

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2017

PRONOUNCED ON : 02.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.720 of 2011

and

M.P.No.1 of 2011

1. Subramani
2. Chellammal
3. Ganesan

...

Appellants

(Cause title accepted vide order of court dated 06.06.2011 made in M.P.No.1 of 2011 in S.A. SR.31187/2011)

Vs.

1. Saraswathi
Lakshmi (died)
- 2.M.Rajesari
- 3.M.Shanthi
- 4.Sivakolundu

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 07.07.2010 made in A.S.No.131 of 2008 on the file of the I Additional District Court, Erode, confirming the judgment and decree dated 01.08.2006 made in O.S.No.694 of 2003 on the file of the II Additional Sub Court, Erode.

For Appellants : Mr.M.Guruprasad

For Respondents : Mr.S.Saravanan

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 07.07.2010 made in A.S.No.131 of 2008 on the file of the I Additional District Court, Erode, confirming the judgment and decree dated 01.08.2006 made in O.S.No.694 of 2003 on the file of the II Additional Sub Court, Erode.

2. The suit has been laid by the plaintiffs for partition and permanent injunction.

3. The second defendant Chellammal is the wife and the third defendant Ganesan is the son of the deceased Perumal. The deceased Perumal, the first defendant Subramani and the plaintiffs are the children of Ramasamy gounder and Ramayee. According to the plaintiffs, the suit properties are the self acquired properties of the deceased Ramasamy Gounder by virtue of the sale deed dated 16.02.1956, which has been marked as Ex.A1. As regards the above relationship between the parties concerned and as regards the acquisition of the suit properties by the deceased Ramasamy Gounder under Ex.A1, there is no dispute. Now, according to the plaintiffs, inasmuch as they are also entitled to claim equal share in the suit

properties as the heirs of the deceased Ramasamy gounder and inasmuch as their request for amicable partition had been repudiated by the defendants, they have been necessitated to lay the suit for partition and the plaintiffs claimed totally 8/15th share in the suit properties.

4. The defendants have resisted the case of the plaintiffs on two grounds. They have pleaded that the plaintiffs orally relinquished their shares in the suit properties. As regards the above said ground, the courts below have rightly disbelieved the evidence projected by the defendants by way of oral evidence through DWs1 to 4 and found that the oral relinquishment plea raised by the defendants is not true and acceptable. Accordingly, it could be seen that the plea of oral relinquishment put forth by the defendants have been rightly negated by the Courts below. No infirmity is pointed out in the above findings of the Courts below with reference to the above defence set forth by the defendants.

5. The second defence is that the defendants, by long possession and enjoyment of the suit properties and by ouster of the plaintiffs, have perfected title to the suit properties by way of adverse possession. However, the above plea of the defendants has also been

negated by the Courts below as the evidence, with reference to the same on the side of the defendants, is not convincing trustworthy and acceptable. As regards the establishment of the plea of adverse possession, the defendants have relied upon Exs.B1 to 9. However, as rightly held by the courts below, the above said documents would not be adequate and sufficient and also found to be not convincing to uphold the plea of ouster and adverse possession set out by the defendants to resist the claim of the plaintiffs in claiming partition in respect of the suit properties.

6. Apart from the above said two main pleas, no other acceptable defence has been set out by the defendants to reject the plaintiffs case. In such view of the matter, it is found that the Courts below have rightly accepted and found that the plaintiffs are entitled to claim their due shares in the suit properties and accordingly, rejected the defence put forth by the defendants and granted the decree as regards the claim of partition by the plaintiffs in respect of the suit properties. No interference is called for in the above said findings of the Courts below.

In the light of the above discussions, no substantial question of law is found to be involved in this second appeal. The second appeal

fails and accordingly, the same is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

02.02.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The I Additional District Court,
Erode.
2. The II Additional Sub Court, Erode.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.720 of 2011
and
M.P.No.1 of 2011

02.02.2017

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