

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 25.07.2018

Judgment Pronounced on : 26.10.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.641 of 1992

V.Velliammal

... Appellant/Plaintiff

Vs

1.K.V.Kumaraguru (Deceased) ... 1st respondent/1st defendant

2.K.Vanaja

3.K.Rajalakshmy

4.K.Vijayalakshmy

5.K.Jayalakshmy

6.Malarvizhy

7.Krithika (Minor)

8.Praveen (Minor)

... Respondents 2 to 8

Minors Represented by 6th respondent as mother and guardian

[Respondents 2 to 8 are brought on record as Lrs of the deceased sole respondent Vide order of Court dated 25.07.2017 made in CMP.Nos.8901 to 8903 of 2006 in AS.No.641 of 1991]

[Defendants 2 to 7 remained exparte in the lower Court. Hence they are not necessary parties in this appeal]

Prayer :- Appeal Suit filed under Order 44 Rule 1 read with Section 96 of CPC, against the judgment and decree passed in O.S.No.104 of 1987 dated 29.11.1990 on the file of the learned Subordinate Judge, Villupuram.

For Appellant

: Mr.M.L.Ramesh

for Mr.A.Uma Shankar

For Respondents : R1 - Died

RR2 to 8 - No Appearance

JUDGMENT

This appeal is preferred challenging the decree dismissing a suit for partition preferred by parties in O.S.No.104 of 1987 on the file of Sub Court, Villupuram. Before this Court, notices were served on respondents and none entered appearance.

2. The brief facts that are now required for the current purpose is that :

The suit property that measures a total extent of 14.46 acres and was held by 15 persons under a joint patta in Patta No.219. In this by sale the plaintiff claim to have purchased the share of some of the pattadars under several sale deeds dated between 03.09.1980 and 13.09.1985, and claimed undivided 311/540 shares in the entire property.

3. The first defendant claims 351/810 share and defendants 2 to 7 have claimed 35/810 shares.

4. Matter went for trial and the trial Court framed as many as 9 issues. So far as plaintiff's entitlement is concerned, the trial Court in para 35 of its judgment has founded that she is entitled to only 212/405 share in the suit property. However, it dismissed the suit on the ground that the plaintiff has lost her right, as the defendants have prescribed title by adverse possession. The appeal is preferred against it.

5. Points for consideration :

Whether the first defendant has prescribed title by adverse possession?

6. The learned counsel for the appellant/plaintiff submits that plea of adverse possession is pleaded in the written statement, in the sense that none of them have stated the specific time since when the possession had become adverse. The property is essentially an open land where the first defendant claims that he has been quarrying stones. And, it is the admitted case of the first defendant that he is not entitled to the entire extent, and the trial court too has found the same. Here, the trial court has considered some tax receipts or patta proceedings without considering whether the said proceedings have held with notice to parties to be affected thereby. At any rate, patta transfer proceedings or tax receipts cannot be treated at par with documents of title and they are inadequate to prove divestiture of undivided interest in the property.

7. The parties are in agreement, which their respective pleadings themselves disclose that the suit property measuring 14.46 acres were jointly held by 15 pattadars under patta No:219. The first defendant in his written statement proceeds to state that this block of land was a poromboke land and was assigned by the Government to 15 individuals. Both the first defendant as well as the plaintiff were purchasers from the original pattadars, or from their legal heirs, or from those to whom the property was sold by the original pattadars or their legal heirs.

8. If the written statement of the first defendant is closely analysed, he first denies the title of the vendors of the purchasers to execute the sale deeds in favour of the plaintiff; next, he would assert title to the entire 14.46 acres; and third

that alternatively the plaintiff and his predecessor in title have lost their title by adverse possession.

9. The judgment of the court below delve into the meticulous aspects of title and possession. And, it did find that the plaintiff has title to an undivided 311/540 share in the entire suit property. It is nobody's case that the property has been divided at anytime before either. Having found that the plaintiff has title to the share it declared, the trial Court then proceeds to take it away on the grounds of adverse possession.

10. The reasoning of the Court below appears to lay considerable weight to the factum of alleged possession by the contesting defendants, but not as to the quality of such possession and its legal sustainability. Firstly, the defendants have raised both the plea of title and adverse possession and both the pleadings, inasmuch as they are inconsistent pleas cannot co-exist. The trial court having held on title, has also stretched to include adverse possession alongside and this is not permissible. Secondly, in a property which is not proved to have been divided anytime before, and when parties can only have title to undivided shares, then the defendants ought to plea ouster, where it is mandatory that to plea that the animus to enjoy the property adverse to the right, title and interest of the other co-owners must be to the knowledge of the other party. Or at least there ought to be a plea of acquiescence. While any plea founded on acquiescence is not pleaded, the plea of adverse possession stretching it to one required to constitute plea of ouster is also not pleaded. Thirdly, in the absence of requisite pleadings, no amount of evidence can be looked into. Fourthly, payment of tax and rates and the receipts issued for them are incapable of affecting title; nor, any patta proceedings can be treated as a document of title.

11. Accordingly, this appeal is allowed and the judgment and decree passed in O.S.No.104 of 1987 dated 29.11.1990 on the file of the learned Subordinate Judge, Villupuram is set aside and plaintiff's 212/405 share in the suit property is declared and a preliminary decree be passed in terms of it. The appellant is directed to pay necessary Court fee payable. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssn

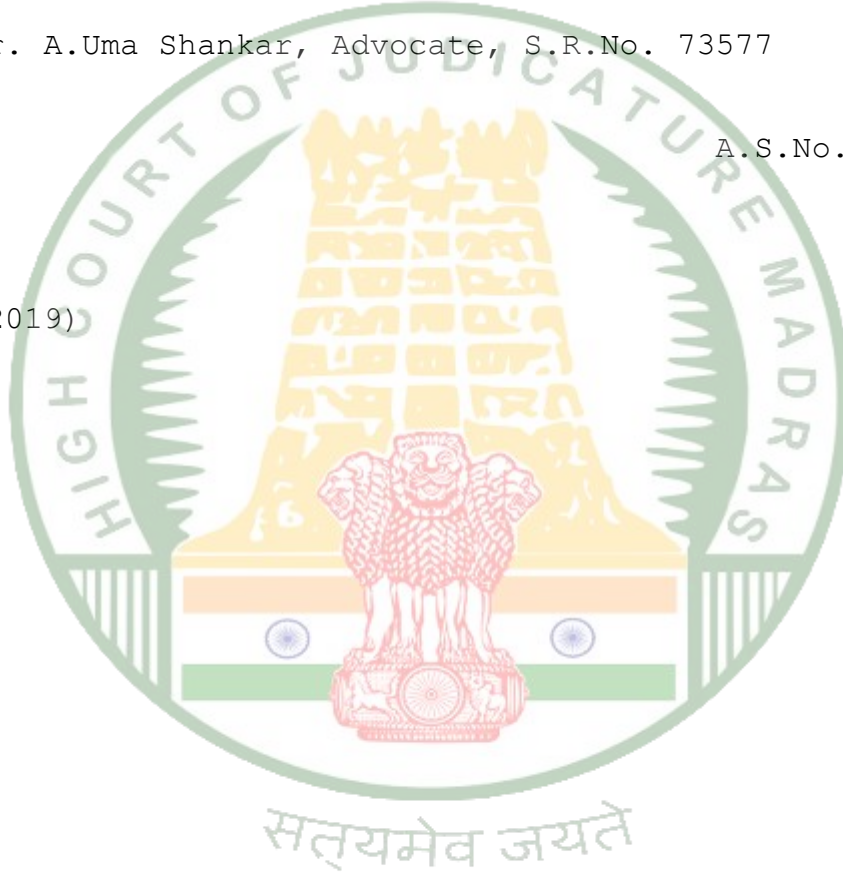
To:

1. The Subordinate Judge,
Villupuram.
2. The Section Officer,
VR Section, High Court,
Madras.
3. The District Collector,
Villupuram District.

+1cc to Mr. A.Uma Shankar, Advocate, S.R.No. 73577

A.S.No.641 of 1992

KJI (CO)
GN(28/01/2019)



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