

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.06.2018

Judgment Pronounced on : 13.07.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.539 of 2006

Vasanthakumari

... Appellant/Plaintiff

Vs

- 1.Robin Sundara Prabhu
- 2.J.P.Nelson
- 3.V.S.Jayakumar
- 4.V.S.Sundarakumar
- 5.B.P.Stanley Samuel
- 6.B.P.Robin Sampathkumar
- 7.Grace Leela
- 8.Rosy Surendran

- 9.Julia Premkumar

Rep.by Power of Attorney Robin Sundara Prabhu

- 10.Samuel (Deceased)
- 11.Salome Manickam
- 12.Minor Joe
- 13.Minor Nancy

[Minors 12 & 13 are rep. by their mother and next friend
the 11th respondent.]

- 14.Christopher Rooban Raj
- 15.Stephen Jabaraj
- 16.Jobu Arulraj

... Respondents/ Defendants

[Respondents 14 to 16 are brought on record as L.Rs of the
deceased 10th respondent Vide order of Court dated
20.07.2017 made in CMP.Nos.534 to 536 of 2017
in AS.No.539/2006]

Prayer :- First Appeal filed under Section 96 of C.P.C., to set aside the judgment and decree dated 28.10.2004 in O.S.No.90/2004 on the file of the Additional District Judge, Fast Track Court No.II, Salem.

For Appellant : Mr.B.Vijayakumar

For Respondents: Mr.Selvaraj for Mr.Devadoss
1 to 6 M/S.S.Gunalan
R15

JUDGMENT

The plaintiff in a suit, in which she has combined the relief of partition that she seeks against her brother, the eleventh defendant in the suit, and another relief of permanent prohibitory injunction that she claims against defendants 1 to 10 and 12 to 15 not to interfere with her peaceful possession and enjoyment of the suit properties, and having lost her suit in entirety has preferred this appeal. For the sake of convenience, the parties would be referred to by their ranks before the Court below.

2. The suit properties described in five items are spread over five different villages in Yercaud Taluk, Salem District. These properties according to the plaintiff originally belonged to a certain Devasagaya Gounder. On his death, the properties devolved on his son Perinba Gounder. From now, it is necessary to provide a short genealogical detail:

- Perinba Gounder was married to one Kirubhai Samadhanam. It was a second marriage for both of them, as both were said to have lost their respective spouses by then.
- Kirubhai Samadhanam was first married to a certain Manickam Pillai, through who she had four sons and two daughters. After her marriage to Perinba Gounder, she had begotten Ruth Ragel Thangamani through Perinba Gounder.
- Ruth was married to one Arulnathan, to whom are born the plaintiff and her brother Samuel, who is arrayed in the suit as the eleventh defendant.

3.1 The controversy here is between the heirs of Kirubhai Samadhanam's daughter born through her second husband, and her four sons through her first husband. The plaintiff contends that inasmuch as the suit properties belonged to Perinba Gounder, on his death the same devolved on his daughter Ruth and upon whose demise the properties devolved on her two children, namely the plaintiff and the eleventh defendant.

3.2 The defendants 1 to 10 and 12 to 14 are the descendants of four sons of Kirubhai Samadhanam born to her through her first husband. When Perinba Gounder married Kirubai Samadhanam, she was a widow with six children and taking pity on the children, they were also maintained by him.

3.3 Ruth Ragel Thangamani, the mother of the plaintiff and the eleventh defendant, lived with her husband Arulnathan at Roseland Estate, Manjaikuttai

Village, Yercaud. Owing to failing health, Ruth was brought to Salem for her treatment where she died on 18.5.1985.

3.4 While so, the defendants 1 to 10 attempted to disturb the possession of the plaintiff and the eleventh defendant over the suit properties, threatened to trespass into, and also cause damage to the suit properties. Hence, the plaintiff laid a suit for partition against her brother and also prayed for prohibitory injunction as against other defendants.

4. The first defendant died during the pendency of the suit and therefore, defendants 12 to 14, who are widow and children of the deceased first defendant are impleaded in the suit as legal heirs of deceased first defendant. The written statement filed by defendants 1, 3 to 10, it is alleged :

- Plaintiff was not born to Ruth Ragel Thangamani and her husband Arulnathan and so was the eleventh defendant, Samuel. Eleventh defendant was a pre-marital child of Ruth Ragel Thangamani and was not born to her through Arulnathan. When Ruth Ragel Thangamani's husband Arulnathan gained knowledge about this conception, and suspected parentage of the child, differences grew within the family, even when their marriage was few months old. Soon they were separated under a written Muchalika dated 12.02.1946. Plaintiff was born to Ruth Ragel Thangamani after her separation from Arulnathan.
- Kirubai Samathanam's first husband Manickam possessed some properties and after his demise, Kirubhai Samathanam sold those properties and came to Yercaud along with the sale proceeds. After Kirubhai Samadhanam's marriage to Perinbha Gounder, her children born to her through both her husbands grew up together. It may have to be stated here that before marrying Kirubhai Samadhanam, Perinbha Gounder was married to Kirubhai Samathanam's sister Susanammal through whom he had three children namely Manonmani, Davamani and Manickam. They are necessary parties to the suit.

- The suit properties are the self-acquired properties of the four sons of Kirubhai Samadhanam born through Manickam. Neither the plaintiff nor her brother, the 11 defendant have any right to the suit properties, and if at all they have had any right over them, the same was lost to them by adverse possession.

5.1 Before the trial Court, the plaintiff has examined herself as P.W.1 and she has produced a solitary document namely, the extract of Baptism Certificate issued to her mother Ruth Ragel Thangamani, and this was marked as Ext.A1. Supporting her case, her brother examined himself as D.W.1. For the contesting defendants, fifth defendant was examined as D.W.2, and he produced Exts. B-1 to B-16.

5.2 The trial Court has framed as many as six issues, of which the second issue was whether the suit properties were the self-acquired properties of the four the sons of Kirubhai Samadhanam, and the trial Court entered a finding in favour of the defendants on the basis of the sale deeds viz., Ext.B4 to Ext.B7 and Ext.B14 are in favour of the aforesaid four sons of Kirubhai Samadhanam, born through Manickam Pillai and dismissed the suit.

6. Point for consideration is whether the plaintiff and the eleventh defendant are the exclusive co-sharers of the suit properties?

7. The plaintiff has clubbed two prayers, one directed against her brother, the 11th defendant and the other directed against defendants 1 to 10, 12 to 14. As against all the defendants, except her brother, plaintiff does not seek any right of partition and as against her brother, she does not seek injunction. And she doesn't receive any resistance from her brother either.

8. As regards defendants 2 to 10 and 12 to 14 are concerned, they claim title to the property based on self-acquisition. To support their title over the property, these defendants rest title to their immediate ancestors, who are the four sons of Kirubhai Samadhanam born to her through her first husband Manickam Pillai, The sale deeds on which they rest the contentions are Ext.B4 to Ext.B7 and Ext.B14. The details that they disclose may be tabulated in brief as below:

Exhibit	Exhibits Details			Relevant suit properties
	Date	Vendor	Purchaser	
B-4	26.9.1942	Perinba Gounder	James Rathinam	Item 3 (Salem District, Servarayan Malai Sub District, No.19, Karadiyur Village)
B-5	26.9.1942	Perinba Gounder	Bosevass Pushvanatham	Item 4 (Salem District, Servarayan Malai Sub District, No.18, Mulivi Village)
B-6	17.6.1946	Charles Varnom Bukton Ryle	1. Victor Swamidoss, 2. Bosevass Pushvanatham & 3. James Rathinam	Item 5 (Salem District, Servarayan Malai Sub District, Nagalur Village)
B-7	15.3.1946	Children of certain S.P.Nadar (third parties)	1. Jaganathan 2. James Rathi	Item 3 (Salem District, Servarayan Malai Sub District, Karadiyur Village)
B-14	12.1.1961	1. Chinnapaya Gounder 2. Victor Swamidoss 3. Bosevass Pushvanatham & 4. James Rathinam	Jagannathan	Item 2 (Salem District, Servarayan Malai Sub District, Chemdura Village) and Item 5 (Salem District, Servarayan Malai Sub District, Nagalur Village)

The above tabulation indicate that all the properties are dealt with under five different sale deeds between 1942 and 1961, and four among them are within a span of four years - from 1942 to 1946. Of them in two sale deeds (Exts.B-4 and B-5), one of the vendors was Perinba Gounder himself. And, the suit is laid some 43 years after the last sale deed in Ext.B-14. All the five sale deeds that find a place in the tabulation do create a strong probability that the possession of the suit properties could only be with the transferees of the properties under the respective sale deeds.

9. Even in the allegation of the contesting defendants that both the plaintiff as well as the 11th defendant are not the

legitimate children born to Ruth Ragel Thangamani and her husband Arulnathan, a fact which was not significantly emphasised by them before the trial court, is kept aside, neither the plaintiff nor the eleventh defendant has produced any documents worthy of consideration to throw even a weak inference that they were in possession of the property.

10. The plaintiff, now seeks a relief of partition which pre-supposes her joint ownership of her suit properties with her brother. Of the five items of suit properties, under Exts.B-4 and B-5, Perinba Gounder himself had sold items 3 & 4 of the suit properties. The plaintiff however, did not choose to explain how she continued to have title over them and enjoy them. As to the remaining three sale deeds, even though Perinba Gounder did not figure as a vendor of the properties dealt with thereunder, yet in the face of Exts.B-6, 7 and 14, that deal with these properties, it becomes all the more important for the plaintiff to establish that Perinba Gounder did own these properties. Here the plaintiff failed absolutely.

11. Inasmuch as the plaintiff has neither proved her title to seek partition, nor her possession to sustain her prayer for injunction, she fails to convince this Court on all aspects. Accordingly, this appeal is dismissed and the order of the Additional District Court, Fast Track Court No.II, Salem in O.S.No.90/2004 is hereby confirmed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1. The Additional District Judge
Fast Track Court No.II,
Salem.

2. The Section Officer, VR Section,
High Court, Madras.

+5cc to Mr.B.Rabu Manohar, Advocate, S.R.No.45911

+1cc to Mr.Gunalan, Advocate, S.R.No.46219

+1cc to Mr.B.Vijayakumar, Advocate, S.R.No.46218

A.S.No.539 of 2006

NRI (CO)

GSP(23/10/2018)