

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2018

PRONOUNCED ON : 23.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.2231 of 2004

1. M.Thavamani
2. T.Sampath
3. T.Santhosam
4. T.Soundararajan
5. T.Rajendiran ...Appellants/Defendants/Respondents

Vs.

1. M.Rani
Rep. by her power of attorney
I.Elangovan ...1st respondent /Appellant/Plaintiff
2. Jayamani ...2nd Respondent/6th respondent /6th Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 21.06.2004 passed in A.S.No.60 of 2003 on the file of Principal District Judge, Vellore District reversing the judgment and decree dated 28.04.2003 passed in O.S. No.447/1995 on the file of the Principal District Munsif Court, Vellore.

For Appellants : Mr. V.K.Rajagopalan

For R1 : Mr.R.Sunilkumar

For R2 : No appearance/set ex-parte
vide order dated 04.07.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.06.2004, passed in A.S.No.60 of 2003, on the file of the Principal District Court, Vellore reversing the judgment and decree dated 28.04.2003, passed in O.S. No.447/1995, on the file of the Principal District Munsif Court, Vellore.

2. The second appeal has been admitted on the following substantial question of law:

"Whether the appellants/defendants
have prescribed their title to the suit

properties by ouster and adverse possession?"

3. Considering the scope of controversy between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The suit has been laid by the plaintiff for partition.

5. It is not in dispute that the plaintiff and the 6th defendant are sisters and the first defendant is the brother of the plaintiff and the 6th defendant and all are the children of the deceased L.Mark alias Sangaan and the defendants 2 to 5 are the sons of the first defendant. Claiming that the suit properties are the separate and self acquired properties of the deceased L.Mark alias Sangaan and accordingly contending that she and the defendants are in possession and enjoyment of the suit properties jointly after the demise of their father and inasmuch as the defendants had colluded together and deprived the plaintiff of her due share in the suit properties, despite the request for the allotment of her share separately, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

6. The defendants 1 to 5 contested the suit mainly on the footing that the suit properties are the ancestral properties of the deceased L.Mark alias Sangaan and accordingly, the plaintiff is not entitled to claim any share in the suit properties as put forth by her. Further, according to the defendants, the plaintiff's request for share had been firmly declined during the panchayat held in 1970 and thereafter, it is only the defendants 1 to 5, who had been in the possession and enjoyment of the suit properties on their own by asserting title independently, continuously and openly to the knowledge of the plaintiff and the 6th defendant beyond the statutory period by ousting the plaintiff and the 6th defendant and hence, according to them, they had prescribed title to the suit properties by way of adverse possession and accordingly contending that the suit laid by the plaintiff is barred by limitation, prayed for the dismissal of the suit.

7. In support of the plaintiff's case PW1 was examined, Exs.A1 to A8 were marked. On the side of the defendants DWs 1 and 2 were examined, Exs.B1 to B60 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss

the plaintiff's suit by holding that the defendants 1 to 5 had prescribed title to the suit properties by way of adverse possession. The first appellate Court, on an appreciation of the materials placed on record, set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff held that the plaintiff is entitled to obtain 1/3 share in the suit properties and accordingly, decreed the suit in favour of the plaintiff. Impugning the same, the present second appeal has been preferred.

9. Materials placed on record go to show that the suit properties are the self acquired properties of L.Mark alias Sangaan. In this connection, as rightly found by the first appellate Court, the documents marked as Exs.A1 to A4 read in conjunction with the oral evidence adduced by the respective parties would go to disclose that it is only the deceased L.Mark alias Sangaan, who had acquired the suit properties independently. Though the defendants would contend that the suit properties are the ancestral properties and would also put forth that the suit properties had been acquired by the deceased L.Mark alias Sangaan with the aid of the income derived from the ancestral properties, however, as regards the abovesaid defence version, the defendants have not adduced any acceptable and reliable evidence. At this juncture, it is to be noted that the evidence of DW1 has been not considered by the first appellate Court on the footing that DW1 has not subjected himself for cross examination and accordingly, eschewed his evidence from consideration. The reasonings of the first appellate Court for not considering the evidence of DW1 cannot be assailed in any manner. It is thus found that we have only the oral evidence of PW 1 and DW2 respectively. As regards the case of the defendants that the suit properties had been acquired out of the income and aid of the ancestral nucleus, it is found that DW1 is unable to throw any picture as regards the availability of the ancestral nucleus and the income derived from the same. When he is completely not aware of the abovesaid facts as, admitted by him, during the course of his evidence, it is found that the claim of the defendants that the suit properties had been acquired with the assistance of the ancestral nucleus, as such, cannot be countenanced. It is thus found that the properties involved in the matter belonged to the deceased L.Mark alias Sangaan absolutely. When the defendants have taken the plea that the same are the ancestral properties, as rightly determined by the first appellate Court, it is for the defendants to establish that the suit properties are the ancestral properties. However, when with reference to their abovesaid claim, there is no material worth acceptance placed on record, the first appellate Court has rightly determined that the suit properties are the

separate and self acquired properties of the deceased L.Mark alias Sangaan. In such view of the matter, the date of the death of the deceased L.Mark alias Sangaan does not assume significance as to whether he had died prior to the advent of the Hindu Succession Act 1956 or subsequent thereto. The suit properties being the separate and self acquired properties of the deceased L.Mark alias Sangaan and he having died intestate leaving behind the plaintiff and the defendants 1 and 6 as his legal heirs, it is found that the plaintiff as per law would be entitled to 1/3 share in the suit properties.

10. The main defence projected by the defendants to resist the plaintiff's case is that they had prescribed title to the suit properties by way of adverse possession. In this connection, though the defendants would claim that after the demise of the deceased L.Mark alias Sangaan, it is only they who had been in the exclusive possession and enjoyment of the suit properties, however, with reference to their abovesaid case, there is no material projected. Absolutely the defendants have not placed any proof to show that since the date of the death of the deceased L.Mark alias Sangaan, the first defendant had been exclusively enjoying the suit properties as his own to the knowledge of the plaintiff and the 6th defendant.

11. In this connection, the defendants have raised a plea that the demand of partition made by the plaintiff during 1970 had been stoutly refused in the panchayat held at that point of time and thereafter, it is their case that it is only the defendants, who had been enjoying the suit properties on their own by asserting independent title to the same continuously and openly by exhibiting animus attitude to one and all, including the plaintiff and the 6th defendant, beyond the statutory period and by ousting them and hence they had prescribed title to the suit properties by way of adverse possession. As rightly determined by the first appellate Court, the plea of panchayat projected by the defendants is not borne out by acceptable proof. None of the panchayat members has been examined. DW1's evidence with reference to the same has been rightly discarded by the first appellate Court by giving cogent reasons. No doubt, some documents have come to be placed by the defendants to show that the first defendant had effected mortgage, obtained service connection, paid kist and obtained patta etc., as regards the suit properties. However, as rightly determined by the first appellate Court, considering the close relationship between the parties, it is found that the mere enjoyment of the suit properties by the first defendant by itself would not lead to the conclusion that he had been enjoying the suit properties as his own to the complete exclusion of the plaintiff and the 6th defendant.

The mutation of records in the name of the first defendant by itself would not confer any right on him and also would not extinguish any right on the part of the plaintiff and the 6th defendant to the properties in dispute and the relationship between the parties being so close, the presumption would be only that the plaintiff and the 6th defendant being the female members of the family, would only be under the impression that the suit properties are being managed by their elder brother, the first defendant, on their behalf also and in such view of the matter, the mere enjoyment of the suit properties or even assuming for the sake of arguments, no income as such had been parted by the first defendant to the plaintiff or the 6th defendant out of the suit properties as such, those facts by themselves would not be sufficient to uphold that plea of adverse possession projected by the defendants. Evidence has been adduced in the matter that the relationship between the parties had been always cordial and in such view of the matter, it is found that for claiming the title to the suit properties by way of adverse possession, there must be a positive evidence on the part of the defendants that they had been asserting their title in respect of the suit properties to the knowledge of the plaintiff and the 6th defendant openly and continuously and by ousting them and with reference to the abovesaid aspects of the matter, when the materials projected by the defendants do not lend support, it is seen that the first appellate Court has rightly discountenanced the plea of adverse possession projected by the defendants considering the authorities placed before the first appellate Court. It is found that the first appellate Court has rightly held that as there had been no strained relationship between the parties as such, the mere mutation of the records would not confer and extinguish title of the co-owners with reference to the properties in dispute and the plaintiff and the 6th defendant being the female members of the family and accordingly had deemed it fit to entrust the enjoyment of the family properties with their elder brother i.e., the first defendant and as above seen, such practice being in vogue in our country leaving the enjoyment of the suit properties in the custody of the male members by reposing confidence on them, it is seen that the documents projected by the defendants on their own, as rightly determined by the first appellate Court, would not entitle them to get the prescriptive title in respect of the suit properties and thus, it is found that the first appellate Court, on a proper appreciation of the materials placed on record, both factually as well as legally and in the light of the authorities projected before it, rightly discountenanced the plea of adverse possession projected by the defendants. The said determination of the first appellate Court do not warrant any interference in the second appeal. The substantial question of law formulated in the second appeal

is accordingly answered against the defendants and in favour of the plaintiff.

12. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Vellore.
2. The Principal District Munsif Court,
Vellore.
3. The Section Officer,
V.R.Section,
High Court, Madras.

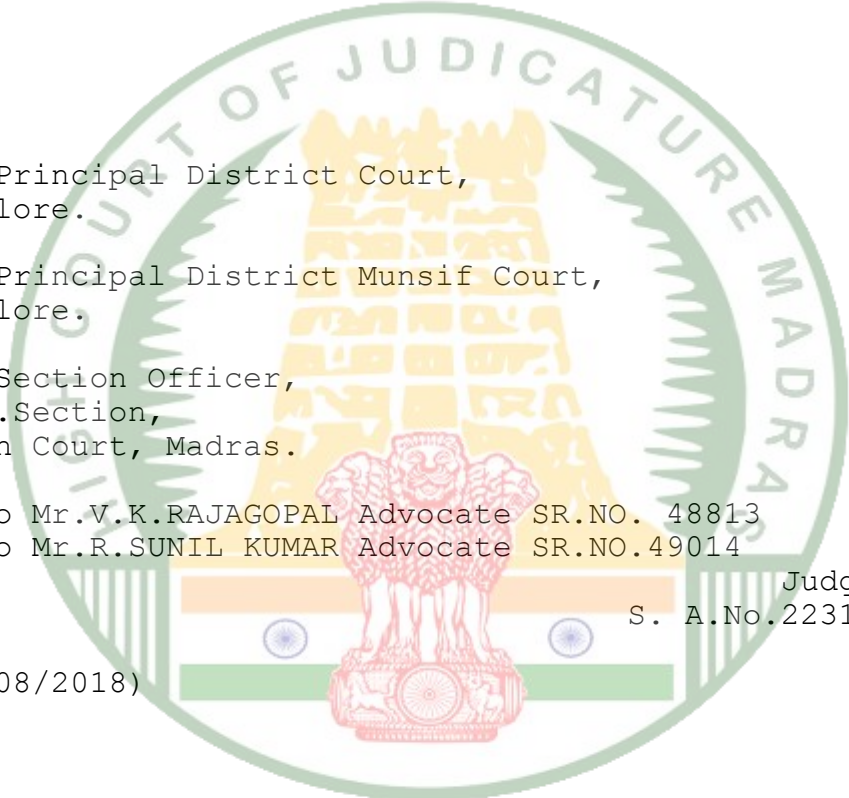
+1 cc to Mr.V.K.RAJAGOPAL Advocate SR.NO. 48813

+1 cc to Mr.R.SUNIL KUMAR Advocate SR.NO.49014

Judgment in
S. A.No.2231 of 2004

KGK(CO)

ASK(28/08/2018)



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