

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2017

PRONOUNCED ON : 10.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1707 of 2001

Pandian

..
Vs.

Appellant

Madhanmohan

..

Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of the Civil Procedure against the Judgment and Decree dated 29.12.2000 made in A.S.No.96 of 2000 on the file of the Additional Subordinate Court, Mayiladuthurai reversing the judgment and decree dated 23.06.2000 made in O.S.No.928 of 1996 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.SrinathSridevan

For Respondent : Mr.SathishParasaran,
Senior Counsel
for Mr.M. Thamizhavel

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated 29.12.2000 passed in A.S.No.96 of 2000 on the file of the Additional Subordinate Court, Mayiladuthurai, reversing the judgment and decree dated 23.06.2000 passed in O.S.No.928 of 1996 on the file of the Additional District Munsif Court, Mayiladuthurai.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for partition.

4. The case of the plaintiff, in brief, is that the suit property originally belonged to Rethina Padayachi and the same is the ancestral and joint family property of Rethina Padayachi and after his death, his son Muthukumarasamy and his grandson Kannan succeeded to the same as Members of the Hindu undivided family and the son Muthukumarasamy was not sound in mind and affected by isomonia and leprosy and on 06.03.1982, the plaintiff purchased the suit property represented by his curator and wife Saroja and also from his son Kannan and after the purchase, it is only the plaintiff, who has been enjoying the suit property by putting up brick built thatched building, etc., and while so, the defendant claims to have purchased the suit property from Muthukumarasamy by way of a registered sale deed dated 13.03.1982 and on that basis, attempted to interfere with the plaintiff's possession and enjoyment and the same resulted in the laying of the suit by the plaintiff against the defendant in O.S.No.136 of 1982 for permanent injunction and pending the above suit, the defendant illegally encroached

into the suit property and therefore, the plaintiff amended the relief for recovery of possession in the said suit and as the plaintiff was advised to amend the plaint further for including the relief of partition as the defendant had also claimed to have purchased the suit property from Muthukumarasamy and as the plaintiff had purchased the suit property from Kannan, S/o. Muthukumarasamy each deriving half share in the suit property, accordingly, the plaintiff sought for the amendment of the plaint for partition and the same was entertained by the trial court and impugning the same, the defendant preferred a petition in CRP.No.585/1994 and the High Court was pleased to allow the Civil Revision Petition and thereby, the amendment sought for by the plaintiff for partition was negated. However, the High Court had observed that the plaintiff is at liberty to work out his remedy in appropriate forum and accordingly, the plaintiff has laid the present suit for partition of his half share in the suit property.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on fact. The claim of the plaintiff is that the suit property is the joint family property of Muthukumarasamy and his son is incorrect. The suit property is the absolute property of Muthukumarasamy, on the demise of his father Rethina Padayachi, as the same was purchased by Rethina Padayachi and his absolute property.

Muthukumarasamy was mentally sound, but he was suffering from

Leprosy and accordingly, his wife and son did not provide for his maintenance and treatment and neglected him and the defendant and Muthukumarasamy entered into an agreement of sale on 20.03.1980 in respect of the suit property and pursuant to the same, the possession of the suit property was handed over to the defendant by Muthukumarasamy and on 10.03.1982, the defendant purchased the suit property from Muthukumarasamy and thus, it is only the defendant, who is entitled to the suit property and as the request of Muthukumarasamy's wife and son for paying a portion of the consideration to them was refused by the defendant, they had created a sale deed on 06.03.1982 in the name of the plaintiff and accordingly, the plaintiff has come forward with the false suit and the sale deed in favour of the plaintiff is not true and valid. The sale deed obtained by the plaintiff from Muthukumarasamy's wife and son will not confer any title on him to claim partition. The plaintiff's suit is barred by the principle of res judicata as he had left the suit to go for dismissal laid by him in O.S.No.136/1982 and the present suit is nothing but an abuse of the process of the Court, the plaintiff has not obtained the permission of the Court to file a fresh suit under Order 23 Rule 3 of the code of Civil Procedure Code and on that ground also, the present suit is legally barred. The defendant is in open, continuous and uninterrupted possession of the suit property right from 20.03.1980 and therefore, the plaintiff has lost his title by the adverse possession of the defendant and the suit is barred by limitation and

hence, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 to 4 were examined and Exs.A1 to A3 were marked. On the side of the defendant, DWs 1 & 2 were examined and Ex.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Assailing the same, the present second appeal has been preferred.

8. At the time of the admission of the Second Appeal, the following substantial questions of law were formulated for consideration:

“ (a) The earlier suit being for bare injunction, would the withdrawal of the suit without leave of the court in any way affect the legal rights of the plaintiff in the subsequent suit based on title and on a different cause of action?

(b) In view of the pendency of the earlier suit in which the relief of possession was

sought to be brought in by way of amendment, which relief was later on refused only by the High Court, will not the time taken during the pendency of the proceedings be excluded from calculating the period of adverse possession set up by the defendant?"

9. Claiming that the suit property is the ancestral property of Rethina Padayachi and thereby, his son Muthukumarasamy and his grandson are entitled to the suit property, on the demise of Rethina Padayachi and claiming that he had purchased the suit property from Muthukumarasamy's curator, namely, his wife Saroja and his son Kannan by way of a sale deed dated 06.03.1982 and also projecting that the defendant has claimed to have purchased the suit property from Muthukumarasamy by way of a Sale deed dated 13.03.1982, as according to the plaintiff, since both Muthukumarasamy and Kannan have equal share in the suit property, it is his case that he has come forward with the suit for partition of his half share in the suit property based on the sale deed dated 06.03.1982.

10. The defendant has challenged the case of the plaintiff that the suit property is the ancestral joint family property of Rethina Padayachi and on the other hand, it is his specific case that the suit property is the absolute property of Rethina Padayachi and the same having been purchased by him and therefore, according to the defendant, on the

demise of Rethina Padayachi, the suit property had been succeeded only by his son Muthukumarasamy and not by his grandson Kannan and therefore, according to the defendant, by way of a sale deed dated 06.03.1982, the plaintiff cannot claim any right or interest over the suit property and further, according to the defendant, inasmuch as, he had purchased the suit property from Muthukumarasamy by way of a sale deed dated 13.03.1982, he only has absolute title to the suit property and hence, the suit laid by the plaintiff is liable to be dismissed. Further, according to the defendant, the suit laid by the plaintiff is barred as the plaintiff has not obtained the permission of the Court to institute the suit, after he had left the suit laid in O.S.No.136/1982 to go for dismissal without prosecution, as violative of Order 23 Rule 3 of CPC .The further case of the defendant is that on account of long and continuous enjoyment, he has also perfected his title to the suit property by way of adverse possession and hence, on that ground also, the plaintiff's suit should fail as the suit is barred by limitation.

11. The case of the plaintiff is that the suit property is the ancestral family property of Rethina Padayachi. Per contra, it is the specific case of the defendant that the suit property is the self acquired property of Rethina Padayachi. The plaintiff examined as PW1 has admitted that on a perusal of the parent title deed, he has come to know that the suit property had been acquired by Rethina Padayachi and the parent title

deed is in his custody and has not produced the same in the Court and in such view of the admission of the plaintiff, it is found that, as contended by the defendant, the suit property is the self acquired property of Rethina Padyachi and not his ancestral family property. Similarly, the grandson of Rethina Padyachi, namely, Kannan, who has been examined as PW3, during the course of cross examination has admitted that the suit property belongs to Rethina Padyachi and his father Muthukumarasamy, who is the only son of Rethina Padyachi. It is thus found that the suit property absolutely belonged to Rethina Padyachi and not his ancestral property. When, according to the plaintiff, the parent title deed disclosed that the suit property had been acquired by way of purchase by Rethina Padyachi, the case of the plaintiff that the same is his ancestral property and thereby, on his demise, his son and grandson would be entitled to share in the property, as such, cannot be accepted. Though the plaintiff is in the custody of the parent title deed, which would disclose the acquisition of the suit property by Rethina Padyachi, for the reasons best known to him, he has not cared to place the same before the Court for consideration. That apart, as above seen, the plaintiff claims to have purchased the suit property from Muthukumarasamy's curator and his wife Saroja and Kannan, PW3 by way of a sale deed dated 06.03.1982 and the copy of the same has been marked as Ex.A1. The plaintiff has not given any valid reason for the non-production of the original sale deed dated 06.03.1982. Be that as it may, on a perusal of

the recitals found in Ex.A1, the same would disclose that the suit property had been purchased by Rethina Padyachi by way of a sale deed dated 12.09.1947 from one Govindasamy Padayachi S/o. Chinasamy Padayatchi and accordingly, he had been enjoying the same as his absolute property. Therefore, from the recitals contained in Ex.A1, it is evident that the suit property is the self acquired property of Rethina Padyachi and such being the position and also in the light of the above said admission of the witnesses, the case of the defendant that the plaintiff has come forward with the false case that the suit property is the ancestral property of Rethina Padyachi seems acceptable. When it is found that the suit property is the self acquired property of Rethina Padyachi, on his demise, the same devolved upon only his son Muthukumarasamy and not on his grandson Kannan as put forth by the plaintiff.

12. However, the Courts below seems to have been carried away by the recitals found in the sale deed dated 13.03.1982, under which, the defendant claims title to the suit property marked as Ex.B1. No doubt, in Ex.B1, the recitals disclose that the suit property has been described as the ancestral as well as the self acquired property of the vendor Muthukumarasamy. On that basis, the Courts below have proceeded to hold that the suit property is only the ancestral property and accordingly, both Muthukumarasamy as well as his son Kannan would be entitled to equal share in the same. However, when the facts, as discussed above,

unerringly lead to the conclusion that the suit property had been acquired by Rethina Padyachi only by way of purchase as depicted in Ex. A1 and when the same is admitted by his grandson Kannan examined as PW3 and also by the plaintiff examined as PW1, the mere recitals found in Ex.B1 as the suit property being ancestral as well as the separate property of Muthukumarasamy by itself would not lead to the conclusion that the same is the ancestral of the family consisting of Muthukumarasamy and Kannan.

13. In the light of the above position, it is seen that PW3 Kannan cannot claim any right to the suit property on the footing that it is the ancestral property of the family. Accordingly, it is found that the suit property is only the absolute property of Muthukumarasamy and when admittedly, Muthukumarasamy has not joined the execution of Ex.A1, under which, the plaintiff claims title to the suit property, it is found that the plaintiff cannot lay any claim of right or partition in the suit property by way of the said document.

14. Though the plaintiff would claim that Muthukumarasamy is a person of unsound mind and suffering from leprosy etc., it is found that Muthukumarasamy has come to be examined as DW2 and from his evidence, it is seen that he is a person of sound mind and accordingly, it is seen that he has alienated the suit property in favour of the defendant

by way of Ex.B1 Sale deed and also asserted that neither his wife nor his son would be entitled to convey any share in the suit property by way of Ex.A1. His evidence seems acceptable and therefore, when it is found that the defendant has purchased the suit property from the lawful owner as above seen, when the plaintiff has not purchased the suit property from the lawful owner and when it has not been established by the plaintiff that DW2 is a person unsound mind and legally represented by his wife Saroja, while executing Ex.A1 and when it is further found that Kannan has no right in the suit property, as such, it is seen that the claim of the plaintiff that he has acquired title to the suit property either in its entirety or as regards half share in the same, as such, cannot be legally countenanced.

15. It is seen that only the defendant has acquired a valid title to the suit property by way of purchase from the absolute owner of the suit property viz., Muthukumarasamy and thus, it is seen that the plaintiff cannot maintain the suit for partition as such on the basis of the alleged purchase of the suit property from the wife of Muthukumarasamy viz., Saroja showing her as his curator and from his son Kannan and therefore, it is seen that the claim of title pleaded by the plaintiff in respect of the suit property for upholding his plea of partition does not merit acceptance in any manner. In the light of the above position, it is seen that the suit laid by the plaintiff for the relief of partition as such

cannot be given credence to and liable to be dismissed.

16. The plea has been taken by the defendant that the present suit laid by the plaintiff for partition is barred by law, particularly, barred under Order 23 Rule 4 of the Civil Procedure Code and on the above ground itself, the plaintiff should be non suited. With reference to the above said contention, it is found that originally the plaintiff had laid the suit against the defendant in O.S.No.136/1982 in respect of the suit property for the relief of declaration and permanent injunction. In the said suit also, the plaintiff had based his claim to the suit property only by way of purchase of the suit property from the wife of Muthukumarasamy viz., Saroja and his son Kannan by way of a sale deed dated 06.03.1982. It is thus seen that the sale deed dated 06.03.1982 is the basis for the claim of the reliefs of declaration and permanent injunction in respect of the suit property in the above said suit. The said suit was resisted by the defendant contending that he had acquired absolute title to the suit property by way of purchase from the true owner of the suit property viz., Muthukumarasamy by way of a sale deed dated 10.3.1982, pursuant to the agreement of sale deed dated 20.03.1980 and that, he has been possession and enjoyment of the suit property pursuant to the sale agreement above sated. Therefore, the defendant had resisted the above suit as devoid of any cause of action and hence, the plaintiff is not entitled to obtain the reliefs claimed in the said suit.

17. Pending the above suit, it is seen that the plaintiff had moved an application to include the relief of possession of the suit property from the defendant on the footing that pending the said suit, the defendant had encroached into the suit property, accordingly, the plaintiff has also sought for the relief of possession in the said suit by way of an amendment and the said amendment had come to be entertained by the Court and accordingly, it is seen that the said suit was proceeded by way of the above said amendment viz., the relief of possession also as sought for by the plaintiff.

18. Further, pending the above said suit, it is found that the plaintiff had preferred another amendment application claiming the relief of partition also in respect of the suit property on the premise that in the event of the Court holding that the plaintiff was entitled to only half share in the suit property he should be granted the said relief. It is found that the said amendment application was stoutly resisted by the defendant and despite the resistance offered by the defendant, the trial Court had allowed the amendment and aggrieved over the same, it is seen that the defendant had preferred the civil revision petition No.585/1994 in the High Court challenging the order of the Court below allowing the amendment for the inclusion of the relief of partition in the said suit. The High Court, on a consideration of the materials placed and the

submissions made by the respective parties, finding that by way of amending the plaint also for including the relief of partition, holding that it would completely change and alter the character and nature of the suit originally laid by the plaintiff and so determining further held that the plaintiff cannot seek the amendment in the suit at his whims and fancies, disregarding the fact that the said suit had been pending for more than 12 years, accordingly, entertained the civil revision petition preferred by the defendant and resultantly, it is seen that it had dismissed the amendment application preferred by the plaintiff for the inclusion of the relief of partition in the said suit. As against the said order, no challenge has been made by the plaintiff.

19. No doubt, while disposing the above said civil revision petition, the High Court had also observed that if the plaintiff obtained the relief of declaration, it is always open to him to take necessary legal action to get his share quantified and identified and further observing that therefore the said suit laid for declaration and consequential injunction cannot be altered into the suit for partition.

20. It is seen that the plaintiff did not prosecute the suit in O.S.No.136/1982 and left it go for dismissal, in other words, it is seen that the plaintiff has abandoned the said suit. Thereafter, it is found that the plaintiff has laid the present suit in O.S.No.928/1996 for seeking the relief of partition. As already averred by him in O.S.No.136/1982, the

plaintiff based his claim for partition, only on the strengthen of his purchase of the suit property by way of a sale deed dated 06.03.1982 from the wife of Muthukumarasamy viz., Saroja and his son Kannan and therefore, it is seen that the base on which, the plaintiff has laid the suit in O.S.No.136/1982 as well as the present suit in O.S.No.928/1996 is only on the claim of his purchase of the suit property by way of the sale deed dated 06.03.1982. It is thus found that the plaintiff has laid the suits both in O.S.No.136/1982 as well as in O.S.No.928/1996 only on the basis of the cause of action i.e. the purchase of the suit property by way of the sale deed dated 06.03.1982 and therefore, it is seen that inasmuch as the same suit property is the subject matter of both in O.S.No.136/1982 and O.S.No.928/1996 and when it is further seen that the cause of action for the two suits is the claim of purchase of the suit property by the plaintiff by way of the sale deed dated 06.03.1982 and though the plaintiff by way of O.S.No.136/1982 has claimed only the relief of declaration and the said relief of declaration is also based upon the claim of the purchase of the suit property by the plaintiff by way of the sale deed dated 06.03.1982 and further when the plaintiff seeks his right and title to the half share in the suit property in the present suit also only on the basis of the sale deed dated 06.03.1982, it is evident that the subject matter as well as the cause of action and the nature of the relief claimed by the plaintiff in both the suits are one and the same. Merely because, the plaintiff has sought for the relief of partition in the present

suit that by itself could not be construed to hold that the plaintiff has laid the present suit for a new relief in respect of the subject matter of the suit and that, he had prayed for a different relief in respect of the same subject matter in O.S.No.136/1982. In toto, it is found that the plaintiff has based his claim to the suit property in both the suits only on the purchase of the suit property by way of a sale deed dated 06.03.1982 and accordingly, it is found that in the earlier suit in O.S.No.136/1982, he has sought for the claim of the suit property in its entirety, whereas, in the present suit, he has sought for the claim of his entitlement to half share in the suit property on the basis of the same sale transaction. In such view of the matter, as rightly put forth and also as rightly determined by the first appellate Court, the sum and substance of the plaintiff's case in both the suits as well as the nature of the reliefs sought for by the plaintiff in both the suits are identical, the only difference being that in the earlier suit, the plaintiff has sought for the declaration that he is entitled to the whole of the suit property, whereas, in the present suit, he has sought for the claim of right to half share in the suit property and therefore, it is seen that both the subject matter as well as the reliefs claimed in both suits are more or less identical and similar and therefore, the contention of the plaintiff's counsel that merely because, in the subsequent suit, the claim of partition had been sought for, it cannot be held that the relief of partition is completely different or alien to the relief of declaration, which had been sought for by the plaintiff in

O.S.No.136/1982.

21. In the light of the above discussions, it is found that as rightly determined by the first appellate Court, when the High Court by way of the Order passed in CRP.No.585/1994 had not granted the permission to the plaintiff to prefer the present suit for partition and on the other hand, had only observed that in case, the plaintiff obtaining the relief of declaration in the earlier suit, it is always open to him to work out his remedy for obtaining his share quantified and identified as per law and that observation cannot at all be construed as a permission granted by the High Court as enabling the plaintiff to lay the suit for partition subsequently. In such view of the matter, when it is found that the plaintiff has abandoned the earlier suit in O.S.No.136/1982, which had been laid based on the cause of action of the purchase of the suit property by the plaintiff by way of a sale deed dated 06.03.1982 and when the plaintiff had not obtained necessary permission from either the trial Court or when the high Court had not granted such permission to the plaintiff in CRP .No.585/1994, it is found that the plaintiff's present suit laid in O.S.No.928/1996 for partition also on the basis of the same cause of action i.e. the purchase of the suit property by way of a sale deed dated 06.03.1982 and when it is, as above discussed, noted that the subject matter or the suit property involved in both the suits is similar and when it is further noted that the plaintiff in the earlier suit has sought

for the relief of declaration by way of his claim of title to the suit property in its entirety and in the present suit, he has prayed for the relief of partition on the footing that he is entitled to half share in the suit property, both claims based on the same sale transaction dated 06.03.1982, it is found that the plaintiff's present suit without the leave of the Court as contemplated under Order 23 Rule 4 of CPC, precludes the plaintiff, as per law, from instituting the present suit on the same subject matter and on the same cause of action and accordingly, it is noted that the first appellate Court had rightly gone into the above aspects in its entirety analysing the factual and legal position in the correct perspective and accordingly, held that the suit laid by the plaintiff for partition without the permission of the Court after abandoning the earlier suit in O.S.No.136/1982 is clearly hit by Order 23 Rule 4 of CPC and the above said determination of the first appellate Court is found to be based on the correct position of law and assessment of the facts in the proper perspective and does not warrant any interference.

22. In the light of the above discussions, it is seen that the contention of the plaintiff's counsel that inasmuch as the reliefs claimed in the earlier suit and the subsequent suit are different, the suit cannot be held to be barred under Order 23 Rule 4 of the Civil procedure Code as such cannot be countenanced and likewise, it is seen that the decisions relied upon by the plaintiff's counsel with reference to the above said

contention reported in **2008 (3) ALD 525, (Kasarapu sujatha and Anr Vs. Veera Velli Veera Somaiah) and AIR 1970 SC 987 (Vallabh Das Vs. Madan Lal and Ors)** as rightly put forth by the defendant's counsel, would not be applicable to the facts and circumstances of the present case. It is found that as held in the above said decisions, when it is noted that the cause of action, the subject matter and the reliefs claimed by the plaintiff and the basis projected by the plaintiff for claiming the reliefs in both the suits are found to be similar and identical in all aspects as discussed above, it is seen that the present suit laid by the plaintiff for partition is barred under Order 23 Rule 4 of CPC and on that ground also, the suit laid by the plaintiff is liable to be dismissed and accordingly, the first substantial question of law formulated in this second appeal is answered against the plaintiff and in favour of the defendant.

23. The plea has also been taken by the defendant that the plaintiff's suit is barred by time and the above said plea is on the footing that inasmuch as the defendant has been in possession and enjoyment of the suit property right from the date of agreement of sale dated 20.03.1980, it is the contention of the defendant that on account of the continuous and uninterrupted possession of the suit property by the defendant since then, he has also perfected his title to the suit property by way of adverse possession and hence, the present suit laid by the

plaintiff in O.S.No.928/1996 is out of time.

24. As far as the contention of the plaintiff's counsel that the time taken by the plaintiff in the prosecution of the earlier suit in O.S.No.136/1982 should be excluded for computing the period of limitation, on the point of plea of adverse possession set out by the defendant, as rightly held by the first appellate Court, cannot be countenanced, because it is found that the plaintiff had been prosecuting the earlier suit based on the sale transaction deed dated 06.03.1982 and accordingly, when he has also laid the present suit for partition based on the same sale transaction and when it is further the plaintiff had left the earlier suit go for dismissal or had abandoned it without the permission of the Court as discussed above, it is seen that as rightly held by the first appellate Court, the plaintiff cannot be held to be prosecuting the earlier suit bona fide when it is seen that the said suit had been wantonly left to go for dismissal by the plaintiff as discussed above. Therefore, the plaintiff cannot invoke Section 14 of the limitation Act 1963 for stalling the period of limitation as regards the plea of adverse possession set out by the defendant.

25. Be that as it may, the defendant has also in an alternative pleaded that he has perfected his title to the suit property by way of adverse possession. As rightly argued by the plaintiff's counsel, in the

light of the decisions relied upon by the plaintiff's counsel reported in **1957 SCR 195 (P.Lakshmi Reddy Vs. L.lakshmi Reddy) and (2017) 4 MLJ 150 (SC) (Dagadabai (dead) by L.Rs. Vs. Abbas)**, it is found that on the above plea taken by the defendant impliedly he is found to have admitted the ownership of the plaintiff in respect of the suit property and only on that basis, we have to proceed with his claim of the title to the suit property by way of adverse possession and in such view of the matter, if the defendant persists in his claim of title to the suit property by adverse possession, as rightly put forth by the plaintiff's counsel, the defendant should establish with acceptable and convincing evidence that he had been in actual, peaceful, uninterrupted and continuous possession of the suit property for more than the statutory period to the exclusion of the true owner with the element of hostility by asserting the rights of the ownership to the knowledge of the true owner and only on the establishment of the above said facts, it can be held that he had also perfected his title to the suit property by way of adverse possession and only on the establishment of the said plea, it could be seen that the defendant would be entitled to seek the dismissal of the plaintiff's suit on the pointing of limitation. However, though the defendant claims to be in the possession of the suit property since the date of the sale agreement dated 20.03.1980 and also placed reliance upon certain stray admission on the part of the plaintiff that he had dispossessed the plaintiff from the suit property. however,

when the defendant has based his claim that he had been in possession of the enjoyment of the suit property as absolute owner since the date of sale agreement, it is seen that when no document at all has been placed by the defendant for accepting his above case, and as regards the plea of hostile possession of the suit property by the defendant, the said plea of his possession of the suit property is found to be not borne out by any acceptable and convincing materials for enabling the Court to hold that the defendant has been in long, continuous and uninterrupted hostile possession of the suit property for more than the statutory period, and when it is seen that other than the copy of the sale deed dated 10.03.1982 marked as Ex.B1, not a scrap of paper has been placed by the defendant to hold that he had been in actual and physical possession of the suit property since the date of the sale agreement as put forth by him and in such view of matter, when the plaintiff is disputing the above said claim of the defendant for non suiting him on the point of limitation, sans any material pointing to the above case of the defendant, in my considered opinion, the plea of the defendant that he has also perfected his title to the suit property by way of adverse possession as such cannot be countenanced and accordingly, it is seen that the first appellate Court has completely fallen into error in holding that the suit laid by the plaintiff is barred by time on the premise that the defendant has perfected his title to the suit property by way of adverse possession beyond the statutory period even prior to the institution of the present suit. In the

light of the above position, it is found that the decisions relied upon by the defendant's counsel reported in **(2015) 1 Supreme Court Cases 417 (N.Padmamma and others Vs. S.Ramakrishna Reddy and others) and AIR 1923 PC 175 (Subbaiya Pandaram Vs. Mahamad Mustapha Maracayar (since Deceased) and Ors.)**, as rightly put forth by the plaintiff's counsel, would not be applicable to the facts and circumstances of the present case as in the present case, there is no valid and acceptable material placed on the part of the defendant to hold that he is in actual and physical possession of the suit property since the date of the sale agreement as projected by him.

26. In the light of the above discussions, it is found that the defendant has failed to establish that he has perfected his title to the suit property by way of adverse possession, accordingly, it has to be concluded that the plaintiff cannot be non suited on the point of limitation as determined by the first appellate Court. In any event, as above discussed, the plaintiff cannot take advantage of the period of the currency of the earlier suit in O.S.No.136/1982 for bring the suit within time. As it has been determined that the plaintiff's suit cannot be thrown out on the point of limitation, in my considered opinion, the second substantial question of law formulated in this second appeal is found to be not germane and as such not required to be answered for the purpose of the disposal of this second appeal, particularly, when it is found that

the defendant has established his title to the suit property by way of the purchase of the same from the real owner viz. Muthukumarasamy by way of the sale transaction dated 10.03.1982 and when it is also held that the suit laid by the plaintiff for partition is barred under Order 23 Rule 4 CPC.

27. For the reason afore stated, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

10.01.2018

Index : Yes / No.
Internet : Yes / No.
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To

1. The Additional Subordinate Court, Mayiladuthurai.
2. The Additional District Munsif Court, Mayiladuthurai.

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T.RAVINDRAN., J.

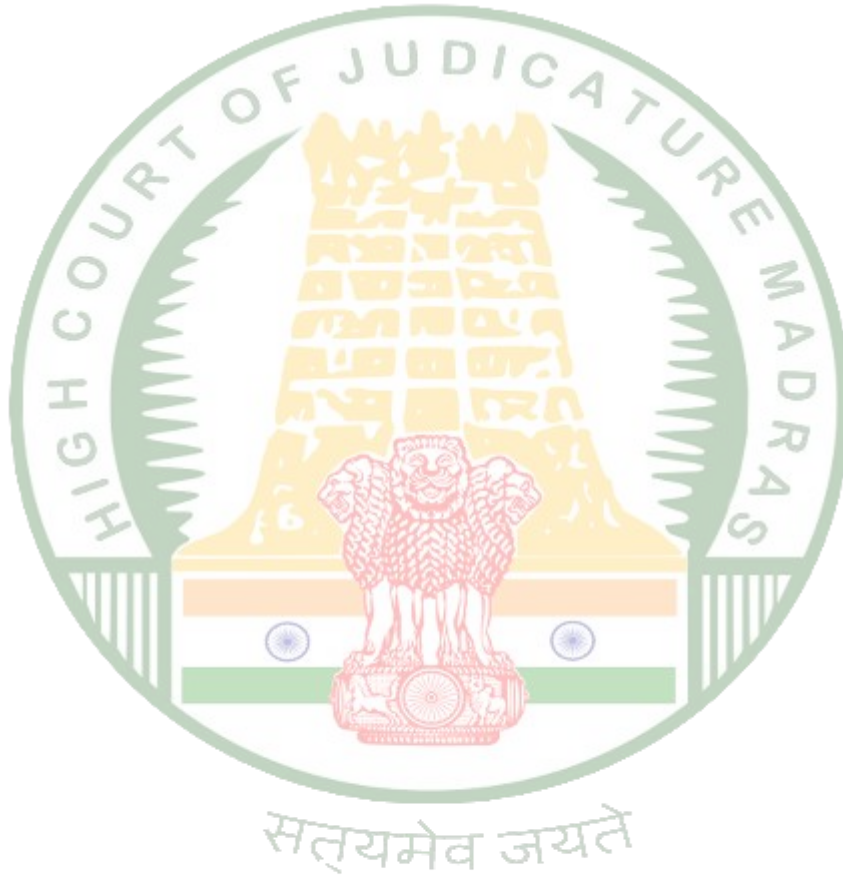
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Pre Delivery Order made in
S.A.No.1707 of 2001

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