

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2019

PRONOUNCED ON: 22.08.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.1063 of 2009

and

M.P.No.1 of 2009

Kanniaappa Nattar Appellant/Defendant

Vs.

Kanniammal ... Respondent/Plaintiff

Prayer:

First Appeal filed under Section 96 of C.P.C., against the judgment and Decree dated 17.02.2009 passed by Additional District Judge, Fast Track Court No.I, Chengalpattu in O.S.No.409 of 2006.

For Appellant : Mr.S.Ramesh

For Respondent : Mr.O.S.Vijaya Sarathi

J U D G M E N T

Aggrieved over the judgment and decree dated 17.02.2009 passed in O.S.No.409 of 2006 on the file of the Additional District Judge/ Fast Track Court No.I, Chengalpattu, the defendant has come forward with the present first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for partition and mense profits.

4. The case of the plaintiff in brief is that her maternal grandfather Thambiran was the absolute owner of the plaint schedule properties and other properties and he had two daughters namely Vendravasi and Jeyammal and the plaintiff's mother is Jeyammal and Tambiran had given half of the suit properties to his elder daughter Vendravasi and he was under

care and production of his younger daughter Jeyammal and her husband Kuppusamy Nattar, the parents of the plaintiff and the defendant, both Jeyammal and Kuppuamy Nattar were in the possession and enjoyment of the plaint schedule properties and Kupppusamy Nattar died leaving behind Jeyammal, the plaintiff and the defendant as his legal heirs and thereafter, Jeyammal had died leaving behind the plaintiff and the defendant as her legal heirs and accordingly, the plaintiff and the defendant have become the joint owners of the plaint schedule properties and the defendant being the male member, was in the management of the plaint schedule properties and he was giving half share of the income to the plaintiff in respect of the plaint schedule properties up to the year 2002 and thereafter stopped giving the income by representing that he would calculate the income from the plaint schedule properties and spent the same for the plaintiff's son's education and other needs and on the other hand, the plaintiff came to understand that the defendant is attempting to obtain patta in respect of the plaint schedule properties in his own name with a view to deprive her share and income of the plaint schedule properties, in that endeavor also, attempted to create fabricated documents with the active assistance of his associates and the plaintiff is entitled to half share in the plaint schedule properties and accordingly demanded the defendant on several occasions to divide and allot her half share in the plaint schedule properties. However, the defendant despite the notice issued by the plaintiff seeking partition, had neither replied to the same nor come forward to divide the plaint schedule properties and allotted the due share in favour of the plaintiff with reference to the same. On the other hand, he had caused a local Panchayath for amicable settlement to share the plaint schedule properties. But, by way of the same, attempted to force the plaintiff to take Rs.1,00,000/- and a small piece of land, inspite of the plaintiff's entitlement to the half share in the plaint schedule properties. The plaintiff refused to accept the abovesaid injustice offer and even thereafter, pointing to the same, issued the second notice on 14.06.2006 calling upon the defendant to partition the suit properties. However, the defendant had failed to reply the said notice and furthermore, the defendant attempted to cut the trees in the suit properties and alienate the same and in this connection, complaint had been lodged by the plaintiff with the police and the defendant had reconstructed the house in the suit properties with the aid of the savings of Jeyammal from her money maintaining 200 goats and sheeps and the defendant had promised that he would reconstruct the house of the plaintiff and furthermore the plaintiff came to understand that the defendant had purchased the other properties, however the same had been acquired only with the aid of plaint schedule properties and accordingly it is purforth that the plaintiff has been necessitated to lay the

suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that it is he who had purchased the suit items in the plaint schedule properties consisting of 0.17 cents and 0.20 cents by way of a registered sale deed dated 19.10.1972 and they are his self acquired properties and the plaintiff is not entitled to claim any share in respect of the same and furthermore, on account of the long and continuous possession and enjoyment by paying Kists etc., he has prescribed title to the properties by way of adverse possession and as far as the item 3 in the plaint A schedule is concerned, it is put forth that an extent of 1.00 acres was purchased by Thambiran, the maternal grandfather and after his demise, his daughters were in possession of the said extent and the defendant was cultivating the half share belonging to Vendravasi and also continued the same under her daughter Ayiammal and it is only the defendant, who had celebrated the marriage of the plaintiff with one Gopinath and after the said marriage, the plaintiff and her husband Gopinath get separated, the defendant again celebrated the second marriage of the plaintiff by spending huge amount and given seers to the plaintiff. Further, the defendant had paid Rs.25,000/- to Ayiammal about 25 years ago, for the purchase of 0.50 cents belonging to her out of 1.00 acre in item 3 of the plaint A schedule and instead of taking 0.25 cents within 0.50 cents in the remaining share, the plaintiff demanded the defendant to purchase 0.25 cents in her name separately in Agraharam village and accordingly, the defendant had purchased the abovesaid extent by way of a registered sale deed dated 13.02.1978 in the name of the plaintiff in Agraharam village and the plaintiff had assured that she would not claim any share in the item No.3 of the plaint A schedule. An extent of 0.66 cents was purchased by the defendant while he was a minor, by way of a sale deed dated 15.11.1961 and the remaining 0.34 cents in the abovesaid item was owned by the defendant's father as his ancestral property and Ayiammal had conveyed 0.50 cents to the defendant by way of a registered sale deed dated 10.08.2006 and it is only the defendant who is in the possession and enjoyment of the same, the defendant had spent huge amount for digging a well in item No.3 of the plaint A schedule and enjoying the same in his own right and as far as the properties comprised in the plaint B schedule, the patta for the same stood in the name of Jeyammal in the UDR scheme and it is only the defendant who has been in the continuous possession and enjoyment of the suit properties. The plaintiff had agreed to receive Rs.1,00,000/- and a strip of land towards her share in lieu of her share in the plaint schedule properties in the persence of Panchayathaars and also signed in the presence of Panchayathaars and furthermore, the defendant had spent the huge amount towards the medical expenses of his mother and the plaintiff did not pay any amount towards the same and the suit laid by the plaintiff is

without any justification and vexatious and so liable to be dismissed.

6. On the basis of the pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

i. Whether the plaintiff is entitled for partition of her half share in the suit schedule A and B items?

ii. Whether 0.17 cents in the schedule item is the self acquired properties of the defendant?

iii. Whether the suit properties are the joint family properties of the plaintiff?

7. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A5 were marked. In support of the defendant's case, D.W.1 was examined. Exs.B1 to B7 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 declare that the plaintiff is entitled to claim partition and separate possession of the half share in the plaint A and B schedule properties and accordingly granted the preliminary decree in favour of the plaintiff and relegated the determination of the mense profits by way of a separate proceeding under Order 20 Rule 12 of C.P.C and accordingly disposed of the suit. Aggrieved over the same, the defendant has come forward with the present First Appeal.

9. The following points arise for determination in the First Appeal.

i. Whether the plaintiff is entitled to obtain partition and separate possession of half share in the plaint schedule properties as claimed in the plaint?

ii. Whether the defendant has prescribed title to the plaint A schedule properties by way of adverse possession as putforth in the written statement?

iii. To what relief the plaintiff is entitled to?

iv. To what relief the defendant/appellant is entitled to?

Point Nos. 1 and 2:

10. The relationship between the parties is not in dispute. The plaintiff is the sister of the defendant and both the plaintiff and the defendant are the children of Jeyammal and Kuppasamy Nattar. The maternal grandfather of the plaintiff and the defendant is one Tambiran and he had two daughters namely Vendravasi and Jeyammal. Jeyammal is the mother of the

plaintiff and the defendant. Now according to the plaintiff, the plaint schedule properties belonged to Tambiran and accordingly she being one of his legal heirs through his daughter entitled to half share in the plaint schedule properties and inasmuch as, the defendant had refused to come forward to allot the plaintiff's half share in the plaint schedule properties despite repeated demands and also the continuous issuance of legal notices, hence according to the plaintiff, she has been necessitated to institute the suit against the defendant for the relief of partition and other reliefs.

11. Per contra, according to the defendant, the plaint schedule properties are his separate properties and that he has been in the possession and enjoyment of the same and he had acquired the same by way of various sale deeds as set out in the written statement and that he had been in the possession and enjoyment of the plaint schedule properties openly, continuously and uninterruptedly as his own to the knowledge of the plaintiff and beyond the statutory period and accordingly he had prescribed title to the plaint schedule properties and thereby sought for the dismissal of the plaintiff's suit.

12. Considering the materials placed on record, it is found that as determined by the trial court, the earliest document projected in the matter for the acquisition of the properties belonging to the family of the plaintiff and the defendant is the sale deed dated 15.11.1961, the copy of which has been marked as Ex.A3 and it is found that by way of the abovesaid sale deed, an extent of 0.66 cents has been acquired in the name of the defendant by his father Kuppusamy Nattar which forms part of item No.3 of the plaint A schedule and accordingly it is seen that the consideration for the same, as rightly determined by the trial court, would have been parted by only the father Kuppusamy Nattar and not by the defendant as admittedly at that point of time, the defendant was only a minor. Accordingly unable to suppress the same, it is found that the defendant though he would claim that all the plaint schedule properties are his separate properties, had admitted that he had not acquired the abovesaid suit property out of his self earned income and that the same had been acquired only by his father in his name and also further admitted that the plaintiff is also entitled to a share in the abovesaid extent. Further, it has been admitted by the defendant that the extent of 0.34 cents in suit item No.3 of the plaint A schedule had been acquired by Kuppusamy Nattar ancestrally. It has also been admitted by the defendant that the remaining extent of one acre belong to his maternal grandfather Tambiran and it is not in dispute that Tambiran had been living only with Jeyammal and her husband, the parents of the plaintiff and the defendant and accordingly, it

is found that the it is Tambiran who had been enjoying the extent of one acre abovestated with his daughter Jeyammal and son-in-law Kuppusamy Nattar. The defendant would claim that he had been cultivating the extent of 0.50 cents within the abovesaid 1.00 acre belonging to Tambiran under Vendravasi, the daughter of Tambiran and subsequently under Ayiammal, the daughter of Vendravasi. However with reference to the abovesaid case projected by the defendant absolutely there is no proof to sustain the same. It is putforth by the defendant that he had paid a sum of Rs.25,000/- to Ayiammal about 25 years ago and in recognition of the same, Ayiammal had conveyed an extent of 0.50 cents in his favour by way of a sale deed dated 10.08.2006, the certified xerox copy of which has been marked as Ex.B5. However, as rightly contended, on a perusal of Ex.B5, there is nothing contained therein that the same had been alienated to the defendant for a sum of Rs.25,000/- said to have been given by him about 25 years ago and furthermore, the document has also does not recite anything about the cultivation of the said extent of 0.50 cents by the defendant under Vendaravasi and subsequently under Ayiammal on any arrangement and on the other hand, the document recites as if the said extent had been alienated in favour of the defendant for a sum of Rs.80,000/- paid on the date of the execution of the sale deed. It is not the case of the defendant that he had purchased the extent of 0.50 cents for Rs.80,000/- as mentioned in Ex.B5. It is further seen that the Ex.B5 has come to be executed after the plaintiff had issued the legal notices calling upon the defendant seeking for partition. Similarly, the defendant would claim that he had also owned and with his self earned income purchased the extent of 0.17 cents and 0.20 cents of the items 1 and 2 of the plaint A schedule by way of a sale deed dated 19.10.1972, the xerox copy of which sale deed has been marked as Ex.B2. However, as rightly determined by the trial court and also contended by the plaintiff's counsel, the defendant has absolutely not placed any material to show that he has been securing independent income other than the income raised by way of agriculture from the ancestral properties belonging to his father Kuppusamy Nattar and the maternal grandfather Tambiran and the materials placed on record go to show that Jeyammal, mother of the plaintiff and the defendant had been rearing 200 goats and sheeps and getting considerable income therefrom and it is also seen that the parties had owned other properties also and getting income and in the light of the abovesaid factors, when the defendant's claim of acquisition of the plaint A schedule properties independently as putforth in the written statement not having been established to have been secured out of his independent income and on the other hand when the materials placed on record go to disclose clearly the existence of adequate and sufficient ancestral nucleus and that apart the ancestral nucleus available are also found to be yielding considerable and

sufficient income and accordingly the defendant being the male member and was in the management of the ancestral properties, in such view of the matter, when the defendant has failed to establish his independent income, resultantly, as determined by the trial court, it is only the income derived from the ancestral nucleus which constituted the source for the acquisition of the other properties and in such view of the matter, merely because, the other properties described in the plaint A schedule had been acquired in the name of the defendant that by itself would not lead to the conclusion that the said suit properties belong to the defendant absolutely. Accordingly it is seen that the plaint A schedule properties having been derived by the plaintiff and the defendant through their ancestors as above stated and also acquired out of the income derived from the ancestral nucleus as above pointed out and when the defendant has failed to establish his independent income and the materials placed on record only go to show that considerable income could be raised from the properties belonging to the parties, in all, as rightly found by the trial court, the plaint A schedule properties are the joint family properties belonging to the plaintiff and the defendant and accordingly it is found that the plaintiff is entitled to claim half share in the plaint A schedule properties.

13. As regards the plaint B schedule properties, it has been admitted that the patta in respect of the same stands only in the name of Jeyammal, the mother and therefore the plaintiff and the defendant being her legal heirs, it is found that the plaintiff is entitled to claim half share in the plaint B schedule properties available in the family. Even the defendant has not raised any serious dispute as regards the entitlement of the plaintiff to claim half share in the plaint B schedule properties.

14. Though the defendant would claim that the plaint schedule properties belong to him absolutely, however considering the defence projected by him in the matter as well as the evidence adduced by him, it is found that he had endeavoured to convene a Panchayath for the division of the plaint schedule properties amicably with the plaintiff and in that exercise seem to have offered Rs.1,00,000/- and a small strip of land to the plaintiff towards her share through Panchayathars, however the same had not been accepted by the plaintiff. In such view of the matter, as rightly found by the trial court and also contended by the plaintiff's counsel, inasmuch as the plaintiff is entitled to half share in the plaint schedule properties, it is obvious that the defendant had also attempted to convene the Panchayath for the division of the properties as claimed in the written statement. But inasmuch as, the plaintiff had refused to accept the Panchayathaars' decision, in such view of the matter, the defendant cannot be allowed to rely upon the so called

Panchayath decision and the same is found to be not legally binding upon the plaintiff. Furthermore, when the plaintiff is entitled to half share in the plaint schedule properties, it is seen that the plaintiff had rightly declined the offer made by the defendant in the Panchayath settlement.

15. Though the defendant would claim that it is he who had spent huge amount for celebrating the two marriages of the plaintiff and also given seer etc., with reference to the same, absolutely there is no material worth acceptance forthcoming on the part of the defendant. Equally, the claim of the defendant that he had spent a large sum towards the medical expenses of his mother is also not borne out of any acceptable material.

16. In the light of the abovesaid discussions and also the materials available on record go to disclose clearly that the plaint schedule properties are the joint family properties of the plaintiff and the defendant derived through their ancestors, in such view of the matter, it is evident that the plaintiff is entitled to obtain half share in the same as claimed in the plaint. Accordingly it is noted that the defendant with a view to deprive the plaintiff's claim of half share of the plaint schedule properties had taken the plea of adverse possession. However as regards the claim of adverse title projected by the defendant, absolutely there is no material on the part of the defendant to hold that he has been in the possession and enjoyment of the plaint schedule properties in his own right, openly, continuously and uninterruptedly to the knowledge of the plaintiff beyond the statutory period with animus possidendi and on the other hand, when it is found that the defendant had been sharing the income from the plaint schedule properties with the plaintiff upto a certain period and thereafter had not accounted/given the income to the plaintiff and immediately the plaintiff having started demanding her share in the suit properties and asserting the same one way or the other, in such view of the matter, further when the plea of adverse title projected by the defendant is not supported by acceptable and reliable material on his part, the said claim has been rightly declined by the trial court and I do not find any reason to interfere with the same.

17. Considering the materials placed on record, when the properties belonging to the family of the plaintiff and the defendant are found to have been acquired only through the ancestors and also acquired with the aid of ancestral nucleus, in such view of the matter, the trial court is found to be wholly justified in granting the preliminary decree for partition in favour of the plaintiff qua the plaint schedule properties and no interference is called for with reference to

the same.

18. For the reasons aforesaid, I hold that the trial court is correct in declaring that the plaintiff is entitled to obtain partition and separate possession of half share in the plaint schedule properties and also correct in holding that the defendant has miserably failed to establish his claim of adverse title in respect of the plaint schedule properties as put forth by him and accordingly the point Nos.1 and 2 are answered.

Point Nos.3 and 4:

19. For the reasons aforesaid, the judgment and decree dated 17.02.2009 passed in O.S.No.409 of 2006 on the file of the Additional District Judge/ Fast Track Court No.I, Chengalpattu are confirmed and resultantly the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mfa

To

The Additional District Judge,
Fast Track Court No.I,
Chengalpattu.

Copy to

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

+1cc to M/s.O.S.Vijaya Sarathi*, Advocate SR.No.72620

A.S.No.1063 of 2009
&
M.P.No.1 of 2009

SAI (CO)
GMY (17/10/2019)