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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.340 of 2003

Kupayee .. Appellant/Plaintiff

...Versus...

1.C.Palaniappan
2.P.Mani
3.Sellammal
4.Karupayee

. Respondents/ Defendants

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.15 of 2001 dated 18.04.2002 on the file of the Subordinate Judge, Mettur confirming the judgment and decree made in O.S.No.867 of 1996 dated 18.09.2000 on the file of the District Munsif cum Judicial Magistrate, Omalur.

For Appellant :: Mr.S.S.Baskaran

For R1&R2 :: No appearance
For R3 :: Mr.P.Jagadeesan and
Mr.M.Ahamed Zuber

For R4 :: Mr.P.Jagadeesan and
Mr.V.Jaishankar

J U D G M E N T

The unsuccessful plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred as per the ranking before the Trial Court.

3. The plaintiff has filed the suit seeking for relief of partition and claiming 1/4th share in the suit schedule property on the ground that he is the co-owner of the property and there was no partition. The first and second defendants are the brother and brother's son of the plaintiff. While, the defendants 3 and 4 are the purchaser



and after subsequent purchase, another property is now with the second defendant.

4. On behalf of the third defendant, written statement has been filed alleging that as per Exhibit B1 partition deed, there was a partition between the first and second defendants, in which, the property was divided. Thereafter, the lands were demarcated in the 4th share and it has specific boundaries and they have taken possession. Subsequently, the said property was sold to third defendant and fourth defendant and thereafter, the fourth defendant has sold the property in favour of the third defendant and in support of his case, the third defendant filed Exhibit B1 partition deed and Exhibits B2, B3, B4 and B5 subsequent sale deeds as referred to above. While Exhibit B6 is a chitta, Exhibit B7 is a patta. Exhibit B10 and Exhibit B11 are the subsequent pattas obtained in favour of the third defendant.

5. The Trial Court, after taking into consideration both oral and documentary evidence, has held that there was a partition already in the family and pursuant to the said partition on 23.07.1979, the property was divided and hence, the second partition cannot be granted and it was also held that the sale deed effected by the first and second defendants in favour of the third and fourth defendants are valid and dismissed the suit and the appeal has been preferred by the plaintiff in A.S.No.15 of 2001, which was also dismissed and hence, the Second Appeal is filed by the plaintiff.

6. The above Second Appeal was admitted on 21.03.2003 on the following substantial question of law:-

"When one co-owner sold a portion of the property and remained ex-parte, whether the Courts below are right in dismissing the suit holding that the plaintiff is not entitled to a share in the joint family property?"

7. Heard the learned counsel on the above substantial question of law and perused the materials available on record.

8. After hearing the learned counsel for the appellant/plaintiff and also after perusing Exhibits B1 to B6, it is seen that the plea raised by the third defendant in the written statement is that there was a partition earlier in the family, whereby the other two sons were allotted shares and thereafter, the defendants 1 and 2 have effected sale in favour of the defendants 3 and 4 herein and the Courts below held that in the absence of the other



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two sons of the first defendant being not impleaded, a suit is bad for non-joinder of the necessary parties and it also remains to be stated that the partition as per Exhibit B1 has taken place on 23.07.1979 and the suit was filed on 02.01.1996, after 15 years, both the Courts below have rightly come to the conclusion that the suit is barred by limitation.

9. On a perusal of Exhibit B1 partition deed, the first defendant along with his other two sons and the second defendant who are allotted 1/4th share each, have taken the property with specific demarcation and boundary and also being in possession of the property as could be seen from Exhibits B6 to B9/revenue records and they are in possession and enjoyment of the respective shares for more than 15 years prior to the filing of the suit.

10. As rightly held by the Courts below that the plea of the plaintiff suffered by the Doctrine of Ouster and such concurrent findings rendered by the Courts below, are duly supported by documentary evidence.

11. It is further to be stated that during the cross-examination of P.W.1 she also admitted that the defendants 3 and 4 are in possession of the respective property as per the sale deeds and she having knowledge about the defendants being in possession of the property, the Courts below have held that the plaintiff however has not prosecuted his alleged claim and accordingly, the suit was dismissed by both the Courts below and the said finding rendered by the both the Courts below is well considered and well merited and the same does not warrant any interference by this Court. The substantial question of law does not arise for consideration on the above factual matrix of the case.

12. In view of the documentary evidence, Exhibit B1 to B6 and B7 and B8 coupled with the admission of the P.W.1 in the cross-examination and hence, the substantial question of law stands negatived and the Second Appeal is devoid of merits and the same is dismissed. The judgment and decree of the first appellate Court and the trial Court are confirmed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Mettur

2.The District Munsif cum Judicial Magistrate, Omalur.

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

+1cc to Mr.S.S.Baskaran , Advocate SR.No. 56792

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A.SK(06/11/2019)