

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :22.01.2019

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1471 of 2004

Arumuga Gounder (died)

2.Subbathaal

(2nd appellant substituted as LRs of the deceased 1st appellant vide Order of Court dated 26.03.2013 made in C.M.P.No.299/2013

... Appellants/D2 & D3

/versus/

Karuppa Gounder (Died)

... 1st Respondent/Plaintiff

2.Ramasami Gounder

3.Nachammal

4.Marathaal

... 2 to 4 Respondents/1,4 & 5 Defendatns

5.Karunai Ammal

6.Ganapathi Appan

7.Palanichami

(RR5 to 7 brought on record as LRs of the deceased R1 vide order of Court dated

09.04.2012 made in C.M.P.Nos.381 to 383/2010)

8.Chinnappan

9.Shanmugam

10.Murugesan

11.Natarajan

12.Subamanian

13.Sathishkumar

14.Nataraj

(RR8 to 14 brought on record as LRs of the deceased R3 vide order of Court dated

05.06.2013 made in C.M.P.No.359 to 361/2013

... Respondents

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Subordinate Judge, Tiruppur dated 10.10.2003 in A.S.No.24/2000 confirming the judgment and decree of the learned District Munsif, Palladam dated 27.01.2000 in O.S.No.15/1996.

For Appellants :Mr.M.N.Balakrishnan

For Respondents :Mr.S.Mukunth for
Sarvabhauman Asso. for
R2,R5 to R7
R4,R8,R9,R10 to R14-
No appearance

JUDGMENT

Heard the learned counsel appearing for the appellants and the respondents 2,5 to 7.

2. The suit for partition filed by one of the son of deceased Nachimuthu gounder as against his sister and purchasers of the suit property from his sister. The suit schedule property consists of two items. While 'A' schedule property is an agricultural land, 'B' schedule property is a residential property. Admittedly, 'A' schedule property belongs to Valliammal, who is the mother of the plaintiff, defendants 1,2,4 and 5. While the plaintiff has contended that Valliammal, who got the suit property from her parents, died intestate and the property was in joint possession of the family members. Defendants 4 and 5 are sisters claiming their mother's share, as if Valliammal has given her share to them as shrithana and they had created sale deeds without his knowledge, which does not binding on him. Similarly, 'B' schedule property, which was purchased by his father in the year 1923 and he put up construction on it. The property is under continuous enjoyment of the family members. After demise of his father, devolved upon his legal heirs, which includes the plaintiff, defendants 1,2,4 and 5. Thus, claiming 1/5th share of the suit property, this suit has been laid.

3. The claim of the plaintiff has been contested by the defendants on two folds. First, by relying upon the recital in the sale deeds executed by defendants 4 and 5 claiming absolute right over the 'A' schedule property as their shrithana property got from their mother Valliammal and secondly, the silence of the plaintiff for over 27 years, without challenging the sale deeds Ex.A2 and A3 deprives his right whatsoever accrued to him. In respect of 'B' schedule property, it was contended by the defendants that the plaintiff with full knowledge and consent has allowed the defendants to enjoy the property adverse to his interest and therefore, the defendants have perfected the title by adverse possession. Both the Courts below have pointed that Exs.A2 and A3- sale deeds executed by defendants 4 and 5 do not have any roots to substantiate the title, since there is no evidence to prove that Valliammal has given the property as shrithana in favour of her daughters

defendants 4 and 5. In the absence of root for source of title, Exs.A2 and A3 have no base to rely upon by the defendants title. The contention of the defendants claiming adverse possession in respect of the residential portion also negated by the Courts below with reasons. Having lost the case before the Courts below, defendants 2 and 3 have preferred the second appeal.

4. This Court, while admitting the second appeal, has formulated the following Substantial Questions of Law:

1. Whether the judgment of the trial Court in the total absence of any material issue being framed and the judgment of the lower appellate Court without framing the crucial points for determination as regards the B schedule property are not vitiated and whether the courts below have not grievously erred in proceeding on the assumption that the case of the first respondent were true?

2. Whether the case of ouster and adverse possession as regards A Scheudle is not established by the Registered Documents Exs.A2 and A3 of the year 1969 followed by subsequent Registered instrument, all in derogation of the rights of the first respondent and followed by production of payment of kists, contrary to his interest and whether the suit filed in 1996 long thereafter is not out of time?

3. Whether the sreedhana in favour of respondents 3 and 4 is not established when admittedly the property belonged to the mother and when the first respondent himself has not challenged the sisters dealing with the properties as their own even in the year 1969 and when the transactions have not been challenged for nearly 27 years?

5. The learned counsel appearing for the appellants have taken all pains to point out alleged errors in the finding of the Courts below and absence of reasons for conspicuous silence of the plaintiff for decades not agitating his right and allowing the defendants to enjoy the suit properties exclusively. Relying upon Exs.A2 and A3 of the year 1969, the learned counsel would contend that the registered sale deeds of the year 1969 has ousted whatever right the plaintiff had in the 'A' schedule property. The purchasers of the property under Exs.A2 and A3 are in possession of the property since 1969. Therefore, through sale deeds and if not through the sale deeds,

if considered to have conveyed defective title, by adverse possession, in alternate they have perfected the title. While the kist receipts and other revenue documents clinching prove the appellants were in possession and continuous enjoyment of the suit property for a long period, the Courts below have gravely erred in not appreciating the factum of continuous, open and exclusive possession of the suit property by the defendants.

6. On considering the above submissions as well as on perusal of the records and the submissions made by the learned counsel appearing for the respondents, this Court is unable to differ from the views expressed by the Courts below for multiple reasons:

First of all, the plaintiff is none other than the brother of the defendants 1,2,4 and 5. There is no dispute regarding the original ownership of 'A' schedule property, which was vested to Valliammal through her father. The 'B' schedule property was purchased by the father of the plaintiff, defendants 1,2,4 and 5. When both father and mother died intestate, as per the Hindu law of Succession the first class legal heirs are entitled to inherit the property. When the relationship of the parties are admitting and in the absence of any testament by the parents, the plaintiff as one of the legal heirs is entitled for his share as per the Hindu Law. There are five legal heirs of first class in this case. Therefore, the claim of the plaintiff seeking 1/5th share in the suit property is in accordance with law and the Courts below have rightly held so. Therefore, this Court finds that there is no reason to interfere with the finding of the Courts below. Hence, this Second Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Tiruppur.

2.The District Munsif, Palladam.

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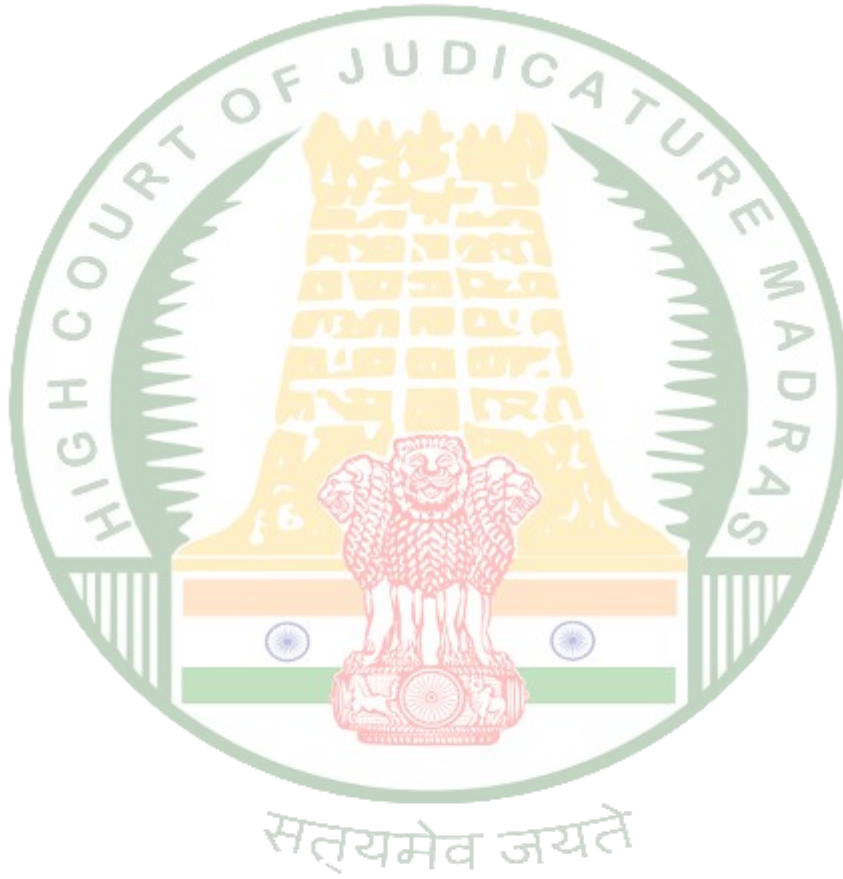
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.M.N.Balakrishnan, Advocate SR.No.4774

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.4807

S.A.No.1471 of 2004

RJI (CO)
GMY (29/03/2019)



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