



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2019

CORAM

THE HONOURABLE **MS.JUSTICE P.T.ASHA**

S.A.(MD)No.423 of 2015

and

M.P.(MD)No.1 of 2015

T.Ramachandran (Died)

R.Paripooranam

... Appellant/Respondent/Defendant

Vs.

B.Konammal

... Respondent/Appellant/Plaintiff

PRAYER:- Second Appeal filed under Section 100 of C.P.C., against the the judgment and decree passed in A.S.No.25 of 2012 dated 06.03.2014 on the file of the I Additional District Court, Madurai reversing the judgment and decree passed in O.S.No.201 of 2009 dated 06.03.2012 on the file of the III Additional Sub-Court, Madurai.

For Appellant : Mr.H.Arumugam

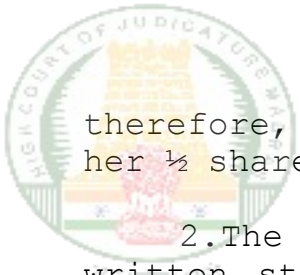
For Respondent : T.R.Subramanian

ORDER

The second defendant is the appellant before this Court. The second appeal is filed challenging the judgment in A.S.No.25 of 2012 passed by the I Additional District Court, Madurai in and by which the judgment and decree of the III Additional Sub-Court, Madurai in O.S.No.201 of 2009 has been reversed.

2.The facts in brief, which are necessary for disposing of the above second appeal are as follows: and

The parties are referred to as per their litigating status in the suit. The plaintiff, who is none other than the sister of the first defendant, had filed a suit in O.S.No.201 of 2009 on the file of the III Additional Sub-Court, Madurai for partition of separate possession of her $\frac{1}{2}$ share in the suit schedule property. It was her case that the plaintiff and the first defendant are the children of the Thirumalai Chettiar and Seethaiammal and the 1st item of the suit property belongs to father and the 2nd item of the suit property belong to mother. It was a case that the parents were enjoying the suit property till their death. Thirumalai chettiar had died in the year 1968 and the mother had died in the year 1991. In the month of October 2008, difference of opinion arose between the plaintiff and the first defendant as the first defendant had refused to part with the plaintiff share of the suit property. She was therefore, constrained to issue legal notice on 12.02.2009 and the first defendant, though he had received the said notice, had not sent reply. Meanwhile, the first defendant had also created a settlement deed, dated 09.01.2009 in favour of his wife, who is the second defendant and the said settlement deed was marked as Ex.B.10. She,



therefore, contended that the second defendant is not entitled to her $\frac{1}{2}$ share of the suit property.

2.The first defendant had entered appearance and filed his written statement *inter alia* admitting the fact that the property belonged to Thirumalai Chettiyar, but also raised a plea that the Thirumalai Chettiyar had solemnized the marriage of the plaintiff by giving sufficient jewels, household articles, in the name of Sridhanaas to the plaintiff, as earlier as in the year 1967. Taking into consideration this factum, the plaintiff had also consented with the first defendant for transferring the revenue records in his name, after demise of their parents. However, since the first defendant is ailing, he had executed a settlement deed in favour of his wife/second defendant. The defendant would submit that after settlement, revenue records have been mutated in the name of the second defendant and she was also in the possession and enjoyment of the property for the last 20 years.

3.The learned Sub Judge, Madurai, on perusal of the pleadings had framed the following issues:

1.*Whether the plaintiff is entitled to $\frac{1}{2}$ share in the suit schedule property?*

2.*Whether the plaintiff is entitled to preliminary decree for partition?*

4.The plaintiff had examined herself as P.W.1 and marked Ex.A1 to Ex.A6. The defendants had examined themselves as D.W.1 and D.W.2 respectively and marked Ex.B1 to Ex.B20. The learned trial Judge came to the conclusion that the plaintiff had failed to prove the joint possession and right over the suit property and with this view, dismissed the suit.

5.Aggrrieved by the judgment and decree, the plaintiff had filed an appeal in A.S.No.25 of 2012 on the file of the I Additional District Judge, Madurai. The learned Judge, by judgment and decree dated 06.03.2012, was pleased to allow the appeal. Challenging the said judgment and decree, the appellant/plaintiff is before this Court.

6.While admitting the second appeal, this Court was pleased to frame the following substantial questions of law:

(a)*Whether the lower Appellate Court is right in rejecting the plea of ouster, ignoring the admission of P.W.1 that for the past 30 years she is away from the suit properties and not claimed any right?*

(b)*When the plea of ouster is admitted by the plaintiff whether the lower Appellate Court is right in giving a finding that ouster is not proved as against*

"Section 58" of the Indian Evidence Act, 1872?

(c)*Whether the lower Appellate Court is right in applying the benefit of Hindu Succession Act, 2005, simply*



on the ground that there was no registered partition and totally ignoring that the succession was opened in the year 1968 itself?

7. After filing the above second appeal, the first defendant had died and the second defendant is contesting the second appeal.

8. The learned counsel appearing for the defendant would contend that the property in question is an ancestral property and the same was admitted by the plaintiff in her evidence. He would further contend that the defendants have been in possession and enjoyment of the suit property for several decades and the plaintiff was not in possession of the property. She had conceded the right of the first defendant to the suit property. Considering the fact that the settlement deed had been executed and revenue records mutated in the name of the defendants, the defendants have prescribed title to the property by way of ouster. The learned counsel further submitted that the lower Appellate Court by relying on the provisions of the Amendment Act of the Hindu Succession Act, 2005 recorded that once the property is ancestral property, the plaintiff would not be entitled for a share in the said property, considering the fact that she had been married and had left the family as early as in the year 1967. Further he contended that the appellate Court has totally misdirected itself and passed the erroneous judgment.

9. Per contra, the learned counsel appearing on behalf of the plaintiff would contend that the defendant who has pleaded ouster, has therefore accepted the title and right of the plaintiff to the suit property. He further contended that being joint owners, the defendant who has set up the plea of ouster has nowhere in the written statement given any details as to the date/time from which the defendant had openly given out to the knowledge of the plaintiff that he is in enjoyment of the property as its absolute owner and in the absence of such a basic pleadings, the plea of ouster would definitely fail. Considering the admitted fact that the property belonged to the father and the mother, it is only the plaintiff and the defendant, who are their legal heirs, who would ultimately get right over the property by succession.

10. Heard the learned counsel on either side and perused the records.

11. The plaintiff has come forward with a case that the suit properties in question belonged to her father and the mother and that on the death of the parents, the plaintiff and the defendant succeeded equally to the properties. The first defendant has filed his written statement *inter alia* admitting that the property belonged to the parents but however contending that the sister, namely, the plaintiff had consented that the property could be transferred in the name of first defendant. The defendant has also raised the plea of ouster, however, nowhere in the pleadings, namely, written statement has the defendant come forward to state as



to when his possession has become adverse to that of the plaintiff and he has not proved the basic ingredients of the ouster viz., his open, continuous and hostile possession of the suit property for over the prescribed period.

12. Even in the written statement, the defendant has admitted that the property in question belonged to the parents absolutely. Once such a plea was taken, by applying the provisions of the Hindu Succession Act, 2005, the plaintiff and the defendant would be clearly entitled to an equal share in the said property and the settlement in favour of the second defendant insofar as it related to the plaintiff's $\frac{1}{2}$ share is invalid. Further, the settlement has also been effected, just three months prior to the filing of the suit, that too after the plaintiff had issued legal notice demanding partition.

13. Therefore, it is clearly evident that the Ex.B10 settlement deed has been created collusively in order to remove the property out of the reach of the plaintiff. The lower Appellate Court is right in reversing the judgment and decree of the trial court. I do not find any reason in interfering in this well considered judgment and decree of the learned I Additional District Court, Madurai. The substantial questions of law raised and answered as against the defendants. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns

To

1. The I Additional District Court, Madurai
2. The III Additional Sub-Court, Madurai.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

- +1 CC to Mr.T.R.SUBRAMANIAN, Advocate (SR-96946[F] dated 08/11/2019)
+2 CC to Mr.P.V.SURENDRAN, Advocate (SR-97181[F] dated 11/11/2019)
+1 CC to Mr.H.ARUMUGAM, Advocate (SR-97374[F] dated 11/11/2019)

S.A. (MD) No.423 of 2015
08.11.2019