

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2020

Date of Verdict : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 992 of 1998

1.Peria Karuppathal

2.Chinnakaruppathal ...Appellants/Plaintiffs

Vs.

1.Karuppavanniyan (Deceased)

2.Subbathal

3.Kandasamy ...Respondents/Defendants

(R3 brought on record as LR's of the deceased R1 vide order of Court dated 04.03.2011 made in C.M.P.Nos. 1869 to 1871 of 2010)

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree of the Court of the Sub-Ordinate Judge, Udumalpet in A.S.No. 76 of 1991 dated 28.04.1994, reversing the judgment and decree of the Court of the District Munsif, Udumalpet in O.S.No. 60 of 1983 date 25.03.1991.

For Appellants : Mr. N.Umapathi

For Respondents : R1-Died

R2- Not ready in notice

R3 - Notice served. NA

J U D G M E N T

This appeal has been filed as against the judgment and decree passed dated 28.04.1994 on the file of the Sub-Ordinate Judge, Udumalaipet reversing the judgment and decree dated 25.03.1991 passed in O.S.No.60 of 1983 on the file of the District Munsif, Udumalpet.

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

3. The case of the plaintiff in brief is as follows:-

3.1. The suit is filed for partition. The plaintiffs and defendants are brothers and sisters. They were born to one Palani Thalayari and he died intestate on 01.11.1961 leaving behind the plaintiffs and the defendants as his heirs. Therefore, the plaintiffs and the defendants are entitled to equal shares in the suit property. The suit properties are self-acquired one by their father and as such under Hindu Succession Act, 1956, the plaintiffs and defendants are entitled to equal share of $\frac{1}{4}^{\text{th}}$ in the suit properties. After death of their father, the first defendant was managing the properties. Hence, the suit.

4. Resisting the same, the first defendant filed a separate written statement and stating that the plaintiffs are sisters of the defendants and they were born to one Palani Thalayari, who died on 01.11.1961. The suit properties are not self-acquired one by their father and the first defendant never administered the property. In fact, their father died even before 22 years from the date of filing of the suit. After his death and even before cremation of body, the plaintiffs demanded their share. The panchayat was held and before the panchayat they received their respective shares along with Rs. 3,000/- and they left the village. Thereafter, they did not even come for the death ceremonies of their father. They never enjoyed the suit properties jointly with the first defendant. The first defendant is in possession and enjoyment of the suit property without any hindrance for the past 22 years and all the revenue dues paid in his name. Therefore, he is entitled for the adverse possession of the suit property in the year 1963 itself. The first defendant executed a settlement deed in favour of his wife and his son by the registered settlement deed. Therefore, the suit is bad for non-joinder of his wife and his son as party to the partition suit. Thereafter, the first plaintiff borrowed loan and dug up a borewell in the suit property. He borrowed loan a sum of Rs.20,000/- from agricultural co-operative bank and also dug up another well to develop the property and prayed for dismissal of the suit. The second defendant filed a separate written statement and admitting entire averments averred in the plaint and he also claimed $\frac{1}{4}$ share in the suit property and prayed for decree the suit as prayed for.

5. On the side of the plaintiffs, they examined P.W.1 and were marked Ex.A1. On the side of the defendants, they examined D.W.1 and D.W.2 and were marked Exs. B1 to B12. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the counsels on either side,

the Trial Court decreed the suit in so far as Item No.1 and 2 of the suit schedule properties and allowed $\frac{1}{4}$ share each and dismissed the suit in so far as the Item 3 of the suit schedule property. In so far as the prayer of mense profits, directed the plaintiff to take separate steps under Order 20 Rule 2 of C.P.C. Aggrieved by the same, the first defendant preferred appeal suit in A.S.No. 76 of 1991. The first Appellate Court allowed the appeal and dismissed the suit filed by the plaintiffs. Aggrieved by the same, the plaintiffs preferred this second appeal.

6. At the time of admission the following substantial questions of law were framed:-

"i) Is not the lower Appellate Court has committed miscarriage of justice holding that the first defendant acquired prescribed right co-sharers?

ii) Whether the lower Appellate Court relied upon the Exhibit B3 and B4 in respect of the patta proceedings even though the patta is not a conclusive proof for title?"

7. The suit is filed for partition. The plaintiffs and the defendants are sisters and brothers born to one Palani Thalayari, who died intestate on 01.11.1961 leaving behind them as his legal heirs. Except the death certificate of their father Palani Thalayari, the plaintiffs did not mark any document to prove that the suit properties acquired by their father. Whereas, the defendants marked Kist receipt for the suit properties as Exs.D1 to D3. Though those documents are subsequent to the suit, those are all pertaining to the Fasli year 1393 and 1395. EX.B4 is the Patta granted in favour of the first defendant. Other receipts relied to the suit property which were issued before initiation of suit in favour of the first defendant. Admittedly, the plaintiffs were married and living separately far away from the suit property. Therefore, the joint possession of the suit property has not been proved by the plaintiff. The Patta, Ex.B4 issued in favour of the first defendant and the Ex.B3 stands in the name of his wife Kaliammal. No where, the plaintiffs name mentioned in those documents. That apart, the plaintiffs filed a suit after 22 years from the date of death of their father. The first defendant categorically deposed that immediately after the death of their father, the plaintiff did not even allow him to take the body of their father for cremation without getting their share. Immediately, the Panchayat was held before the Panchayatars, they were allotted shares along with cash and they were settled. Therefore, the first defendant proved his possession and enjoyment of the suit property Item No.1 for more than 12 years and as such the first defendant is entitled for adverse possession of the suit Item 1 and 2 of the suit schedule

property. Without considering the other aspects, simply on the basis of the evidence of the first defendant, decreed the suit in favour of the plaintiff. In fact, the plaintiff did not even deposed anything about the written statement filed by the first defendant and did not even mark any document to prove that the suit properties are self-acquired property of their father. Therefore, the first Appellate Court rightly reversed the findings of the Trial Court and dismissed the suit filed by the plaintiffs.

8. In view of the above discussion, this Court does not find any valid reason reason to interfere with the findings rendered by the first Appellate Court by upholding the case of the first defendant. As such, this Court is of the considered opinion that no substantial questions of law are accordingly answered as against the plaintiffs and in favour of the first defendant. In fine, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CO mdu)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Subordinate Judge, Udumalpet

2.The District Munsif, Udumalpet.

+lcc to Mr.N.Umapathi , Advocate SR.No. 17693

S.A.No. 992 of 1998

A.SK(21/08/2020)

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