

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.819 of 2004

1.Kare Gowder (died)

2. Tmt. Samakkal

3.Natarajan

4. Velumani

...Appellants

[Appellants 2 to 4 brought on record as LRs of the deceased 1st Appellant viz., Kare Gower by Order of Court dated 26/10/2006 made in CMP.Nos.1972 & 1973 of 2005 in SA.No.819 of 2004 (AKJ)]

Vs.

1.Oomathurakkal (died)

2.Rangammal

3.Rangaraj

...Respondents

[R3 brought on record as LR of the deceased R1 viz., Oomathurakkal Vide Order of Court dated 21/11/2019 made in CMP.Nos.1 to 3 of 2019 SA.No.819 of 2004 (PRMJ)]
R3 absent by set ex parte

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the I Additional District Judge at Coimbatore, dated 29.10.2003 in A.S.No.119 of 2003 confirming the judgment and decree of the Principal Distict Munsif Court at Coimbatore, dated 21.04.2003 in O.S.No.257 of 1997.

For Appellant : Mrs.Mythili Suresh for
Sarvabhauman Associates

For Respondents: N.Damodaran for R3
R1-died (steps taken Vide Court order)
R2-Sd-NA

JUDGMENT

The 1st defendant in a suit for partition is the appellant herein. The suit property is described as a block of agricultural land measuring 1.925 acres. This property was purchased by one Ramaiyya Gowder under Ext.A1 sale deed dated 06.08.1943. Under this sale deed, Ramaiyya Gowder had purchased 3.85 acres. Thereafter, under Ext.A2 sale deed dated 13.12.1960, Ramaiyya Gowder sold the northern 1.925 acres to his daughter, the plaintiff in the suit. After separating the property covered under Ext.A-2 sale deed, the southern half is shown as the suit property.

2.1 Ramaiyya Gowder died intestate leaving behind him surviving two daughters and a son. As already indicated, one of his daughters is the plaintiff. The other is the 2nd defendant, who remained exparte both before the trial Court as well as the First Appellate Court. Claiming that on the demise of Ramaiyya Gowder, the plaintiff is entitled to 1/3rd share in the suit property, the suit is laid.

2.2 Ramaiyya Gowder's only son is the 1st defendant, who is the only contesting defendant. The primary defence taken by the 1st defendant/appellant herein is that, notwithstanding the fact that the entire property measuring 3.85 acres was purchased in the name of his father Ramaiyya Gowder, this defendant too has contributed some amount towards the sale consideration. The next ground of his defence is that this defendant has been in continuous and exclusive possession of the property right through.

3. The trial Court decreed the suit and the first Appellate Court confirmed it. Both the courts below have found the 1st defendant/appellant, has not pleaded ouster of the share to which the plaintiff is entitled to. The present appeal is hence preferred by the 1st defendant.

4. The appeal is admitted to consider the following substantial questions of law:

"(i) When the appellant had proved his plea of ouster by producing Exs. B-1 to B-9 to establish his exclusive possession of the suit property and other property from 1943 to 1997 to the knowledge of the respondents, whether the Courts below have correct in law in rejecting the same?

(ii) When the appellant had been in exclusive possession of the suit property ever since 1943 and

even according to the first respondent their father died in the year 1980, whether the suit for partition filed in the year 1997 is not barred by limitation, particularly when the appellant had pleaded and proved ouster?

(iii) Whether the Courts below have correct in law in discarding the decisions of this Court reported in 1968 TLNJ 478 and 1980 (1) MLJ 432, which are squarely applicable to the facts of the instant case?"

5. Heard both sides. The learned counsel for the appellant/first defendant argued that the suit property admittedly was purchased in 1983. It has also come out in evidence that the father of the appellant has died in 1980. At all points of time, this defendant alone has been in possession and enjoyment of the suit property to the exclusion of the plaintiff. This would also be proved by Exts. B5 to B9 adangal.

6. Admittedly, Ramaiah Gowder, the father of the appellant, was holding the suit property till 1980, the year in which he passed away and he died intestate. It was only on his death, succession opened and the parties herein became entitled to the property. Now it may be that the first defendant/appellant has been in possession of the property after the demise of the Ramaiah Gowder, and that it may also be true that the suit was laid only in 1997, some 17 years after the demise of Ramaiah Gowder, but the point is, if this waiting for 17 years to institute a suit for partition ipso facto imply that the plaintiff has been presumed to have lost her title to claim partition of her share?

7. It is too rudimentary a principle of law that one co-sharer holds the property for the benefit of all his other co-sharers, and the one in actual physical possession of the property, if he intends to exclude the other co-sharers from taking a share in the property, then he ought to plead and prove that the other co-sharer's right has been ousted to the knowledge of the latter. The co-sharer not in physical possession of the property must have knowledge that he or she has been so excluded. That sets a clock ticking for reckoning the limitation.

8. If the pleadings in this case is analyzed for the availability of ingredients necessary for constituting ouster, it falls far below the requirements that the law on ouster looks for. In conclusion, this Court does not find there is any substantial question of law to be decided and hence all are decided against the appellant.

9.This appeal is dismissed and the Judgment and Decree of the I Additional District Judge at Coimbatore, dated 29.10.2003 in A.S.No.119 of 2003 confirming the judgment and decree of the Principal Distict Munsif Court at Coimbatore, dated 21.04.2003 in O.S.No.257 of 1997 is upheld. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ska

To:

1.I Additional District Judge at Coimbatore.

2.Principal Distict Munsif Court at Coimbatore.

+1cc to M/s.Sarvabhauman Associates, Advocate, sr no.23063

+1cc to Mr.N.Damodaranm Advocate, sr no.22972

S.A.No.819 of 2004

SS (CO)

RMP (08/03/2021)



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