

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

S.A.No.169 of 2016
and
C.M.P.No.3470 of 2016

Pappathi ... Appellant/Appellant/
Defendant

Vs.

T.S.Manickam .. Respondent/Respondent
Plaintiff

Prayer: Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 07.07.2015 in A.S.No.32 of 2014 on the file of Sub Judge, Namakkal confirming the judgment and decree dated 30.07.2013 in O.S.No.189 of 2011 on the file of the Principal District Munsiff Court, Namakkal.

For Appellant : Mr. S. Kalyanaraman

For Respondent : Mr. S.R.Varun Karthik

J U D G M E N T

The defendant in O.S.No.189 of 2011, who suffered a decree for partition and separate possession of the half share of the plaintiff, upon its confirmation in A.S.No.32 of 2014 on the file of the Sub Court, Namakkal, has come up with this Second Appeal.

2. The suit was laid by the plaintiff / respondent claiming partition on the ground that the suit property belongs to the father of the plaintiff and the defendant namely Sabapathy Udayar. The said Sabapathy Udayar died sometime around 1974 leaving behind the plaintiff, defendant and his wife Chinammal. Chinammal died on 03.12.2009.

3. It is the claim of the plaintiff that after the death of Chinnamaal, he sought for partition on 06.03.2011 and since the defendant refused, the plaintiff has come forward with the above suit. The defendant resisted the suit contending that she had perfected title by ouster while admitting the relationship

between the parties and the character of the property. At trial, the plaintiff examined himself as P.W.1 and two other witnesses namely Soundarrajan and Periyasamy were examined as P.Ws.2 and 3 while defendant was examined as D.W.1. One Periyasamy and Ilango were examined as D.Ws.2 and 3. Exs.A1 to A3 were marked on the side of the plaintiff and Exs.B1 to B6 were marked on the side of the defendant. Upon a consideration of the evidence on record, the trial Court, concluded that the defendant has not established the claim of ouster.

4. It also concluded that her contention that the plaintiff sold the property of the family without her permission and it was agreed that she would not question the allegation and the plaintiff would not claim a share in the suit property was not established by cogent and convincing evidence. From Ex.P2, the trial Court found that the family property was sold in the year 1964 even during the life time of Sabapathy Udayar. The fact that Chinnamaal died on 03.12.2009 was also considered by the trial Court to reject the claim of ouster made by the defendant. On the said finding the trial Court decreed the suit as prayed for.

5. Aggrieved, the defendant preferred an appeal in A.S.No.32/2014. The Appellate Court upon reconsideration on evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Aggrieved, the defendant has come up with the second appeal.

6. I have heard Mr. Kalyanaraman, learned counsel appearing for the appellant and Mr. Varun Karthik, learned counsel appearing for the respondent.

7. Mr.Kalyanaraman, learned counsel for the appellant would vehemently contend that the exclusive possession of the defendant from the year 1990 has been admitted and the suit has been filed in 2011 i.e., after the expiry of 21 years. Therefore, according to him, the Courts below were no right in rejecting the claim of ouster.

8. I am unable to countenance the said submission of Mr.Kalyanaraman. As rightly pointed out by the Courts below, the defendant has miserably failed to prove the arrangement pleaded by her and that the plaintiff gave his right over the suit property. As regards, the plea of ouster, the mother Chinnammal was alive till 2009. It is admitted that Chinnammal was living in the suit property. Therefore, so long as Chinnammal was alive and she was living in the suit property, it cannot be said that the defendant was in exclusive possession asserting hostile title to the knowledge of the other co-owners. The cause of action to suit for partition at least with regard

to estate of Chinnammal would arise only in 2009. Therefore, the Courts below were right in rejecting the claim of ouster also. I do not find any question of law much less as substantial question of law in order to entertain this appeal. The second appeal therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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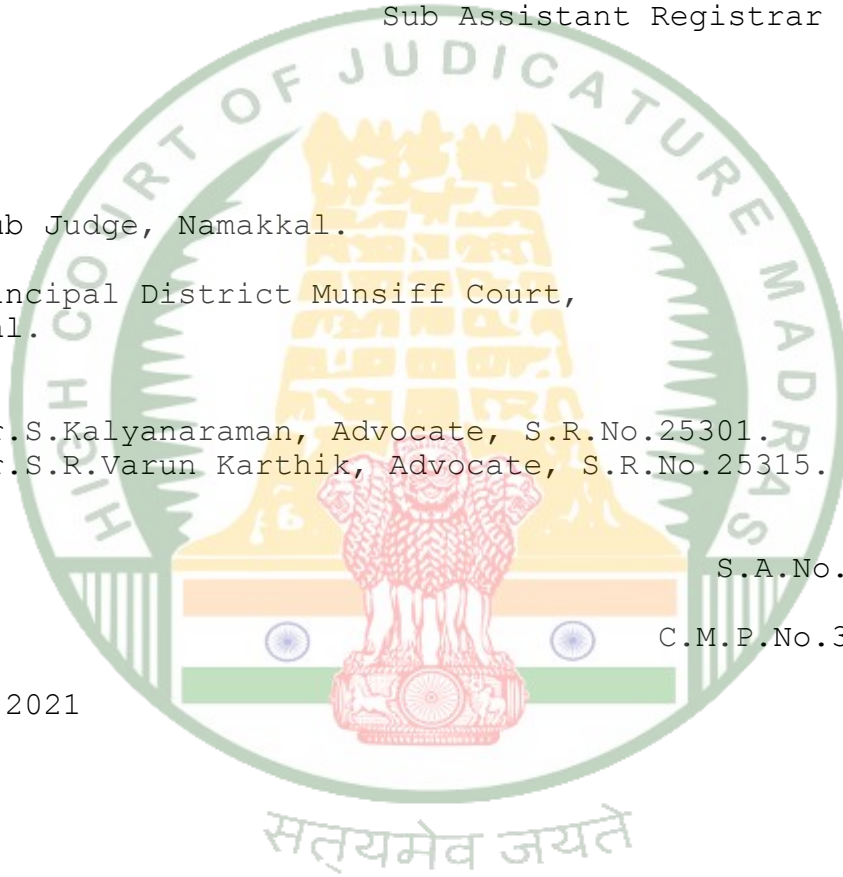
To

1. The Sub Judge, Namakkal.
2. The Principal District Munsiff Court,
Namakkal.

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No.25301.
+1cc to Mr.S.R.Varun Karthik, Advocate, S.R.No.25315.

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KJ(CO)
CSR 23.04.2021



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