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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.95 of 2015  
and  
M.P.Nos.1 & 2 of 2015

Umadevi  
1.Janaki  
2.Manonmani  
3.Amirthammal  
4.Adithan  
5.Karthikeyan  
Vs.  
...Appellant/Plaintiff  
...Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 04.02.2015 made in O.S.No.94 of 2011 on the file of the III Additional District Judge, Puducherry.

For Appellant : Mr.P.Veera Raghavan

For Respondents : No appearance

#### JUDGMENT

The Appeal suit in A.S.No.95 of 2015 is filed against the Judgment and Decree dated 04.02.2015 made in O.S.No.94 of 2011 on the file of the III Additional District Judge, Puducherry.

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

3. The brief facts of the plaintiff is that originally the suit properties owned by her father. The item No.1 and 2 of the suit properties were acquired by her father as per the partition deed dated 24.04.1968 and in respect of the other items were purchased by him. The entire properties were in his possession and enjoyment during his life time. The plaintiff and the defendants are the sons and daughters of the deceased father. When the plaintiff asked for her 1/6<sup>th</sup> share in the suit schedule property, the defendants are not willing for any partition. Therefore, the plaintiff issued legal notice on 16.11.2010 and filed a suit for partition.



4. Resisting the same, the defendants 4 and 5 filed written statement stating that their mother agreed to sell Item No.3 of the suit property for the sale consideration of Rs.50,000/- to one Periasamy in the year 1995, in which, she had received a sum of Rs.45,000/- from the purchaser. In fact, their father was suffered with stroke and he was bed ridden from the year 1982. Thereafter, the fourth defendant alone is looking after the family and he spent entire earnings for the plaintiff's marriage and other sisters marriage. He had spent a sum of Rs.2,00,000/- for the marriage of one Amirthambal and Rs.1,00,000/- for the marriage of Manonmani and Rs.5,00,000/- to the plaintiff's marriage in the year 1994. Even after the marriage, 3 ½ sovereign necklace was given to her. All along only on the support of the fourth defendant, the plaintiff is living in a rental house. The plaintiff has filed the suit after the expiry of 12 years from the date of death of their father. Therefore, the suit itself is barred by limitation, since she ousted her right and not entitled for mesne profit.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- "1. Whether the suit is barred by limitation ?
2. Where there is cause of action for the suit ?
3. Whether the suit property can be divided into six shares and allot one such share to the plaintiff ?
4. Whether the defendants are directed to pay Rs.70,000/- as mesne profits for every year ?
5. Whether the plaintiff is entitled for a preliminary decree as prayed for ?
6. Whether the plaintiff is entitled to a judgment and decree as prayed for ?
7. To what relief the parties are entitled to? "

6. On the side of the plaintiff, she examined P.W.1 and P.W.2 and marked Ex.A1 to A13. On the side of the defendants, they examined D.W.1 and D.W.2 and marked Ex.B1 to Ex.B8. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the present Appeal suit has been preferred by the plaintiff.

7. The learned counsel for the appellant would submit that the Court below dismissed the suit only on the ground of limitation, since the suit was filed by the plaintiff after a



period of 12 years from the date of death of their father. When the suit is for partition, the limitation doesn't arise and as such, the Court below erred in holding that the suit itself is barred by limitation. Further, the Court below dismissed the suit by applying the wrong proportion of law as held in the case reported in 2010 7 MLJ 52 [T.A.Yuvaraj and others Vs. T.Balakrishnama and others], that when the suit is barred by limitation and ouster that have been inferred and thereby caused delayed injustice to the appellant. He further submitted that admittedly, the entire suit schedule property owned by her father, as such, she is entitled to 1/6<sup>th</sup> share after death of her father. In fact, some of the suit schedule property obtained by her father by partition between his brothers. Rest of the properties were purchased by him only by the income derived from the ancestral property. Therefore, the plaintiff is entitled to have her 1/6<sup>th</sup> share in the suit schedule property. In fact, after death of her father, there was negotiation between the legal heirs and as such, it took time to file the present suit for partition. However, for the suit for partition, that too among the brothers and sisters, the limitation doesn't arise and the plaintiff is entitled to have her 1/6<sup>th</sup> share in the suit property.

8. Heard, the learned counsel for the appellant. Though, the notice served to all the defendants and printed their name in the cause list, no one appeared before this Court in person or through pleader.

9. The plaintiff filed a suit for partition claiming 1/6<sup>th</sup> share in the suit schedule property against the defendants. The plaintiff and the defendants are brothers and sisters. Their father derived title over the property by way of partition and also by purchasing from the third party. Thereafter on 09.03.1998, their father Egambaram died. The plaintiff filed the present suit after 12 years from the date of death of her father. In this regard, the Court below relied upon the Judgment reported in (2010) 7 MLJ 52 in the case of T.A.Yuvaraj and other Vs. T.Balakrishnama and other, and this Court held that the relevant portion is extracted hereunder :

"22. In the previous paragraph, it has been pointed out that a case of ouster and adverse possession extinguishing the right the plaintiffs in the suit property has been made out by the defendants. It has also been held that the possession of the first defendant became adverse to that of the plaintiffs from 25.01.1963, the date of Exhibit-B2 settlement deed. Therefore, from the said date the possession of the property by first defendant became one for himself and it shall not be deemed to be a possession on behalf of the



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plaintiffs also. As such, the limitation for seeking partition and separate possession viz., started from the said date 25.01.1963. The contention of the plaintiffs that they were not aware of the existence of such a settlement deed cannot be believed, as there are sufficient evidence to show that despite the fact that the first defendant was dealing with the property as if it were his absolute property by executing registered documents, the plaintiffs kept quite. As the suit has not been filed within 12 years from the date on which the possession of the first defendant became adverse, the present suit filed by the plaintiffs is to be held as one barred by limitation."

10. The case of ouster and adverse possession extinguishing the right of the plaintiff in the suit property has been made out by the defendants. In the case on hand, the plaintiff got marriage in the year 1994 with one Sathyamoorthy. After her marriage, she lived with her husband in a rental house. Thereafter, her father died on 09.03.1998. After demise of her father, all the defendants are in possession and enjoyment of the suit property. In fact, the defendants have constructed house in the suit property and they are residing there. The plaintiff never questioned about the possession and enjoyment of the suit property. Therefore, the possession and enjoyment of the suit property becomes adverse from the date of death of their father i.e., on 09.03.1998. The present suit has been filed after 12 years from the date of death of their father, therefore, the suit itself is barred by limitation.

11. In the result, the Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-  
Assistant Registrar

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Sub-Assistant Registrar

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To

The III Additional District Judge,  
Puducherry.

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Copy to

The Section Officer  
VR Section  
High Court, Madras 104.

A.S.No.95 of 2015  
and  
M.P.Nos.1 & 2 of 2015

PP(CO)  
SP(18/11/2021)