



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.07.2021
CORAM
THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN
A.S.No.97 of 2015

WEB COPY

1. Mohanambal
2. T.Srinivasan
3. T.Vijayalakshmi
4. N.Manomani
5. N.Prakash

... Appellants/Plaintiff

Vs.

Dhanammal

... Respondent/Defendant

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 08.10.2014 made in O.S.No.7192 of 2010 on the file of the learned IV Additional District Judge, City Civil Court, Chennai.

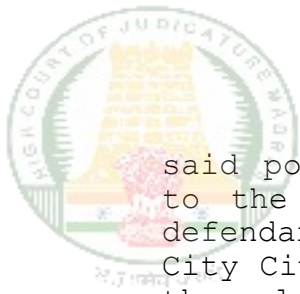
For Appellants	: Mr.Adinarayana Rao
For Respondent	: Mr.J.Sudhakaran

JUDGMENT

The Appeal Suit is filed as against the Judgment and Decree dated 08.10.2014 made in O.S.No.7192 of 2010 on the file of the IV Additional District Judge, City Civil Court, Chennai.

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

3. The suit is filed for declaration and recovery of possession. The case of the plaintiffs is that they are the legal heirs of the deceased Thangavelu and Nagalingam, who are brothers. The defendant is the elder sister of the above said brothers. The above said brothers, along with defendant and another sister, had partitioned their properties, which were originally belonged to their parents, by a registered partition deed dated 11.05.1982. As per the partition deed A schedule properties were allotted to the defendant. B schedule properties were allotted to another sister viz., Lakshmi. C schedule properties were allotted to one of the brothers viz., deceased Thangavelu and D schedule properties were allotted to another brother viz., deceased Nagalingam. After demise of the said brothers, the plaintiffs are being the legal heirs were in continuous possession and enjoyment of their respective shares. The plaintiffs 1 to 3 and 4 & 5 are each entitled to half share. The plaintiffs were residing in one portion and the remaining portions are let out to tenants. After vacating the tenant, the defendant was given permission to occupy the



said portion. The tenants and the defendant were paying rent to the plaintiffs. Only to avoid the payment of rent, the defendant filed suit in O.S.No.1915 of 1994 on the file of the City Civil Court, Chennai, for permanent injunction as against the plaintiffs. Hence the plaintiffs filed this suit for declaration and recovery of possession.

4. Resisting the same, the defendant filed written statement admitting the relationship and also execution of partition deed dated 11.05.1982. But according to the defendant, the partition deed was never acted upon between them and the so called brothers were never put into possession of the suit property. The house referred by the plaintiffs was built up by one Ammakannu Ammal from her own funds and later developed by the defendant. The defendant has been in continuous possession and enjoyment of the suit properties with her mother and even after demise of her mother, in fact, she inducted the tenants in the house and collected rent from the tenants. The portion of item No.1 of the A and B schedule suit properties are in exclusive possession and enjoyment of the defendant. All the revenue records stands in the name of the defendant. The suit itself is vexatious and frivolous one. In fact, the defendant filed suit in O.S.No.1915 of 1994, as against the plaintiffs and the same was decreed in her favour by the judgment and decree dated 16.12.1999. Therefore, the first and fourth plaintiffs or their respective husbands viz., Thangavelu and Nagalingam were never in possession of the suit properties. If at all any right had accrued to them, they have lost their right due to continuous and adverse possession of the defendant in respect of the suit properties. The defendant has also perfected title of the suit properties by way of adverse possession. Hence the present suit is barred by limitation and the plaintiffs did not disclose any cause of action to file the suit.

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

"1. Whether the plaintiffs 1 to 3 are absolutely entitled to the item mentioned in "A" schedule of the suit properties?

2. Whether the plaintiffs 4 and 5 are absolutely entitled to the item mentioned in "B" schedule of the suit properties?

3. Whether the defendant is in illegal occupation of the item No.1 "A" Schedule and item No.1 "B" schedule of properties of the plaintiffs and that to direct the defendant to delivery of possession of the same to the plaintiffs?

4. Whether the question of prescription of title by adverse possession will arise when permissive occupation is given to a close relative?



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5. Will the question of ouster arise within the close relatives who are in permissive possession?

6. Were the plaintiffs at any time in possession and enjoyment of item No.1 of A and B schedule properties mentioned in the plaint after the partition deed dated 11.05.1982?

7. Has not the defendant prescribed title to item No.1 of the plaint A & B schedule properties being in possession of the same openly, continuously and adverse to the knowledge of the plaintiffs?

8. Is not the decision in O.S.No.7927 of 1986 City Civil court, Madras a bar to the plaintiff's claim for possession?

9. Has not the defendant prescribed title to plaint No.1 of A and B Schedule property by open, continuously and adverse possession over the statutory period?"

6. On the side of the plaintiffs, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.5. On the side of the defendant, she examined D.W.1 and marked Ex.B.1 to Ex.B.39. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made by the learned counsel on either side, the trial Court dismissed the suit. Aggrieved by the same, the present Appeal Suit has been preferred by the plaintiffs.

7. The learned counsel appearing for the plaintiffs/appellants submitted that the defendant categorically admitted the partition between the first and fourth plaintiffs' respective husbands along with other sister by the registered partition deed dated 11.05.1982. On permission, the defendant occupied the suit property for rent. In order to avoid the payment of rent, she filed suit in O.S.No.1915 of 1994 for permanent injunction. He further submitted that to claim adverse possession in respect of the suit properties, the possession and enjoyment of the suit property should be challenged or denied. In the present suit, the limitation does not arise and the defendant is not entitled to any right by way of adverse possession. When the defendant categorically admitted the partition between the plaintiffs' family members, she cannot claim adverse possession over the suit properties.

8. Per contra, the learned counsel appearing for the defendant submitted that though the defendant admitted the partition deed dated 11.05.1982, it was never acted upon and the plaintiffs or their predecessors were never in possession of the suit properties. The defendant and her mother are in continuous possession and enjoyment of the suit properties. In order to substantiate her possession and enjoyment, the



defendant marked the documents in Ex.B.1 to Ex.B.31 to prove her possession and enjoyment of the suit properties from the year 1984 onwards. Those documents categorically proved her possession and enjoyment of the suit properties without any obstruction or objection. He further submitted that the present suit is nothing but vexatious and frivolous only to extract money from the defendant. Therefore, he prayed for dismissal of the appeal suit.

9. Heard Mr.Adinarayana Rao, learned counsel appearing for the appellants and Mr.J.Sudhakaran, learned counsel appearing for the respondent.

10. Admittedly, there was a partition deed dated 11.05.1982, which was marked as Ex.A.1, between the first plaintiff's husband and fourth plaintiff's husband viz., Thangavelu and Nagalingam respectively, along with their sisters. Accordingly, the first item in A and B schedule suit properties were allotted to the said Thangavelu and Nagalingam by equal share. A perusal of Ex.A.1 reveals that, the item 1 of the A schedule suit property was a thatched house at the time of execution of partition deed. Whereas a perusal of documents marked by the defendant in respect of the suit property reveals that, it was a terrace house.

11. The plaintiffs also failed to prove their possession of the suit property at any point of time even during the time when their husbands were alive. Therefore, the defendant claimed adverse possession in respect of the suit property. The defendant prescribed title by way of ouster in respect of the suit property, since the defendant is in continuous possession from the time immemorial. Whereas the plaintiffs claimed title through the said Thangavelu and Nagalingam by the partition deed dated 11.05.1982. The plaintiffs have filed the present suit with vague avernments, without any specific avernment in respect of any date viz., the date on which the defendant was permitted to occupy the suit property and what was the rent paid by her. Therefore, the plaintiffs are not entitled for any relief sought for in the plaint. Hence the Court below rightly dismissed the suit and there is nothing warranting interference by this Court.

12. Accordingly, this Appeal Suit stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

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To

The IV Additional District Judge,
City Civil Court, Chennai.

A.S.No.97 of 2015

RLD(CO)

A.SK(11.11.2021)