



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.07.2021
Pronounced On	03/08/21

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.88 of 2015
and M.P. No.1 of 2015

(Through Video Conferencing)

1.P.Natarajan
2.Palanimuthu
3.Govindaraj

... Appellants/Respondents
1 to 3/Defendants 1 to 3

vs.

1.Lakshmi
2.Rasammal
3.Shanmugam
4.Mohan
5.N.Rathinavel

...Respondent/Appellant/Plaintiff

... Respondents 2 to 5/Respondents 4 to 7/
Defendants 4 to 7

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 05.11.2013 passed in A.S.No.7 of 2013 by the Sub Court, Rasipuram, by confirming the Judgment and Decree dated 20.09.2012 passed in O.S.No.226 of 2010 by the District Munsif Court, Rasipuram.

For Appellants : M/s.S.Rajendra Kumar

For Respondents : M/s.T.Dhanyakumar

J U D G M E N T

This appeal has been filed by the appellants 1 to 3/defendants 1 to 3 against the impugned Judgment and Decree dated 05.11.2013 passed by the learned Sub Judge, Rasipuram in A.S.No.7 of 2013.



2. By the impugned Judgment and Decree dated 05.11.2013 in A.S.No.7 of 2013, the learned Sub Judge, Rasipuram modified the judgment and decree 20.09.2012 passed by the learned District Munsif Court, Rasipuram in OS.No.226 of 2010 and allowed the appeal filed by the 1st respondent.

3. The 1st respondent/plaintiff had filed O.S.No.226 of 2010 before the learned District Munsif Court, Rasipuram. The suit was filed for partition and separate possession of the suit schedule property by claiming a 1/4th share in the suit schedule properties (item nos.1 to 3) purchased by the father and mother of the parties which was being enjoyed by the appellants herein along with R1 to R4.

4. The Trial Court by the impugned judgment and decree dated 20.09.2012 had partly allowed and partly dismissed the suit filed by the 1st respondent. The Trial Court allowed partition of the 1st item of the suit schedule property purchased in the name Alamelu Ammal, the mother of the appellants 1&2, 1st respondent and grandmother of the 3rd appellant and Respondent Nos. 2 to 5 on 26.04.1938 and dismissed the suit for partition of the 2nd and 3rd items of the suit schedule properties purchased in the name of their father and grandfather respectively on 14.04.1947 and 30.08.1957.

5. The 1st respondent/plaintiff thus filed A.S.No.7/2013 insofar as the Judgment and Decree of the Trial Court which declined the relief for partition of the 2nd and 3rd items of the suit schedule properties.

6. By the impugned Judgment and Decree, the Appellate Court has allowed the above appeal filed by the 1st respondent/plaintiff by holding that the 2nd and 3rd items of the suit schedule properties were also the self-acquired properties of their father and grandfather respectively. Thus, the present appeal has been filed by the appellants who were 1st to 3rd defendants in O.S.No.226 of 2010 filed by the 1st respondent/plaintiff.

7. The only ground on which the impugned judgment and decree of the First Appellate Court has been challenged is based on the decision of the Division Bench of this Court reported in Minor Ibramasa Rowther and others Vs. Sheik Meerasa Rowther and others, 1972 (85) LW 596, 1972(1) MLJ 466. In this connection, a reference was made to the following passage from the aforesaid



WEB COPY

decision which reads as under:

In a case of ouster of a co-owner, the position is entirely different. The possession of one co-owner is presumed to be on behalf of all the co-owners in view of the unity of title and possession. Because of this presumption of joint ownership in the case of co-owners the law requires to constitute ouster, proof of something more than mere exclusive possession and exclusive receipt of income. Along with exclusive possession there must be an ouster, a hostile, open denial and an open repudiation of the other co-owner's right to the latter's knowledge. The co-owner in exclusive possession cannot render his possession adverse to the other co-owner merely by any secret, hostile animus on his own part in derogation of other co-owner's title. Vide the observations in P. Lakshmi Reddy v. L. Lakshmi Reddy, ; Sinnaraj Pillai v. Ramayee Ammal, and Shambhu Prasad v. Phool Kumari, . But, this does not mean that the co-owner who has been ousted or excluded should be expressly informed as such by the other co-owner. If other circumstances concur the Courts, in proper cases, may legitimately infer, from exclusive possession for a considerable length of time, that the other co-owner has been excluded to his knowledge and that title has been denied and repudiated by the hostile assertion of the co-owner in possession. The theory of lost grant is applicable to support long continued possession for a considerable length of time and the most important element in presuming ouster is the time factor or the length of time of sole and exclusive possession by one co-owner. If a co-owner does not assert his rights for a considerable length of time with the result that the other side is handicapped, by lapse of time and disappearance of evidence, from proving that his exclusive possession was coupled with open denial and open repudiation of the title of the other co-owner either at the inception or subsequently, the co-owner who has been inactive must take the consequence for the long delay in bringing the suit which has



WEB COPY

prejudiced the other side and occasioned the loss of evidence by lapse of time.

As observed in Broom's Legal Maxims (Tenth Edition) page 645, "No greater obligation lies upon a Court of justice than that of supporting long-continued enjoyment by every legal means, and by every reasonable presumption; this 'doctrine of presumption goes on the footing of validity, and upholds validity by supposing that everything was present which that validity required': OMNIA PROESUMUNTUR RITE FUISSE ACTA is the principle to be observed." Courts may presume ouster from exclusive possession for a considerable length of time. We may in this context, extract the following observations in ILR (1970) 2 Mad 636 (referred to above) at pp. 730 to 732:

8. Assailing the impugned judgment and decree, the learned counsel for the appellants submits that the parents of the 1st and 2nd appellants and the contesting 1st respondent and the deceased brother Venkatachalam namely Perumal Padayachi and Alamelu Ammal died in the year 1990 and 1985 respectively. It is submitted that the suit for partition was filed after the period of 25 years from the death of the mother and 20 years after the death of their father.

9. It is the case of the appellants that the 7th defendant/ 5th respondent herein namely Rathinavelu (S/o. Natarajan), had filed the written statement wherein he alleged that the 1st respondent's son Sivashanmugam was married to his sister Sivagami (D/o Natarajan) and through the aforesaid marriage, a son named Thirugnanam was born.

10. He further submits that there was marital discard between the said Sivashanmugam and Sivagami and that the said Sivagami was sent out of the matrimonial home along with their son and therefore to create trouble, the suit for partition was filed at the instance of the 1st appellant's son Sivashanmugam even though by conduct there was ouster.

11. Before the Trial Court, the following issues were framed:-



WEB COPY

1. Whether it is true that the plaintiff has got married 50 years back and the suit properties have been in possession and enjoyment of the defendants?
2. Whether the plaintiff is entitled to relief as prayed for?
3. To what other relief, the parties are entitled?

12. An Additional issue was also framed as to whether the 5th respondent/7th defendant herein was a necessary party to the suit. As mentioned above, the Trial Court had partly decreed the suit in respect of the 1st item of the suit schedule property and dismissed the suit in respect of the 2nd and 3rd items without any cost. The Trial Court allowed partition of 1st item of the Suit Schedule Property as it was purchased in the name of the mother Alamelu Ammal. However, the Trial Court refused the relief for partition of 2nd and the 3rd item of the suit schedule property on the assumption that they were ancestral property.

13. After considering the evidence on record and perusal of the averments made in the plaint and written statement, the Appellate Court has concluded that the Trial Court confused itself with the pleadings of the parties that though properties are in joint possession and enjoyment of the parties yet construed that the 2nd and 3rd item of the properties was a joint family property.

14. The First Appellate Court has observed that after the death of male Hindu, his property equally devolves on his class I legal heirs and until partition among the class I legal heirs, possession to be construed in joint possession of the property and it does not mean that the properties are joint family properties.

15. The operative portion of the impugned judgment and decree reads as under:

"After the death of male Hindu, his properties shall devolve equally on his clause I legal heirs and until partition all the clause I legal heirs have to be construed to be in joint possession of the property but that does not mean that the properties are joint family properties. The property derived ancestrally,



WEB COPY

the property purchased from and out of the income from the nucleus of the joint family, the property purchased by putting the efforts of the coparceners but in the name of Kartha are alone joint family properties. If any, member of the joint family want to through his individual property into the common hotchpots with an intention to blending the same with the joint family property, that property also can be construed as a joint family property. The suit 2nd and 3rd item of properties does not fall in to any one of the above said category but they are the separate and self acquired properties of Perumal padaychi and as such it clearly falls under section 8 of Hindu Succession Act and not under section 6 of Hindu Succession Act. Therefore, the learned District Munsiff misconstrued that the suit 2nd and 3rd item of properties are coparcenary properties and mistakenly applied the rulings which is applicable only for the cases falling under section 6 of Hindu Succession Act and denied the lawful share of the plaintiff in the suit 2nd and 3rd item of properties. The suit 2nd and 3rd item of property, being the separate self acquired property of the plaintiff's father Perumal padayachi and when admittedly he died intestate, the said properties shall devolve upon his clause I legal heirs equally as contemplated under section 8 of the Hindu Succession Act and the plaintiff, being one of a clause I legal heir of the Perumal Padayachi along with her 3 brothers, is entitled to $\frac{1}{4}$ share in the suit 2nd and 3rd item of properties also. The learned District Munsif was not correct in holding that the plaintiff is not entitled to share in the suit 2nd and 3rd item of properties and as such the said decision of the learned District Munsif warrants interference by this court by setting aside the same and this pint is answered accordingly".

16. The learned counsel for the 1st respondent/plaintiff submits that the impugned judgment and decree upholding the contention of the respondent was well reasoned and requires no



WEB COPY

interference. He further submits that no documents were produced by the appellants to infer the item Nos.1 and 2 were ancestral in nature. It is further submitted that no witnesses were also examined on behalf of the appellants to dislodge the case of the 1st respondent/plaintiff.

17. The learned counsel for the 1st respondent further submits that there were also no pleadings regarding the hostile or adverse possession by the appellants herein along with the other respondents to infer ouster. He further submits that in absence of any pleadings and evidence regarding hostile possession the decision of the Division Bench of this Court reported in Minor Ibramasa Rowther, by guardian and next friend father Ayyavoo Rowther alias Ibramoli Rowther and Others Versus Sheik Meerasa Rowther and Others, 1972 (85) LW 596, 1972 (1) MLJ 466 (cited supra) is of no relevance.

18. It is therefore submitted that no substantial questions of law arises for consideration in this appeal. It is submitted that even if any substantial questions of law arises was inherited, it has to be answered against the appellants. By way of re-joinder, the reference was made to para-7 of the written statement filed by the 3rd defendant/3rd appellant that the suit for partition was filed after 50 years of marriage.

19. This appeal was not admitted. Notice of motion was ordered on 2.3.2015. Thus, the respondent No.1 is represented by her counsel. As only Notice of Admission was ordered as per the prevailing practice of this Court, substantial questions of law were not framed for being answered at the time of final disposal of this appeal.

20. Having perused the impugned judgment and decree of the Trial Court and the First Appellate Court and after considering the arguments of both sides, this Court is of the view that the following substantial questions of law arises for consideration in this appeal.

- i) Whether the suit schedule properties Nos.2 and 3 purchased the name of late Perumal Padayachi (the father of the 1st and 2nd appellant, 1st respondent and the paternal grandfather of the 3rd appellant, 3rd and 4th respondent) were ancestral property or a self-acquired property?



WEB COPY

ii) Whether the appellate Court committed an error in failing to note that there was ouster of right to partition as per the decision of this Court in Minor Ibramasa Rowther, by guardian and next friend father Ayyavoo Rowther alias Ibramoli Rowther and Others Versus Sheik Meerasa Rowther and Others, 1972 (85) LW 596? and

iii) Whether the First Appellate Court committed an error in allowing the appeal filed by the 1st respondent/plaintiff in A.S No.7 of 2013 even if item nos.2 & 3 of the suit schedule property were the ancestral in nature?

21. The present appeal is confined to item Nos.2 and 3 of the suit schedule property which was purchased in the name of late.Perumal Padayachi on 14.4.1947 and 30.08.1957. Item No.1 of the suit schedule property was purchased in name of late.Alamelu Ammal (wife of Late. Perumal Padayachi).

22. Late Perumal Padayachi died in the year 1990 while his wife late Alamelu Ammal predeceased him and died in the year 1985. Both late Perumal Padayachi and his wife late Alamelu Ammal died intestate.

23. Late Perumal Padayachi and Alamelu Ammal had 3 sons named P.Venkatachalam (who had pre-deceased) at the time of institute of the suit P.Natrajan (1st appellant) and P.Pazhanimuthu (2nd appellant) and one daughter named Lakshmi (1st respondent-plaintiff). Their first son late.P.Venkatachalam who died before the suit was instituted left behind him, the 3rd appellant and the 2nd, 3rd and the 4th respondents as his legal heirs.

24. It appears that the three suit schedule properties were being enjoyed by the appellants along with the other children late Venkatachalam (the first son of late Perumal Padayachi and Alamelu Ammal).

25. The suit for partition was filed by the 1st respondent in the year 2010. It is the case of the appellants



that the 1st respondent was married about 50 years back to Mr. Muthusamy and was filed after 20 years after the death of the father and 25 years after the death of their mother.

WEB COPY

26. Before proceeding to answer the 1st and 3rd questions of law, I shall proceed to answer the 2nd question of law. The learned counsel for the appellants have attempted to persuade the Court to infer ouster in the light of the decision of this Court in Minor Ibramasa Rowther, by guardian and next friend father Ayyavoo Rowther alias Ibramoli Rowther and Others Versus Sheik Meerasa Rowther and Others, 1972 (85) LW 596.

27. The submission that the appellants and other respondents (children of the late P. Venkatachalm) had ousted 1st respondent from the joint family property is not available as the appellants and rest of the respondents have accepted the judgement and decree dated 20.09.2012 of the Trial Court in O.S.No.226 of 2010 in so far as item No.1 of the suit schedule property. They have not appealed against the judgement and decree of the Trial Court. Therefore, ouster cannot be inferred.

28. The submission that the suit for partition in the year 2010 was filed after 50 years of marriage of the 1st respondent was motivated with a view to settle personal enmity arising out of the matrimonial dispute between the daughter of the 1st appellant and sister of the 5th respondent / 7th defendant with the son of first respondent/plaintiff of no relevance. Possession by member of a family entitled to a share in the joint family property is a possession by other members of the joint family.

29. Even otherwise, it was not the defence of the appellants that the 1st respondent/Plaintiff was ousted from the property in their written statement. They have neither pleaded adverse possession nor let in any evidence to that effect.

30. Further, it was not incompetent for them to file a suit for declaration of title in terms of the decision of the Hon'ble Supreme Court in Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729. However, they did not file a suit for declaration of title. Therefore, the 2nd substantial question of law is answered in the negative and against the appellants .

31. Having answered the 2nd question of law, I shall proceed to answer the 1st question of law. There is nothing on



record to show that these two properties (item Nos.2 and 3 of the suit schedule property) were ancestral in nature and therefore were to be partitioned in terms of section 6 of the Hindu Succession Act, 1956.

WEB COPY

32. On the other hand, there are sufficient indications that these properties were self acquired property of late.Perumal Padayachi. Since late Perumal Padayachi died intestate, the devolution of the properties purchased by him were not governed by Section 6 of the Hindu Succession Act, 1956.

33. The devolution of the self acquired properties purchased by late.Perumal Padayachi were governed by Section 8 of the Hindu Succession Act, 1956 in absence of a testamentary disposition of these properties by late.Perumal Padayachi.

34. As mentioned above, item No.2 and 3 of the suit schedule property were self acquired property. Therefore, outside the purview of Section 6 of the Hindu Succession Act, 1956. Therefore, the 1st substantial question of law is also answered against the appeal appellants.

35. The Trial Court disallowed the case of the 1st respondent for partition of item nos.2 and 3 of the suit schedule property in view of Section 6 of the Hindu Succession Act, 1956 in view of decision of this Court Srimathi Bagirathi and 5 others vs. Venkatesan 2008 (3) LW 1054.

36. Even if, Section 6 of the Hindu Succession Act, 1956 were to be applied on an assumption on a demurred that the property in question was a ancestral property in the hands of late.Perumal Padayachi and the 1st respondent would have been entitled to a share in the ancestral property in the light of the decision of the Hon'ble Supreme Court in Vineeta Sharma vs Rakesh Sharma and Others, 2020 SCC Online SC 641.

37. The decision of this Court in Valliammal vs Muniappan, 2008 (4) CTC 773 which was relied by the trial Court to partly deny the relief to the 1st respondent is not applicable to the facts and circumstances of the case in the light of the decision of the Hon'ble Supreme Court in Vineeta Sharma vs Rakesh Sharma and Others, 2020 SCC Online SC 641.

38. In the light of the above discussion, the appeal filed by the appellants fails and on the first substantial



question of law raised in this appeal has to be answered against the appellants.

39. In the result, the present appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(JJ Act)

// True Copy //

Sub Assistant Registrar

kkd

To

1.The Subordinate Judge,
Sub Court, Rasipuram,

2.The District Munsif,
Rasipuram.

+1cc to Mr.S.Rajendrakumar, Advocate SR.No.37943

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.32107

S.A.No.88 of 2015

RR(CO)
CB(23/11/2021)