



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AS.No.517/2018

[Hybrid Mode]

Durai

... Appellant

Vs.

Rani Paramasivam

... Respondent

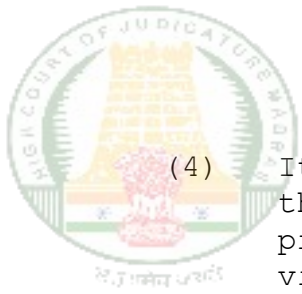
Prayer:- Appeal Suit filed under Order 41 Rule 1 CPC to set aside the judgment and decree dated 22.03.2018 passed in OS.No.186/2016 by the learned IV Additional District Judge, Tiruvallur at Ponneri.

For Appellant : Mr.R.Munuswamy

For Respondent : Mr.R.Karunakaran

JUDGMENT

- (1) The present Appeal Suit is directed against the judgment and decree dated 22.03.2018 in OS.No.186/2016 on the file of the learned IV Additional District Judge, Tiruvallur at Ponneri.
- (2) The respondent herein as plaintiff, filed the suit in OS.No.186/2016 before the learned IV Additional District Judge, Tiruvallur at Ponneri, for partition and separate possession of plaintiff's one-half share in all the suit properties.
- (3) The respondent herein is the elder sister of the appellant/defendant in the suit. It is the case of the respondent/plaintiff that the father of the plaintiff and defendant, namely Kuppusamy Reddy died intestate on 04.09.1998 and that the plaintiff and the defendant are the only legal heirs of the said Kuppusamy Reddy.



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- (4) It is the further case of the respondent/plaintiff that the entire suit schedule properties along with the other properties were purchased by her father Kuppusamy Reddy vide registered Sale Deed dated 30.08.1980. It is further stated that the said Kuppussamy Reddy died intestate on 04.09.1998 leaving behind the plaintiff and the defendant who are the daughter and son of the said Kuppusamy Reddy.
- (5) Though the appellant/defendant raised several issues in the written statement, one of the contentions in the written statement is that the father of the plaintiff and the defendant, even during his life time, denied any share to the plaintiff and that the plaintiff therefore, had not made any claim during the life time of her father. It is further stated in the written statement that the appellant/defendant is in exclusive possession and enjoyment of the property exercising all rights of possession. Therefore, it was contended that the plaintiff had lost her right by ouster.
- (6) The Trial Court, after framing necessary issues, found that the suit properties are the self acquired properties of the father of the plaintiff and the defendant and that the plaintiff is entitled to half share in all the properties. With regard to ouster, the Trial Court gave a definite finding that the defendant has failed to establish that his possession was in open assertion and denial of title to the knowledge of the plaintiff. Aggrieved by the findings of the Trial Court, the above Appeal Suit has been preferred by the defendant in the suit.
- (7) The learned counsel for the appellant/defendant though submitted that the suit properties were purchased in the name of the appellant/defendant's father by grandfather, he is unable to point out any evidence to support his claim. When the properties stand in the name of the appellant's father, the burden lies on the appellant/defendant to prove that there was existence of joint family property prior to the purchase and that the property acquired by his father was out of the income derived from such joint family property or can be characterised as joint family property by other means.
- (8) The law is settled that there is no presumption of existence of any joint family property. In this case, the appellant/defendant has not even pleaded availability of



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any other property which can be characterised as joint family property in the hands of the defendant's father. No evidence was let in to show that the grandfather had acquired the property by joint family income. This Court is unable to appreciate the first contention of the learned counsel for the appellant/defendant.

- (9) Secondly, the plea of ouster should be specific to establish that the defendant/appellant herein is in enjoyment of the property exclusively and that his possession and enjoyment is long and continuous to the knowledge and exclusion of the respondent. In the written statement, as regards the plea of ouster, it is not indicated how he had asserted ouster. Merely because the appellant/defendant is in physical possession of the property, it cannot be said that his possession is open and in denial of the plaintiff's/respondent's right of co-ownership. No instance of ouster is pleaded nor proved.
- (10) The findings of the Trial Court on this issue is supported by reasons. This Court is unable to find any error or illegality in the findings of the Lower Court.
- (11) In the result, the Appeal Suit is dismissed confirming the judgment and decree dated 22.03.2018 passed in OS.No.186/2016 by the learned IV Additional District Judge, Tiruvallur at Ponneri. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

AP

To

The IV Additional District Judge,
Tiruvallur at Ponneri.



Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.E.Prabu, Advocate Sr.66450

+1cc ot Mr.R.Karunakaran, Advocate Sr.66200

AS.No.517/2018

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srg 07/01/2022