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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.674 of 2014

1.Thayarammal (Died)

2.Baby ... Plaintiff / Appellants

Vs.

Sandalalakshmi ... Defendant /Respondent

(2nd Appellant brought on record as LR of the deceased sole appellant vide order of Court dated 11.02.2020 made in C.M.P.Nos.1593, 1594 & 1595 of 2020 in A.S.No.674 of 2014).

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgement and Decree of District Court, Karaikal dated 21.02.2014 made in O.S.No.62 of 2010.

For Appellant : Mr.S.Sounthar

For Respondent : No Appearance

JUDGMENT

The plaintiff in a suit for partition filed before the District Judge, Karaikal in O.S.No.62 of 2010 is the appellant before this Court, she having been non suited.

2. The facts which are necessary for understanding the issue on hand is herein below narrated and the parties are referred to in the same rank as before the Trial Court.

Plaintiff's Case:

3. It is the case of the plaintiff that the suit schedule property belonged to one Sowrirajalu Chettiar son of Balaguru



Chettiar by virtue of sale deed dated 16.09.1941. The plaintiff was entitled to estate of late Sowrirajalu Chettiar by reason of inheritance. It is her case that the defendant is an utter stranger to the suit property and taking advantage of the senility of the plaintiff, the defendant had trespassed into the property around 2 years ago, prior to the institution of the suit. When the plaintiff had questioned the act and requested him to vacate the premises, the defendant had displayed an indifferent attitude.

4. A legal notice came to be issued by the plaintiff dated 22.06.2010 calling upon the defendant to vacate the premises. To this, a reply dated 30.06.2010 was received from the defendant which contains absolutely false statements. It was for the first time informed that the defendant had come into possession of the property under a sale deed dated 06.02.2008.

5. It is the case of the plaintiff that this sale deed is an absolutely sham and nominal document and the plaintiff is therefore seeking to declare the documents void as the same is not binding on her. Therefore, the plaintiff has come forward with the suit for partition.

Defendant's case:

6. The defendant had countered the suit filed by the plaintiff by inter alia contending that the framing of the suit itself was totally defective and no reason has been given as to how the plaintiff was a co-owner in respect of the suit property. The plaintiff had disputed the title of the defendant's vendor and therefore she was bound to file a suit for declaration for her title and recovery of possession and the suit for partition was absolutely not maintainable.

7. The defendant would admit that the property belonged to Sowrirajalu Chettiar. However, it was an absolute falsehood to state that the plaintiff had become co-owner by reason of inheritance. She would contend that the suit property belonged to G.Balaguru son of Govindasay Chettiar. On his demise, his wife Rukkumani Devi became entitled to the same by virtue of a Will dated 10.05.1983. Rukkumani Devi was in possession and enjoyment of the said property. The revenue records had also been mutated in her name.



8. Thereafter, the defendant had purchased the suit property from the said Rukkumani Devi for a valid sale consideration under a registered sale deed dated 06.02.2008. She has been in absolute possession and enjoyment of the property since her purchase. In fact, prior to her purchase the defendant's father-in-law, Maharaja Nadar was a tenant in respect of the suit property since 1982 under the defendant's vendor.

9. Therefore, the contention of the plaintiff that she has been in possession and enjoyment of the suit property was nothing short of a blatant lie. The suit was also bad for non-joinder of necessary parties as the plaintiff who has contended that she is a co-owner has not bothered to implead the other co-owners. The defendant had also taken a defense of limitation.

Trial Court:

10. The learned District Judge, Karaikal on perusing the pleadings of the parties had framed the following issues:

(i) Whether the suit for partition is not maintainable as the plaintiff ought to have filed a suit for declaration of title and recovery of possession?

(ii) Whether the plaintiff is in joint possession and enjoyment of the suit property along with the defendant?

(iii) Whether the defendant is the lawful owner of the suit property with possession and enjoyment of the same?

(iv) Whether the plaintiff is entitled for half share in the suit property?

(v) Whether the plaintiff is entitled for a preliminary decree with mesne profits at Rs.1,000/- per month from the date of plaint till delivery of possession with costs?

11. The parties had gone to trial on the basis of these issues. On the side of the plaintiff her son who was the power agent was examined as P.W.1 and Ex.A.1 to Ex.A.10 were marked. On the side of the defendant, one Kandavel was examined as D.W.1 and she had, in support of her contentions, marked Ex.B.1 to Ex.B.10.

12. The learned Judge returned a finding that the



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plaintiff has not stated as to how she had become entitled to the suit property and despite the fact that she called herself a co-owner she had not impleaded the other co-owners and had also failed to produce documents to show her possession and enjoyment of the suit properties. Further, the plaintiff has not got into the box but had examined a power agent to speak on her behalf.

13. Therefore, the learned Judge had held that the first issue against the plaintiff that the suit for a very partition was not maintainable and that the plaintiff ought to have file the suit for declaration of title and recovery of possession. The suit was ultimately dismissed. Challenging the same, the plaintiff is before this Court.

14. Mr.S.Sounthar, learned counsel appearing on behalf of the plaintiff would contend that the observation of the learned Judge that the non-examination of the plaintiff was fatal since it was only power agent who had been examined may not be correct since the power agent is none other than the son of the plaintiff who had personal knowledge of the case.

15. The learned counsel would submit that the defendant had come to the Court with a contention that property belonged to one G.Balaguru. He would argue that in the course of the evidence the plaintiff's side witness had narrated the basis on which the plaintiff claimed a right as a co-owner. He would submit that both parties have admitted that the original owner of the property was one Sowrirajalu Chettiar. Sowrirajalu Chettiar had two brothers, Kaliaperumal and Govindasamy. The said Sowrirajalu Chettiar had died issue less. Therefore, his property devolved on his two surviving brothers, namely, Kaliaperumal and Govindasamy Chettiar. The plaintiff was daughter of Kaliaperumal and the defendant's vendor is the son of Govindasamy Chettiar. Therefore, the plaintiff had share in the property and the sale of the entire property by Balaguru, the son of Govindasamy Chettiar in favour of the defendant was wrong. Therefore, the plaintiff was entitled to a partition.

16. On hearing the arguments, this Court is framing the following points for consideration:

(a)Whether the sale of the entire property by the vendor of the defendant was correct in law and binding on the plaintiff?



(b)Whether the suit as framed by the plaintiff is correct in law?

17. I will proceed to answer the second point for consideration first.

18. A perusal of the pleadings of the plaintiff does not provide any clarity as to how she is entitled to claim a right to the suit property. The only contention made by her in the plaint is as follows "By reason of inheritance of the estate of late Sowrirajalu Chettiar, the plaintiff has become a co-owner of the suit property". This statement does not by any means explain the relationship between Sowrirajalu Chettiar and the plaintiff.

19. Further, even according to the plaintiff she was only a co-owner of the property. Her pleading in this regard is evident from the statement extracted supra. Therefore, while seeking a partition, the plaintiff has to necessarily implead the other co-owners. In the instant case such an exercise has not been undertaken.

20. Further, from the written statement and the evidence of the defendant it is seen that Balaguru Chettiar, the son of Govindasamy Chettiar had been in exclusive possession of the property and he had as early as in the year 1983 executed a Will in favour of his wife from whom the defendant had purchased the property. That apart, from the year 1982 the defendant's father-in-law one Maharaja Nadar has been occupying the property as a tenant of the said Balaguru Chettiar and thereafter continued under Rukkumani Devi.

21. It is therefore clear that from the year 1982 atleast Balaguru has been exercising rights as the absolute owner of the property and the plaintiff has not made any claim over the same. Therefore, the suit filed without seeking a relief of declaration of title and recovery of possession as held by the Trial Court is not maintainable and the second point for consideration is held against the plaintiff.

22. As regards the argument that the plaintiff has not pleaded as to how she was a co-owner of the suit property was sought to be corrected by the oral evidence. However, the plaintiff has not asserted any right over the property at any



point of time till filing of this suit. The son of the brother of Sowrirajalu Chettiar, namely, G.Balaguru has been enjoying property exclusively by leasing out to third parties. The plaintiff ought to have objected to the same if her contention that she was a co-owner was to correct. However, the plaintiff has not asserted such a right. She has also not been able to prove that she was in joint possession and enjoyment of the property. The plaintiff by not impleading the other co-owners has also failed to establish her right to the suit property. Therefore, the first point of consideration is answered against her since any right that the plaintiff has over the suit property can be declared only in the presence of the other co-owners.

23. In view of the above, the First Appeal is dismissed and the Judgement and Decree of the learned District Judge, Karaikal is confirmed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The District Judge,
Karaikal

Copy To:

The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.49369

A.S.No.674 of 2014

AD(CO)
SB(29/10/2021)