



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD)No.8 of 2007

Rajeswari ... Appellant/Plaintiff
Vs.

1.Murugesan
2.Natarajan
3.A.M.S.Periyasamy
4.Anand
5.M/s.Balaji Chemicals (P) Ltd.
Pirattiyur Main Road, Trichy - 9.
6.Thangamani
7.Varadan

... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the decree and judgment made in O.S.No.49 of 2004, dated 20.05.2005, on the file of the Additional District Court (Fast Track Court No-II), Tiruchirapalli.

For Appellant : Mr.Raguvaran Gopalan
For Respondents : Ms.S.Vijayashanthi for R3
No Appearance for R1, R2, R4, R5 to R7

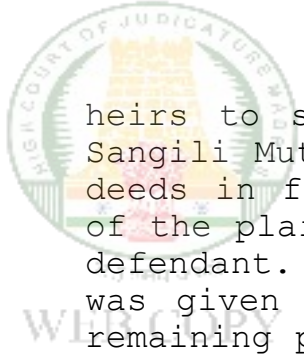
JUDGMENT

Aggrieved over the dismissal of the suit filed for partition, the present Appeal Suit is filed.

2.The parties are referred to as per their rank before the trial Court.

3.The brief facts, leading to the filing of this Appeal Suit are as follows:-

One Sangili Muthiriar had two wives viz., Ponnammal and Ayilambal. The said Sangili Muthiriar died in the year 1964. The first wife of the said Sangili Muthiriar viz., Ponnammal died in the year 1965, leaving behind her one son viz., Subramanian. The said Subramanian died on 20.12.1994, leaving behind his only son Murugesan, first defendant herein. The second wife of the said Sangili Muthiriar died on 03.01.1988, leaving behind the plaintiff herein. The plaintiff and the first defendant alone are the legal



heirs to succeed to the estate of the Sangili Muthiriar. The said Sangili Muthiriar during his life time, had executed two settlement deeds in favour of the first defendant herein and Ayilambal mother of the plaintiff. The defendants 2 to 7 are alienees from the first defendant. As regards the house property, a portion of the house was given to Ayilambal, enjoyed by her during her life time. The remaining portion of the house belongs to both the plaintiff and 1st defendant. Hence, the suit claiming half share in item 1 to 7.

4. Admitting the relationship, it is the contention of the first defendant in the written statement that plaintiff has issued a legal notice on 30.04.1977 in respect of item Nos.1 and 2, claiming 1/6th share. Now, the plaintiff has taken a different stand that the suit properties mentioned in item Nos.1 and 2 were originally belonged to Late Aravan Muthuraj and the property was acquired by Sangili Muthuriar as an ancestral property. It is the contention of the first defendant that the properties mentioned under item No.1 belonged to the first defendant absolutely and item No.2 also purchased by the 1st defendant and it is the further contention of the first defendant that in respect of the house property, the same has not been enlarged as an absolute estate. It is the further contention of the first defendant that he has perfected title by way of adverse possession. Hence, prayed for dismissal of the suit.

5. The 5th defendant had claimed independent right in Survey No.118/2.

6. Based on the above pleadings, the trial Court framed the following issues:

- i) *Whether the plaintiff has a share in the suit schedule property?*
- ii) *Whether the suit schedule property belongs to the joint family of plaintiff and the first defendant?*
- iii) *Whether the plaintiff is entitled for mesne profits of Rs.12,000/- (Rupees Twelve Thousand only) as prayed for?*
- iv) *Whether the plaintiff is entitled for future mesne profits?*
- v) *To what other reliefs, the plaintiff is entitled?*

7. Before the trial Court, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A13 were marked. On the side of the defendants, three witnesses were examined as P.W.1 to P.W.3 and Exs.B1 to B39 were marked.

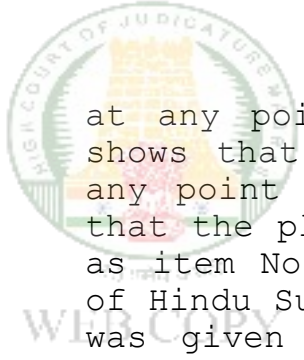
8. After considering the oral and documentary evidence, the trial Court has dismissed the suit on the ground that the marriage between the plaintiff's mother and Sangili Muthiriar has not been established. Besides the first defendant also proved ouster and

adverse possession in respect of item Nos.3 and 7. Challenging the same, the present Appeal Suit is filed.

9. Though this Appeal Suit has been filed challenging the entire judgment of the trial Court, it is the contention of the learned counsel appearing for the appellant that now the appellant is restricting their appeal only in respect of item Nos.3 and 7 and given up her rights in respect of other items. As far as item No.3 is concerned, it is not disputed that it is an individual property of the Sangili Muthiriar. The only contention of the first defendant that he has perfected title by way of adverse possession. Mere paying the kist receipts in favour of the father, who was the original owner of the property, such document cannot be used to contend that the plaintiff is totally ousted from the property. The plea of ouster has not been proved in the manner known to law. Mere non-possession of house property by one of the co-owner will not become adverse to the co-owner, unless hostile intention has been established or the other co-owners were totally excluded from the property. Hence, it is his contention that the trial Court has not appreciated the legal position in that aspect, properly. It is the further contention of the appellant that as far as item No.7 is concerned, a small portion measuring 16 x 26 feet was given in lieu of maintenance to the mother of the plaintiff under Ex.A3-Gift Deed. Therefore, it is the contention that once the document itself clearly indicates that the mother of the plaintiff is all along treated as a wife and she was given property to reside in lieu of maintenance by virtue of Section 14(1) of the Hindu Succession Act, the limited estate got enlarged into an absolute estate. Therefore, the plaintiff is certainly entitled to the above property, being the class-I legal heir of the mother. Hence, submitted that the appeal has to be allowed in respect of item No.3 and a preliminary decree may be passed in respect of item No.3, dividing the property into two equal shares and to allot one share to the plaintiff and similarly allot 16 x 26 feet of the land in back portion of item No.7 of the suit schedule property to the plaintiff. In support of his submission, he has also relied upon the following judgements:

- (i) **Shambhu Prasad Singh Vs. Mst.Phool Kumari and Ors** reported in **1971(2) Supreme Court Cases 28;**
- (ii) **V.Tulasamma and others Vs. Sesha Reddy** reported in **(1977) 3 SCC 99;** and
- (iii) **Meethiyan Sidhiqu Vs. Muhammed Kunju Pareeth Kutty** reported in **(1996) 7 Supreme Court Cases 436.**

10. The learned counsel appearing for the third respondent contended that as far as item No.7 is concerned, the plaintiff was never in possession of the said property. On a perusal of Ex.B1 to B39, the tax receipts and the house-tax receipts, it is seen that the first defendant and his father have been in continuous possession and enjoyment of the property. From the above, it is very clear that the plaintiff was not in possession of the property



at any point of time. The legal notice, dated 27.04.1997, also shows that the plaintiff was not in possession of the property at any point of time. Hence, the Court below has rightly concluded that the plaintiff was ousted from the property. Similarly, as far as item No.7 is concerned, it is the contention that Section 14(1) of Hindu Succession Act alone is applicable to this case, since what was given in Ex.A1 is only a permission to reside in the said property and not in lieu of maintenance. Hence, her contention that the permission to reside in the property would never be enlarged as an absolute estate. Hence, submitted that the judgments of the Courts below does not require any interference. Further, it is the contention of the third respondent that in Ex.A7-Settlement Deed, executed by Ayilambal, mother of the plaintiff, nothing has been mentioned about her possession in the house property viz., in item No.7 of the suit schedule property. Therefore, her contention is that permission to reside in the property would never be enlarged as an absolute estate.

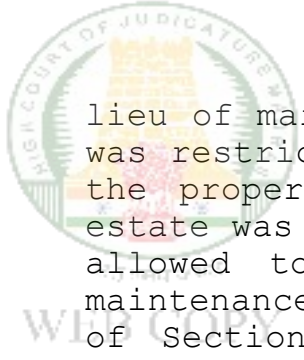
11. In the light of the above submissions, now the points that arise for consideration are as follows:

(i) Whether the restrictive right granted under Ex.A1 in item No.7 of the property is enlarged as an absolute estate in favour of the mother of the plaintiff?

(ii) Whether the first defendant has proved the plea of ouster and adverse possession to exclude one of the co-owner from the suit property?

12. Though the suit has been filed claiming partition of half share in item Nos.1 to 6, and portion of item no.7, now in the appeal stage, the plaintiff, who is an unsuccessful plaintiff before the trial Court, has given up her right in respect of item Nos.1, 2 and 4 to 6 and canvassed her case in respect of item No.3 and portion of item No.7. In view of such thing, this Court has dealt with item Nos.3 and 7 alone. Respondent No.3 is a purchaser of item No.2. Though the appellant has not claim any right in respect of item No.2, the purchaser has opposed the appeal even in respect of item No.3 and 7. Be that as it may, the relationship of parties are not in dispute. Item No.3 is purchased by Sangili Muthiriar, grandfather of the first defendant and father of the plaintiff. The plaintiff is born through the second wife of Sangili Muthiriar viz., Ayilambal, which is not in dispute. Ex.A1-Settlement Deed itself makes it very clear that the said Ayilambal has been referred to as the wife of Sangili Muthiriar. Apart from mere agricultural property settled in her favour through Ex.A3, she was also permitted to reside in a portion of item No.7 viz., 16 x 26 feet in the back side of the house property, till her life time. That right to reside was given till her life time.

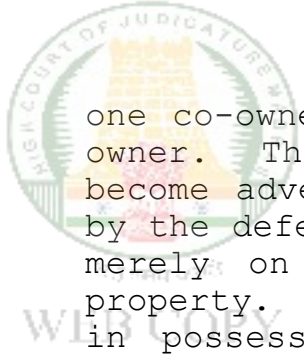
13. On an entire reading of the document, it is very clear that the very arrangement and settlement made in her favour only in



lieu of maintenance. Therefore, merely a right to enjoyment, which was restricted till her life time, in a portion of the item No.7 of the property, cannot be construed to mean that only the limited estate was given to her. When such arrangement was made and she was allowed to enjoy the property till her life time in lieu of maintenance, certainly the same will clearly fall within the ambit of Section 14(1) of Hindu succession Act. Even though such a restricted estate was provided under Settlement Deed-Ex.A3, the very recital of the documents makes it clear that such arrangement was made by the settler with the intention of providing maintenance to his second wife. In such view of the matter, advent of the Hindu succession Act, 1956, any property possessed by a women in lieu of the maintenance, the same would be enlarged as an absolute estate. Therefore, this Court is of the view that the portion of the property measuring 16 x 26 feet in item No.7 would be construed only as an absolute property of the Ayilambal, the mother of the plaintiff.

14. In **V.Tulasamma and others Vs. Sesha Reddy** reported in (1977) 3 SCC 99, the Apex Court has held that if any property acquired by a female, by virtue of a pre-existing right of maintenance, it should be enlarged as an absolute property. Only where the property is acquired by a female under instrument, without any pre-existing right solely by virtue of the instrument, such property should be treated as an restricted estate. Admittedly, in this case, the settler himself has expressed his intention and made a provision for maintenance and settled the properties. In such view of the matter, this Court is of the view that the portion of the property viz., 16 x 26 feet given to the plaintiff's mother under Ex.A3 should be treated only as an absolute property. Plaintiff being the Class-I legal heir of her mother, is entitled to the above property. Accordingly, the preliminary decree is passed to divide item No.7 of the property and allot 16 x 26 feet in the back-side of the house property.

15. As far as item No.3 is concerned, it is not disputed that item No.3 purchased in the name of Shangili Muthiriar, father of the plaintiff and grandfather of the defendant. The only contention of the first defendant is that he has perfected title by adverse possession. Except tax receipts of house property, no other documents whatsoever was filed to show that defendant has dealt the property hostile to the interest of the plaintiff and the plaintiff was totally excluded from the joint family property. It is to be noted that the possession how so ever long by any of the co-owner, the same will not automatically become an adverse one as against the co-owner. For proving adverse possession, it has to be established a specific overt act on the part of the co-owner pleading adverse possession. Therefore, without the proof of plea as to the specific overt act and hostile intention to hold the property to exclude other co-owner, one cannot succeed the estate by adverse possession, merely on the basis of the long possession. In Law, possession of



one co-owner is always deemed to be in possession of the other co-owner. Therefore, without any pleadings as to when the possession become adverse to others and what was the specific overt-act shown by the defendants, the plea of adverse possession cannot be inferred merely on the basis of kist receipts paid in respect of the property. Normally, kist receipts were paid to the persons, who is in possession of the property. If any of the co-owner is in possession of the property, he has to pay the kist normally. The mere payment of kist will not be a determinative factor to hold that said person perfected title by way of adverse possession.

16. Having regard to the above, this Court is of the view that except kist receipts, no other evidence whatsoever was filed on record that the plaintiff was totally excluded from the property and the defendant has perfected title by ousting the plaintiff from the property. The plea of adverse possession has to be failed. Therefore, the judgment of the trial Court non-suited the appellant on the plea of adverse possession and ouster, is not based on proper appreciation of Law.

17. In the result, this Appeal Suit is partly allowed, granting a preliminary decree in respect of item No.3, in dividing the suit property into two equal shares and allot one such share to the plaintiff and to divide item No.7 and allot a portion measuring 16 x 26 feet in the back-side of the house property as indicated in Ex.A3. In respect of other items of property viz., item Nos.1, 2, 4, 5 and 6, the Appeal Suit is dismissed and the decree and judgment of the trial Court is confirmed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional District Judge, (Fast Track Court No-II),
Tiruchirapalli.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Section Officer,(2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to Mr.RAGUVARAN GOPALAN, Advocate (SR-6262[F] dated
19/02/2021)

A.S. (MD) No.8 of 2007
18.02.2021

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