



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.203 of 2009

WEB COPY

Antony Ignesi Jebastian ... Appellant / 1st Respondent /
Plaintiff

-Vs-

1.Chozha Textiles (P) Ltd.,
Vedasanthur,
Rep. By its Administrative Director Office,
Vedasanthur,
Dindigul District. ... 1st Respondent / Appellant /
3rd Defendant

2.Peproni

3.Elizbeth Rani

4.Jesu Maria Susai ... Respondents 2 to 4 /
Respondents 2 to 4/Defendants 1, 2, and 4

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 23.12.2008 made in A.S.No.73 of 2007 on the file of the Sub Court, Valliyoor, reversing the judgment and decree dated 26.06.2006 made in O.S.No.352 of 2004 on the file of the Principal District Munsif Court, Valliyoor.

For Appellant : Mr.Balamohan Thampi
for Mr.S.Siva Thilakar
For R1 : Mr.S.Mahesh Kumar
for Mr.R.S.Pandiyaraj
For R3 & R4 : no appearance

JUDGMENT

The plaintiff in O.S.No.352 of 2004 on the file of the Principal District Munsif Court, Valliyoor is the appellant in this second appeal.

2. The suit was one for partition. The case of the plaintiff is that the suit items numbering 7 originally belonged to his father Devasahaya Gruz Pattankattiar. Devasahaya Gruz Pattankattiar was married to one Jesu Antony Ignasi. Through her, he had begotten two daughters namely Expathithu and Antony Ammal. After demise of the first wife, Devasahaya Gruz Pattankattiar married Jesu Maria Soosai and through her, begot Peproni and Elizabeth. Devasahaya Gruz Pattankattiar passed away in the year 1969. Thereafter, partition



was entered into between the daughters born to Devasahaya Gruz Pattankattiar through his first wife and the second wife. The second wife Jesu Mariya Soosai represented herself and her three children. The suit items were allotted to the share of the second wife and three children. According to the plaintiff, the suit items have not been partitioned till date. The plaintiff came to know that the third defendant namely Chozha Textiles Private Limited was also staking claim on the suit second item comprised in Survey No.460. Therefore, seeking partition and separate possession of his 2/9th share in the suit items, the partition suit came to be laid. His two sisters were shown as D1 and D2. The plaintiff's mother was shown as fourth defendant. The alienee in respect of suit 2nd item was shown as third defendant. The plaintiff's sister and mother remained exparte. The suit was contested only by the third defendant. The third defendant filed written statement pointing out that the suit 2nd item was sold by the plaintiff's mother under Ex.B1 dated 10.11.1975 in favour of one Suyambu Nadar. Suyambu Nadar subsequently sold the property in favour of M/s.Sarjan Realities Private Limited. Under Ex.B4, there was an exchange of the lands and that is how, the third defendant came to be in possession of the suit 2nd item. The contention of the third defendant was that the suit was hopelessly barred by limitation. Few other contentions were also raised. Based on the rival pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and marked Ex.A1 and Ex.A2. On the side of the contesting defendants, three witnesses were examined. Ex.B1 to Ex.B7 were marked. After considering the evidence on record, the trial court by judgment and decree dated 26.06.2006 granted preliminary decree allotting the plaintiff 2/9th share in all the suit items. Aggrieved by the grant of preliminary decree as regards suit 2nd item, the third defendant filed A.S.No.73 of 2007 before the Sub Court, Valliyoor. By the impugned judgment and decree dated 23.12.2008, the judgment and decree passed by the trial court as regards the suit 2nd item was set aside and the appeal was allowed. Aggrieved by the same, the plaintiff filed this second appeal. The second appeal was admitted on the following substantial questions of law:-

"(i) Whether Ex.B1 sale deed executed by Jesu Maria Soosai Ammal in favour of Suyambu Nadar can bind the plaintiff in respect of his 2/9th share in the suit property?

(ii) Whether the suit for partition is barred by limitation?"

3. Heard the learned counsel on either side.

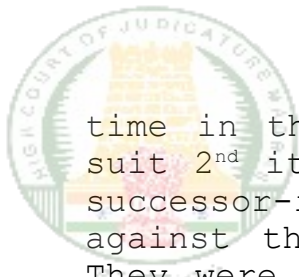
4. The learned counsel appearing for the appellant submitted that as per Ex.B1-partition deed in suit 2nd item, not only the fourth defendant, the plaintiff and the defendants 1 and 2 also had undivided share. There is nothing on record to show that the suit items were partitioned among the family members. Of-course, the fourth defendant was the mother and natural guardian of the



plaintiff in the year 1975. But then, when the fourth defendant sold the suit 2nd item in favour of Suyambu Nadar under Ex.B1 dated 10.11.1975, the sale was made in her individual capacity. Minor children were not even shown as eo-nominee parties. The parties are Christians and therefore, Jesu Maria Soosai could have had only 1/3rd share in the said suit item. The said sale made by her could be valid only to the extent of her 1/3rd share in the suit item. Since the plaintiff was not even shown as eo-nominee party, it will not bind the plaintiff. The plaintiff was also not obliged to formally challenge the same seeking its invalidation as far as his share is concerned. The learned counsel submitted that the appellant was not aware of the alienation made by his mother / D4 and therefore, the suit cannot be said to be barred by limitation. He called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial Court in *toto*.

5. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree is well reasoned and that it does not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record. It is true that the suit item No.2 was allotted to the share of the plaintiff, his two sisters (D1 and D2) and his mother (D4). It is again true that the suit 2nd item was alienated as a whole by his mother. Ex.B1 does not indicate that the sale was made not only on her behalf but also on behalf of the minor children. Of-course, Ex.B1 mentions that sale was for family necessity. But then, the plaintiff has not been joined as eo-nominee party. Therefore, I answer the first substantial question of law in favour of the appellant. The plaintiff examined himself as P.W.1. To a pointed question, the plaintiff admitted that his mother / D4 continues to reside with him. When Ex.B1 was executed by his mother, the plaintiff was aged about 17 years. The suit came to be filed only on 03.06.2004. In other words, the plaintiff has sought to enforce his right after a gap of almost 29 years. The alienee namely Suyambu Nadar under Ex.B1 was examined by the contesting defendant as D.W.3. D.W.3 had categorically deposed that immediately after purchasing the property from the plaintiff's mother, he took possession and was enjoying it in his independent capacity. He also deposed that the patta in respect of suit 2nd item stood only in his name till the deed of exchange under Ex.B4 was executed. The first appellate court had stated that following the execution of the deed of exchange, the revenue records were changed in favour of the contesting defendant. The plaintiff was specifically questioned as to whether he had been remitting the kist in respect of the suit item No.2. The plaintiff pleaded utter ignorance. He also stated that he is not having patta in his name. Therefore, this is a case, in which, Section 27 of the Limitation Act will come into play. The plaintiff had attained majority some



time in the year 1976. The alienee under Ex.B1 was enjoying the suit 2nd item as a rightful owner. Neither Suyambu Nadar nor his successor-in-title and interest have pleaded adverse possession against the plaintiff. They also do not claim to be co-owners. They were enjoying the entire property in an independent capacity. Their enjoyment was open also. Therefore, the plaintiff ought to have filed the suit for recovery of possession within a period of 12 years after attaining majority. He did not do so. Therefore, after determination of the period of 12 years, the plaintiff's right to suit 2nd item stood extinguished. That is the clear effect of Section 27 of the Limitation Act. Therefore, the second substantial question of law is answered against the appellant. The impugned judgment and decree do not call for any interference. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

To

1.The Sub Court, Valliyoor.

2.The Principal District Munsif Court, Valliyoor.

Copy To

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

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-28011[F] dated 02/09/2021)

Judgment made in
S.A. (MD) No.203 of 2009
02.09.2021

ks (CO)

TR(13.04.2022) 4P 6C