



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A (MD)No.419 of 2012

Valliammal

... Appellant

Vs.

1.N.Vijayaraman

2.N.Sreenivasan

... Respondents

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 22.02.2012 passed in A.S.No.13 of 2010 and Cross Appeal on the file of the Principal District Court, Thoothukudi reversing the Judgment and Decree passed in O.S.No.4 of 2008 dated 05.11.2009 on the file of the Sub-Court, Kovilpatti.

For Appellant : Mr.V.Meenakshi Sundaram

For Mr.D.Nallathambi.

For Respondents : Mr.S.Vellaichamy

For Mr.D.Gandhiraj for R1 & R2.



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JUDGMENT

Heard the learned counsel on either side. This judgment is dictated in the open court.

2.The plaintiff in O.S.No.4 of 2008 on the file of Sub Court, Kovilpatti is the appellant in this Second Appeal. The suit was filed for the relief of partition and separate possession claiming 1/3rd share in the suit properties. The suit items are 12 in number. The plaintiff is the elder sister of the defendants. According to the plaintiff, the suit items were the acquired properties of their father, namely, Nataraja Reddiyar. He died intestate. Their mother also passed away on 16.06.1997. Thus, the suit properties devolved in equal shares on all the three children. Since the defendants are declining to allot 1/3rd share to the plaintiff, she was constrained to file the instant suit.

3.The defendants filed their written statement controverting the plaint averments. The defendants conceded that the suit properties are self acquired properties. They also admitted that their father as well as their mother passed away intestate on the dates mentioned in the suit.



However, the defendants pleaded that oral partition took place among the three. They also claimed that in the oral partition, the plaintiff was given a sum of Rs.10,00,000/-, in lieu of her share in the suit properties. According to them, while items 1 to 7, 11 and 12 belonged to Nataraja Reddiyar, items 8, 9 and 10 did not.

4. Based on the rival pleadings, the Trial Court framed necessary issues. The plaintiff examined herself as PW1 and marked Exs.A1 to A10. The first defendant examined himself as DW1. One Senji Reddiyar was examined as DW.2 and Exs.B1 to B15 were marked. After consideration of the evidence on record, the learned Trial Judge partly decreed the suit. Preliminary decree was passed granting 1/3rd share in favour of the plaintiff in all items except the houses in suit item 12.

5. Aggrieved by the same, the defendants filed A.S.No.13 of 2010 before the learned Principal District Judge, Thoothukudi. The plaintiff also filed cross appeal. By the impugned judgment dated 22.02.2012, the first appellate Court allowed the first appeal and dismissed the cross-



appeal. In other words, the plea of oral partition projected by the defendants was sustained. Aggrieved by the same, the plaintiff has filed the present Second Appeal.

6.The Second Appeal was admitted on the following substantial questions of law:-

“1.Whether the approach of the Lower Appellate Court believing the factum of oral partition is correct?

2.Whether the plaintiff will be entitled to share in the house properties in Suit Item 12 in view of the amendment made in the Hindu Succession Act conferring equal rights in favour of the female heirs on par with the male heirs ?”

7.The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and restore the decision of the Trial Court.

8.Per contra, the learned counsel for the respondents submitted that the First Appellate Court had correctly considered the evidence on record



and came to the conclusion that oral partition had taken place among the parties and that the plaintiff had received a sum of Rs.10,00,000/- and relinquished her share in the properties. He had also pointed out that the partition suit was instituted after a lapse of 29 years after their father passed away. He also reminded that this Court is exercising jurisdiction under Section 100 of C.P.C and therefore, the factual finding arrived by the First Appellate Court may not be interfered with.

9.I have carefully considered the rival contentions and went through the evidence on record.

10.Exs.A1 to A8 are sale deeds standing in the name of Nataraja Reddiyar. They correspond to most of the items in the suit schedule. For the remaining items, there is no definite proof that Nataraja Reddiyar acquired the same. But this will not make any difference. Nataraja Reddiyar as well as his wife died intestate. In view of the authoritative pronouncement by the Hon'ble Apex Court in Vineeta Sharma v. Rakesh Sharma (2019) 6 SCC 164, the very purpose of enacting 2005



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amendment was to place a daughter on par with a son in all respects. In other words, even a married daughter would also acquire the very same rights as that of son by virtue of her very birth in the family.

11.The only defence projected by the defendants is that the plaintiff had relinquished her share in the suit properties after getting a sum of Rs.10,00,000/- in a oral partition. The learned counsel for the respondents would refer to some of the statements given by plaintiff/PW1 during the course of her cross examination. It is seen that Exs.P9, P10 and other documents marked by the respondents are in the joint names of the two brothers. Ex.P9 is in the name of the first defendant. With regard to the item No.12, it appears that the house property was divided and assigned to separate parties.

12.The learned counsel for the appellant on instructions categorically stated that the said Item No.12 can be allotted to the defendants as per the present enjoyment and that the plaintiff's rights therein can be properly compensated by giving shares in agricultural lands. Of course, this adjustment of equities is a matter for consideration



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at the time of passing final decree.

13.As already noted, the entire defence of the defendants is based on the plea of oral partition. Therefore, the burden lay only on them. No document has been marked evidencing receipt of a sum of Rs.10.00 lakhs in lieu of the plaintiff relinquishing her share in the suit properties. Mere mutation of revenue records will not go to show that there was oral partition. If before effecting changes in the revenue records, the authority had issued notice to the petitioner, that would definitely have gone a long way in favour of the defendants. That is not the case here. Except the self serving testimony of the defendants, there is no credible evidence in support of the plea of oral partition. That is why, the trial court granted preliminary decree in favour of the plaintiff. The first appellate court without noting that there is no evidence in favour of the defendants reversed the decision of the trial court. The plaintiff by virtue of her birth in the family became a co-sharer. Possession of her siblings for any length of time will not operate as adverse possession. There is nothing on record to show that the defendants were enjoying the suit properties by asserting title. No legal notice was issued from the



defendants' side. The suit therefore cannot be said to be barred by limitation. Even the defendants have not projected the plea of ouster. Since the plea of oral partition has not been proved, the decision of the trial court will have to be restored. The first appellate court erroneously gave undue importance to some answers given by the plaintiff during cross examination. Rs.10.00 lakhs is a large sum and there is absolutely no evidence of payment of said amount to the plaintiff. I have no hesitation to answer both the substantial questions of law in favour of the appellant. In view of the fair stand taken by the appellant as regards Item No.12, the dismissal of cross appeal by the first appellate court is sustained. The judgment and decree allowing A.S No.13 of 2010 is set aside and the decision of the trial court is restored.

14.In the result, this Second Appeal is partly allowed. No costs.

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To:

1. The Sub Judge, Kovilpatti.
2. The Principal District Judge, Thoothukudi.

Copy to:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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