



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 672 of 2012

WEB COPY

1. Sarkunavalli
2. R.Muthuraman
3. R.Manikandan

... Appellants / Appellants /
Plaintiffs

Vs.

1. Vairam
2. Manickam (Died)
3. Bose
4. Jansirani
5. Ganesan Muthaliar
6. Balu
7. Elango
8. Kalyani

... Respondents / Respondents /
Defendants

9. M.Shenbagam
10. M.Uthaya Rani
11. M.Kavitha
12. M.Karthikayani

(R-9 to R-12 are brought on record as LR's. of the
deceased 2nd respondent vide Order dated 03.09.2021
made in C.M.P. (MD) No. 6495 of 2021)

... Respondents

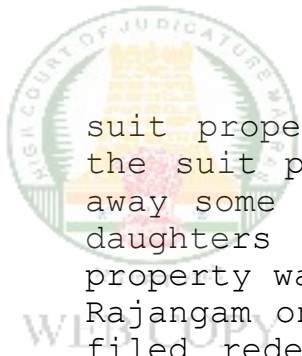
Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the decree and judgment dated 15.06.2012 passed in A.S.No.50 of 2010 on the file of the I Additional District Judge, Madurai, thereby decreeing the suit in O.S. No.55 of 2005 dated 25.08.2010 on the file of the II Additional Subordinate Judge, Madurai with cost in favour of the appellants/plaintiffs.

For Appellants : Mr.T.C.S.Thillainayagam
For R-1, R-3 & R-4 : Mr.K.Hemakarthykeyan
For R-5, R-6, R-7
& R-8 : No appearance.

J U D G M E N T

The plaintiffs in O.S.No.55 of 2005 on the file of the II Additional Subordinate Judge, Madurai, are the appellants in this second appeal.

2. The suit was filed for partition and separate possession of 3/4th share in the suit property. There is no dispute that the
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suit property originally belonged to one Subbammal. She purchased the suit property under Ex.A.10 dated 25.04.1924. Subbammal passed away some 40 years back leaving behind her son Muthusamy and three daughters Petchiyammal, Gomathiyammal and Meenambal. The suit property was mortgaged (usufructually) by Muthusamy in favour of one Rajangam on 06.12.1969. Following the demise of Muthusamy, his wife filed redemption suit in O.S.No.583 of 1992. It was decreed and E.P.No.96 of 2004 was filed and the possession was also delivered to the legal heirs of Muthusamy by the legal heirs of the mortgagee who are none other than the appellants herein.

3. The case of the appellants/plaintiffs was that the suit property, following the demise of Subbammal, devolved in equal shares on her son and three daughters. The appellants had purchased 3/4th share from the legal heirs of the three daughters under Ex.A.1 dated 10.07.2000. Since the subsequent purchaser of an undivided share has to file a suit for partition, the present suit came to be laid. The Courts below had given a finding that Ex.A.1 is a valid document but still chose to non-suit the plaintiffs.

4. The learned counsel appearing for the appellants reiterated all the contentions set out in memorandum of grounds and took me through the written statement filed by the legal heirs of Muthusamy. He pointed out that their plea was that the suit property was the absolute property of their father. Nowhere have they traced the title. He submitted that in a suit for partition, where the relationship is not in dispute, the defence of a co-sharer can only be a plea of ouster. The Hon'ble Supreme Court in case after case had laid down as to how the plea of ouster has to be established. Since the defendants did not admit the title of the plaintiffs, they cannot take the plea of ouster. Hence, the Courts below ought to have granted the relief sought for. He called upon this Court to formally admit the second appeal after formulating the substantial questions of law and take up the matter for final disposal later.

5. Per contra, the learned counsel appearing for the contesting respondents submitted that no substantial question of law arises for consideration and that the impugned judgment and decree do not call for any interference.

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

7. I am satisfied that the property originally belonged to Subbammal and that she died intestate. In the very nature of things, her property would have devolved in equal shares on all the legal heirs, namely, the son Muthusamy and the three daughters. There is again no dispute that the appellants herein have purchased the undivided share that devolved on the daughters under Ex.A.1 dated 10.07.2000. Now the only question for consideration is whether the



first appellate Court could have non-suited the plaintiffs after finding that Ex.A.1 is a valid document.

8. In the normal circumstances, there could not have been any difficulty in decreeing the suit as prayed for. But what stands in the way of granting relief to the appellants is filing of the partition suit in O.S.No.567 of 1992 by the sisters of Muthusamy against the legal heirs of Muthusamy. Thus in the year 1992 itself, the joint family status suffered a disruption. The right to file a suit for partition began to run from the year 1992 itself. It is true that though O.S.No.567 of 1992 suffered a dismissal for default, a second suit for partition was always maintainable. It is well settled that Order 9 Rule 9 of C.P.C. will not apply to a partition suit. If the second suit for partition had been filed before the expiry of twelve years after the filing of O.S.No.567 of 1992, then the present suit would have been in time. But the present suit came to be filed only in the year 2005 (ie.,) on 24.01.2005. It was clearly beyond the period of twelve years. Article 110 of the Limitation Act prescribes twelve years as a period of limitation. The period of twelve years has to be calculated not from the date of dismissal of O.S.No.567 of 1992 or from the execution of Ex.A.1 but from the date of filing of O.S.No.567 of 1992 by the vendors of the plaintiffs. Their status as members of joint family got disrupted in 1992 itself. Since within twelve years therefrom O.S.No.55 of 2005 was not filed, as per Section 3 of the Limitation Act, 1963, the Court is obliged to dismiss the suit, even if limitation has not been set up as a defence. The Courts below rightly non-suited the plaintiffs. No substantial question of law arises for determination.

9. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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 I Additional District Judge,
Madurai.
2. The II Additional Subordinate Judge,
Madurai.
3. The Record Keeper, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai.

S.A. (MD) No.672 of 2012
20.09.2021

DJ (CO)

KB (07.10.2021) 4P 5C