



WEB COPY

**S.A.(MD)No.201 of 2014**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A. (MD)No.201 of 2014

and

M.P. (MD)No.1 of 2014

and

C.M.P. (MD)No.7360 of 2021

- 1.Jeyapal Rajan
- 2.King Part
- 3.Usha Kumari
- 4.Minor Dixon
- 5.Minor Nixon

... Appellants/Appellants/  
Defendants 1,3,4,6 & 7

*(Minor appellants 4 and 5 are represented  
by their mother and next guardian  
3<sup>rd</sup> appellant herein.)*

**Vs.**

- 1.Pansybai
- 2.Nesa Bai

... Respondents/Respondents/  
Plaintiff & 5<sup>th</sup> Defendant

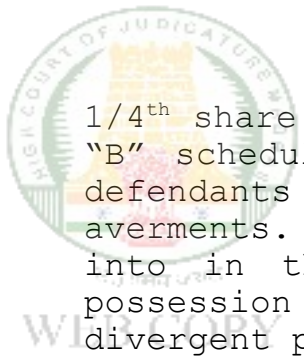
**Prayer :** Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.24 of 2010 on the file of the Sub Court, Kulithurai, dated 25.02.2013, confirming the judgment and decree passed in O.S.No.123 of 2006 on the file of the learned District Munsif Court, Kulithurai, dated 13.11.2009.

For Appellants : Mr.H.Thaymana Swamy

For Respondents : Mr.K.Sreekumaran Nair  
For Mr.P.Muthukumar

### **JUDGEMENT**

The defendants in O.S.No.123 of 2006 on the file of the District Munsif Court, Kuzhithurai are the appellants in this second appeal. It was a suit for partition filed by one Pansybai. The case of the plaintiff was that plaintiff "B" schedule property measuring 69.65 cents of land belonged to her maternal grandmother by name Neasammal. Following her demise, plaintiff "B" schedule property devolved on the plaintiff's mother by name Jebarathinam. There is no dispute that the parents of the parties passed away when the suit was instituted. They were survived by the plaintiff/daughter and the defendants/three sons. The parties are Christians and their right in the plaintiff "B" schedule property is governed by the Indian Succession Act. Therefore, each of them had



1/4<sup>th</sup> share in the suit property. Claiming her 1/4<sup>th</sup> share in plaint "B" schedule property, the said suit came to be instituted. The defendants filed written statement controverting the plaint averments. They projected a family arrangement that was entered into in the year 1987. They also pleaded ouster and adverse possession to defeat the rights of the plaintiff. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.The plaintiff examined herself as P.W.1 and one Swamidhas was examined as P.W.2 and Exs.A1 to A12 were marked. The first defendant examined himself as D.W.2, the second defendant examined himself as D.W.2 and Exs.B1 to B9 were marked.

3.After a consideration of the evidence on record, by judgment and decree dated 13.11.2009, the trial Court granted preliminary decree allotting 1/4<sup>th</sup> share in plaint "B" property in favour of the plaintiff. Aggrieved by the same, the defendants filed A.S.No.24 of 2010 before the Sub Court, Kuzhithurai. By the impugned judgment and decree dated 25.02.2013, the first appellate Court confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed. During the pendency of the suit, the second defendant/King Part had passed away and his wife and children were brought on record. All of them filed this second appeal.

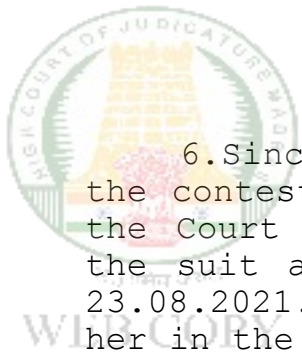
4.The second appeal was admitted on the following substantial question of law:-

*"(i) Whether the defendants have prescribed title to entire "B" schedule property by adverse possession and ouster?*

*(ii) Whether the shares worked out by the plaintiff is correct since the plaintiff's father 1/3<sup>rd</sup> share under Indian Succession Act, 1925 has been transferred to the appellants under Ex.B1? and*

*(iii) Whether the plaintiff by her conduct and in action has become legally disentitled to claim any share in the "B" schedule property under Section 115 of Evidence Act, and the General Principle of estoppels"*

5.The matter was taken up for final hearing on 23.08.2021. By then, the second appellant/King Part had joined hands with the plaintiff/Pansybai. The second appellant was no longer sailing with the other appellants. The fourth appellant/Dixson, who appears to have attained majority had also passed away on 16.09.2015. The learned counsel for the remaining appellants submitted that the matter had been compromised and that therefore, the second appeal itself ought to be disposed of in terms of the said compromise, in which, all the appellants as well as the contesting first respondent had signed.

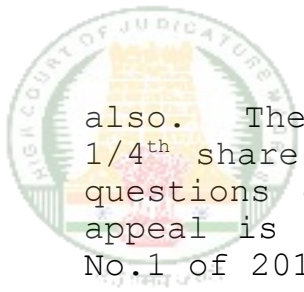


6.Since this assertion was disputed by the learned counsel for the contesting respondent/plaintiff, she was asked to appear before the Court through video conferencing. Pansybai, the plaintiff in the suit appeared before this Court through video conferencing on 23.08.2021. She categorically denied the signature attributed to her in the memorandum of the compromise projected by the appellants. Likewise, the second appellant/King Part also disowned the same.

7.Thereupon, she was directed to file an affidavit clarifying her stand. She has since filed an affidavit stating that she had not signed in the memorandum of compromise. Per contra, the learned counsel appearing for the appellants had filed C.M.P.(MD)No.7360 of 2021 for causing comparison of the signature attributed to the plaintiff as well as the second appellant appearing in the compromise for comparison with their admitted signatures found elsewhere.

8.Order 23 Rule 3 of C.P.C., states that where it is alleged by one party and denied by the other that the matter had been compromised, the Court shall decide the question. As rightly pointed out by the learned counsel appearing for the first respondent, the memorandum of compromise projected by the appellants does not bear any date. One of the appellants had passed away as early as on 16.09.2015 itself. The appeal was filed in the year 2014. If really the matter had been compromised, it ought to have surfaced much earlier. Nothing prevented the appellants from filing a petition for having the second appeal itself disposed of in terms of the said compromise. The learned counsel appearing for the first respondent also states that he was never associated with the compromise earlier. The second appellant had also disowned his signature. I repeatedly asked the learned counsel for the appellants as to whether the appellants namely, appellants 1, 3 and 5 have altered their position based on the said memo of compromise. The response of the learned counsel does not indicate that the appellants' position had been altered on the strength of the compromise. Inasmuch as, two of the key parties have disowned the signatures attributed to them and since the so-called compromise did not surface for almost six years, I hold that the remaining appellants have not satisfied this Court that the matter had been compromised. In this view of the matter C.M.P.(MD)No.7360 of 2021 is dismissed.

9.The suit was for partition. The property admittedly belonged to the mother/Jeba Rathinam. The father of the parties had also passed away. They had left behind three sons and one daughter. The daughter has only asked for her 1/4<sup>th</sup> share in the suit property. There is no evidence to show that the plaintiff was excluded and that the defendants have prejudiced their title by adverse possession. In the absence of such evidence, possession and co-owner is on behalf of the remaining co-owners



also. The Courts below have granted preliminary decree allotting 1/4<sup>th</sup> share in the suit property to the plaintiff. The substantial questions of law are answered against the appellants. The second appeal is dismissed. No costs. Consequently, connected M.P.(MD) No.1 of 2014 is closed.

WEB COPY

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ias

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 Sub Judge,  
Kulithurai.
- 2.The District Munsif,  
Kulithurai.

**Copy to:**

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

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate ( SR-28976[F] dated 14/09/2021 )

+1 CC to M/s.H.THAYUMANASWAMY, Advocate ( SR-28940[F] dated 14/09/2021 )

S.A.(MD)No.201 of 2014  
13.09.2021

MGJ(24.01.2022) 4P 7C