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Appeal Suit No.54 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit No.54 of 2016

1.Lakshmi Ammal
2.Palaniammal

... Appellants

Versus

1.Gurunathan
2.Murugan
3.Mariappan

... Respondents

Appeal Suit is filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree passed in O.S.No.107 of 2011, dated 29.04.2015, on the file of the III-Additional District and Sessions Judge, Salem.

For Appellants : No Appearance
For Respondents : No Appearance

JUDGMENT

This Appeal Suit arises out of the Judgment and Decree of the III-Additional District and Sessions Judge, Salem, in O.S.No.107 of 2011, dated 29.04.2015, in and by which the suit for partition filed by the Appellants/plaintiffs, was dismissed by the Trial Court.



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2. In this Appeal Suit, notices were served to the respondents and thereafter none entered appearance on behalf of the respondents. Therefore, their names have been printed and the matter was being posted for hearing. When this matter was called on 14.09.2022, the learned Counsel for the Appellants reported that there were no instructions for him and therefore the name of the Learned Counsel was deleted and the appellants' names are printed in the cause list and the matter is taken up for hearing today. There was no representation on behalf of both sides. Under these said circumstances, since the Appeal Suit is pending from the year 2016, the matter is taken up for final disposal by perusing the material records in this case.

3. On perusal of the material records of the case, the case of the plaintiffs is that the suit schedule properties were originally belonging to One *Sennan Chetty*, he having purchased the said suit properties by registering a sale deed dated 27.05.1948. The said *Sennan Chetty* died approximately about 40 years prior to the filing of the suit. The plaintiffs 1 & 2 and the first defendant, are the three children of the said *Sennan Chetty*. Therefore, the plaintiffs 1 & 2 and the first defendant are entitled to



1/3rd each, in the suit schedule properties. While so, six months prior to the filing of the suit the plaintiffs came to know that the first defendant along with his son namely, the second defendant had sold the properties in favour of the third defendant. The said sale is not binding on the plaintiffs. Therefore, the plaintiffs issued a legal notice on 26.01.2011, to which, the third defendant, sent a reply notice on 22.02.2011, containing unsustainable averments. Therefore, a suit in O.S.No.107 of 2011 was filed, before the III-Additional District Judge, Salem, seeking for partition of separate possession in the suit schedule properties into three shares and allotment of 2/3 shares to the plaintiffs.

4.Only the third defendant alone resisted the suit, by filing a written statement. The case of the third defendant is that, the plaintiffs' father died 40 years ago and thereafter, the first defendant/*Gurunathan*, was in exclusive possession and enjoyment of the suit property. The Revenue records all stood in the name of *Gurunathan* alone. The plaintiffs who are claiming shares in the suit properties on the death of their father ought to have claimed immediately within a period of three years from date of the death of the father. Therefore, the plaintiffs' suit is barred by limitation.

Even the third defendant, purchased the property by a registered sale deed



Appeal Suit No.54 of 2016

dated 30.01.2022 and all the revenue records were mutated in the name of the third defendant. The third defendant is in possession and enjoyment of the suit properties. The possession is well to the knowledge of the plaintiffs, therefore, this suit is barred by limitation and the plaintiffs have not approached this Court with clean hands.

5. On the strength of the said pleadings, the Trial Court framed five issues, which are as follows:-

" i) Whether the plaintiffs are entitled to 2/3 shares in the suit schedule properties?

ii) Whether the third defendant has purchased the suit property from the first and second defendant and is in possession of the suit property?

iii) Whether this suit for the partition filed by the plaintiffs without claiming prayer for relief of setting aside the settlement deed, is proper?

iv) Whether the suit is barred by limitation?

v) To what relief the plaintiffs are entitled to?"



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6. On the strength of the said issues, the first plaintiff examined herself as P.W.1 and ***Exs.A-1 to A-4***, were marked, on behalf of the plaintiffs. The third defendant was examined as D.W.1 and one *Boopathi*, was examined as D.W.2 and ***Exs.B-1 to B-14***, were marked, on behalf of the defendants.

7. Thereafter, the Trial Court proceeded to hear the learned Counsel on either side and by Judgment dated 29.04.2015, found that the plaintiffs father had died 40 years before filing of the suit. Thereafter, the suit property was exclusively in possession of the first defendant. The separate Patta in the name of the first defendant was entered in the A-Register and all the consequential revenue documents were mutated in the name of the first defendant. The Trial Court found that not only the suit property was exclusive possession of the first defendant alone, more than possession and enjoyment, the possession has also been hostile by the first defendant so as to extinguish the rights of the plaintiffs.

8. The Trial Court also found that the version of the plaintiffs that they came to know about the sale of the first defendant in favour of the third defendant only six months before the filing of the suit as unbelievable



Appeal Suit No.54 of 2016

and as they were also in exclusive possession of the property and revenue records had been mutated in their names. On both grounds, it was held that the plaintiffs' suit is hopelessly barred by limitation and answered all the issues in favour of the defendants and against the plaintiffs, and dismissed the suit. Aggrieved by the same, the present Appeal Suit is filed before this Court.

9.In the memorandum of grounds of appeal, the appellants have contended that being Class -I heirs of the deceased *Sennan Chetty*, the Trial Court ought to have held that both the plaintiffs are entitled to the $\frac{2}{3}^{\text{rd}}$ share in the suit property. It is their further contention that when the plaintiffs are entitled to $\frac{2}{3}^{\text{rd}}$ share of the suit property, the alleged sale deed in favour of the third defendant is not binding on them. Therefore, the Trial Court erred in holding that the relief for setting aside the sale deed must also have prayed for and also in dismissing the suit on the ground of limitation.

10.I have considered the aforementioned grounds of the appeal raised in the Appeal Suit and perused the material records of this case.



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11.While there may be a force in the contentions of the learned Counsel for the appellants/plaintiffs as to whether or not a specific relief as to the setting aside the sale deed has to be made or not, however, it has to be seen that the suit was filed in the year 2011. Even the alleged illegal sale in favour of the third party namely the third defendant took place in the year 2002. The suit properties are agricultural lands. The third defendant, by producing Exs.B2 to B14, has categorically proved that they were in exclusive possession and were cultivating in the suit property. The plaintiffs, have miserably failed to prove that they came to know about the sale only six months prior to the filing of the suit. There are no averments in the plaint that the plaintiffs are in joint or constructive possession of the suit property. It is not their case that the first defendant was holding the property on their behalf also or sharing the mesne profits even though their father died 40 years ago prior to the filing of the suit. When the first defedant had obtained exclusive patta and thereafter when third defendant was put in exclusive possession in 2002 pursuant to the sale, atleast at that stage, the cause of action for the suit arose for the plaintiffs and since they did not take any action whatsoever till the year 2011 the suit is barred by limitation. The Trial Court has also found so, therefore, the Appeal Suit is



Appeal Suit No.54 of 2016

bound to fail.

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13.In that view of the above findings, I answer the issue No.4 framed by the Trial Court in the affirmative that the suit is barred by limitation. In that view of the matter, the other issues need not to be answered. Thus, I do not find any merit in the Appeal Suit.

14.In the result,

- (i) The Appeal Suit in A.S. No. 54 of 2016 stands dismissed;
- (ii) There shall be no order as to costs.

26.10.2022

Index : yes

Speaking order

klt

To

- 1.The III-Additional District and Sessions Judge, Salem.
- 2.The Section Officer, V.R. Section, High Court of Madras.



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Appeal Suit No.54 of 2016

D.BHARATHA CHAKRAVARTHY, J.

klr

A.S.No.54 of 2016

26.10.2022