



A.S.No.685 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
11~04~2022	24~06~2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

A.S.No.685 of 2014

I.Joseph Raj

... Appellant

Vs.

1. I.Susai Arul
2. Sesu Maichael
3. Anthony Ammal

... Respondents

PRAYER: Appeal Suit is filed under Section 96 r/w. Order 41 Rule 1 of the Civil Procedure Code against the Judgment and Decree passed in O.S.No.7136 of 2008 on the file of Additional District Court-cum-Fast Track Court No.IV, Chennai, dated 18.12.2009.

For Appellant : Mr.V.Subramani

For Respondents 1& 3 : Mr.V.Anand for
Mr.AM.Packianathan Easter



WEB COPY



A.S.No.685 of 2014

JUDGMENT

Plaintiff before the trial Court is the appellant herein. He has filed this appeal, aggrieved over the dismissal of the suit viz., O.S.No.7136 of 2008 on the file of Additional District Court-cum-Fast Track Court No.IV, Chennai.

2. Suit was one for partition of the suit schedule property into four equal shares and allotment of 1/4 share to the plaintiff with possession.

3. According to the appellant/plaintiff, the suit property was allotted by Tamil Nadu Housing Board in the name of first respondent/defendant and his brothers on 08.04.1974; he and respondents/defendants are brothers and sisters; Tamil Nadu Housing Board executed a sale deed in favour of "Susai Arul and Brothers", which was registered as Document No.1133/91, dated 20.04.1991, and the entire sale consideration of Rs.11,610/- was paid by the appellant and the respondents and they are in joint possession and enjoyment of the same; while so, the first respondent, without the consent and knowledge of the



A.S.No.685 of 2014

appellant and other respondents, mortgaged the suit property, by borrowing a sum of Rs.57,000/- from Chennai Bharathi Co-operative Building Society Ltd. and repaid the entire sum with interest to the said Society; the first respondent started dealing with the property as he likes without the knowledge and consent of the other co-sharers and, therefore, the appellant demanded the respondents to partition the suit property and allot him 1/4 share therein, but the first respondent has evaded and failed to comply with the demand of the appellant; the suit property was purchased out of the money contributed by all the parties in the suit; therefore, the appellant and the respondents are equally entitled to the property, each entitled to 1/4 share; and since the respondents failed to partition the suit property and allot 1/4 share therein in spite of repeated demands, the appellant was compelled to file the suit.

4. The case of the first respondent/defendant was that the application for allotment of plot was made by him alone on 08.07.1973; in the application, the names of the appellant and the other respondents are not mentioned; on 04.06.1974, there was a partition between A.Irudhayam and his three sons, namely, Susai Arul, Joseph Raj and



A.S.No.685 of 2014

Minor Sesa Maichael, represented by his mother Tmt.Lourdhu Mary; in the partition, Tmt.Lourdhu Mary was allotted property and cash worth Rs.26,625/-; the third respondent was allotted property and cash worth Rs.14,000/-; for the marriage of the first and the second defendant, Rs.5,000/- each was allotted; there will be no future continuation with regard to the properties as well as business between the family members; ever since the date of partition, all the parties are living separately; the lease-cum-sale agreement was executed by the first respondent to Tamil Nadu Housing Board after paying the amount by the first respondent alone; no contribution was made by the appellant and the respondents 2 and 3; Tamil Nadu Housing Board issued Transfer Certificate in the name of the first respondent on 14.08.1974 in respect of the suit property; therefore, the suit schedule property has become the absolute property of the first respondent; Chennai Corporation levied the property tax to the suit property in the name of the first respondent on 26.10.1984 and this respondent has been paying property tax till-date; Tamil Nadu Housing Board executed a registered sale deed in the name of this respondent on 02.05.1994; this respondent paid Rs.57,000/- to Bharathi Co-operative Building Society Ltd., Chennai, on 04.12.1998 and obtained receipt in



A.S.No.685 of 2014

his name for the loan repayment in respect of the suit property; this respondent also obtained a sanction plan from the statutory authority on 24.04.1997 up to 23.04.2000; this respondent is paying water charges, sewerage charges and electricity charges to the authorities concerned as on date and that from the date of allotment, till-date, this respondent alone has paid all the dues to Tamil Nadu Housing Board and other authorities and developed the property; this respondent is in exclusive possession and enjoyment of the suit property from the year 1974 i.e., for more than 34 years and, therefore, the suit is liable to be dismissed.

5. Based on the above pleadings, the trial Court framed the following issues for trial :

(1) Whether the suit property is the joint property of the plaintiff and the first defendant ?

(2) Whether the suit property is purchased by the first defendant on behalf of the plaintiff and other defendants ?

(3) Whether the plaintiff is entitled to get any partition , if so what is the relief ?



WEB COPY



A.S.No.685 of 2014

(4) Whether the suit property is the absolute property of the first defendant ?

(5) Whether the court fee paid by the plaintiff is correct ?

(6) To what other relief, the plaintiff is liable ?

6. During the course of trial, on behalf of the plaintiff, the plaintiff himself was examined as P.W.1 and Exs.A-1 to A-4 were marked. On the side of the defendants, the first defendant himself was examined as D.W.1 and Exs.B-1 to B-11 were marked.

7. The trial Court, considering the evidence, both oral and documentary, and also the arguments of both sides, dismissed the suit. Challenging the same, this appeal has been filed by the plaintiff.

8. I have heard the learned counsel for the parties and also gone through the records.



A.S.No.685 of 2014

9. The primary point that arises for consideration in this appeal is, whether the suit was maintainable and, if so, whether the trial Court was right in dismissing the suit ?

10. In order to decide the above point, the statutory provision that is relevant is, Section 65 of the Limitation Act, 1963. Section 65 to Schedule I of the Limitation Act, 1963, prescribes a time-line of 12 years, within which an aggrieved person may file a suit for recovery of possession of immovable property or any interest therein based on proprietary title i.e., title based on documents.

11. Keeping the above statutory provision in mind, if we look at the present case, Ex.A-1, sale deed, is dated 20.04.1991, and it is executed by Tamil Nadu Housing Board in favour of Suisai Arul Brothers in respect of the suit property. Ex.B-1, partition deed, was effected on 04.06.1974 between Irudhayam and his three sons, namely Suisai Arul, Joseph Raj and Minor Sesu Maichael, represented by mother Tmt.Lourdhu Mary. In the said partition deed, every one of the family members was given due share. Ex.B-4, dated 13.07.1974, is a lease-cum-



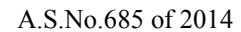
A.S.No.685 of 2014

sale agreement of the suit property, between Tamil Nadu Housing Board and Suisai Arul Brothers. Ex.B-5, dated 14.08.1974, is the Transfer Certificate, in and by which, Tamil Nadu Housing Board allotted the suit property to the first respondent, namely, Suisai Arul alone.

12. If the appellant was aggrieved by any of the transactions/developments, which took place way back in the year 1974, he ought to have filed the suit within the period of limitation of 12 years therefrom as per Section 65 of the Limitation Act, as stated supra. However, the appellant kept quiet right from the year 1974 till 2008 and only, thereafter, filed the suit in the year 2008 for the relief of partition and separate possession, after a huge gap of 34 years. Even if we take Ex.A-1, sale deed, dated 20.04.1991, into consideration for the purpose of calculation of period of limitation, the gap is 17 years. Therefore, this Court has no hesitation to hold that the suit was barred by limitation and not maintainable. Though the trial Court did not frame an issue in the suit as to the maintainability, it dealt with the same and decided the issue in the negative. Since the suit is held not maintainable, it is not necessary for the Court to deal with other aspects.



13. However, even on academic interest, if we look at the merits of the case, it is seen that Ex.B-4 lease-cum-sale agreement was executed by the first respondent alone in favour of Tamil Nadu Housing Board. Ex.B-5, Transfer Certificate, dated 14.08.1974, was executed by Tamil Nadu Housing Board in favour of the first respondent only. Further, as could be seen from Ex.B-6, copy of Income-tax Return for the Assessment Year 1977-1978, the first respondent alone paid the entire sale consideration of the suit property to Tamil Nadu Housing Board. Vide Ex.B-7, release deed, dated 17.08.1983, one of the brothers of the first respondent, namely, Sesu Maichael, the second respondent, released his right in the suit property in favour of the first respondent. Ex.B-8 series, E.B. Receipts, also stand in the name of the first respondent. Under Ex.B-9, dated 24.04.1997, sanction order for additional construction of the building in the suit property was granted in the name of the first respondent alone. Ex.B-10, mortgage deed, dated 25.01.1984, mortgaging the suit property for availing loan from Bharathi Co-operative Building Society Ltd. stands in the name of the first respondent alone. Under this document, the first respondent dealt with the suit property by way of borrowal of mortgage loan from Bharathi Co-



Page 10 / 12



A.S.No.685 of 2014

WEB COPY 14. The trial Court has dealt with the matter in proper perspective and arrived at a just conclusion to dismiss the suit, which decision, in the standpoint of this Court, does not warrant any interference. Therefore, this Appeal Suit is dismissed. No costs. Consequently, the connected C.M.P.No.20789 of 2021 is closed.

Index : Yes
Internet : Yes
Speaking Order

24-06-2022

dixit

To

1.Additional District Judge-cum-
Fast Track Court – IV,
Chennai.

2.V.R.Section,
High Court,
Madras.



WEB COPY



A.S.No.685 of 2014

S. KANNAMMAL, J.

dixit

A.S.No.685 of 2014

24-06-2022