



S.A.No.1091 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2022

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1091 of 1999

Nattarjee

... Appellant/Appellant/
7th Defendant

Vs

1.Chelliah (Died)

*[R1 - died, memo in USR No.209/2014 dated
08.01.2014 recorded vide order dated
21.01.2014 in S.A.No.1091 of 1999]*

2.Valliammal

3.Shanmugasundaram

4.Sivanaintha Perumal

5.Valli Deivanai

6.Seethai alias Maria Muthammal

7.Sudalaimuthu

... Respondents/Respondents/
Plaintiff & Defendants 1 to 6

*[Respondents 2 to 7 set exparte before the Courts below
and hence issuance of notice to them is dispensed with
vide order dated 14.12.2022 made in S.A.No.1091 of 1999]*

8.Karuppasamy

... 8th Respondent

*[8th respondent was brought on record as LR of the deceased
R1 vide order dated 22.12.2022 made in C.M.P.(MD) Nos.
12648, 12649 & 12651 of 2022 in S.A.No.1091 of 1999]*



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 25.01.1999 made in A.S.No.198 of 1996 on the file of the Principal District Court, Tuticorin confirming the judgment and decree dated 21.12.1995 made in O.S.No.197 of 1994 on the file of the Principal District Munsif's Court, Tuticorin.

For Appellant : Mr.M.P.Senthil
R2 to R7 : Dispensed with
For R8 : No appearance

J U D G M E N T

The 7th defendant is the appellant. The 1st respondent herein filed a suit for partition of his 1/4th share and the same was decreed by the trial Court. Aggrieved by the same, the 7th defendant filed an appeal and the said appeal was dismissed. Aggrieved by the same, he is before this Court.

2. According to the 1st respondent/plaintiff, the father of the 1st respondent viz., Karuppan @ Karuppasamy entitled to 1/4th share in the suit property. The father of respondents 2 to 4 entitled to the other 1/4th share. Likewise, the mother of the 5th respondent viz., Kaliammal entitled to 1/4th share. The remaining 1/4th share belonged to one Karuppan. The appellant



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herein purchased 80 cents in the suit property from the 6th respondent. The 7th respondent herein claims the share of the above said Karuppan. The plaintiff is the only son of his father viz., Karuppan @ Karuppasamy. Since there was some difficulty in enjoying the properties jointly, the 1st respondent/plaintiff issued a notice to the defendants in the suit seeking partition, but however, there was no reply. Thereafter, the suit was filed by the 1st respondent seeking 1/4th share.

3. Respondents 2 to 7, who were arrayed as defendants 1 to 6 in the suit, remained exparte. The appellant/7th defendant alone filed his written statement and resisted the suit. According to the appellant, he purchased 1 acre and 23 cents in S.No.233/1B from the 3rd respondent herein on 22.08.1991. Likewise, he purchased another 80 cents in the same survey number from the 6th respondent on 18.05.1992. The appellant in his written statement claimed that apart from the properties purchased by him from the above said sale deeds, he has been in possession and enjoyment of 4 acres and 82.5 cents for more than a statutory period and hence, perfected title by adverse possession.



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4. Before the trial Court, the 1st respondent/plaintiff was examined as P.W.1 and one Bommian was examined as P.W.2. He marked 20 documents as Ex.A.1 to Ex.A.20. On behalf of the appellant, he was examined as D.W.3. His vendors viz., the 3rd and 6th respondents were examined as D.W.1 and D.W.2. One Kumarasamy Naicker was examined as D.W.4. On behalf of the appellant, five documents were marked as Ex.B.1 to Ex.B.5.

5. The trial Court, on appreciation of oral and documentary evidences, came to the conclusion that the 1st respondent proved his entitlement to claim 1/4th share in the suit property and also found that the appellant failed to prove the plea of adverse possession raised by him and consequently, decreed the suit. Aggrieved by the same, the appellant filed a first appeal in A.S.No.198 of 1996 on the file of the Principal District Court, Tuticorin. The first appellate Court also concurred with the findings entered by the trial Court and dismissed the suit. Aggrieved by the same, the appellant is before this Court.



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6. This Court, at the time of admitting the second appeal, formulated the following substantial question of law:

“Whether the findings of the Courts below are vitiated by its failure to consider the admissions of PW.1 regarding partition between the 4 sharers and the absence of any evidence regarding title and possession?”

7. The learned counsel for the appellant contended that the appellant in his written statement specifically denied the right claimed by the 1st respondent/plaintiff that his father entitled to 1/4th share in the suit property. Further, the 1st respondent/plaintiff failed to prove the entitlement of his father to 1/4th share in the suit property by producing any documents. Further, the learned counsel for the appellant submitted that P.W.1 himself admitted regarding partition between the four sharers of the suit property and in the absence of any evidence to prove his entitlement for 1/4th share, the Courts below ought not to have decreed the suit as prayed for.

8. Heard the arguments of the learned counsel for the appellant and perused the records along with the typed set of papers.



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9. The 1st respondent/plaintiff has come to the Court with his specific plea that his father Karuppan @ Karuppasamy entitled to 1/4th share in the suit property. The said fact was admitted by the witnesses examined by the appellant viz., D.W.1 and D.W.2. The said witnesses are none other than the vendors of the appellant. They are also sharers in the suit property. They categorically admitted that the 1st respondent's father Karuppan @ Karuppasamy has got 1/4th share in the suit property. Both the Courts below, based on the admission made by D.W.1 and D.W.2 under whom the appellant claims title to portion of the suit property, came to the conclusion that the 1st respondent/plaintiff is entitled to 1/4th share in the suit property. Apart from that, Ex.A.8 patta produced by the 1st respondent/plaintiff proves that the patta for the suit property stands in the name of 25 persons including the plaintiff. The 1st respondent also produced certain *kist* receipts for payment of tax towards portion of the suit property in his direct enjoyment. The said *kist* receipts were marked as Ex.A.1 to Ex.A.5.

10. Before filing a suit for partition, the 1st respondent/plaintiff issued a lawyer's notice claiming 1/4th share in the suit property under Ex.A.6 and



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the said notice was received by the appellant as exhibited by Ex.A.7 postal acknowledgement card, but for the reasons best known to him, he had not chosen to reply to the pre-suit notice. In these circumstances, based on the admission of the appellant's own witnesses viz., D.W.1 and D.W.2 and also the other evidences available on record, as discussed earlier, both the Courts below came to the conclusion that the 1st respondent/plaintiff proved his entitlement for 1/4th share in the suit property. Though the appellant/7th defendant in his written statement claimed adverse possession, he failed to prove the same by leading cogent evidence. In these circumstances, the substantial question of law is answered against the appellant and the second appeal deserves to be dismissed.

11. According to the written statement filed by the appellant, he purchased 1 acre and 23 cents from the 3rd respondent Shanmugasundaram and 80 cents from the 6th respondent Maria Muthammal. The total extent of the suit property is 4 acres and 76 cents out of which, the 1st respondent/plaintiff claims only 1/4th share.



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12. The learned counsel for the appellant submits that the appellant may be permitted to workout equity in the final decree proceedings in respect of the properties purchased by him.

13. It is always open to the appellant to file appropriate application in the final decree proceedings for working out equity in respect of the property purchased by him. If any such request is made by the appellant for working out equity, the same shall be considered by the Court below in accordance with law without being influenced by anything discussed in this judgment.

14. In fine, (a) the Second Appeal is dismissed by confirming the judgments and decrees passed by both the Courts below; and (b) in the facts and circumstances of the case, there will be no order as to costs.

22.12.2022

(2/2)

NCC: Yes
Internet: Yes
Index: Yes/No
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To

- 1.The Principal District Judge,
Tuticorin.
- 2.The Principal District Munsif,
Tuticorin.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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