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S.A. No. 855 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.855 of 2009

Sulliammal

.. Appellant

Versus

- 1 Jagathambal
- 2 Elumalai
- 3 Chitra
- 4 Jamuna @ Yamuna
- 5 Susila
- 6 Poongavanam
- 7 Sakkarapani
- 8 Sampath
- 9 Ellappan
- 10 Kathayee Ammal
- 11 Janakiraman
- 12 M.Kuppusamy

(12th Respondent brought on record
as LR of deceased 5th respondent
vide order of court dated 09.09.2011
mad in M.P.No.2 of 2011)

... Respondents



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Prayer:- Second Appeal filed under Section 100 C.P.C., against the judgment and decree passed in A.S.No.22 of 2007 dated 29.01.2009 on the file of the Subordinate Court at Cheyyar in reversing the judgment and decree passed in O.S.No. 212 of 1998 dated 30.03.2007 on the file of the Principal District Munsif Court, Vandavasi.

For Appellant : Mr.Rajasekar

For Respondents : Mr.B.Jawahar for R2 to R4 & R9

R1 & R5 – died

Mr.M.V.Deenadhayalan for
R6 to R8, R10 & R11
- Not ready in notice

JUDGEMENT

The appellant herein is the plaintiff in the suit in O.S.No.212 of 1998 on the file of Principal District Munsif, Vandavasi. He filed a suit against the defendants 1 to 11 claiming 1/3rd share in the entire suit properties in item Nos.1 to 10 stating that the entire properties are ancestral properties of her father Jayarama Gounder and her mother Mangammal. Thereafter, they died intestate leaving behind their two daughters and son. As one of the



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daughters, she is entitled 1/3rd share along with her sister and brother. The defendants 1 to 5 are legal heirs of deceased brother and sister, thereby, she prayed to allot 1/3rd share in the entire suit properties. The defendants 6 to 11 are purchasers of certain properties.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The contesting defendant viz., 2nd defendant admits the relationship, but denied the entire claim made by the plaintiff. He would submit that the properties are not belong to plaintiff's parents nor she enjoyed along with her brother Vasudevan, in fact, he sold certain items of suit properties to defendants 6 to 11 before filing the suit as it is absolute properties of Defendants 1 to 4. After demise of plaintiff's brother, there was a dispute in the family between plaintiff and 4th defendant (daughter-in-law). Accordingly, the suit was filed seeking for partition.



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4. Before the trial court, both parties adduced their oral and documentary evidence. On the side of plaintiff, she was examined as P.W.1 and documents in Ex.A1 to A16 were marked. On the side of defendants, D.W.1 to 3 were examined and documents in Ex.B1 to B17 were marked. The trial judge framed three issues. The foremost issue is whether the plaintiff and the defendants 1 to 5 jointly enjoyed the suit property?, in which, whether the plaintiff is entitled 1/3rd share as she prayed for?.

5. Considering the evidence on record, the trial judge held that as per Ex.A3, Sale deed, the plaintiff's mother Mangammal purchased the properties relating to Item Nos.1 to 5 herein, but there is no proof that the said properties were enjoyed by the plaintiff and her parents. Therefore, no relief was granted in respect of Item Nos.1 to 5. As per Ex.A1, in respect of item Nos.1 to 5, the properties were purchased by plaintiff's mother. As she died, the plaintiff is entitled to share in respect of the said properties. In respect of properties in item Nos. 6 to 10, no document was adduced on either side, but the revenue records relied on by the plaintiff Ex.A4 to A16,



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Patta and adangal extracts reveal that those properties stand in the name of plaintiff's brother Vasudevan, but the contesting defendant, son of the said Vasudevan not produced any document to show that how the property belong to his father individually, thereby the plaintiff able to establish that it is a joint family property, more particularly, it was enjoyed by her father and after his demise, his legal heirs were allotted 1/3rd share in those item Nos. 6 to 9. In respect of item No.10, as per Ex.A5, Chitta was transferred in the name of plaintiff's brother Vasudevan and other co-sharers and Arumuga Gounder and his son jointly, but the plaintiff claimed only common 1/2 share in that item No.10 on the wester side with house, thereby she is entitled 1/3rd share, because all the revenue records relied on by the defendants viz., Ex.B6 to 16, the plaintiff's brother Vasudeva Gounder name is mentioned. As the defendants 1 to 4 failed to establish that it is a self-acquired properties of Vasudeva Gounder, thereby it impliedly reveals that it belongs to father of plaintiff. Accordingly, item Nos. 1 to 10, plaintiff was granted 1/3rd share by passing preliminary decree.



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6. Furthermore, the ouster plea made by D.W.1 has not been accepted

by the trial judge and concludes that no specific plea made by the defendants in their written statement in respect of ouster nor in respect of adverse possession, on the other hand, plaintiff proved that she also enjoyed jointly with other sharers viz., her brother and sister and their legal heirs, thereby the claim of adverse possession and ouster made by the defendants was rejected. Challenging the said findings, they preferred an appeal in A.S.No.22 of 2007 on the file of Sub-Judge, Tiruvannamalai. The learned first appellate judge independently analysed the evidence on record and finally held that the properties in item Nos.1 to 4 were already sold by the 2nd defendant Elumalai, in which the plaintiff has no share. In respect of item Nos 5 to 10, the plaintiff not proved that those items are self-acquired properties of her parents Jayarama Gounder and Mangammal and it is individual property of 2nd defendant Elumalai, thereby those properties are not jointly enjoyed by the plaintiff with other sharers. Furthermore, the plaintiff separated from the family 40 years ago after she got married and she was not in possession of the properties and the suit properties are enjoyed by her brother, thereby she is not entitled for measne profits from



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the properties, thereby the defendants 1 to 5 alone entitled for share in item nos. 5 to 10, which was enjoyed the plaintiff's brother Vasudeva Gounder uninterruptedly enjoyed the properties for more than 60 years, thereby the plaintiff is not entitled to claim share in item Nos.1 to 10. Accordingly, the appeal was allowed and confirmed the findings of trial judge.

7. Challenging the said findings, the plaintiff preferred this Second Appeal. The learned counsel for Appellant/plaintiff argues that the lower appellate court erroneously held that the revenue records relied on by the defendants would be sufficient to conclude the long possession and enjoyment of 2nd defendant and his father Vasudeva Gounder, but without considering the legal proposition that the revenue records would not confer title in respect of properties relied on by the parties concerned. He would further submit that the trial judge failed to appreciate Ex.A3, sale deed dated 02.09.1942 stands in the name of plaintiff and her mother Mangammal and after her demise, it devolves upon her legal heirs viz., plaintiff and her brother Vasudeva Gounder and another sister equally. Though Ex.A3 was partly appreciated by the courts below, erroneously held that those



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properties were already sold, as such is total misconception of law and on facts and the same is liable to be set aside. He would further submit that as per Ex.A3, plaintiff is entitled for 1/3rd share, but the trial judge erroneously held that plaintiff's brother Vasudeva Gounder and his legal heirs have enjoyed the property as per Ex.A3 uninterruptedly with the knowledge of plaintiff, thereby, they are the owners of the properties absolutely, in which the plaintiff has no right to claim partition, which is totally erroneous one. Hence, the same is liable to be set aside.

8. By way of reply, the learned counsel for respondents/contesting defendants would submit that the lower appellate court rightly concludes that the plaintiff not proved her claim nor produced any document to show that item Nos.1 to 10 suit properties are belong to her parents Jayarama Gounder and Mangammal and after their demise, she along with other sharers enjoyed the properties jointly. Accordingly, the defendants proved their uninterrupted enjoyment of the properties and portion of the properties was already sold through documents, which was rightly appreciated by the trial judge. Therefore, this Second Appeal is liable to be dismissed as no merits.



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WEB COPY 9. Considering both side submissions, the Second Appeal was admitted on the following questions of law :-

- I. Whether the revenue entries/chitta will give any title or patta to the respondents?
- II. Whether adverse possession/ouster will be applicable among the joint owners from the ancestral property?
- III. Whether the defendant/respondent has raised any plea in the written statement regarding the adverse possession of the appellant?
- IV. Whether the learned Subordinate Judge misconstrued and misappreciated the evidence on record?

10. The relationship between the parties are admitted. Admittedly, as per Ex.A3 sale deed stands in the name of plaintiff's mother Mangammal pertaining to item Nos. 1 to 4. Though the said sale deed covers other survey numbers, but the plaintiff restricted her claim only in respect of item Nos. 1 to 4 as per Ex.A3 sale deed. Admittedly, Survey No. 144/2



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mentioned as item No.5 was already sold by father of plaintiff Jayarama gounder. Therefore, Ex.A3 is only pertaining to item Nos. 1 to 4. Both parties admitted that their parents died intestate leaving their two daughters and one son viz., Vasudeva Gounder. Plaintiff is one of the daughters. Thereafter, Vasudeva Gounder also died. The defendants 1 to 4 are his legal heirs. The learned trial judge rightly appreciated the Sale deed Ex.A3 and granted 1/3rd share in favour of plaintiff, but the lower appellate court though admits Ex.A3 relating to item Nos.1 to 4, but concludes that the plaintiff has not produced any document to show that those properties were jointly possessed and enjoyed by the plaintiff and defendants, nor there is no evidence adduced by the plaintiff to show that it was jointly possessed and enjoyed by her with other sharers after the demise of her mother, thereby no share was allotted to the plaintiff in respect of Item Nos. 1 to 4. Admittedly, as per Ex.A3 Sale deed, the property was absolutely belong to plaintiff's mother and after her demise, it was enjoyed by her brother and sister. Though the 2nd defendant denied the said aspect and contested that the properties in respect of item Nos.1 to 4 were already sold, but no proof was attached in respect of alleged sale nor no particulars submitted when it



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was sold and to whom it was sold. Ex.A3 Sale deed is sufficient to prove the title in respect of item nos.1 to 4, but the lower appellate judge failed to appreciate the same and erroneously concludes that item nos. 1 to 4 were already sold nor respondents jointly enjoyed the properties as such is totally erroneous one and the same is liable to be set aside.

11. Furthermore, in respect of item Nos. 5 to 10, the lower appellate court held that as per revenue records Ex. B4 to B17 all were chitta and adangal extracts, which were stand in the name of 2nd defendant Elumalai, son of Vasudeva Gounder continuously, thereby the lower appellate judge concludes that the 2nd defendant uninterruptedly enjoyed the properties for more than 60 years with the knowledge of plaintiff, thereby denied the plaintiff's claim in respect of item Nos.5 to 10. Admittedly, except chitta, a revenue records, the 2nd defendant not produced any other document before the trial court to show that it is his absolute property. According to the plaintiff, item Nos.6 to 10 belong to his father Jayarama gounder and after his demise, she enjoyed along with other sharers viz., Vasudeva Gounder and Annammal. When the 2nd defendant failed to establish that the property



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absolutely belong to him based on the revenue records, the lower appellate court erroneously concludes that it is absolute property of 2nd defendant for the reason that it is a settled proposition, revenue records would not confer title on a person and only for collection of revenue, those documents can be relied. Therefore, the findings rendered by the lower appellate judge in respect of item Nos.5 to 10 is set aside. Accordingly, the question of law No.I is answered.

12. Moreover, the other contesting defendants totally denied plaintiff's claim in respect of entire property nor pleaded that he enjoyed the property for time immemorial, thereby he perfected right over the properties through adverse possession nor pleaded that the plaintiff was ousted from the property as she got married long back. So, when there is no specific pleading to that effect, the lower appellate judge dismissed the plaintiff's claim stating that the 2nd defendant perfected title as he enjoyed the property for more than 60 years uninterruptedly without any material evidence, as such is liable to be set aside. Accordingly, the question of law No.II is answered.



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13. Furthermore, the lower appellate judge held that as per Ex.B1 to B3, chitta and adangal extracts, item Nos.1 to 4 stands in the name of Ramasamy, Chinnasamy and Arumugam, but there is no proof that they purchased the property from the third party and how they claimed right in the property, on the other hand, as per Ex.A3 Sale deed, item Nos. 1 to 4 belongs to plaintiff's mother, as she died intestate, the plaintiff is entitled 1/3rd share, which was rightly appreciated by the trial judge. Moreover, the contesting defendants failed to show that certain property was sold to third party, but the plaintiff denied that she has not signed in the sale deed, thereby, it would not bind on her. As discussed above, the plaintiff is entitled 1/3rd share in item Nos. 1 to 4. Even if there is any sale, it would not bind her, but the lower appellate judge failed to appreciate Ex.A3 properly, on the other hand, he misconstrued the entire evidence on record both oral and documentary, thereby the findings rendered by the lower appellate judge is liable to be set aside. Accordingly, the question of law No.III is answered.

14. In respect of item No.10, the plaintiff claimed half of the eastern



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portion comes around 16 cents along with house, wherein the 2nd defendant is residing. In fact, the plaintiff was married long back. The 2nd defendant is son of other co-sharer Vasudeva Gounder, who enjoyed the property along with house, but no vacant site. The plaintiff is entitled 1/3rd share in the property, but not in the house property, because it is a residential house of 2nd defendant. Therefore, in the vacant space of Item No.10, the plaintiff is entitled 1/3rd share, though revenue records stand in the name of 2nd defendant along with other documents for entire extent of 30 cents. Hence, the findings of the lower appellate judge is liable to be set aside. Accordingly, the plaintiff is granted 1/3rd share in item Nos. 1 to 9.

15. In respect of item No.10, the plaintiff's claim is that it belongs to her father and after his demise, as per documents Ex.A6 to A16 relied on by the plaintiff, the said properties stand in the name of Vasudeva Gounder and after his demise, his son/2nd defendant enjoyed the property. However, there is no proof that the said item was enjoyed by the plaintiff and her sister Annammal along with her brother after the demise of her father Jayarama Gounder. Moreover, there is no document produced on the side of plaintiff



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that item No.10 of the property belong to her father, on the other hand, the revenue records show that item No.10 was enjoyed by Vasudeva Gounder along with other sharers Narayana Gounder, Arumuga Gounder and his son with patta No.606. Therefore, item No.10 is the absolute property of Vasudeva Gounder and after his demise, 2nd defendant possessed and enjoyed the property along with house. Hence, in respect of item No.10, the plaintiff has no share and the suit is dismissed. Accordingly, this Second Appeal is partly allowed and the findings of lower appellate judge in A.S.No. 22 of 2007 is set aside in respect of item Nos.1 to 9, thereby the findings of the trial judge is confirmed. Suit is decreed in respect of item Nos.1 to 9 and the plaintiff is granted 1/3rd share in all items of properties except house in item No.10. No costs.

10.10.2023

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To
Sub-Judge, Cheyyar

T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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