



A.S.No. 355 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 355 of 2021
and
C.M.P. No. 16342 of 2021

K.Ponnusamy,
S/o.Kaliappa Gounder

... Appellant

Vs.

1. Baby,
W/o. Murugesan

2. Vignesh,
S/o. Murugesan

3. Minor Janakan,
rep. by his mother/guardian Baby

.. Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 of Civil Procedure Code, praying to set aside the decree and judgment dated 15.03.2021 passed in O.S.No. 525 of 2015, on the file of learned III Addl. District Judge, Coimbatore.



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For Appellant : Mr.Haja Nazirudeen,
Senior Advocate for Mr.P.Hari Babu

For Respondents : Mr.C.R.Prasanan

ORDER

The appellant herein is the defendant in the suit in O.S.No.525 of 2015, on the file of III Addl. District Judge, Coimbatore, which was filed by respondents/plaintiffs as a legal heir of deceased Murugesan, who is his brother-in-law, claiming half share in the entire suit property stating that the suit property was purchased by the said Murugesan and the defendant jointly. After the demise of the said Murugessan, the plaintiffs have enjoyed the property along with the defendant and now the defendant attempted to sell the property ignoring the plaintiffs' right. Hence, the suit was filed for partition and accepting the partition, the suit was decreed partly.

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



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3. While the defendant admits the sale deed stands in the name of deceased Murugesan and himself, but he would content that the said Murugesan is only a name lender and the entire contribution was made by the defendant alone. Even during the life time of Murugesan, he only enjoyed entire property. Therefore, after the demise of Murugesan, the plaintiffs, as the legal heirs of deceased are not having any right over the property. Even otherwise, for more than 25 years, he enjoyed the property without any interruption by constructing a house and enjoyed the same, thereby, he perfected his title by adverse possession, thereby denied plaintiffs' claim.

4. Before the trial court, both parties have adduced evidence and four issues were framed. On considering both oral and documentary evidence, the trial court concluded that the property was jointly purchased by deceased Murugesan and his brother-in-law/defendant herein and till his life time, he enjoyed the same. After his demise, his legal heirs are deemed to be constructive possession of the property and



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based on Ex.A6 Computerised Patta, the suit property jointly stands in the name of 1st plaintiff as well as defendant. The property tax receipt for the year 2006-2007 was paid by deceased Murugesan, would prove that the plaintiffs have also jointly enjoyed the property along with defendant and there is no proof that defendant enjoyed the property uninterruptedly for more than 25 years with the knowledge of deceased Murugesan as well as plaintiffs, thereby the plaintiffs' right over the property was accepted by the trial judge and granted the relief of partition in respect of half share in the entire suit property. Aggrieved over the same, the defendant preferred this appeal.

5. The learned counsel for appellant/defendant would submit that the trial judge failed to take note of the fact that the defendant alone put up construction in the property even during the life time of his brother-in-law Murugesan and he has not raised any objection for that construction, which would clearly implied that he had knowledge about the fact that he is only a named lender, but inspite of appreciating the said fact, the trial judge decreed the suit in favour of plaintiffs, as such is total



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misconception of law and facts and the same is liable to be set aside. He would also submit that as an absolute owner, the defendant developed the property and enjoyed with the knowledge of deceased Murugesan as well as his family members for more than 25 years, which itself sufficient to conclude that by an uninterrupted possession, the defendant perfected his title by adverse possession. But, the trial judge, without appreciating the said fact, erroneously decreed the suit in favour of plaintiffs, as such is liable to be set aside. However, the trial judge dismissed the relief of permanent injunction against the plaintiffs and accepted the possession of defendant, but at the same time granted the relief of partition, which is outside the scope of law and without applying the principles of ouster, thereby the findings rendered by the trial judge is liable to be set aside, as the legal proposition was not properly applied. Based on the above grounds, the learned counsel for defendant prayed to set aside the findings of trial judge.

6. By way of reply, the learned counsel for respondents/plaintiffs would submit that Murugesan, who is husband of 1st plaintiff, along with



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his brother-in-law/defendant jointly purchased the suit property on 02.06.1981 and ever since they were jointly in possession till the demise of Murugesan in the year of 2009 leaving behind the plaintiffs as his legal heirs and they are deemed to be constructive possession of the suit property, but the defendant not accepted for amicable partition. Hence, they approached the trial court for the relief of partition and the trial judge rightly appreciated the sale deed as well as joint patta stands in the name of deceased Murugesan and rightly concludes that plaintiffs are having half share in the property as legal heirs of deceased Murugesan and also their possession deemed to be constructive possession and not accepted the plea of adverse possession, which was pleaded by the defendant without any material evidence, thereby, the trial judge rightly decreed the suit in favour of plaintiffs, which needs no interference. Hence, they prayed to dismiss this appeal as no merits.

7. Considering both side submissions, the points to be decided in this appeal are as follows :-



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(i) whether as a legal heirs of deceased Murugesan, plaintiffs are entitled for half share in the suit property?

(ii) whether the defendant is the absolute owner of entire property by perfecting title by way of adverse possession in respect of plaintiffs' share in the property?

8. The deceased Murugesan and the defendant, who is his brother-in-law and plaintiffs are legal heirs of deceased Murugesan are the admitted facts. According to plaintiffs, deceased Murugesan and the defendant have jointly purchased the property in the year of 1981 as per the sale deed Ex.A1, thereby the deceased Murugesan is having half share. After his demise in the year of 2009, as his legal heirs, the wife and children (plaintiffs) are entitled for the said half share. Hence, they approached the court seeking for the relief of partition and division of their share. The certified copy of sale deed is marked as Ex.A1. On perusal of its recitals in the sale deed, it clearly denotes that deceased Murugesan and defendant have jointly purchased the property in the year of 1981. The entire extent of property covered in the sale deed is form and part of suit schedule, which is undisputed one and it is the



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agricultural land along with tiled sheds 10 anganam with all rights of way and other appurtenances.

9. P.W.1's evidence is that till the life time of her husband Murugesan in the year of 2009, she jointly enjoyed the property along with the defendant/her husband's brother-in-law and to prove the same, she produced computerised joint patta stands in both names, which is marked as Ex.A6. Admittedly, in the year of 2009, Murugesan died, death certificate would prove the said fact. Prima facie, the 1st plaintiff proved that the property was purchased by her husband jointly with the defendant, thereby deceased is holding half share in the suit property and the same was jointly enjoyed by both of them.

10. The defendant denied not only the plaintiff's right, but also deceased Murugesan's right stating that he is only a named lender and though it stands in the name of both parties, the defendant alone enjoyed entire extent of property even during the life time of deceased Murugesan and at his own cost, he has put up a construction, thereby till date, he is residing in the said land and paying property tax also. His name was



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mutated in the revenue records, which was not objected by the said Murugesan nor by the plaintiffs, thereby he claimed absolute ownership as well as his title perfected by way of adverse possession. Admittedly, as per Ex.A1, Sale deed, half of share belong to the defendant. With regard to the remaining share, the defendant claimed title by adverse possession.

11. On perusal of entire records, before the trial court, there is no proof on the side of defendant that deceased Murugesan was a named lender, however the defendant admits that Patta was jointly stands in the name of himself and 1st plaintiff. The defendant also admits that during the life time of Murugesan, he paid kist and the kist receipt along with patta was marked as Ex.A6. Even during the cross-examination, D.W.1 was suggested by the 1st plaintiff that when the bank was attempted to auction the property as the loan amount was not paid, the said loan was discharged by deceased Murugesan is not totally denied by the defendant, on the other hand, he has stated that any such receipt would be in the hands of plaintiffs. Therefore, during the life time of Murugesan, he along with plaintiffs enjoyed the property and Ex.A6 also prove the



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said aspect. Therefore, the uninterrupted possession for more than 25 years claimed by the defendant is false one and it has not been established by the defendant as rightly observed by the trial judge. Even the fact reveals that deceased Murugesan and defendant are brother-in-laws, already there is a family dispute with regard to earlier partition. With regard to plea of ouster in the suit for partition, the defendant has to specifically mention from which date onwards, he was in possession openly and to the knowledge of other co-owners. But, in the case in hand, the defendant failed. For that, the following authority relied on by the plaintiffs is squarely applicable to the facts of the case :-

***“Nagabhushanammal (D) by LRs. vs. Chandikeswaralingam
reported in 2016 (2) CTC 345***

Doctrine of Ouster – Pleadings – Suit for partition – Defendant raised plea of ouster and prescription of title by adverse possession – Proof – Ouster is weak defense in suit for partition of family property and it is strong if defendant is able to establish consideration and open assertion of denial of title, long and uninterrupted possession to knowledge of other co-



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owner – possession of one co-owner is presumed to be on behalf of all co-owners unless it is established that possession of co-owners and possession is in hostility to co-owners by exclusion of them.”

12. The learned counsel for defendant would submit that while putting up construction in the property, neither Murugesan nor 1st plaintiff raised any objection, thereby from the conduct of party, it is sufficient to hold that the plaintiffs accepted the defendant is the owner of the property. But, the trial judge failed to appreciate the said aspect. For that, he relied on the authority reported in **1989 (2) SCC 630** in the case of **Smt. Chandrakantaben, wife of Jayantilal Bapalal Modi vs. Vadilala Bapalal Modi and others**, wherein the Apex Court held as follows :-

“Limitation Act, 1963 (36 of 1963) – Art. 65 – Adverse possession – proof of possession for more than 12 years – having regard to conduct of parties and comparatively superior nature of evidence of the party claiming adverse possession, held on facts, exclusive adverse possession of



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the property from 1946 onwards till filing of the suit in 1960 proved.”

But, as discussed above, the revenue records clearly reveal that along with defendant, deceased Murugesan having joint patta and some of kist receipts also reveal that he paid the kist, which would show that he was in joint possession of property. Furthermore, at the time of argument, the learned counsel argues that the defendant perfected his title by way of adverse possession, since because for more than 25 years, he enjoyed the property by putting up construction much earlier in the year of 1998 itself, but the trial judge not framed any issue with regard to limitation. Without framing any issue for limitation, the plaintiffs are also incapable, thereby the trial judge ought to have framed the issue with regard to limitation, but the trial judge failed. Hence, the findings rendered by the trial judge is liable to be set aside as the issues were not properly framed. For that, he relied the authority reported in **2015 (3) SCC 624** in the case of ***Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others***, in which, the Apex Court in para 15 held as follows :-



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“15. As has already been reflected and commented upon, the tenants had filed an appeal only in respect of O.S.No.6 of 1978, although common conclusions had been arrived at in all three suits, except for some inconsequential differences. It is trite that the obligation and duty to frame issues is cast solely on the court which may, nevertheless, elicit suggestions from the litigating adversaries before it. Issues settled by the court under Order 14 CPC constitute the crystallisation of the conflict or the distillation of the dispute between the parties to the lis, and are in the nature of disputed questions of fact and/or of law. While discharging this primary function, the court is expected to peruse the pleadings of the parties in order to extract their essence, analyse the allegations of the parties and the contents of the documents produced by them, and thereafter proceed to frame the issues.”



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13. The learned counsel for defendant also relied on the following authorities in support of his contentions :-

- (i) reported in **2008 (17) SCC 491** in the case of ***Bachhaj Nahar vs. Nilima Mandal and another***
- (ii) reported in **ILR 2009 KAR 887** in the case of ***Veeragouda and others vs. Shantakumar @ Shantappagowda***
- (iii) Judgment passed in ***Civil Appeal Nos. 1858-1859 of 2016 by Supreme Court of India.*** in the case of ***Nagabhushanammal (D) by LRs. vs. C.Chandikeswaralingam***”

14. As discussed above, the plaintiffs prima facie establish that the property was purchased jointly and enjoyed jointly till the demise of deceased Murugesan in the year of 2009. Thereafter, even in the year of 2009, the plaintiffs paid tax. So, with the help of those document Ex.A6, the plaintiffs able to establish that defendant not enjoyed absolutely for more than 25 years uninterruptedly, on the other hand, deceased Murugesan also enjoyed the property jointly. Therefore, the claim of



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adverse possession as such not been proved by the defendant with sufficient material evidence. So, the trial judge rightly gave the finding to that effect in paras 10, 11 and 12 of the judgment while deciding the issue No.2 with regard to the issue of adverse possession, whether the defendant has perfected his title by adverse possession as he claimed? Therefore, there is no irregularity committed by the trial judge as argued by the appellant. Hence, the authority relied on by the defendant is not supporting his case. The evidence of D.W.2, the defendant's witness, neighbouring landowner, during the trial admits that Patta Ex.A6, the 1st plaintiff's name also found and his evidence is not supporting the case of defendant rather it supports the case of plaintiffs. Therefore, in all aspects, plaintiffs established that the suit property jointly purchased by 1st plaintiff's husband along with defendant. During his life time, Murugesan enjoyed the property along with defendant and after his demise, the legal heirs of plaintiffs are deemed to be constructive possession, but the defendant not inclined to give their share. Hence, they have approached the court for division of property and by producing documents, they proved their claim and the trial judge also rightly



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appreciated those facts and decreed the suit in favour of plaintiffs, which needs no interference by this court.

15. The defendant, who claimed title by way of adverse possession, has not proved his claim nor he proved the fact that he uninterruptedly enjoyed the property and on the other hand, Ex.A6 clearly proves that joint patta stands in the name of co-sharer during his life time, which itself sufficiently prove that the plaintiffs and the deceased Murugesan are deemed to be constructive possession of the property. Against which, the defendant is not entitled to claim adverse possession and to that effect, the findings rendered by the trial judge in respect of issue No.2 needs no interference. Accordingly, both issues are answered and this Appeal Suit is dismissed as no merit. In respect of permanent injunction, the trial judge held that if at all any obstruction made by the defendant during the trial proceedings would hit by principles of lispence is well-reasoned one and permanent injunction relief was not dismissed by accepting the possession of defendant as he has committed before this court. The trial judge clearly gave findings that



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possession of plaintiffs is deemed to be constructive and joint possession.

Therefore, the submissions made by the appellant to that effect is unsustainable one. Accordingly, this Appeal Suit is dismissed as no merits and the findings of trial judge in O.S.No.525 of 2015 is confirmed.

By way of preliminary decree, the plaintiffs are entitled to half share in the entire suit property. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

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Coimbatore.



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