



A.S.No.411 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.No.411 of 2014

1. Ponnusamy
2. Mayangathal

...Appellants

-Vs-

1. Sivakami
2. Paramasivam
3. Najammal
4. Chandra

... Respondents

Prayer: First Appeal filed under Section 96 of CPC praying to set aside the Judgment and Decree dated 29.11.2013 made in O.S.No.408 of 2011 on the file of the 2nd Additional District and Sessions Judge, Tirupur.

For Appellants : Mr.H.Shabeer Ali
for M/s Sarvabhauman Associates

For R1 to R4 : Mr.S.Vinodh

JUDGMENT

This appeal suit has been filed to set aside the Judgment and Decree dated 29.11.2013 made in O.S.No.408 of 2011 passed by the II Additional District and Sessions Judge, Tirupur, thereby decreed the suit.



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2. The appellants are the defendants and the respondents are the plaintiffs. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The case of the plaintiffs is that the suit property originally belonged to one Nanjappa Gounder. He had a son by name Arunachala Gounder. Nanjappa Gounder and Arunachala Gounder were in joint possession and enjoyment of the suit property. After the demise of the said Nanjappa Gounder, the said Arunachala Gounder was in possession and enjoyment of the suit property along with the second defendant, who is the daughter of the said Nanjappa Gounder. Therefore, the second defendant alone cannot claim the exclusive right over the property. The first defendant is the son of the second defendant. The said Arunachala Gounder died about 35 years ago. The plaintiffs are the legal heirs of the said Arunachala Gounder and they are in possession and enjoyment of the suit property. The first defendant created troubles by preventing the plaintiffs from enjoying the suit property. The said Arunachala Gounder, as the joint family member of the property, was entitled to 1½ share by birth and the said Nanjappa Gounder is entitled to remaining ½ share. After the demise of the the said Nanjappa Gounder, it is well settled law that his daughter viz., the second defendant is entitled for the ½ share of her father. Therefore, the



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plaintiffs caused notice on 29.05.2011. Hence, the suit.

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4. Resisting the same, the defendants filed their written statement stating that the suit property was purchased by the said Nanjappa Gounder, out of his self acquired income. He gave birth to one Arunachala Gounder and the second defendant. After the demise of the said Arunachala Gounder, the defendants got right over the property. Hence, the plaintiffs' claim of suit property as Hindu undivided joint family property and their claim of right over the suit property are not sustainable. Though the said Arunachala Gounder had 1½ share over the suit property, he never claimed any right over the suit property. The entire property was in possession and enjoyment of the second defendant for more than 40 years. By theory of ouster, the plaintiffs right over the suit property got extinguished and the second defendant has executed a deed of transfer dated 10.07.2009, thereby transferred the entire property in favour of her son, viz., the first defendant. Now, he is in possession and enjoyment of the property and all the revenue records were mutated in his name.

5. After completion of pleadings, the Trial Court framed the following issues:-



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“ 1. Whether the plaintiffs are entitled for partition as prayed for?

2. Whether the plaintiffs are entitled for permanent injunction as prayed for?

3. To what relief if any?”

6. On the side of the plaintiffs, they had examined P.W.1 and marked Exs.P1 to 8. On the side of the defendants, they had examined D.Ws.1 to 4 and marked Exs.D1 to 14. On perusal of oral and documentary evidence, the Trial Court decreed the suit as prayed for. Hence, this Appeal suit.

7. The learned counsel for the defendants/appellants would submit that the Trial Court had decreed the suit only on the ground that the defendants failed to prove that from when the plaintiffs were not in possession and enjoyment of the suit property. Immediately, after the death of the said Arunachala Gounder, the plaintiffs were not in possession and enjoyment of the suit property. In fact, while the said Arunachala Gounder was alive, he had enjoyed with the defendants and they are in possession and enjoyment of the suit property. Thereafter, the entire revenue records were mutated in the name of the second defendant. On the strength of the same, the second defendant had executed a sale deed in favour of the first defendant. Now, the first defendant is in possession and enjoyment of the suit property.



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8. In support of his contentions, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1993 4 SCC 375** in the case of ***Parsinni (dead) by LRS and others Vs Sukhi and others***, in which the Hon'ble Supreme Court of India held that whether the appellants have perfected their title by prescription, by Article 65 of the Schedule to the Limitation Act, 1963 for possession of immovable property or any interest therein based on title, 12 years period begins to run when the possession of the defendants becomes adverse.

9. The revenue records were mutated in favour of the second defendant even before 30 years. Therefore, the suit itself is barred by limitation under Article 65 of the Limitation Act.

10. Admittedly, the entire suit property belongs to one Nanjappa Gounder. He had given birth to one Arunachala Gounder and the second defendant. The plaintiffs are the legal heirs of the said Arunachala Gounder. The first defendant is the son of the second defendant. After the demise of the the said Nanjappa Gounder and after the demise of the said Arunchala Gounder, the plaintiffs, being the legal heirs, filed a suit for partition and



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claimed a share in the suit property.

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11. The only point for consideration in this appeal is whether the suit is barred by limitation under Article 65 of the Limitation Act?

12. A perusal of records revealed that the defendants failed to prove their adverse possession over the suit property. Therefore, the defendants failed to prove the theory of ouster. Hence, the Judgment cited by the learned counsel for the defendants/appellants is not applicable to the case on hand. Admittedly, the said Arunachala Gounder and the second defendant are the son and daughter of the said Nanjappa Gounder. Therefore, they are entitled for $\frac{1}{2}$ share in the suit property, after the demise of the said Nanjappa Gounder. Hence, the Trial Court had rightly decreed the suit and this Court finds no infirmity or illegality in the Judgment and Decree dated 29.11.2013 made in O.S.No.408 of 2011 passed by the II Additional District and Sessions Judge, Tirupur and this Appeal Suit is liable to be dismissed.

13. Accordingly, this Appeal Suit is dismissed. No costs.

12.12.2023



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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

The II Additional District and Sessions Judge, Tirupur.

G.K.ILANTHIRAIYAN. J.

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