



SA.No.1697 of 2001

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **09.02.2023**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

SA.No.1697 of 2001

Kanniappan

... Appellant

Vs.

1.N.M.Kishappa Chettiar (died)

2.Renukammal

3.Subramanian

4.Vasanth Raj

5.Dhanasekaran

6.Panchatcharam

7.Delhi Baskar

8.M.Mangai

9.Vasanth

... Respondents



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[Respondents R.2 to 9 brought on record as legal representatives of the deceased R.1 viz., N.M.Kisthappa Chettiar vide Court order dated 22.09.2022 made in CMP.Nos.16874, 16875 and 16878/2022 in SA.No.1697/2001 (KRJ)]

PRAYER: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 20.02.2001 in A.S.No.11/2000 on the file of the learned Subordinate Judge of Madurantakam, which is confirming the judgement and decree dated 31.03.2000 made in OS.No.143 of 1995, on the file of the District Munsif of Madurantakam.

For Petitioner : Mr.M.S.Mani

For Respondents : Mr.K.Govi Ganesan [R.2 to R.9]
: [R.1 died]

JUDGEMENT

The defendant is the appellant before this Court challenging the concurrent judgement and decree suffered by him in a suit for partition. The facts necessary for disposing of the Second Appeal is hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.



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2. The plaintiff had filed the above suit seeking partition and separate possession of his 1/3rd share in the suit schedule property. It is his case that the suit property originally belonged to Solai Pillai and Thiruvengada Pillai as their ancestral property. Solai Pillai died in and around the year 1950 leaving behind him surviving his only son Seeyala Pillai. Seeyala Pillai, in turn, died in or around the year 1957 leaving behind his son, the defendant in the above suit. Meanwhile, Thiruvengada Pillai also passed away in the year 1957 leaving behind him surviving his wife, Amma Kannammal and three daughters, namely, Chinna Ponnu, Giriammal @ Lakshmi Ammal and Thanjammal.

3. The widow passed away in the year 1955 and her daughters Chinna Ponnu and Thanjammal died in the year 1959. Chinna Ponnu had a daughter Govindammal and likewise, Thanjammal also had a daughter, Kuppammal. The 2nd daughter Giriammal @ Lakshmi Ammal had died issueless in or around the year 1991.



4. The suit property measures an extent of 17 cents and both Solai Pillai and Thiruvengada Pillai had an equal share in it. Consequently, the defendant is entitled to a half share as the legal heir of Solai Pillai which was inherited by his son Seeyala Pillai, the father of the defendant.

5. It is the case of the plaintiff that Thiruvengada Pillai's half share had devolved on his 3 daughters, each being entitled to a 1/3rd share in the properties belonging to Thiruvengada Pillai. The plaintiff has purchased the share of the Govindammal, the daughter of Chinaponnu and Kupammal, the daughter of Thanjammal. Therefore, he is entitled to a 1/3rd share of the suit property. The plaintiff would submit that despite his several requests to partition the suit property, the defendant had not come forward to execute the same. Therefore, the plaintiff was constrained to file this suit for partition.

6. The written statement filed by the defendant would indicate that he had denied the claim of the plaintiff. It is his case that Solai Pillai had died in the year 1952 and his daughters Chinnaponnu and Thanjammal had pre-deceased their father. The 2nd daughter Giriammal @ Lakshmi Ammal died



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on 01.04.1987 leaving behind 3 children, Pachayammal, Dhanam and Elumalai. The defendant would submit that as per the law then in existence at the time of the death of Thiruvengada, his wife and Lakshmi Ammal alone were alive and as per the law of survivorship, the property devolved on Seeyala Pillai, the son of Solai Pillai. It was Seeyala Pillai who had met the expenses for the funeral and other expenses of Trivengada's wife.

7. In 1979, the defendant's father and Lakshmi Ammal had executed a registered settlement deed dated 17.01.1979 bequeathing the property upon the defendant and putting him in possession thereof. It is the case of the defendant that the revenue records had also got mutated in his name and he has been in possession and enjoyment of the property since then. The plaintiff's vendor had no right or interest in the property and therefore had no right to convey the same to the plaintiff. He, therefore, sought for a dismissal of the suit.

8. The Trial Court had framed the following issues which are translated hereinbelow into the English language:-



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A. Whether the plaintiff is entitled to a partition of

his 1/3rd share in the suit property?

*B. Whether the suit is bad for non-joinder of
necessary parties?*

C. To what other relief the plaintiff is entitled to?

9. The plaintiff has examined himself as PW.1 and one Vayumuni Pillai and Ezhumalai as P.W.2 and P.W.3 and marked Ex.A.1 and A.2. On the side of the defendant, the defendant had examined himself as D.W.1 and K.Ezhumalai , C. Ezhumalai and Umapathi as D.W.2 to D.W.4 respectively. To substantiate his case the defendant had filed Ex.B.1 to B.6.

10. The Trial Court had returned a finding that the plaintiff was entitled to the partition as prayed for, since the defendant has not been able to establish the fact that Govindammal and Kupammal have ceased to have a right in the suit property.

11. The learned Judge held that the suit was not bad for non-joinder of necessary parties as under Ex.B.1 settlement deed dated 17.01.1979, the



share of Lakshmi Ammal has been settled on the defendant. Ultimately, however, the suit was decreed as prayed for.

12. Challenging the said judgement and decree the defendant had filed A.S.No.11 of 2000 on the file of the Sub Court, Madurantakam. The learned Sub Judge also confirmed the judgement and decree of the Trial Court and dismissed the appeal filed by the defendant. It is against this concurrent judgment and decree that the defendant is before this Court.

13. The Second Appeal has been admitted on the following Substantial Questions of law on 20.11.2001.

i. Whether the Courts below are proper and justified in not appreciating the documentary evidences and oral evidences regarding ouster and adverse possession?

ii. Whether the Courts below are right in accepting the contention of the Plaintiff regarding Court fee and valuation for alleged joint possession?

iii. Whether the Courts below properly appreciated the scope of law relating to ouster and adverse possession?



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iv. Whether the suit is bad for misjoinder of parties?

v. Whether the Courts below properly appreciate

Section 114 of the Indian Evidence Act?

vi. Whether the Courts below properly appreciated

the scope of Hindu Succession Act and Hindu Women's

Right to property Act, 1937?

14. The learned counsel for the defendant has attacked this concurrent Judgement and Decree of the Courts below on the following grounds:-

a) The plaintiff has not sought for a prayer to declare the settlement deed Ex.B.1 as null and void and therefore the suit for partition filed was bad in law.

b) Though the plaintiff has claimed relief only with reference to an extent of 6 cents, the Courts below have decreed the suit for the entire 17 cents more particularly when the sale deed in favour of the plaintiff would only show an extent of 6 cents.

c) The appellant has acquired a title to the entire extent of 17 cents by virtue of Ex.B.1, whereas, the plaintiff has only acquired 6 cents from out of this 17 cents on 13.06.1990 under Ex.A.1 and the suit for partition has been



filed 4 years later. Therefore, the suit is bad for want of a pre-suit notice.

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d) The plaintiff's vendor cannot claim any share in the joint family property by virtue of Section 29 A (4) of the Hindu Succession Act.

15. The learned counsel relied on the following Judgements:-

i) *(1991) 1 LW 97 - Sundarambal Vs. Deivanayagam* to support his plea of ouster.

ii) *(2009) 4 LW 439 - S.Seshachalam Vs. S.Deenadayalam* with reference to the pecuniary jurisdiction of the Courts.

iii) *1996 1 CTC 661 - P.B.Ramjee and two others Vs. P.B.Lakshmanaswamy Naidu & 10 others.*

iv) *(2001) 3 MLJ 15 - Balu @ Balakrishnan Vs. Minor B.Sasikumar and Others.*

v) *AIR 1997 SC 471 - Ghantesher Ghosh Vs. Madan Mohan Ghosh and Others.*

16. Per contra, the learned counsel appearing on behalf of the plaintiff on the other hand would submit that the admitted facts would show that the property measuring an extent of 17 cents was jointly possessed by Solai



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Pillai and Thiruvengada Pillai. Therefore, each of them were entitled to an extent of 8.5 cents. Solai Pillai's 8.5 cents had devolved directly on the defendant as regards the Thiruvengada Pillai's share on his demise his 8.5 cents devolved on his daughters. In the year 1957 he was survived only by his 2nd daughter Giriammal @ Lakshmi Ammal. Thiruvengada Pillai's wife had pre-deceased him as also his daughter China Ponnu and Thanjammal. His daughter Giriammal @ Lakshmi Ammal died on 01.04.1987 leaving behind her daughters Pachayammal and Dhanam and a son Elumalai. Therefore, he would contend that on the death of the Thiruvengada Pillai, Chinna Ponna's daughter Govindammal and Thanjammal's daughter Kuppaammal along with their aunt Giriammal @ Laxmi Ammal became jointly entitled to an extent of 8.5 cents.

17. The plaintiff has purchased the shares of Govindammal and Kuppaammal under two sale deeds dated 13.06.1990. Therefore, he would submit that by virtue of the sale the plaintiff became entitled to a 2/3rd share of 8.5 cents. The contention of the defendant that he is the owner of the entire extent of 17 cents on the basis of the settlement deed dated 17.01.1979 executed by Seeyala Pillai and Laxmi Ammal in respect of the



entire 17 cents is totally misconceived.

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18. The learned counsel would submit that the contention that since two daughters Chinna Ponnu and Thanjammal had pre-deceased their father their shares devolved only on Laxmi Ammal and consequently she became entitled to the entire 17 cents, is totally false and baseless. Once the partition had taken place the property becomes the exclusive property of Thiruvengada Pillai and on his death it will devolve equally on his children and children's children. Further, the plea of ouster has been taken and argued for the first time here in this appeal. This point was not taken earlier nor was an issue framed.

19. Heard the learned counsel on either side.

20. Admittedly, the total extent of land is 17 cents. This land belonged to one Thiruvengada Pillai and Solai Pillai. The brothers had partitioned the property and each became entitled to an extent of 8.5 cents in the said property. Solai Pillai had one son Seeyala Pillai and he in turn had one son the Defendant. Therefore, the share of Solai Pillai belongs to the defendant,



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i.e; an extent of 8.5 cents. As regards the remaining extent of 8.5 cents, the same fell to the share of Thiruvengada Pillai in the partition and therefore he was the absolute owner of the same. On his death, his wife and children would be entitled to the same.

21. It is an admitted case that Thiruvengada Pillai's wife and two daughters, Chinna Ponnu and Thanjammal who are the mothers of Govindammal and Kuppammal respectively had pre-deceased him and it was only Lakshmi Ammal, the 2nd daughter of Thiruvengada Pillai who surviving her father. The daughters of Thanjammal and Chinna Ponnu namely, Govindammal and Kuppammal respectively have sold the property to the plaintiff on 13.06.1990, thereby conveying their share in the property to the plaintiff i.e; 2.83 cents each = 5.66 cents. Therefore, the plaintiff has become the owner of 5.66 cents from out of the 8.5 cents that fell to the share of Thiruvengada Pillai. Therefore, the plaintiff cannot claim a right to 6 cents as claimed by him in the suit as he is only entitled to an extent of 5.66 cents.



22. In the written statement the plea of ouster has not been taken except for a stray sentence which is hereinbelow extracted :-

"Patta also transferred in the name of the defendant, the house tax registry is also transferred in the name of the defendant, prior to his father was in possession and enjoyment in their own right and also prescribed title by ouster also."

23. In fact, a reading of the written statement would show that no pleading relating to ouster has been taken. Be that as it may, the right of Thiruvengada Pillai to an extent of 8.5 cents is an admitted fact and he had 3 daughters. Therefore, the defendant cannot claim to have purchased the entire extent of 8.5 cents from Giriammal @ Lakshmi Ammal, since the plaintiff is entitled to an extent of 5.66 cents. Since no pleading regarding adverse possession/ouster has been taken by the defendant, the substantial questions of law (i) and (iii) are answered against the defendant. The defendants have not seriously contested the Court fee paid and is raising it as a ground in this Second Appeal, therefore, substantial question of law number (ii) is answered against the defendant. Similarly the entire share of



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Lakshmi is claimed to be purchased by the defendant and the share of the other 2 daughters of Thiruvengada Pillai by the plaintiff therefore, there is no misjoinder of parties and substantial question of law number (iv) is answered in favour of the plaintiff. The Courts below have considered the evidence and pleadings properly to arrive at its conclusion, therefore, substantial questions of law numbers (v) and (vi) are answered in favour of the plaintiff. In fact, the arguments were advanced on those questions of law.

24. In fine, the Second Appeal stands dismissed confirming the judgement and decree of the Courts below. No costs.

09.02.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The Subordinate Judge, Madurantakam
2. The District Munsif, Madurantakam.

P.T. ASHA, J.



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