



S.A(MD).No.485 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.485 of 2022
and C.M.P(MD)No.6194 of 2022

Nallathambi Asari Appellant/Appellant/1st Defendant

Vs.

1.D.Santhi ...1st Respondent/1st Respondent/Plaintiff

2.C.Rani

3.C.Sivasami

4.C.Saranya

5.D.Kumar

... Respondents 2 to 5 /Respondents 2 to 5
/Defendants 2 to 5

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 31.01.2019 passed in A.S.No.10 of 2017 on the file of the Principal District Court, Pudukkottai, confirming the judgment and decree dated 03.06.2016 passed in O.S.No. 234 of 2010 on the file of the Subordinate Court, Pudukkottai.

For Appellant : Mr.D.Rameshkumar
For R1 : Mr.N.Kamesh
For R2 to R5 : Mr.P.Pandiarajan

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The appellant is the first defendant in the suit



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in O.S.No.234 of 2010 on the file of the Subordinate Court, Pudukkottai.

The respondents 2 to 5 are the defendants 2 to 5 in the suit. The suit was filed for partition claiming 1/6th share in the suit schedule property.

2. In the following paragraphs the parties are described as per their litigative status in the suit.

3.The plaintiff is the grand-daughter of Perumal Asari. Her mother Renganayaki Ammal, who is the daughter of Perumal Asari died and after her death, she has filed the suit seeking for partition of her mother's share out of which she is entitled for 1/6th share each along with her brother, who is the fifth respondent/fifth defendant in the suit. The plaintiff has claimed in the plaint that though her mother during her life time was entitled to 1/3rd share in the suit schedule property, she was deprived of the same by her uncles namely Chockalinga Asari and Nallathambi Asari.

4. However, the contesting defendants in the suit denied the plaintiff's claim for partition on the ground that Nallathambi Asari and Chockalinga Asari have been in possession and enjoyment of the suit schedule property ever since the death of Perumal Asari. According to them, there was an oral



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partition between Perumal Asari, their father and Chockalinga Asari and Nallathambi Asari and therefore, the plaintiff does not have any right over the suit schedule property and further, she has been ousted on account of the long lapse of time.

5. Before the trial court, the plaintiff filed 4 documents which are marked as Ex.A.1 to Ex.A.4. The plaintiff was also examined as witness (P.W.1). On the side of the defendants, no documents were filed. Nallathambi Asari, the first defendant was examined as witness (D.W.1).

6. After framing issues and based on the oral and documentary evidence available on record, the trial court has held that the oral partition pleaded by the defendants in the suit has not been proved through any oral and documentary evidence. The trial court has also taken note of the fact that the revenue records namely Ex.A.1 dated 06.07.2010 also stands in the name of Perumal Asari, the grand-father of the plaintiff and the father of Chockalinga Asari and Nallathambi Asari. The trial court has also held that the plaintiff has discharged her burden of establishing her right over the suit schedule property i.e her right to claim 1/6th share in the same, based on Ex.A.1 to Ex.A.4, which were marked as exhibits on her side.



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7. Though the contesting defendants contended that the plaintiff has been ousted from claiming any right in respect of the suit schedule property on account of the oral partition effected between Perumal Asari and his sons Chockalinga Asari and Nallathambi Asari, they have not filed any documentary evidence before the trial court either in the form of a document confirming oral partition or through revenue records standing in their names. Admittedly, the only revenue record available on record is Ex.A.1 and the same also stands only in the name of Perumal Asari, deceased from whom the plaintiff as well as the contesting defendants derive rights over the suit schedule property. While that be so, when the plaintiff has discharged her burden as per the provisions of Section 101 of Indian Evidence Act that she is entitled to 1/6th share in the suit schedule property by filing documentary evidence and also letting-in oral evidence, it is for the defendants to disprove the same if they claim that the plaintiff is not entitled for any share in the suit schedule property. They have miserably failed to disprove the contentions of the plaintiff by letting-in oral and documentary evidence. The trial court has rightly decreed the suit in favour of the plaintiff by granting the relief of partition as prayed for in the plaint.



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8. The lower Appellate Court namely, the Principal District Court, Pudukkottai by its judgment and decree dated 31.01.2019 has also rightly confirmed the findings of the trial court by dismissing the first appeal filed by Nallathambi Asari, the first defendant in the suit by rightly observing that the trial court has rightly appreciated the facts and has rightly decreed the suit.

9. Even though no separate issue has been framed by the trial court with regard to the plea of ouster taken by the defendants in the suit in their written statement and even without that issue being considered, the contentions of the defendants will have to be rejected as they miserably failed to establish their case through oral and documentary evidence with regard to their plea of oral partition which they claim in their written statement.

10. The learned counsel for the appellant/1st defendant has relied upon the judgment of the learned single Judge of this Court in the case of **Vellapandian @ Thanga Arumugasamy Nayakkar Vs. Duraiappan (died) and 17 others** reported in **2022(2) MWN (Civil) 109** to substantiate his submission that the plaintiff has been ousted from claiming rights in



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respect of the suit schedule property by passage of time. The said judgment has no bearing to the facts of the instant case. Admittedly, in the instant case, no documentary evidence was produced by the appellant/1st defendant to substantiate his claim that there was oral partition between their father and the contesting defendants. In the decision referred to supra, the defendant had a patta standing in his name and on account of long passage of time, this Court held that the plaintiff's right has been ousted. But in the case on hand, the contesting defendants have not produced any documentary evidence to establish their exclusive right over the suit schedule property and hence, the decision relied upon by the learned counsel for the appellant/1st defendant has no bearing to the facts and circumstances of the instant case.

11. It is also brought to the notice of this Court by the learned counsel for the 1st respondent/plaintiff that subsequent to the passing of the preliminary decree passed by the trial court and confirmed by the lower Appellate Court, a final decree application was filed and excepting for the appellant/first defendant, all others have agreed to the passing of a final decree. The said submission is also recorded and this point also goes against the appellant/1st defendant.



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12. The substantial questions of law raised in the grounds of the appeal by the appellant/first defendant in this Second Appeal are all factual issues, which have been rightly considered by the courts below based on oral and documentary evidence and there is no substantial questions of law involved. There is also no perversity in the findings of the courts below. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
CM

To

- 1.The Principal District Court, Pudukkottai.
2. The Subordinate Court, Pudukkottai.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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ABDUL QUDDHOSE, J.

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