



S.A.No.167 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.167 of 2000

A.Azhagarsamy (Deceased)

... Appellant/1st Respondent/
Plaintiff

2.A.Veeranagammal
3.Nagammal
4.Chinnaponni
5.Kamatchi
6.Chinnakamatchi
7.Rajeswari
8.Sivakami
9.Nagarajan

... Appellants 2 to 9

*[Appellants 2 to 9 brought on record as LR's of
the deceased sole appellant vide order dated
12.04.2002 made in C.M.P.No.6124 of 2000]*

Vs

1.Rathakiliammal (Died)
2.Bommakkal (Died)
3.Krishnammal
4.Meenakshiammal
5.Ganesan

...Respondents 1 to 5/
Appellant&Respondents 2 to 5/
Defendants



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6.Mookaiya Goundar

7.Sundararajan

... Respondents 6 & 7

[R6 & R7 were brought on record as LR's of the deceased R2 vide order dated 29.03.2022 made in C.M.P.Nos.5913 and 5914 of 2002 in S.A.No.167 of 2000]

8.Krishnan

9.Palanisamy

10.Ramasamy

... Respondents 8 to 10

[Respondents 8 to 10 were brought on record as LR's of the deceased R1 vide order dated 19.04.2022 made in C.M.P.(MD) No.3072 of 2022 in S.A.No.167 of 2000]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 26.02.1999 made in A.S.No.42 of 1996 on the file of the Sub Court, Dindigul, by reversing the judgment and decree dated 30.11.1993 made in O.S.No.106 of 1987 on the file of the Additional District Munsif's Court, Dindigul.

For Appellants	:	Mr.S.Kadarkarai
For R8 to R10	:	Mr.G.Gomathi Sankar
For R7	:	No appearance
RR1, 2 & 6	:	Died
RR3 to 5	:	Memo filed in USR 2178



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J U D G M E N T

The plaintiff in the suit is the first appellant. The suit is for declaration and injunction in respect of five items of suit property. The suit was decreed. The 1st respondent/1st defendant alone filed an appeal challenging the trial Court's decree and the same was allowed. Aggrieved by the same, the first appellant/plaintiff had filed this second appeal. Pending second appeal, the first appellant died and his legal representatives were brought on record as appellants 2 to 9.

2. According to the first appellant/plaintiff, the suit properties were originally belonged to Bomma Gounder, ancestor of the first appellant/plaintiff. He had three sons viz., Hari Rama Goundar, Nagappa Goundar and Konniah Gounder. The first appellant/plaintiff is the first son of Hari Rama Goundar and apart from the first appellant, he had five daughters. Nagappa Goundar died issueless and his wife predeceased him and hence, his property devolved on Hari Rama Goundar and Konniah



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Goundar. The defendants in the suit are the legal representatives of Konniah Goundar. According to the first appellant, there was a partition in the family between Hari Rama Goundar and Konniah Gounder and the suit properties were allotted to the share of the first appellant's father Hari Rama Goundar and on his death, the first appellant inherited the property as his heir. The first appellant also referred to two suits filed among the respondents in O.S.No.220 of 1972 on the file of the Sub Court, Dindigul and O.S.No.699 of 1985 on the file of the District Munsif's Court, Dindigul. According to the first appellant, the respondents have no right over the suit properties other than the properties, which were allotted to their share in O.S.No.220 of 1972. The first appellant specifically pleaded that the suit properties had been in his possession and enjoyment for more than the statutory period and hence, the respondents were ousted from the suit properties and consequently, he is entitled to declaration of title over the suit property and for consequential injunction restraining the respondents from interfering his peaceful possession and enjoyment of the suit properties.



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3. The 1st respondent/1st defendant and the 5th respondent/5th defendant filed separate written statement and resisted the suit on various grounds *inter alia* specifically denying the averments contained in the first appellant's plaint that there was a partition between his father Hari Rama Goundar and his brother Konniah Goundar. The respondents raised a plea that Konniah Goundar purchased the suit properties and enjoyed the same treating the same as his own properties and hence, the first appellant is not entitled to any right over the same. The respondents also raised a plea that the first appellant had been enjoying the suit properties as permissive occupant by virtue of some arrangement between the first appellant's father Hari Rama Goundar and maternal uncle of the 5th respondent viz., Malliah Goundar. The plea of adverse possession and ouster raised by the first appellant has been specifically denied by the respondents in the written statements filed by them. The respondents also raised a plea of non-joinder of necessary parties viz., the sisters of the first appellant.

4. The parties went to trial on these pleadings and on behalf of the first appellant/plaintiff, he was examined as P.W.1 and one Thethappan was



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examined as P.W.2. On behalf of the first appellant/plaintiff, 18 documents were marked as Ex.A.1 to Ex.A.18. On behalf of the respondents, the 1st respondent/1st defendant was examined as D.W.1 and through her, eight documents were marked as Ex.B.1 to Ex.B.8.

5. The trial Court, on appreciation of oral and documentary evidences, came to the conclusion that the first appellant/plaintiff proved his case that the suit property was allotted to the share of the first appellant's father Hari Rama Goundar and hence, he is entitled to declaration of title and injunction. Aggrieved by the same, the 1st respondent herein filed a first appeal in A.S.No.42 of 1996 on the file of the sub Court, Dindigul. The first appellate Court reversed the findings of the trial Court and held that the first appellant/plaintiff failed to prove the partition between his father Hari Rama Goundar and his brother Konniah Goundar and in the said partition, the suit property was allotted to the share of Hari Rama Goundar. The first appellate Court also non-suited the first appellant/plaintiff on the ground that the first appellant/plaintiff is not entitled to seek declaration of his title without impleading his five sisters viz., the daughters of Hari Rama



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Goundar. Hence, the first appellant had filed this second appeal. As mentioned earlier, the 1st appellant died pending second appeal and appellants 2 to 9 were brought on record as his legal representatives.

6. The learned counsel for appellants 2 to 9 mainly submitted that the present suit was filed by the first appellant/plaintiff mainly on the ground that the respondents are trying to interfere with the possession of the first appellant/plaintiff over the suit property. Therefore, in the present case, his sisters are not necessary parties and if at all, the sisters of the first appellant/plaintiff have got any grievance, it is always open to them to file a suit for partition against the appellants and get their share of property, if any. In nutshell, the contention of the learned counsel for appellants 2 to 9 is that when the possession of the first appellant/plaintiff is sought to be disturbed by the respondents, the present suit filed by the first appellant by impleading the respondents alone, without impleading the others heirs of his father viz., the sisters of the first appellant, is maintainable in law.



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7. This Court is unable to accept the contention raised by the learned counsel for appellants 2 to 9. As per the pleadings of the first appellant, there was a partition in the family between his father Hari Rama Goundar and his brother Konniah Goundar. In the said partition, the suit properties were allotted to the share of the first appellant's father viz., Hari Rama Goundar. Admittedly, the first appellant's father Hari Rama Goundar died in the year 1957 subsequent to the coming into force of the Hindu Succession Act, 1956. Therefore, on the death of Hari Rama Goundar, the five sisters of the first appellant/plaintiff viz., the daughters of Hari Rama Goundar are also entitled to share in the properties of Hari Rama Goundar. However, the present suit has been filed by the first appellant seeking his exclusive title over the suit property and for injunction. This is not a suit for bare injunction restraining the respondents from interfering with the possession of the first appellant. The first appellant positively sought a declaration of his exclusive title over the suit property and he also raised a plea of adverse possession and ouster. On the face of it, it is very clear that on the death of Hari Rama Goundar, his children viz., the first appellant and his five sisters are entitled to succeed to his estate. Therefore, the first appellant is not



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entitled to maintain a suit for declaration of his exclusive title over the suit property and for consequential injunction. The plea of adverse possession and ouster raised by the first appellant has to be tested in the presence of his sisters. Therefore, I do not find any substantial question of law arising for consideration in this second appeal and consequently, the Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court. However, it is made clear that it is open to appellants 2 to 9 to file a suit for appropriate relief by impleading the sisters of the first appellant, if so advised.

8. In fine, (i) this Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court; and (ii) in the facts and circumstances of the case, there will be no order as to costs.

06.01.2023

NCC : Yes
Index: Yes/No
Internet: Yes

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S.SOUNTHAR, J.

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To

- 1.The Sub Judge, Dindigul.
- 2.The District Munsif, Dindigul.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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