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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 10 / 2024

JUDGMENT PRONOUNCED ON : 28 / 10 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.101 OF 2021
AND C.M.P.NO.2153 OF 2021

C.Mani ... Appellant / 1st Respondent /
1st Defendant

Vs.

1.C.Rajan ... 1st Respondent / Appellant /
Plaintiff

2.S.Janarthanan ... 2nd Respondent / 2nd Respondent /
2nd Defendant

3.M.Suguna ... 3rd Respondent / 3rd Respondent /
3rd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated January 29, 2020 made in A.S.No.69 of 2018 on the file of the I Additional District Court at Coimbatore reversing the Judgment and decree dated August 3, 2017 made in O.S.No.476 of 2014 on the file of I Additional Subordinate Court, Coimbatore.

For Appellant : Mr.S.Mukunth



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Senior Counsel
for Ms.T.R.Gayathri
M/s.Sarvabhauman Associates

For Respondent-1 : Mr.S.Saravanakumar

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated January 29, 2020 passed in A.S.No.69 of 2018 by the 'learned First Additional District Judge, Coimbatore' [henceforth 'First Appellate Court' for the sake of brevity and convenience] reversing the Judgment and Decree dated August 03, 2017 passed in O.S.No.476 of 2014 by the 'learned First Additional Subordinate Judge, Coimbatore' [henceforth 'Trial Court'].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Case of the Plaintiff

3. An extent of 460 Sq.Mtr. In S.F.No.1391/3 at Veerampalayam, Kalapatti Village, Coimbatore District along with the tiled house therein constitutes the Suit property and the same belonged to the plaintiff, 1st defendant and one Srinivasan who are all brothers. The



said Srinivasan died intestate on August 24, 2013 leaving behind the defendants 2 and 3 as his only legal heirs. The wife of the said Srinivasan, who is the mother of the 2nd and 3rd defendants also died. The revenue records pertaining to the suit property jointly stands in the names of the plaintiff, 1st defendant and Srinivasan. The plaintiff and the defendants are in joint and constructive possession of the suit property for more than 20 years as co-owners and co-sharers. The plaintiff and the 1st defendant each are entitled to 1/3rd share while the defendants 2 and 3 are jointly entitled to 1/3rd share in the suit property. When the plaintiff demanded for amicable partition of the suit property, the defendants evaded the same. Hence, the plaintiff caused legal notice dated May 2, 2013 against the defendants. In response, the defendants replied with false averments. Therefore, the plaintiff filed the suit for partition seeking division of the suit property into 3 equal shares and allotment of one such share to him.

Case of the Defendants

4. The defendant 2 and 3 did not contest the suit and they were set *ex-parte* before the trial Court. The 1st defendant alone filed



written statement.

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5. The suit property is a tiled building situated in *Natham Poramboke* and the defendant alone is residing in the suit property for more than past four decades. The plaintiff was never in joint and constructive possession of the suit property and is not a co-owner and co-sharer of the suit property. Further, the plaintiff's marriage took place in the year 1972 and the family had to borrow a sum of Rs.6,000/- for the marriage expenses. Since the plaintiff was unable to repay the loan amount, the family property viz., land measuring 2.00 acres situated at Nehru Nagar, Kalapatti was sold in the year 1973 and the sale consideration was utilized to discharge the loan of the plaintiff. Further, at that time, a family arrangement took place in the presence of their mother, where the plaintiff agreed that he will not claim any share in the suit property and also the 1st defendant paid a sum of Rs.10,000/- to the said Srinivasan to relinquish his right in the suit property. Ever since 1973, the 1st defendant alone has been in possession and enjoyment of the suit property by paying the property tax and electricity charges. Further, the suit is also barred by limitation, as the plaintiff has not resided in the Suit property since 1973. Hence, the suit is liable to be dismissed with cost.



Trial Court

6. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.9 documents were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant was examined as D.W.1 and Ex-B.1 to Ex-B.3 were marked.

7. After completion of trial and hearing both sides, the trial Court concluded that the suit property is a *Natham Poramboke* and that the Government is the title holder and it further held that the plaintiff is not in joint possession and enjoyment of the suit property for more than 20 years as alleged and hence, the suit is barred under Article 64 of the Limitation Act, 1963 and also that the Court fee paid under Section 37(2) is not legally sustainable and accordingly dismissed the suit.

First Appellate Court

8. Feeling aggrieved with the trial Court's Judgement and Decree, the plaintiff preferred an appeal in A.S.No.69 of 2018 before the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, concluded that the



defense that the plaintiff had orally relinquished the property was not proved. Further held that the plaintiff is in constructive possession of the suit property along with the defendants and hence, the suit is not barred under Article 64 of the Limitation Act, 1963. The First Appellate Court further held that Ex-A.1 – Adangal and Ex-A.2 - Chitta have been jointly issued by the Government under the Natham Land Tax System in the names of the plaintiff, 1st defendant and Srinivasan who is the father of the defendants 2 and 3 which shows that they are co-owners and accordingly, allowed the appeal and decreed the suit.

Substantial Question of Law

9. Feeling aggrieved with the Judgment and Decree passed by the First Appellate Court, the 1st defendant preferred this Second Appeal.

10. The Second Appeal was admitted on February 15, 2021 on the following substantial question of law:

"Is the Lower Appellate Court correct in decreeing the suit of partition overlooking the fact that the suit property is a natham poramboke land and that the appellant is in exclusive possession of property over a period of 40 years to the exclusion of other co-owners and that the suit is barred



by limitation?

Arguments

11. The learned counsel for the appellant/1st defendant would argue that the suit property is a *Natham Poramboke* and Ex-A.1-Adangal Extract and Ex-A.2-Chitta do not confer any title up on the plaintiff. The 1st defendant alone has been in possession and enjoyment of the suit property by paying the property tax and electricity consumption charges. The plaintiff is residing elsewhere and not in possession of the suit property. Further, the 1st defendant is in possession and enjoyment of the suit property, excluding the plaintiff and other defendants, for more than 40 years. Hence, the trial Court rightly dismissed the suit but, the First Appellate Court without appreciating the facts and circumstances in the right perspective, allowed the appeal and decreed the suit which is erroneous. Accordingly, the learned counsel prays to allow this Second Appeal.

12. Per contra, the learned counsel for the 1st respondent/plaintiff would invite attention of this Court to Ex-A.1 and Ex-A.2 and argue that the Joint Patta No.1502 has been issued in the names of the plaintiff, 1st defendant and Srinivasan. Hence, the plaintiff, 1st



defendant and Srinivasan / father of the defendants 2 and 3 are co-owners.

He further would submit that the alleged oral relinquishment and family arrangement as alleged, have not been proved by the 1st defendant. Hence, the plaintiff as a co-owner and co-sharer is entitled to 1/3rd share. The First Appellate Court, after considering the documents and evidence thoroughly, rightly allowed the appeal and decreed the suit and that there is no need for the interference of this Court with the appellate Court's Judgment. Accordingly, the learned counsel prays to dismiss this Second Appeal.

Discussion

13. The plaintiff, 1st defendant and Srinivasan, who is the father of defendant Nos.2 and 3 are brothers. Plaintiff caused Ex-A.4 – legal notice dated May 2, 2013 claiming his 1/3 share in the Suit property for which the 1st defendant sent Ex-A.7 – reply notice dated July 13, 2013. 1st defendant in his written statement has specifically prayed to read the Ex-A.7 – reply notice as part and parcel of his written statement. In Ex-A.7 – reply notice, the 1st defendant has specifically admitted that the Suit property originally belonged to the plaintiff, 1st defendant and Srinivasan. Further, he has stated that plaintiff had relinquished his share in the Suit property in the presence of the Panchayatdars namely, Mr.Chellakutty



Gounder (Former President of Kalapatty Panchayat) and Mr. Jananathan in the year 1973. In short, plaintiff's case is that he is co-owner in respect of the Suit property and the 1st defendant's case is that the plaintiff orally relinquished his rights in the Suit property. This Court has perused Ex-A.1 and Ex-A.2. Ex-A.1 is the Adangal Extract and Ex-A.2 is the Chitta issued under the Natham Land Tax Scheme in the name of C. Mani (1st Defendant), Rajan (Plaintiff) and Srinivasan (father of defendants 1 and 2). Hence, Ex-A.1 and Ex-A.2 would *prima facie* establish that the plaintiff and the defendants are co-owners of the suit property.

14. The 1st defendant contended that the plaintiff and brother Srinivasan orally relinquished their share in a family arrangement in 1973. It is a settled legal proposition that, when the law says that transfer must be in writing and registered, it can be done that way. If the law does not require a written document, the transfer can be made verbally. As per the Transfer of Property Act, 1882, relinquishment need not be in writing. Hence, oral relinquishment is valid provided, it is proved. See: In ***Ramdas Chimna Vs. Pralhad Deorao reported in AIR 1965 Bom 74***. The burden is upon the 1st defendant to prove the alleged family arrangement as



well as the alleged relinquishment by the plaintiff and his brother Srinivasan. He has not examined any independent witness to prove the same.

15. In this case, the 1st defendant failed to prove his case that plaintiff and Srinivasan relinquished their rights in the Suit property. Defendants filed Ex-B.1 to Ex-B.3, namely, property tax, electricity bill and water tax receipts. Ex-B.1 stands in the name of Chinnasamy who is the father of the plaintiff and 1st defendant. Ex-B.2 stands in the name of Srinivasan who is the father of 2nd and 3rd defendants. Ex-B.3 also stands in the name of Srinivasan. Ex-B.1 to Ex-B.3 and Ex-A.1 and Ex-A.2 would clearly establish that plaintiff's and defendants are co-owners of the Suit properties. Hence, this Court is of the considered view that the first defendant has not proved his case.

16. As stated *supra*, the plaintiff and the defendants are co-owners of the Suit property. The 1st defendant has failed to prove his contention *qua* relinquishment. Therefore, the plaintiff and the 1st defendant each are entitled to 1/3rd share and the defendants 2 and 3 are jointly entitled to 1/3rd share in the suit property. Hence, the law presumes



that the plaintiff is in constructive possession over the suit property.

Perusal of plaint cause title and deposition of P.W.1 and D.W.1 would establish that the plaintiff is residing in the same locality where the Suit property is situated. Merely because the plaintiff is residing some place other than the Suit property, it does not mean that his right over the suit property is extinguished, unless the 1st defendant establishes that the plaintiff is ousted from the suit property for more than the statutory period and the 1st defendant has perfected title by adverse possession.

17. It is apposite to cite here the decision of Hon'ble Punjab and Haryana High Court in ***Sant Ram Vs. Daya Ram [ILR (1962) 1 P&H 101 = AIR 1961 P&H 528]***, which is *locus classicus* in the subject *qua* rights of the co-owner. Hon'ble Punjab and Haryana High Court has held as follows:

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or



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even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession, of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for



actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.

(9) Where a portion of the joint property is, by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.”

18. The further contention of the 1st defendant that since the suit property is a *Natham Poramboke* it cannot be partitioned, deserves to be rejected in view of this Court's decision reported in **(1999) 2 Mad LJ 757 [Packiyam Ammal and others Versus Pattu Ammal and others]**. It has been held therein that even if it is a *Poramboke* land, if a family is in possession and enjoyment of the suit property, there is no bar to partition the property. Relevant portion of the aforesaid judgment reads as follows:

“16. In regard to Item No. 10, the only reason for dismissing the suit was that the family is not having title to the property. Under Ext. A-2, it is found that the family is in possession. It could be a Government land. The possessory



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right continuous in the family. Any arrangement between the members of the family may not bind the Government. But, as between them, it has to be treated as a family asset and available for partition. A preliminary decree also will have to be passed with regard to Item 10.”

19. Hence, the Trial Court's findings are incorrect. The First Appellate Court rightly intervened and set aside the trial Court's Judgment and Decree and decreed the suit in which, this Court does not find any illegality or irregularity. Hence, this Second Appeal must fail.

20. In the result, the Second Appeal is dismissed and the Judgment and Decree dated January 29, 2020 passed by the First Appellate Court in A.S.No.69 of 2018 is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28 / 10 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

1.The I Additional District Court
Coimbatore.

2.The Additional Sub-ordinate Court
Coimbatore.



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3. The Section Officer
VR Section,
High Court of Madras
Madras.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.101 OF 2021

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