



S.A.No.772 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.772 of 2022

1.Sivanandam
2.S.Sridharan
3.S.Sivakumar
4.Indira Gandhi

... Appellants

Vs.

1.Pappal
2.Nalli

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 04.02.2022 passed in A.S. No.21 of 2020, on the file of the Additional District (Fast Track) Court, Mettur, upholding the decree and judgment dated 21.11.2019 passed in O.S.No.268 of 2015, on the file of the Sub Court, Mettur.

For Appellants : Mr.R.Subramanian
For Respondents : Mr.M.Nandakumar



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JUDGMENT

The appellants are the legal heirs of the deceased Alamelu, who was the defendant in O.S.No.268 of 2015 on the file of the Sub Court, Mettur. The respondents / plaintiffs filed the above suit for partition of the suit property into three equal shares and to allot two such shares to them.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiffs in a nutshell is as follows :

The plaintiffs and the defendant Alamelu (since deceased) are sisters. The suit property was purchased by them jointly through a registered sale deed dated 15.02.2002 (Ex.B4) and ever since the date of purchase all the three of them are jointly enjoying the suit property. With regard to the other joint family properties belonging to the family of the



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plaintiffs and the defendants, the plaintiffs have filed a suit in O.S.No.121 of 2015 before the Sub Court, Mettur, for a declaration of their title in respect of all those properties and recovery of possession. Since the plaintiffs could not enjoy the suit property jointly with the defendant, they requested the defendant to partition the suit properties. The defendant in turn directed the plaintiffs to withdraw the suit in O.S.No.122 of 2015 on the file of the Sub Court, Mettur. Therefore, the plaintiffs were constrained to file the present suit for partition.

4. The suit was resisted by the defendant on the following grounds:

- i. The suit property was purchased by the defendant through a registered sale deed dated 15.02.2002 (Ex.B4) and at the request of her father, she included the names of the plaintiffs (her sisters) as purchasers of the suit property.
- ii. The defendant alone paid the entire sale consideration for the purchase of the suit property.
- iii. Ever since the date of purchase the defendant is in possession and



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iv. The defendant is paying necessary tax to the Government.

Therefore, the suit is liable to be dismissed.

5. The trial court after framing necessary issues posted the case for trial.

6. In the trial Court, the first plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A7. The defendant Alamelu (deceased) examined herself and two other witnesses and marked Ex.B1 to Ex.B7.

7. The learned trial court judge after analysing oral / documentary evidence, decreed the suit in favour of the plaintiffs vide his decree and judgment dated 21.11.2019, on the following grounds:-

- i. As per the sale deed dated 15.02.2002 (Ex.B4) the plaintiffs and the defendant Alamelu (since deceased) purchased the suit property jointly.



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- ii. The entire sale consideration of Rs.4,45,000/- was paid by them to their vendors.
- iii. The defendant has not adduced any evidence to show that she alone paid the entire sale consideration for the purchase of the suit property.
- iv. The defendant did not take any action to collect the balance sale consideration from the plaintiffs.
- v. The defendant in her evidence admitted that the plaintiffs are residing in two of the houses situate in the suit property.
- vi. When the sale deed (Ex.B4) is executed and registered, the defendant cannot be permitted to give any oral evidence contradicting or varying the terms of the contract as per Section 91 and 92 of the Indian Evidence Act.

8. Aggrieved over the decree and judgment passed by the trial court, the legal heirs of the defendant Alamelu (since deceased) filed an appeal in A.S. No.21 of 2020, before the Additional District (Fast Track) Court, Mettur. The learned Additional District Judge, Mettur, after



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analysing the evidence on record, upheld the findings recorded by the trial court vide his decree and judgment dated 04.02.2022, as against which the present second appeal is filed.

9. At the time of admission the following substantial questions of law were framed :

"(1) How not the plaintiffs right to property stood extinguished by section 27 of Limitation Act?

(2) Is not the finding of the Courts below that the defendants have not prescribed title by adverse possession perverse when admittedly the defendant has been in possession and enjoyment and in the revenue records also there is mutation in her name?"

10. Heard Mr.R.Subramanian, learned counsel for the appellants and Mr.M.Nandakumar, learned counsel for the respondents.

11. Mr.R.Subramanian, learned counsel for the appellants contended that both the Courts below had wrongly held that the



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possession of one co-owner is deemed to be the possession of the other co-owners. According to him, the property is not a joint family property but was purchased by Alamelu (since deceased) and that she is in possession of the suit property. Since the plaintiffs are not in possession their suit filed in the year 2015 is barred by Section 27 of the Limitation Act. He therefore, prayed for allowing the present second appeal.

12. Per contra Mr.M.Nandakumar, learned counsel for the respondents contended that both the Courts below by a well reasoned orders had decreed the suit filed by the plaintiffs and therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.

13. A perusal of the sale deed dated 15.02.2002 (Ex.B4) shows that the plaintiffs and the defendant Alamelu (since deceased) jointly purchased the suit property. According to the defendant, she paid the entire sale consideration and has been in possession and enjoyment of the suit property even since the date of purchase. Her specific contention is



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that, at the instance of her father the names of the plaintiffs were included in the sale deed. This contention of the defendant has not been established by adducing acceptable evidence. The main contention of the learned counsel appearing for the appellants is that since the plaintiffs are not in possession of the suit property, they cannot maintain the present suit since it has been filed after a period of twelve years from the date of the sale deed.

14. Section 30 of the Limitation Act says that the Court will not take cognizance of any suit which is barred by limitation even if issue of limitation is not pleaded in the written statement. However, the law of limitation bars the remedy but not the right. Section 27 of the Limitation Act is an exception to the general principle of the law of limitation. It conveys that if a person fails to file a suit for recovery of possession within the period of limitation, his right to recover the possession of that property also extinguishes. If such a situation occurs, the true owner extinguishes his ownership over the property. Section 27 of the Limitation Act affirms the limitation period to file a suit on the part of



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owner of the property to be twelve years under Article 65 of the Schedule of Periods of Limitation First Division Suits. The time limit commences from the date when the possession of the immovable property becomes adverse to the plaintiff. The defendant should prove the date on which adverse possession of the property began. This date is critical as it determines the twelve year statutory period required for adverse possession. It is also necessary to demonstrate that the true owner had knowledge of the possession and the date when he became aware of it. Apart from this, the defendant should be in continuous possession without any hindrance.

15. In the instant case the defendant states that she is in possession of the suit property from the date of sale i.e. 15.02.2002 (Ex.B4) and that the suit filed by the plaintiffs in the year 2015 is hit by Section 27 of the Limitation Act. However, it is pertinent to point out that the defendant had admitted in her evidence that there are three houses in the suit property and that her sisters (the plaintiffs) are residing in two houses. Thus the defendant herself has admitted the plaintiffs'



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possession over the suit property. Moreover, the defendant in her written statement has not mentioned the date when her possession became adverse to the plaintiffs. It is not the date of sale deed but the date on which the possession became adverse to the plaintiffs.

16. It is also pertinent to point out that the present suit is filed for partition of the suit property. The plaintiffs and the defendant have jointly purchased the suit property and the defendant's contention that she alone paid the entire sale consideration has not been substantiated. Moreover as per Section 91 and 92 of the Indian Evidence Act when the terms of a contract is reduced in the form of a document, no evidence shall be given in proof of the terms of such contract. No evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding to, or subtracting from, its terms. It is relevant to extract Section 91 and 92 of the Indian Evidence Act.



Section 91 in The Indian Evidence Act, 1872

" 91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no [evidence] [Where, however, a Criminal Court finds that a confession or other statement of an accused person has not been recorded in the manner prescribed, evidence may be taken that the recorded statement was duly made-see the Code of Criminal Procedure, 1973 (2 of 1974), Section 463.] shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.

Exception 1. - When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2. - Wills [admitted to probate in [India] [Substituted by Act 18 of 1872, Section 7, for "under the Indian Succession Act".]] may be proved by the probate.

Explanation 1. - This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2. - Where there are more originals than one, one original only need be proved.

Explanation 3. - The statement, in any document whatever, or



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a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Section 92 in The Indian Evidence Act, 1872

92. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms :

Proviso (1). - Any fact may be proved which would invalidate



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any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] [Substituted by Act 18 of 1872, Section 8, for "want of failure".] of consideration, or mistake in fact or law.

Proviso (2). - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). - Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). - Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular



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ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called "The Rampur Tea Estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded a part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitled him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words : "Bought of A a horse for Rs. 500". B may prove the verbal warrantly.

(h) A hires lodgings of B, and gives B a card on which is written - "Rooms Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board. A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It



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is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered."

The defendant had admitted the sale deed Ex.A1 and she cannot be permitted to say that the other co-owners are mere name lenders.

17. The first appellate court in his judgment has also observed thus:

" 17. It is true that all the documents are in the custody of the defendant in respect of the suit property. Just because the defendant has all documents in respect of the suit property does not mean he is the absolute owner of the suit property. In fact, the defendant is the eldest member of the family. It is made clear that the defendant is being the eldest member of the family, all original documents are in the custody of the defendant and paying tax to the



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suit property. Generally if only one person pays tax on a joint property, it cannot be considered as her absolute property. Under these circumstances in order to prove the plaintiffs claim the 2nd plaintiff has been examined as PW1. Besides, the husband of the 1st plaintiff has been examined as PW2. During the course of cross examination of PW1, the defendant put a suggestion that, “வழக்கு சொத்துக்களை கிரயம் வாங்குவதற்கு நாங்களோ பிரதிவாதியோ ஒரு ரூபாய் கூட செலவு செய்யவில்லை என்றாலும், எனது தகப்பனார் அவரது சொந்த சம்பாத்தியத்தில் பெயரளவில் எங்கள் பெயரில் கிரயப்பத்திரம் எழுதிக்கொடுத்தார் என்றால் சரியல்ல.” According to the suggestion put by the defendant, it is revealed that the suit property purchased in the name of plaintiffs and defendant by their father namely Thangavelu. Further, the defendant put a suggestion during the course of cross examination of PW1 that, “எனக்கு எனது தகப்பனார் போதுமான சொத்துக்கள் கொடுத்துவிட்டதால் வழக்கு சொத்தானது பிரதிவாதிக்கு மட்டுமே ஒதுக்கப்பட்ட சொத்து என்று சொன்னால் சரியல்ல” According to the suggestion put by the defendant, it is clearly revealed that the father of the plaintiff purchased the suit property in the name of his 3 daughters namely plaintiffs and defendant. Moreover, according to the suggestion put by the defendant, it is



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made clear that the defendant did not pay the sale consideration amount as alleged in the written statement.

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Admittedly no piece of documents produced by the defendant to show that the entire sale consideration amount paid by the defendant at the time of purchasing the suit property. The contention of the defendant that while purchasing the suit property, the father of the plaintiffs and defendant requested the defendant to include the plaintiffs name in the sale deed. On request of the defendant's father, the plaintiffs name included in the sale deed. The plaintiff also requested the defendant to include their name in the sale deed and they will contribute the sale consideration amount towards their respective shares within 3 years. But the plaintiffs did not contribute the sale consideration amount towards their respective shares within 3 years. After that the defendant did not take any steps to collect the sale consideration amount from the plaintiffs within 3 years. If really, the defendant had paid the entire sale consideration amount at the time of purchasing the suit property, definitely the defendant had taken steps to collect the sale



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consideration amount from the plaintiffs as agreed by them. In such circumstances the initial burden is proved by the plaintiffs that the suit property purchased in the name of plaintiffs and defendant jointly for a total sale consideration amount of Rs. 4,45,000/-. Though, the defendant has contended that the entire sale consideration amount paid by the defendant while purchasing the property, she has not established the averments made in the written statement by adducing oral and documentary evidences.

22. It is made clear that, before purchasing the suit property, the father of the plaintiffs and defendant, namely Thangavelu had entered into an agreement of sale with Anbalagan and others in respect of the suit property through Ex.B3. Subsequent to the sale agreement, the suit property purchased in the name of plaintiffs and defendant jointly. Therefore, the contention of the defendant could not be accepted that the entire sale consideration amount paid by the defendant alone. The plaintiffs established that the suit property purchased in the name of plaintiffs and defendant jointly and they have been possessing and enjoying the suit property along with defendant. Hence, plaintiffs are entitled to 2/3 shares in



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the suit property. "

18. Both the Courts belows have concurrently held that the plaintiffs are also in possession of the suit property and the defendant has not established any of her contentions mentioned in her written statement. All the observations of both the Courts below are based on evidence and facts and therefore, the substantial questions of law 1 and 2 are answered against the appellants.

19. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 04.02.2022 passed in A.S. No.21 of 2020, on the file of the Additional District (Fast Track) Court, Mettur and the decree and judgment dated 21.11.2019 passed in O.S.No.268 of 2015, on the file of the Sub Court, Mettur, are upheld.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Additional District (Fast Track) Court, Mettur.
2. The Sub Court, Mettur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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