



S.A.No.726 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.726 of 2021

and

C.M.P.No.14271 of 2021

Marammal @ Marathal (Died)

1. Kanagaraj(died)
2. Padmavathi
3. Ranganathan
4. Loganathan

... Appellants

Vs.

1. Palanathal
2. Adaikathal@ Chinnamani
3. Kamala

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 24.03.2021 in A.S.No.91 of 2019 on the file of the II Additional Sub Court, Coimbatore, confirming the judgment and decree dated 19.03.2018 in O.S.No.593 of 2017 on the file of the District Munsif Court, Sulur.

For appellants	: Mr.Govi Ganesan
For R1 and R2	: Mr.C.Kanagaraju
For R3	: No appearance



S.A.No.726 of 2021

JUDGMENT

WEB COPY The defendants 2 and 4 to 6 are the appellants before this Court.

2. The circumstances which have given rise to the above second appeal are hereinbelow set out. For the ease of understanding of the case, the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiffs had filed a suit in O.S.No.247 of 2008 originally on the file of the District Munsif Court, Palladam, which was, for jurisdictional reasons, later transferred to the file of the District Munsif Court, Coimbatore, and re-numbered as O.S.No.2543 of 2012 and thereafter, once again transferred to the file of the District Munsif Court, Sulur, and re-numbered as O.S.No.593 of 2017. The suit was filed for partition and allotment of the plaintiffs' 3/18th share in the suit schedule property.



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2.2. It is the case of the plaintiffs that they are sisters, and daughters of one Rangasamy Gounder and Thirumathal. Rangasamy Gounder died on 01.09.1989 and his wife Thirumathal had predeceased him. After the death of the Thirumathal, Rangasamy Gounder had married the first defendant, viz., Marammal @ Marathal and the defendants 2 and 3 are the son and the daughter respectively, of the said Rangasamy Gounder and Marammal @ Marathal and the 4th defendant is the wife of Soundarrajan, who is the deceased son of Rangasamy Gounder and the defendants 5 and 6 are their children.

2.3. The plaintiffs would submit that the suit schedule property had been purchased by Rangasamy Gounder under a registered sale deed dated 13.09.1978. Rangasamy Gounder had purchased the property in his name and that of the first defendant. The first defendant was only a name lender and the entire sale consideration had been paid by Rangasamy Gounder. The plaintiffs would submit that since Rangasamy Gounder died intestate and as the plaintiffs and the



defendants were enjoying the suit property jointly, the plaintiffs had demanded partition from the defendants as well as the deceased Soundarrajan as early as in the year 1977. But, the defendants kept postponing the same without giving any valid reason.

2.4. It appears that on 20.05.1997, the first and third defendants had executed a sale deed in favour of the said Soundarrajan and on coming to learn about the same, the plaintiffs have sent a legal notice dated 28.03.2008, calling upon the defendants to divide the suit property by metes and bounds. Since there was no response to the said notice, the plaintiffs have come forward with the suit in question.

2.5. A written statement was filed by the defendants 1, 2 and 4 to 6, in which, they would admit that the suit property was purchased by Rangasamy Gounder and Mammal @ Marathal jointly and that Rangasamy Gounder had died in the year 1989. However, it is the contention of the defendants that the plaintiffs had been given in marriage 40 years ago and they had left Pachagoundempalayam for



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Coimbatore and their whereabouts were not known to these defendants as well as the third defendant. They have contended that the second defendant left the family at the age of 10 itself. It is only on the death of Soundarrajan, the second defendant had returned back to Pachagoundempalayam. The defendants would submit that the first and third defendants and the deceased Soundarrajan were in exclusive enjoyment of the suit property after the death of Rangasamy Gounder. Therefore, under a sale deed dated 20.05.1997, the defendants 1 and 3 had sold their share to Soundarrajan and Soundarrajan had taken possession of the entire property. Pursuant to the execution of sale deed dated 20.05.1997, he has become the absolute owner of the suit property and also kept the revenue records mutated in his name.

2.6. On 06.08.2005, Soundarrajan died leaving behind him the defendants 1 and 4 to 6 as his legal heirs to succeed his estate. The second defendant admits the sale deed dated 20.05.1997 executed in favour of the said Soundarrajan by the defendants 1 and 3 and he was not claiming any share in the suit property. The defendants would



submit that Soundarrajan had spent money to deepen the well and obtained service connection to the well as well as domestic service connection and also constructed an east-facing tiled house in the said suit property. Therefore, it is the contention of the defendants that the said Soundarrajan had been exercising rights as the absolute owner. It is only the defendants 4 to 6 who are in absolute possession and enjoyment of the suit property. The defendants would submit that the defendants 4 to 6 had perfected title by ouster and therefore, the plaintiffs are not entitled to any share in the suit schedule property.

2.7. An additional written statement was filed by the 5th defendant which was adopted by the defendants 2, 4 and 6, in which, it is contended that Rangasamy Gounder had not died on 01.09.1989, but, had passed away on 26.01.1989. The suit property was purchased by the first defendant who is the second wife of Rangasamy Gounder from and out of her own income, which she had obtained by selling her property in favour of one Ramathal under a registered sale deed.



2.8. That apart, the first defendant had obtained hand loan and also alienated her gold jewellery to purchase the property. The deceased Rangasamy Gounder had not contributed any amount for the purchase of the said property. Therefore, they sought for the dismissal of the suit.

TRIAL COURT:

3. The learned Trial Judge had framed the following issues.

“(i)Whether Rangasamy Gounder had absolute right to the suit property?

(ii)Whether the plaintiffs were entitled to a partition as prayed for?

(iii)To what other reliefs they are entitled to?”

4. The plaintiffs examined the second plaintiff as P.W.1 and marked Exs.A1 to A9. The 5th defendant examined himself as D.W.1 and marked Exs.B1 to B6.

5. The learned Judge, on considering the evidence on record,



S.A.No.726 of 2021

held that the plea of ouster put forward by the defendants 2 and 4 to 6 had been rejected on the ground that Rangasamy Gounder had died on 26.01.1989 and after his demise, the transactions in respect of the property had taken place on 20.05.1997, in and by which, the defendants has for the first time asserted and exclusive right of property. The suit is filed on 12.08.2008 and therefore, the suit has been filed within a period of 12 years, from the date on which, the plaintiffs had come to know about their exclusion from the suit schedule property.

6. The Trial Court had rejected the contention of the plaintiffs that the property belonged to only Rangasamy Gounder and that the sale consideration for the purchase was given only by Rangasamy Gounder and the first defendant was only a name lender. The Trial Court held that the first defendant had an equal share in the property. The learned Judge, therefore, held that the plaintiffs were entitled to a share in the half share of Rangasamy Gounder along with the others.



S.A.No.726 of 2021.

7. Ultimately, the suit was decreed granting each of the plaintiffs 1/12th share in the suit property.

LOWER APPELLATE COURT:

8. Challenging the said judgment and decree passed by the District Munsif, Sulur, the defendants 2 and 4 to 6 had filed an appeal in A.S.No.91 of 2019 on the file of the II Additional Sub Court, Coimbatore. The learned Judge confirmed the judgment and decree of the Trial Court and dismissed the appeal. The plaintiffs have not challenged the judgment and decree passed in O.S.No.593 of 2017 by the District Munsif, Sulur.

9. It is against this judgment and decree, the defendants 2 and 4 to 6 are before this Court.

10. Heard the learned counsel on either side and perused the materials available on record.



11. The above second appeal was admitted on 24.09.2021, on the following substantial questions of law.

“(i)When the plaintiffs have not even pleaded the nature of avocation and the means of deceased Rangasamy Gounder for purchasing Ex.A1 sale deed property, is it correct on the part of the Courts below to hold that the deceased Rangasamy Gounder has also contributed for the purchase of the same?

(ii)When the father Rangasamy Gounder had died on 26.01.1989 and succession opened on that date, it is not the suit, which was filed during the year 2008, is barred by limitation?

(iii)When admittedly the plaintiffs were married 40 years back and settled elsewhere, are they not ousted from the suit property?”

DISCUSSION:

12. The plaintiffs have come forward with the suit for partition on the ground that the suit property had been purchased by Rangasamy Gounder out of his income and that the first defendant who is his second wife, was only a name lender and therefore, the plaintiffs were



entitled to a share in the entire property.

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13. The defense to this claim for partition is two fold. Firstly, the defendants have pleaded that the property has been purchased by the first defendant out of her own funds and the deceased Rangasamy Gounder was only a name lender. The amount given for the purchase came from the sale of the first defendant's property and from the sale of her gold jewellery and hand loan. Secondly, the defendants 2 and 4 to 6 have pleaded ouster. The first defendant died pending the suit and the third defendant has not contested the suit.

14. As regards the ouster, it is the contention of the defendants that Rangasamy Gounder had died on 26.01.1989 and the suit has been filed only in the year 2008 and therefore, the suit was clearly barred.

15. Admittedly, Ex.A1 – sale deed stands in the joint name of Rangasamy Gounder and Mammal @ Marathal. The defendants had originally filed the written statement which was a common written statement for the defendants 1, 2 and 4 to 6, in which, the defendants



pleaded that the entire sale consideration was paid by Mammal @ Marathal out of her funds. However, there is absolutely no proof on the side of the defendants to prove that it was only Mammal @ Marathal who had contributed to the purchase and another factor which has to be taken into consideration is that the first defendant who was alive, has not been examined as a witness and she has not submitted herself to cross-examination. Therefore, adverse inference for the non-examination of the first defendant viz., Mammal @ Marathal has to be drawn.

16. The plaintiffs had also failed to establish their contention that Rangasamy Gounder had purchased the property out of his own income. Therefore, the plaintiffs would be entitled to a share in Rangasamy Gounder's share i.e., half share in the suit schedule property. The share of the first defendant has been sold to her deceased son Soundarrajan. Therefore, the Courts below have rightly arrived at a conclusion that the plaintiffs are entitled to 1/12th share in the suit schedule property. Therefore, the substantial question of law (i) is



answered in favour of the plaintiffs.

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17. It appears that much efforts have been made to say that the said Rangasamy Gounder had not died on 01.09.1989 as pleaded by the plaintiffs, but, died only on 26.01.1989 as pleaded by the defendants. The plaintiffs had produced the death certificate as Ex.A2 which clearly shows that the said Rangasamy Gounder had died on 01.09.1989. Therefore, the claim for partition arose on 01.09.1989. However, it is seen that only on 21.11.2006 the plaintiffs came to know about the sale deed dated 20.05.1997 executed by the defendants 1 and 3 in favour of Soundarrajan. Therefore, it is only on 20.05.1997 that the defendants had asserted their independent right to the suit property. The suit has been filed in the year 2008. Therefore, the plea of adverse possession has to be rejected and the Courts below have also rightly rejected this plea of ouster. It is needless to state that the enjoyment of the common property by one co-owner does not automatically amount to ouster. There must be an open, hostile and continuous possession and in the case of ouster, the co-owner has to be put on notice about the other co-owners asserting an independent and individual rights. The



S.A.No.726 of 2024

written statement is totally bereft of the details, as to the date from which, the ouster was pleaded. Therefore, the substantial questions of law (ii) and (iii) are answered against the defendants.

In fine, the judgments of the Courts below are very much in order and they do not require any re-consideration. Accordingly, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. No costs.

23.02.2024

Index : Yes/No
Speaking order/non-speaking order
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To

1. The District Munsif, Sulur.
2. The III Additional Sub Judge, Coimbatore.
3. The Section Officer, V.R. Section, High Court, Madras.



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S.A.No.726 of 2021

P.T.ASHA, J.,

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S.A.No.726 of 2021

23.02.2024