



S.A.No.154 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.154 of 2017

G.Settu

... Appellant

Vs.

1. G.Krishnamoorthy
2. G.Veeramani
3. Rajammal (Died)
4. Logammal

... Respondents

(Since the legal heirs of the third respondent are already on record a memo to that effect was filed and the same was recorded in C.S.R. No.10436)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.09.2016 passed in A.S. No.55 of 2015, on the file of the Sub Court, Ranipet, Vellore District, upholding the decree and judgment dated 05.09.2014 passed in O.S.No.34 of 2012, on the file of the District Munsif Court, Ranipet, Vellore District.

For Appellant : Mr.K.V.Ananthakrushnan



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JUDGMENT

The appellant is the first defendant in O.S.No.34/2012 on the file of the District Munsif Court, Ranipet. The first respondent / plaintiff filed the suit for partition of the suit properties into five equal shares and to allot one such share to him.

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 appeal would also be indicated.

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

The suit properties originally belonged to one Govindaraja Gounder. He died intestate during the year 2000, leaving behind his wife (third defendant), a daughter (fourth defendant) and three sons (plaintiff and the defendants 1 and 2). After the death of Govindaraja Gounder, the suit properties were in joint possession and enjoyment of the plaintiff and the defendants and there was no partition by metes and bounds. During the year 2012, the first defendant dug up the land in the first item of the



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suit property for laying foundation and when this was questioned by the plaintiff, the defendants 1 and 2 threatened him with dire consequences. Therefore, the plaintiff issued a legal notice dated 02.07.2012 (Ex.A3) to the defendants seeking partition of the suit properties into five equal shares and to allot one such share to him. The said notice was served on the defendants as is evidenced by the postal acknowledgment cards (Ex.A4 and Ex.A5). However, the defendants did not come forward to effect the partition of the suit properties. Hence the suit.

4. The defendants 3 and 4 remained absent before the trial court and were set *ex parte*. The suit was resisted by the defendants 1 and 2 on the following grounds:

- i. The suit is not maintainable either in law or on facts.
- ii. The suit properties were partitioned orally during 1995, in and by which 50 cents of land was allotted to the first defendant in the second item of the suit property.
- iii. Govindaraja Gounder settled the first item of the suit property in favour of the first defendant through a registered settlement deed in



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the year 1995 and he has been in possession and enjoyment of the same.

iv. He also obtained patta in respect of the first item of the suit property and his enjoyment is to the knowledge of the plaintiff and the other defendants.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether the plaintiff is entitled for the relief of partition ?*
- ii. Whether the plaintiff is entitled for 1/5th share ?*
- iii. Whether the plaintiff is entitled for the preliminary decree for partition?*
- iv. To what other relief ?"*

6. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A5. The first defendant examined himself and one another witness and marked Ex.B1 to Ex.B4.



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7. The learned trial court judge, on considering the evidence on record, decreed the suit filed by the plaintiff, vide her decree and judgment dated 05.09.2014, on the following grounds:

- i. Though the defendants had contended that the suit properties were partitioned orally during the year 1995, they did not substantiate the same by adducing acceptable evidence.
- ii. Natham patta (Ex.B1) issued in favour of the first defendant is not sufficient to hold that there was an oral partition in the family of the plaintiff and the defendants.
- iii. Though the defendants had taken a stand that the suit properties are the joint family properties, they have not proved the said contention also.
- iv. When the second item of the suit property measures 1.44 acres, the first defendant could not have been allotted 50 cents.

8. Aggrieved over the decree and judgment passed by the trial court judge, the first defendant filed an appeal in A.S. No.55 of 2015 before the Sub Court, Ranipet, Vellore District. The learned Subordinate



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Judge, Ranipet, after analysing the oral and documentary evidence on record, upheld the findings recorded by the trial court judge vide her decree and judgment dated 06.09.2016, as against which the present second appeal is filed.

9. At the time of admission the following substantial questions of law were framed by my learned predecessor :

“a. Had not the Courts below gone outside the pleadings and issues and failed to advert their attention to the admitted and established facts that the appellant is in possession of the suit properties and hence the suit ought to have been valued for the purpose of court fees and jurisdiction under Section 37(1) and not under 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act?

b. Govindaraja Gounder died in the year 2000. After the oral partition in the year 1995, whether the second partition after 12 years is barred by limitation ?”



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10. Heard Mr.K.V.Ananthakrushnan, learned counsel for the appellant.

11. Though notices were served on the respondents and their names were also printed in the cause list, there is no representation on their behalf.

12. Mr.K.V.Ananthakrushnan, learned counsel appearing for the appellant contended that the defendants have proved the oral partition that took place in the year 1995 by examining the witnesses and also by adducing patta issued in favour of the first defendant. However, both the Courts below did not consider the same and wrongly decreed the suit. It is also his submission that the suit for partition filed by the plaintiff in the year 2012, is barred by limitation, especially, when the properties were partitioned in the year 1995.



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13. It is seen from the records that the suit properties originally belonged to the father of the plaintiff and the defendants 1, 2 and 4 and the husband of the defendant 3. It is admitted that Govindaraj Gounder died intestate. The plaintiff has filed the suit seeking for partition of the suit properties into five equal shares and to allot one such share to him. The main contention of the first defendant in his written statement is that there was an oral partition in the family during the year 1995 and that an extent of 50 cents in the second item of the suit property was allotted to his share. When the first defendant had claimed oral partition, the burden of proof lies on him. In order to prove the oral partition, the defendants had relied on the oral evidence of one Muthu Rama Reddy (D.W.2). D.W.2 in his evidence had deposed that Govindaraj Gounder died in the year 1987 and that there was an oral partition in the family during 1985. It is an admitted case of the plaintiff and the defendants that Govindaraja Gounder died in the year 2000. Thus D.W.2 does not know anything about the family of the plaintiff and the defendants. It is also the contention of the first defendant that the first item of the suit property was settled in his favour by his father through a settlement deed and that he is



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in possession of the same. According to him, the revenue authorities issued a patta (Ex.B1) in his favour.

14. A perusal of Ex.B1 shows that the Special Tahsildar, Arcot, had issued a separate patta in respect of survey numbers 624/3D4 and 624/3E1. In the plaint schedule, the first item of the suit property is described as punja land in old survey number 623/2 and new survey number 624/3D1, 2, 3, 4, 3E1 and 2. It is not known as to how a patta (Ex.B1) was issued in favour of the first defendant when he has not filed the registered settlement deed allegedly executed by his father. The second item of the suit property measures 1.44 acres of land and it is not known as to how the first defendant was allotted 50 cents out of the entire extent of 1.44 acres when there are four other sharers. Thus, the first defendant has not established either the oral partition that took place in the year 1995 or the execution of the settlement deed in his favour by his father.



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15. On the contrary, the plaintiff was able to establish that his father died intestate and that he is entitled to 1/5th share in the suit properties. It is pertinent to point out that the defendants 3 and 4 did not contest the suit and they remained absent in the trial court and were set *ex parte*. Both the Courts below had analysed the evidence on record and concurrently held that the plaintiff is entitled to 1/5th share in the suit properties.

16. It is the contention of the plaintiff that after the death of his father Govindaraja Gounder, all the sharers were in possession and enjoyment of the suit properties jointly and that since the first defendant unauthorizedly dug up the first item of the suit property for laying foundation, he was constrained to issue a legal notice dated 02.07.2012 (Ex.A3). There is nothing on record to show that the first defendant was in possession of the entire extent of the first item and 50 cents in the second item of the suit properties to the exclusion of other sharers.



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17. The first appellate court in fact in its judgment had observed thus :

"17. In order to prove his contention, the 1st defendant examined himself as DW1 and one Muthuraman examined as DW2. DW2 is none other than the relative of the 1st defendant. He was examined to prove the oral partition. But DW2 has deposed evidence in his cross examination that the late Govindaraja Gounder died in the year 1987 and that the oral partition held two years prior to his death. But as per the evidence of DW1, the oral partition was held in 1995. The late Govindaraja Gounder died in the year 2000. So the evidence of DW2 is not at all corroborating the evidence of DW1 and the case of the 1st defendant. The evidence of DW2, who is none other than the maternal uncle of DW2 is unreliable one. Even though DW2 has stated that he participated in the oral partition, there is no document, no supportive evidence in support of the appellant in this regard. Hence the trial court rightly held that the oral partition was not proved.

18. The next contention of the appellant that he is in possession and enjoyment of the suit properties and he relied upon the patta, tax receipts etc. Admittedly patta is not a



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conclusive proof for document of title. The appellant is the elder member of the family and patta standing in the name of the elder member does not mean that the entire properties belongs to him. As per Ex.A1 and Ex.A2, the properties purchased by late Govindaraja Gounder and stands in his name as on date. The appellant has taken an inconsistent plea that the suit property is ancestral one, for which there is on evidence. The appellant has also contended that the plaintiff is out of possession and that he filed the suit without any merits. There is no necessity for co-sharer to be in joint possession. The Hon'ble Apex Court held in

Neelvathi ..vs.. Natarajan,

AIR 1980 SC691

"To continue to be in joint possession in law it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession"

19. The trial court also raised a question that the B schedule property, being an extent of 1.44 acres, how four



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All the observations of the first appellate court are perfectly in order and therefore, the substantial questions of law are answered against the appellant.

18. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. the decree and judgment dated 06.09.2016 passed in A.S. No.55



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of 2015, on the file of the Sub Court, Ranipet, Vellore District and the decree and judgment dated 05.09.2014 passed in O.S.No.34 of 2012, on the file of the District Munsif Court, Ranipet, Vellore District, are upheld.

- iii. since the mother of the plaintiff (third defendant) died, the plaintiff is entitled to 1/4th share in the suit properties.

12.12.2024

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

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2. The District Munsif Court, Ranipet, Vellore District.
3. The Section Officer, VR Section, High Court, Madras.



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