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S.A.No.191 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.191 of 2017
and C.M.P.No.6733 of 2017

1. G.Ravi
S/o.V.Govinda Mandiry
2. G.Mani,
S/o.V. Govinda Mandiry
3. G.Srinivasan,
S/o.V.Govinda Mandiry
4. G.Saraswathi,
W/o.Nagaraj
5. G.Ramesh,
S/o.V.Govinda Mandiry
6. G.Balaji,
S/o.V.Govinda Mandiry

.. Appellants

vs.

1. A.Dhanapal,[Died]
S/o. Adhi Mandiry
2. A.Kannan,
S/o.Adhi Mandiry
3. A.Devaraj,
S/o.Adhi Mandiry
4. J.Vadivel,



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S/o.Jagadevan

5. Ramani,
D/o.Jagadevan

6. J.Nandagopal,
S/o.Jagadevan

7. Saraswathi,
D/o.Sekar

8. Lakshmi,
D/o.Sekar

9. Sasikala,
D/o.Sekar

10.Chandrakala,
D/o.Sekar

11.D.Vinod,
S/o.A.Dhanapal

12.D.Vijay,
S/o.A.Dhanapal

13. D.Vivek Son,
S/o.A.Dhanapal

14. D.Vidhya,
S/o.A.Dhanapal

...Respondents

[R1 died, R11 to R14 are bring on records as legal heirs of the deceased R1 vide Court order dated 10.01.2024 made in C.M.P.Nos.28543, 28544 to 28546 of 2023 in S.A.No.191 of 2017 by PBBJ]



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Prayer: Second Appeal under Section 100 of C.P.C., to set aside the decree and judgment passed in A.S.No.70 of 2015 on the file of the Sub-Ordinate Judge Court, Vellore, dated 03.10.2016 reversing the decree and judgment passed in O.S.No.582 of 2009 on the file of Additional District Munsif, Vellore dated 25.08.2015.

For Appellants : Mr.S.Thamizharasi

For Respondent : Mr.S.Prem Raj Kumar [RR2 to R14]
R1- Died

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 03.10.2016 passed in A.S.No.70 of 2015 on the file of the Sub-Ordinate Judge Court, Vellore, reversing the judgment and decree dated 25.08.2015 passed in O.S.No.582 of 2009 on the file of the Additional District Munsif, Vellore.

2. The parties are described as per their litigating status before the trial Court.

3. The trial Court decreed the suit. However, on appeal by the



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second defendant, the First Appellate Court went into the issue of payment of Court fee and the exclusive possession not being with the plaintiff and on that ground alone, allowed the appeal and set aside the decree and judgment of the trial Court granting a preliminary decree in favour of the plaintiffs.

4. Aggrieved by the said judgment and decree, the plaintiffs are before this Court.

5. On 07.03.2017, the above second appeal was admitted on the following substantial question of law:

“Whether the Lower Appellate Court is correct in law in arriving at the finding that the appellants/plaintiffs ought to have filed the suit under Section 37[1] of the Tamil Nadu Court Fees Act, in the absence of establishing the joint possession, despite the fact that Ex.A3 – Joint Patta stands in the name of the defendants?”

6. Heard the learned counsel appearing for the appellants/plaintiffs and the learned counsel appearing for the respondents/defendants.



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7. It is an admitted case of the parties that the property originally belonged to one Kanagammal, who died intestate in the year 1998, leaving behind her, six legal heirs. The plaintiffs are the legal heirs of Abbarangi, one of the said six legal heirs. The second defendant, Dhanapal contested the suit on the ground that the property has already been partitioned and the plea of ouster was put against the plaintiffs. The trial Court negatived the said plea and granted a preliminary decree in favour of the plaintiffs. However, the first Appellate Court without testing the judgment and decree on merits, has merely decided the appeal on non-payment of Court fee under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. In fact, the trial Court has rightly discussed the legal position by citing the judgment of the Hon'ble Supreme Court and stating that, in case of partition between co-owners, the possession of one is, in law, possession of all, unless ouster or exclusion is proved.

8. The plaintiffs who have come to this Court had specifically stated that they are in joint possession of the suit property and it is not the case of the defendants that they are not the legal representatives of Abbarangi and therefore, they are to be denied a claim for partition. The



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suit was resisted only on the ground that there has been an ouster of the rights of the plaintiffs. While so, the First Appellate Court ought to have tested the judgment and decree of the trial Court on the plea of ouster and decided as to whether the defendants were successful in establishing the same.

9. It is the further case of the defendants that the plaintiffs have the knowledge of partition and they are estopped from claiming a share from the suit property. However, without going into the merits of the case, the first Appellate Court has erroneously held that the plaintiffs ought to have valued the suit under Section 37(1) of Tamil Nadu Court Fees and Suits Valuation Act, 1955 and it requires interference as the position of law is well settled. In fact, the first Appellate Court has culled out the correct legal position, by stating that to continue to be in joint possession in law, it is not necessary that the plaintiffs should be in actual possession of the whole or part of the property and equally, it is not necessary that the plaintiffs should get any share or income from the property. Hence, after setting out the legal position, the first Appellate court had come to the conclusion that the plaintiffs have been excluded from joint possession and enjoyment of the property, which is without any discussion or basis



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Index: Yes/No

Neutral Citation: Yes/No

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To:

1. The Sub-Ordinate Judge Court,
Vellore.
2. The Additional District Munsif Court, Vellore.



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P.B.BALAJI, J.

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