



WEB COPY



S.A.No.327 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.327 of 2019
and
CMP. Nos.4844 & 4845 of 2019

A.Pushparaj

...Appellant

Vs.

1.Bagyam
2.Rajeshwari
3.Baby
4.Valarmathi
5.Manga

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri dated 07.12.2017 in A.S. No.33 of 2014 confirming the judgment and decree of the learned District Munsif of Krishnagiri dated 24.06.2014 in O.S. No.222 of 2009 and allow the Second Appeal.

For Appellant : Mr.V.Nicholas



S.A.No.327 of 2017

For Respondents : Mr.P.M.Duraiswamy for R1
Mr.M.K.Vijayaraghavan for R2, 4 & 5
R3-Died.

JUDGMENT

The unsuccessful first defendant/brother in a suit for partition, is the appellant before me.

2. The first respondent herein, as plaintiff, filed O.S. No.222 of 2009 before the learned District Munsif, Krishnagiri, seeking partition and separate possession of her 1/6th share in the suit property and also for permanent injunction to restrain the first defendant, her brother from alienating or encumbering the suit property. The first defendant, brother alone contested the suit by filing a written statement. The plaintiff's sisters chose to remain exparte.

3. The case of the first defendant/brother was that even though the suit properties were ancestral in nature, in 1984, the sisters of the first defendant viz., the plaintiff and defendants 2 to 5, relinquished



their 1/12th share in the suit property in favour of the first defendant and further right from 1984, the first defendant has been in exclusive possession and enjoyment and that even patta has been issued to him and he has been paying Kist. Therefore, the first defendant prayed for dismissal of the suit.

4. The trial Court finding that the suit property was ancestral in nature and the daughters could claim a share only in the father's 1/2 share and not 1/6th share in the suit property, partly decreed the suit, granting 1/12th share to the plaintiff, holding that the first defendant was entitled to a 7/12th share, defendants 2 to 5 were entitled to a 1/12th share each.

5. On appeal by the first defendant, the First Appellate Court dismissed the Appeal, confirming the judgment and decree of the trial Court and aggrieved by the concurrent findings, the first defendant has filed the present Second Appeal.

6. Heard, learned counsel for the appellant and learned counsel



for the respondents. I have also gone through the records, including the pleadings as well as the judgments of the Courts below.

7. The learned counsel for the appellant would submit that the sisters were never in enjoyment of the suit property at any point of time and further their rights stood ousted which is evident from the fact that the appellant has mutated patta in his name and has been in absolute, physical possession and enjoyment of the suit property, paying Kist in his name. He would also attack the findings of the First Appellate Court stating that the First Appellate Court has proceeded as if the case of the appellant was that the suit property was the self-acquired property of the appellant and that the same had not been established through sufficient evidence.

8. Per contra, Mr.P.M.Duraiswamy, learned counsel for the first respondent submitted that the Hon'ble Supreme Court in the case of ***Vineeta Sharma vs. Rakesh Sharma and Ors***, reported in ***(2020) 9 SCC 1***, has held that the daughters are to be treated as coparceners and



therefore the plaintiff's share will have to be an equal 1/6th, along with brother. However, he would state that the first respondent/plaintiff would be satisfied if the share of 1/12th as granted by the trial Court and affirmed by the First Appellate Court, are confirmed. He would also state that merely because the first defendant was in physical possession, paying taxes, would not amount to ouster and therefore, there was nothing warrant interference of the concurrent findings of the Court below.

9. On a reading of the written statement filed by the appellant/first defendant, I am able to see that the appellant has admitted that the plaintiff and defendants 2 to 5 have a 1/12th share and he is entitled to the remaining 7/12th share. He has also specifically stated "*hence they were having very meager share*". However, the case of the appellant is that in 1984, the sisters gave up their share in favour, of the first defendant and thereafter, the first defendant has been in exclusive possession and enjoyment of the same. In order to establish the said fact of relinquishment by the sisters in his favour, in 1984, the



appellant has not been able to substantiate the same. Any relinquishment or release, if even a fractional interest in immovable property having a value of more than Rs.100/- can be made only by way of a registered written instrument. It is not the case of the appellant that his sisters executed any such release or relinquishment in his favour. The mere fact that the first defendant has been in physical possession and enjoyment of the suit property, including mutation of patta in his name and payment of Kist would not enable the first defendant to claim absolute right, title and interest in the suit property, especially when he has failed to prove his claim that the sisters had relinquished their shares in his favour.

10. I do not find the findings of the Courts below to be illegal or perverse. The substantial questions of law suggested by the appellant also do not merit consideration. As far as a suit for partition, there is no period of limitation. I can understand the defendant had pleaded ouster. However, the first defendant's plea was only an oral relinquishment in 1984, without pleading any further with regard to the



alleged relinquishment by the sisters. Therefore, I do not find any substantial questions of law raising for consideration in the above Second Appeal. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.

11. Mr.P.M.Duraiswamy, learned counsel for R1 brought to my notice that the third respondent who did not contest the suit has passed away. However, he would state that in the final decree proceeding in I.A. No. 553/2016, the legal heirs of the deceased third respondent have already been impleaded. The same is recorded. The trial Court shall proceed with the final decree Application in accordance with law.

05.02.2024

Index : Yes/No
Internet : Yes/No
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P.B.BALAJI, J.

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To

- 1.The Subordinate Judge of Krishnagiri.
- 2.The District Munsif of Krishnagiri.

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and
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