



A.S. No. 125 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

CORAM

THE HON'BLE MR. JUSTICE R. SUBRAMANIAN

AND

THE HON'BLE MR. JUSTICE R. SAKTHIVEL

A.S. No. 125 of 2019

&

C.M.P. No. 5157 of 2019

K. Tamilarasan

..Appellant

Vs.

1. P. Poongodi

2. R. Eswari

3. K. Saravanan

..Respondents

Prayer: First Appeal as against the judgment and decree dated 14.12.2017 passed in O.S. No. 66 of 2016 by the III Additional District Court, Salem.

For Appellant :: Mr.S. Vediappan

For Respondents :: Ms. Mithra Nisha for
Mrs.V. Srimathi for R1 to R3

J U D G M E N T



WEB COPY



A.S. No. 125 of 2019

(Delivered by R. SUBRAMANIAN,J.)

The 1st defendant in O.S. No. 66 of 2016 on the file of III Additional District Judge, Salem, is the appellant herein.

2. The suit was laid by respondents 1 and 2 seeking partition and separate possession of their 6/10th share in the suit properties. The plaintiffs contended that the suit properties were absolute properties of their father Kandasamy, who died in the year 2007. His wife Chinnakannu died in the year 2011. The said Kandasamy and Chinnakannu had four children, who are plaintiffs and defendants in the suit. According to the plaintiffs, Chinnakannu had executed a Will on 25.08.2008 bequeathing her share of the properties to her daughters, namely, the plaintiffs. Therefore, the plaintiffs claimed 6/10th share instead of 1/4th share.

3. The suit was resisted by the 1st defendant/appellant contending that the plaintiffs got married 40 years ago and left the suit property; their parents, namely, Kandasamy and Chinnakannu died intestate and therefore,



A.S. No. 125 of 2019

the 1st defendant had perfected title by ouster. The 2nd defendant remained
ex parte.

4. On the above pleadings, the learned Trial Judge framed the following issues:

- '1. Whether the plaintiffs are entitled for partition and separate possession as prayed for?*
- 2. Whether the plaintiffs are entitled for permanent injunction as prayed for?*
- 3. To what other relief?'*

5. Before the Trial Court, the 1st plaintiff was examined as P.W.1 and Exs. A1 to A8 were marked. The certified copy of the Will said to have been executed by Chinnakannu was marked as Ex.A7. On the side of the defendants, the 1st defendant was examined as D.W.1 and two other witnesses were examined as D.W.s 2 and 3. Only one document, namely, a kist receipt was marked as Ex.B1 on their side.

6. On consideration of evidence on record, learned Trial Judge



A.S. No. 125 of 2019

found that the defendants did not prove their claim of ouster and in any event, ouster will not arise since Kandasamy died only in the year 2007 and the suit came to be filed within 12 years in the year 2016. The theory that the plaintiffs were out of possession was also rejected. Since the original Will was not produced and no attesting witness was examined, Ex.A7 Will was disbelieved. On the above findings, the learned Trial Judge granted a decree for 1/4th share to each of the plaintiffs. Aggrieved by the same, the 1st defendant has preferred the present appeal.

7. We have heard Mr.S. Vediappan, learned counsel for the appellant and Ms. Mithra Nisha, learned counsel appearing on behalf of Mrs.V. Srimathi, learned counsel for respondents.

8. Mr.S. Vediappan, learned counsel for the appellant would vehemently contend that the Trial Court erred in granting a decree overlooking the plea of ouster. The only plea that was raised in the written statement was that the suit properties are ancestral properties and the defendants have equal share with their father by birth. Therefore, according



A.S. No. 125 of 2019

to the learned counsel, defendants 1 and 2 would be entitled to a larger share.

9. Contending contra, Ms.Mithra Nisha, learned counsel for respondents would submit that it was not the case of the parties that the properties were ancestral properties. Admittedly, the properties belonged to the mother of Kandasamy, namely, Palaniammal and her brother. On the death of Palaniammal, Kandasamy inherited the property that was allotted to his mother in the partition dated 09.09.1965 and he purchased the property that was allotted to his uncle in the said partition by virtue of sale deed dated 06.03.1967. Therefore, the properties are self-acquisitions of Kandasamy and hence, there was no question of any right by birth to any of the children of Kandasamy. Learned counsel for respondents is unable to challenge the finding regarding the Will since the original was not produced and none of the attesting witnesses to the Will were examined.

10. We have considered the rival submissions.



A.S. No. 125 of 2019

WEB COPY

11. The following question arises for determination in this appeal:

'Whether the contention of the appellant that he has perfected title by ouster can be accepted?'

12. *It is the admitted case of the parties that on the death of Palaniammal, i.e, mother of Kandasamy, the property devolved on Kandasamy under Section 15 of The Hindu Succession Act, 1956. The property that was purchased by virtue of sale deed dated 06.03.1967 was the separate property of Kandasamy. Therefore, the entire properties are separate properties of Kandasamy. The suit 'B' Schedule property was assigned to Kandasamy by the Government and therefore, there is no question of treating it as an ancestral property or characterising it as any other property. It will be the self-acquired property of Kandasamy. Moreover, Kandasamy died in the year 2007 and the suit came to be filed within 12 years in the year 2016. Therefore, there is no question of ouster and the claim that the female heirs were not in possession of the property would not arise since upon inheritance, they also became co-owners. Hence, we are unable to fault the Trial Court for having granted a decree*



A.S. No. 125 of 2019

for partition in favour of the plaintiffs.

WEB COPY

13. In the result, the appeal fails and the same is dismissed.

Considering the relationship between the parties, we leave the parties to bear their own costs. Connected C.M.P. is closed.

nv

(R.S.M.J.) (R.S.V.J.)
10.06.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The III Addl. District Court, Salem.

R. SUBRAMANIAN,J.



WEB COPY



A.S. No. 125 of 2019

AND

R. SAKTHIVEL,J.

nv

A.S. No. 125 of 2019

10.06.2024