



S.A.(MD)No.654 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.654 of 2007

Sirumbayee

...Appellant

-Vs-

Chellammal

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 28.06.2006 made in A.S.No.134 of 2005 on the file of the District Judge Court at Karur, confirming the judgment and decree, dated 30.11.2004 and made in O.S.No.13 of 2001 on the file of the Subordinate Judge Court, Kulithalai, Karur District.

For Appellant : Mr.S.Sridharan

For Respondent : Mr.D.Kirubakaran



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JUDGMENT

The defendant in the suit is the appellant. The respondent, who is the sister of the appellant filed a suit for partition claiming half share in the suit property. The suit was decreed by the trial Court and the findings of trial Court were was affirmed by the first appellate Court. Aggrieved by the concurrent findings, the appellant/defendant has preferred the above appeal.

2.According to the respondent/plaintiff, the suit “A” schedule property belonged to her father, Theetha Gounder and he executed a Will, dated 30.09.1983 under Ex-A1 bequeathing the suit properties equally to the plaintiff and the defendant. It was claimed by the respondent that the suit 'B' schedule property was purchased by Theetha Gounder out of the income from the suit “A” schedule property. The suit 'C' schedule property belonged to the mother of the parties, namely, Patchaiammal and after her death, both the appellant the respondent were entitled to half share.

3.The appellant/defendant herein filed a written statement claiming that



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respondent/plaintiff was ousted from the suit property, as she was living away from the suit property for the past 20 years. It was also claimed by the respondent that the cattles described in the suit 'B' schedule property were purchased by her husband, Manickkam out of his own money and therefore, the respondent/plaintiff was not entitled to any share in the suit properties.

4.Before trial Court, the respondent/plaintiff was examined as PW-1. The Advocate Commissioner, who visited the suit property, was examined as PW-2 and the attesor to the Will relied upon by the respondent/plaintiff was examined as PW-3. On behalf of the respondent/plaintiff, two documents were marked as Ex-A1 and Ex-A2. On behalf of the appellant/defendant, she was examined as DW-1 and no documentary evidence was let in on behalf of the appellant/defendant. The Advocate Commissioner's report and plan were marked as Ex-C1 and Ex-C2.

5.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant/defendant failed to prove the plea of ouster raised by her. The trial Court also gave a factual finding



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that the appellant/defendant failed to prove that the cattles described in the suit “B” schedule property were purchased by her husband, Manikkam, out of his own earnings and therefore, the trial Court was pleased to grant a decree for partition of half share in favour of the respondent/plaintiff. Aggrieved by the same, the appellant preferred an appeal in A.S.No.134 of 2005 on the file of the District Court, Karur. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the defendant is before this Court.

6.The learned Counsel for the appellant submitted that the respondent/plaintiff was failed to lead any evidence to prove her joint possession in respect of the suit property and hence, the Courts below ought not to have presumed joint possession and granted decree for partition. The learned Counsel submitted that the respondent is living separately for more than 20 years and therefore, she has been ousted from the enjoyment of the suit property for more than statutory period and the said fact has not been properly appreciated by the Courts below.

7.The appellant and the respondent are sisters. It is the admitted fact that



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both of them are the daughters of one Theetha Gounder. The Will executed by Theetha Gounder, dated 30.09.1983 was marked as Ex-A1 and the same was proved by examining one of the attessor to the document, who was examined as PW-3. The Courts below on appreciation of oral evidence of PW-3 came to the factual finding that Ex-A1, Will, was proved. Therefore, as per the terms of the Will, the parties are entitled to equal share in suit 'A' schedule property.

8.As far as the suit 'B' schedule property is concerned, the appellant/defendant has set up a defence, as if the cattles in the suit 'B' schedule property were purchased by her husband, Manickkam, out of his own money. However, she failed to lead any evidence in support of the plea, except her own interested testimony. In such circumstances, the Courts below have rightly rejected the plea regarding suit 'B' schedule property.

9.The suit 'C' schedule properties are the properties owned by the mother of the parties, namely, Patchaiammal. After her death, both the appellant the respondent are entitled to half share each. Though the appellant/defendant pleaded ouster, she failed to prove the same by leading any independent and



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acceptable evidence, except her interested testimony. In such circumstances, both Courts below have given a factual finding that the appellant failed to prove the plea of ouster and negated her claim. I do not find any questions of law much less a substantial questions of law to interfere with the findings of fact reached by the Courts below. Accordingly, the Second Appeal stands dismissed. No costs.

17.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

cmr

To

- 1.The Subordinate Judge, Kulithalai, Karur District.
- 2.The District Judge at Karur.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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