



A.S.(MD)No.222 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.07.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.222 of 2015

and

M.P.(MD)No.1 of 2015

- 1.Thulasi Ammal
- 2.Gnanasekaran
- 3.Masi
- 4.Mallika
- 5.Rajakumari
- 6.Chitra

7.Minor Priyanka,
represented by her mother Chitra.

8.Minor Siva

--Vs--

...Appellants

- 1.Manonmani (Died)
- 2.Sundaravalli
- 3.Rajendran
- 4.Annavi (Died)
- 5.Durai
- 6.Annathurai
- 7.Vanathi
- 8.Vijai
- 9.Prabhu
- 10.Akila
- 11.Leelavathi
- 12.Balamurugan
- 13.Aruna

(Respondents 11 to 13 are brought on record as LR's
of the deceased 4th Respondent vide court order



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dated 21.04.2023 made in C.M.P.(MD)Nos.4502 to 4507 of 2023 in A.S.(MD)No.222 of 2015)

14.Surumbai

15.Kathiravan

16.Minor Sasikumar,
through his Mother and Guardian Surumbai

17.Shanthi

18.Sugendri

19.Minor.Vimalraj,
through his Mother and Guardian Surumbai

20.Ravi

21.Sekar

(Respondents 14 to 21 are brought on record as LR's of the deceased 1st Respondent vide court order dated 21.04.2023 made in C.M.P.(MD)Nos.4502 to 4507 of 2023 in A.S.(MD)No.222 of 2015)

...Respondents

PRAYER: Appeal Suit filed under Section 96 read with order XLI & XLI-A of Civil Procedure Code, against the judgement and decree dated 19.08.2015 in O.S.No.62 of 2013 on the file of the 1st Additional District Judge (PCR), Tiruchirappalli.

For Appellants	: Mr.H.Lakshmi Shankar
For R1	: Mr.Raguvaran Gopalan
For R2, R3, R11 to R21	: Mr.K.Prabhakar
For R5	: Mr.S.Muthukrishnan
For R6 to R10	: No Appearance



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JUDGMENT

The First Appeal is filed by defendants 1 to 8 to set aside the judgment and decree dated 19.08.2015 passed in O.S.No.62 of 2013 on the file of the 1st Additional District Judge (PCR), Tiruchirappalli.

2. The plaintiffs are the respondents 1 to 4 herein, the defendants 1 to 8 are the appellants herein and defendants 9 to 14 in the suit are the respondents 5 to 10 herein. For the sake of convenience, the parties shall be referred as plaintiffs and defendants as per the ranking in the suit.

3. The plaintiffs had filed the suit for partition of the suit properties into four equal shares and allot two of such shares to the plaintiffs with separate possession.

4. The brief facts as stated in the plaint is that the schedule property along with several other properties originally belonged to one Annavi. The said Annavi's married Onthiya Ammal and both died intestate leaving behind his four sons viz., Maruthai, Sangili, Gopal and Natesan. The abovesaid four persons and their



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children also died. During the life time of four sons mentioned above, they partitioned the family properties on 22.04.1946 and the said partition made between them was subsequently evidenced by Bhaga Cheettu. Each of the sons were given one Bhaga Cheettu showing the properties that were allotted to them separately and the same is clearly mentioned in the Bhaga Cheettu. Based on the said partition the properties were being enjoyed by them separately and the properties were in separate possession after mutation of revenue records. The contention of the plaintiff is that the suit property mentioned hereunder was specifically left out to be enjoyed by all the four sons, which was also very clearly mentioned in the Bhaga Cheettu of the respective parties. The reason was that all other properties are eligible for cultivation or for other works, but the suit property alone would not be suitable for any cultivation, hence the members of the family used it as a grazing field for cattle. The properties that were partitioned between the four sons though in the name of their father Annavi or grandfather Periyannan or in the name of first son Marudai (who is one of the parties in the Bhaga Cheettu), the properties should be treated as joint family property only. This particular property was purchased in the name of the eldest son Marudai and he is mere a name lender. Hence as per the Bhaga Cheettu and as per the understanding between the sons of Annavi the suit property is also one of the joint family properties which was specifically left out as a common property of all the



legal heirs of Annavi.

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5. The plaintiff further stated that Annavi's son Sangili died intestate leaving behind plaintiffs 1, 2 and another sister Sivanthi and one son Srinivasan. Srinivasan died leaving behind his wife Muthulakshmi and two children Sudhakar and Sumathi. The other daughter Sivanthi died and her husband Karupppannan also died leaving Rajendran, the 3rd plaintiff herein as his legal heir. Gopal died leaving behind his only son Annavi, the 4th plaintiff herein. The other son Natesan died leaving behind 3 sons Durai, Annadurai and another son Jayaraj. Jayaraj died leaving behind his wife Vanathi and 2 sons and one daughter viz, Vijai, Prabju and Akila respectively. The legal heirs of Natesan mentioned above now seem to side with the defendants. Hence, they are arrayed as defendants 9 to 14. The first son of Annavi namely Marudai had one son and three daughters viz. Periyannan, Janaki, Meenakshi and Kamakshi. Periyannan died leaving behind his wife the first defendant herein. The defendants 2 to 8 are legal heirs of Marudai through his son Periyannan and his wife the first defendant herein. Marudai's daughter Janaki died leaving behind her husband Ayyasamy, and her sons and daughters. The next daughter Meenakshi died leaving behind her husband and 2 daughters and one son. Kamakshi is the surviving daughter of Marudai and she married to



Srinivasan son of Sangili. The said Kamakshi, her son and daughter informed the other plaintiffs that they do not want any further properties in the joint family properties and hence do not want to join the suit. The defendants 1 to 6 represent other branches of Marudai. If necessary, they will also be impleaded as parties at a later stage and a geneology tree was filed. All the sons viz, Marudi, Sangili, Gopal and Natesan have equal shares in the suit property. Hence the plaintiffs who are heirs of three sons of Annavi have got 1/2 share in the suit property. The suit property was purchased in the name of first son Marudai of Annavi, though it was specifically kept as joint property for all the four sons and their heirs. Taking advantage of the property being in the name of Marudai, now the defendants 1 to 8 as legal heirs of Marudai are taking hasty steps to sell away the suit property behind the back of the other legal heirs. The plaintiffs come to understand that now the 5th defendant has obtained a Power of Attorney from defendants 1, 2 and 3 for selling the properties. Though the other legal heirs of Marudai do not seem to give any power of attorney in favour of the 5th defendant, they joined together to sell away the property and swallow the entire amount between them. The plaintiffs 1 to 4 had issued a legal notice dated 02.02.2013 for themselves and on behalf of the other legal heirs of Sangili calling upon the defendants to come for an amicable settlement of the suit property. Though the defendants 1,2,3,5 and 6 received the notice they neither came for a compromise as demanded, nor cared to



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issue any reply for the notice issued by the plaintiff. Hence the plaintiffs are claiming their 1/2 share for partition and possession of their share in the suit property.

6. The defendants had filed written statement, wherein it is stated that after the death of Annavi, the family properties were divided amongst his sons. The suit properties were purchased by Marudai after the death of his father. The land is fit for cultivation and there is well in the land. All the sons of Annavi and Onthayiammal have got separated after division of properties and they are having sons and daughters. The other sons of Annavi i.e., Sangili, Gopal, Natesan have no right whatsoever in the suit properties. And they are in enjoyment of their own lands obtained under partition and purchase. The Baga Cheettu relied by the plaintiffs is not with regard to the suit property and it pertains to erstwhile common lands and its division. Since the suit property was of Marudai the same have not been mentioned in the Baga Cheetu. The suit properties are in the enjoyment and possession of the legal heirs of Marudai in their individual property without any nexus with the other branches. After the death of Periyannan, son of Marudai the sons of Periyannan namely Gunasekaran and deceased Thangaraj were in enjoyment of the same. The legal heirs of deceased



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Thangaraj are 6th, 7th and 8th defendants and they are in enjoyment of the same. So, the plaintiffs have no right of partition much less 1/2 share in the suit properties.

The same is the absolute properties of defendants 1 to 8. The village records and revenues entries are in the name of defendants 1 to 8 and they have got separate patta excluding the other branches. “A” register of the village records with regard to suit properties are in the name of deceased Marudai son of Annavi. The defendants 1 to 8 have created mortgage in Tiruchirappalli Cooperative Land Bank on 15.03.2000 with regard to the suit property and the defendants 1 to 8 are in exclusive possession and enjoyment of the property as their own property and the same is within the knowledge of the plaintiffs and other branches of Late. Annavi and Onthayiammal. The plaintiffs or the other branches of Sangili, Gopal and Natesan have no right of partition in the suit properties, since the suit properties are the absolute and exclusive properties of late Marudai, son of Annavi. The plaintiffs have no cause of action for the suit and to claim the suit properties as joint family properties of Late. Annavi and prayed to dismiss the suit.

7. After considering the plaint and written statement the following issues were framed:

(i) Whether the plaintiffs are entitled for partition and separate



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possession as prayed for?

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(ii) To what other reliefs the Plaintiff is entitled for?

8. The plaintiffs had marked Ex.A1 to Ex.A10 and 1st plaintiff was examined as PW1 and the 4th plaintiff was examined as PW2. The defendants had marked Ex.B1 to Ex.B14 and 5th defendant was examined as DW1 and one Gunasekaran was examined as DW2, one Durai was examined as DW3. After considering the pleadings, evidence and depositions the Trial Court had allowed the suit in favour of the plaintiffs. Aggrieved over the same the defendants 1 to 8 had filed the present Appeal Suit raising various grounds.

9. The primary contention of the plaintiffs is that originally several properties belong to one Annavi, who died intestate. After his demise his four sons namely Maruthai, Sangili, Gopal and Natesan had partitioned the properties on 22.04.1946 and the said partition was subsequently evidenced by Bhaga Cheettu marked as Ex.A6 and Ex.B14. The further claim of the plaintiffs is that the suit property was a joint family property of Annavi and the same was left for common usage of the four sons and the same is available for partition. In order to ascertain the claim of the plaintiff this Court proceeds to scrutinize the documents. It is seen



that the Trial Court had erroneously taken that the property was purchased on 17.02.1960, but the fact remains the property was purchased on 20.08.1960 by Maruthai. Further it is seen that the parties had admitted the fact that several other properties belonging to Annavi were partitioned on 22.04.1946 among four sons. But the suit property was purchased in the name of Maruthai on 20.08.1960 marked as Ex.B1 (original copy) and Ex.B2 (certified copy), admittedly it was purchased 14 years after the said partition dated 22.04.1946. The said sale deed states that the Maruthai had purchased from one Periyakkal wife of Mari Vettiayan (1), Pitchaikariammal wife of Maruthai Vettiayan (2) Minor son Pethan (3) and the minor is represented by mother Pitchaikariammal. In the said sale deed dated 20.08.1960 it is mentioned that the parent document i.e. sale deed dated 17.02.1960 was handed over to the purchaser. The Ex.B3 is the certified copy of the said sale deed dated 17.02.1960 and on perusing the said sale deed it is seen that the property was purchased by Mari Vettiyan son of Aastty Vettiayan from one Periyasmay Pillai son of Shanthapillai. In the said sale deed dated 17.02.1960 it is stated that the said Periyasamy Pillai had purchased the property in auction sale, which was sold in court auction on 18.06.1924 in E.P.No.156 of 1924 in O.S.No.95 of 1921 on the file of Munsif Court, Srirangam and the confirmation of sale was on 21.07.1924. From the above fact it is evident the property was purchased by Periyasamy Pillai in court auction on 18.06.1924, sale confirmation



on 21.07.1924, thereafter the said Periyasamy Pillai had sold it to Mari Vettiyan on 17.02.1960. Thereafter the Periyakkal wife of Mari Vettiyan had sold the property to Maruthai. The aforesaid facts would clearly indicate the suit property was never with Annavi at the time of partition dated 22.04.1946. To be specific the property was in the hands of the said Periyasamy Pillai from 18.06.1924 to 17.02.1960. Hence, under such circumstances the said property would not have been left out for the common usage for the sons of Annavi and the claim of the plaintiffs that the property joint family property of Annavi and the same was left for common usage of the four sons are unbelievable and the same is not proved.

10. The contention of the defendant/appellant is that the Trial Court had erred in coming to the conclusion that there is admission by the defendant in the deposition that the suit property and the property in sale deed are identifiable as “Vadakamedu”. But the Trial Court failed to consider that the said Vadakamedu is mentioned in Ex.A6 and B14 as item 8 which was allotted to Natesan. If the land in Vadakamedu is allotted to Natesan then the same would not be left for common usage of all the sons. In order to considered this contention it is necessary to peruse the Ex.B1 sale deed and Ex.A6 Bhaga Cheettu. On perusing Ex.A6 Bhaga Cheettu which is the Bhaga Cheettu given to Natesan, the property “Vadakamedu”



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is mentioned under item 8. On the other hand the sale deed Ex.B1 only indicates land situated in Ariyaur village. As rightly pointed of by the defendant / appellant, if the said property Vadakamedu is allotted to Natesan, then the same would not have been left for common usage. Therefore, this Court is of the considered opinion that the plaintiff had miserably failed to prove their case.

11. The Trial Court had erred in relying on the advocate commissioner report. As held supra when the property was never with the said Annavi at the time of partition dated 22.04.1946 and when the property was in the hands of the said Periyasamy Pillai from 18.06.1924 to 17.02.1960, the Trial Court had erred in relying on the advocate commissioner.

12. Interestingly, the said four sons namely Maruthai, Sangili, Gopal and Natesan died and their legal heirs died and the third generation had claimed right over the property. If the property was left for common usage, then the other three sons would have claimed right over the property and they had not claimed any right. At least the second generation i.e. the legal heirs of the said four sons Maruthai, Sangili, Gopal and Natesan would have claimed rights and the said



legal heirs had not claimed any right. It is only the third generation had claimed the alleged rights. Therefore, this Court is of the considered opinion that when the plaintiffs are aware of the fact that the defendants 1 to 8 are in possession and enjoyment for more than 12 years from the date of partition dated 22.04.1946 or the sale deed dated 20.08.1960 then the claim of the plaintiffs is hit by adverse possession. Further the claim is barred by limitation.

13. The Trial Court had held that the burden of proof is on the defendant since the defendant claims that the suit property is self-acquired. It is settled law that the party who claims the property as self-acquired ought to prove the same. But when there is sale deed in favour of the said Maruthai, then the burden is on the plaintiff to prove that the said property was purchased prior to partition dated 22.04.1946. Further the plaintiff ought to be prove that the said property was purchased by the said Maruthai as Kartha of family from the nucleus of the joint family properties prior to partition. Therefore this Court is of the considered opinion that the Trial Court had erred in holding that the burden of proof is on the defendants.



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14. For the reasons stated supra, the Appeal Suit is allowed. The judgment and decree dated 19.08.2015 passed in O.S.No.62 of 2013 on the file of the 1st Additional District Judge (PCR), Tiruchirappalli is set aside and consequently, the original suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2024

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

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To

1. 1st Additional District Judge (PCR),
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

Tmg

Judgment made in

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