



S.A.(MD).No.17 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **25.03.2024**

PRONOUNCED ON : **19.06.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.17 of 2024
and
C.M.P.(MD)Nos.478 and 480 of 2024

Palanichamy

... Appellant

/Vs./

Muthu

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.41 of 2020, dated 14.09.2023, on the file of the II Additional District Judge, Thoothukudi, reversing the Judgment and Decree made in O.S.No.41 of 2015 on the file of the Subordinate Judge, Kovilpatti, dated 18.12.2019.

For Appellant : Mr.S.Parthasarathy
For Respondent : Mr.S.Ponsenthil Kumaran

JUDGMENT

The Second Appeal in S.A.(MD)No.17 of 2024 is filed against the Judgment and Decree, dated 14.09.2023 in A.S.No.41 of 2020 on the file of the II Additional District Court, Thoothukudi, reversing the Judgment and Decree, dated



S.A.(MD).No.17 of 2024

18.12.2019 passed in O.S.No.41 of 2015, on the file of the Sub Court, Kovilpatti.

2. The defendant in the suit is the appellant herein and the plaintiff in the suit is the respondent herein. For the sake of convenience, the rank of the parties shall be referred as plaintiff and defendant as stated in suit.

3. The suit in O.S.No.41 of 2015 was filed to declare that the property belongs to the plaintiff and consequently, to vacate the defendant within a particular period to be fixed by the Court. The plaintiff and the defendant are brothers. The brief facts as stated by the plaintiff is that the mud wall and thatched house in the suit property in Natham S.No.593/2, Door No.20 belongs to the father of the plaintiff and defendant namely Saravana Mudaliar. Originally, the suit property and the eastern portion Door No.19 was comprised with Door No.20 and the said house was bequeathed to the plaintiff through Will dated 13.12.1978 and the said Saravana Mudaliar died on 08.12.1985, thereafter, the Will came into effect. Since the plaintiff was in Government job and was staying elsewhere, further the defendant, being plaintiff's brother, was not having any house to reside, the defendant had sought permission to reside in the house and the



S.A.(MD).No.17 of 2024

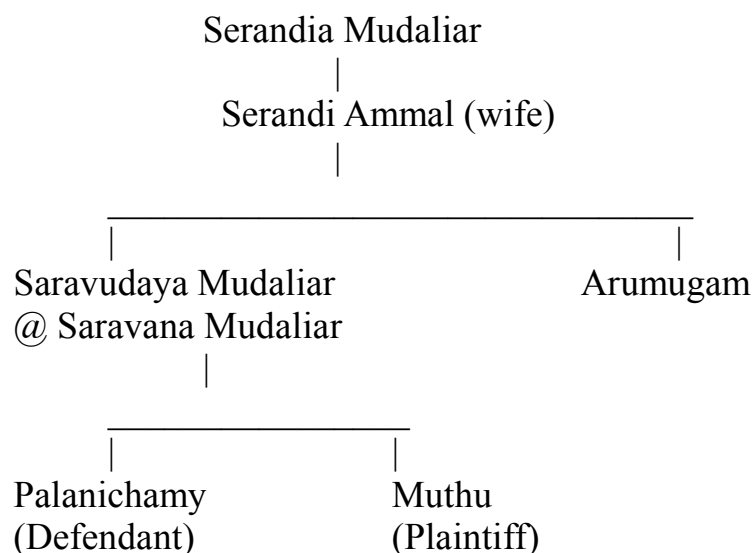
permission was granted. The defendant was residing in the suit property only as the brother of the plaintiff and the plaintiff directed the defendant to pay all taxes only on behalf of the plaintiff. But only in the year 2010, the plaintiff came to know that the defendant is paying property taxes in the name of the defendant and not in the name of the plaintiff. After questioning the same the plaintiff tried to change the name in the property tax records. Hence, the defendant Palanichamy had filed suit in O.S.No.50 of 2010 on the file of District Munsif Court, Vilathikulam, by arraying the Municipal Commissioner, District Collector, Tahsildar and the plaintiff Muthu as parties. The said suit was allowed in favour of the defendant Palanichamy. Hence, the plaintiff Muthu had filed A.S.No.12 of 2015 and the same is pending. Since the plaintiff had granted permissive possession to the defendant, but the defendant by paying taxes in his name had created documents in his name, the plaintiff had issued Lawyer Notice dated 10.03.2015 cancelling the permission to reside in the suit property. The defendant had received the same and through reply notice dated 18.03.2015 had falsely stated that during the life time of Saravana Mudaliar the suit property was given to the defendant through oral partition. Since the said statement is false, the plaintiff had filed the suit to declare that the suit property belongs to the plaintiff



S.A.(MD).No.17 of 2024

and consequently, to direct the defendant to vacate the suit property and hand over the same to the plaintiff. The said suit in O.S.No.41 of 2015 was dismissed, Aggrieved over the same, the plaintiff had filed the appeal in A.S.No.41 of 2020 and the same was allowed. Aggrieved over the same, the defendant in the suit had preferred the present second appeal in S.A.(MD)No.17 of 2024.

4. The case of the defendant Palanichamy is that the suit property along with its contiguous portions on its east and other properties originally belong to his paternal grandfather namely Serandia Mudaliar ancestrally, who had married Serandi Ammal and they had two sons namely Saravudaya Mudaliar @ Saravana Mudaliar and Arumugam. The family tree is given below:





S.A.(MD).No.17 of 2024

WEB COPY

5. The suit properties and other properties were the coparcenary properties and that as per the law prevailing then, the said Serandia Mudaliar and his two sons Saravudaya Mudaliar @ Saravana Mudaliar and Arumugam were enjoying the properties as coparceners. The said Serandia Mudaliar died leaving his wife and two sons as legal heirs. The said two sons Saravudaya Mudaliar @ Saravana Mudaliar and Arumugam had executed partition deed dated 24.09.1958 marked as Ex.B7. In the said partition the suit property and its contiguous portions on its east as a single lot was allotted to the father of plaintiff and defendant Saravudaya Mudaliar @ Saravana Mudaliar. The south of the said property was allotted to the father's brother Arumugam and now the said property is inherited by the son of Arumugam namely Sakthivel Murugan. While the said Saravudaya Mudaliar @ Saravana Mudaliar was alive there was a family arrangement by which the suit property was allotted to the defendant and the contiguous portions on the east was allotted to the plaintiff. After such family arrangement a dividing wall was raised by the father separating the suit property and the property on the east. Thereafter the suit property was assigned with Door No.4/20, while the eastern side house was assigned with Door No.4/19. The defendant was in exclusive possession and enjoyment of Door No.4/20 and paying



S.A.(MD).No.17 of 2024

taxes in the name of the defendant during the life time of the father. Likewise, the plaintiff was in exclusive possession and enjoyment of Door No.4/19 and paying taxes in the name of the plaintiff during the life time of the father. After the demise of the father on 08.12.1985 both the plaintiff and the defendant had moved the authorities for mutations and Natham Survey No.593/2 in patta No.376 was issued, property tax was levied for the Door No.20 and all in the name of the defendant. Likewise, Survey No.593/3 in patta No.376 was issued, property tax was levied for the Door No.19 and all in the name of the plaintiff. Hence the defendant submitted that the property in Door No.20 is in exclusive possession and enjoyment of the defendant by virtue of family arrangement for the past 39 years and he is aged about 80 plus. If he is disposed at this age, it will cause serious prejudice to the defendant and prayed to dismiss the suit.

6. The second appeal is admitted on the following substantial questions of law:

“A. Whether the First Appellate Court is right and justified in reversing the well-considered Judgment and decree of the trial Court?”



S.A.(MD).No.17 of 2024

B. Whether the First Appellate Court is right and justified in coming to the conclusion that suit property is the absolute property of late Saravudaya Mudaliar @ Saravana Mudaliar by virtue of Ex. B-7 partition deed?

C. Is it not the trite of Law that a share allotted to a coparcener in a partition shall retain the character of a coparcenary property as regards his male issues?

D. Whether the First Appellate Court is right and justified to take a contra view in respect of Ex.A1 Will, when the same has been rejected in the earlier proceedings between the parties by a competent Court under Ex.A6?

E. Is not the suit barred by limitation?"

7. The substantial questions of law A, B and C are taken together and dealt with. Both the plaintiff and the defendant had admitted that the suit property originally belongs to Serandia Mudaliar, after his demise his two sons Saravudaya Mudaliar @ Saravana Mudaliar and Arumugam had executed partition deed dated 24.09.1958 marked as Ex.B7. In the said partition the suit property and its contiguous portions on its east are shown as a single lot was allotted to the father of plaintiff and defendant Saravudaya Mudaliar @ Saravana Mudaliar. Now it ought to be decided whether the suit property still be considered as coparcenary



S.A.(MD).No.17 of 2024

property in the hands of the said Saravudaya Mudaliar. At the time of cross-examination, the plaintiff had stated that he does not know the date of birth of his brother. But it is an admitted fact that the plaintiff and the defendant were born prior to the execution of partition deed dated 24.09.1958 Ex.B7. The plaintiff was aged about 60 years at the time of filing the suit in the year 2015, which means he had born in the year 1955. The defendant was aged about 70 years at the time of filing the suit in the year 2015, which means he had born in the year 1945. Then both had born prior to the amendment of Hindu Succession Act, 1956. Hence, the plaintiff Muthu and the defendant Palanichamy would become coparceners to the properties of grandfather Serandia Mudaliar at the time of their birth. In such circumstances, at the time of partition the father Saravudaya Mudaliar and his two sons would become coparceners to the property inherited through the partition deed dated 24.09.1958. Therefore, the father has no right to execute Will in favour of the plaintiff Muthu when other coparcener has right over the suit property. This proposition is supported by the judgment rendered by the Hon'ble Supreme Court in the case of *Arshnoor Singh Vs Harpal Kaur & others* reported in **2019 SAR (Civil) 809** wherein it is held as under:



WEB COPY

“7. With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh’s death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal’s Singh’s property in accordance with the old Hindu Mitakshara law.

7.1. Mulla in his commentary on Hindu Law (22nd Edition) has stated the position with respect to succession under Mitakshara law as follows:

Page 129 “A son, a grandson whose father is dead, and a greatgrandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship.” Page 327 “All property inherited by a male Hindu from his father, father’s father or father’s father’s father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son’s sons, and son’s son’s sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property.” (emphasis supplied)



7.2. In *Shyam Narayan Prasad V. Krishna Prasad & two others* this Court has recently held that :

“12. It is settled that the property inherited by a male Hindu from his father, father’s father or father’s father’s father is an ancestral property. The essential feature of ancestral property, 2 (2018) 7 SCC 646. according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.” (emphasis supplied) 7.3. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property.

7.4. In *Yudhishter v. Ashok Kumar* this Court held that :

“11. This question has been considered by this Court in *Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and others*. [1986] 161 ITR 370 (SC) (1987) 1 SCC 204 where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any



other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Kartha of his own undivided family but takes it in his individual capacity.” (emphasis supplied)

7.5. After Hindu Succession Act, 1956 came into force, this position has undergone a change. Post – 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

7.6. If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

7.7. In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the



WEB COPY

property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants upto three degrees below them.

7.8. The judgment in Uttam v. Saubhag Singh (supra) relied upon by the Respondents is not applicable to the facts of the present case. In Uttam, the appellant therein was claiming a share in the coparcenary property of his grandfather, who had died in 1973 before the appellant was born. The succession opened in 1973 after the Hindu Succession Act, 1956 came into force. The Court was concerned with the share of the appellant's grandfather in the ancestral property, and the impact of Section 8 of the Hindu Succession Act, 1956. In light of these facts, this Court held that after property is distributed in accordance with Section 8 of the Hindu Succession Act, 1956, such property ceases to be joint family property in the hands of the various persons who have succeeded to it. It was therefore held that the appellant was not a coparcener vis-à-vis the share of his grandfather.

7.9. In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court vide a decree of partition dated 04.11.1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands qua their male descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property qua the Appellant.



7.10. With respect to the devolution of a share acquired on partition, Mulla on Hindu Law (22nd Edition) states the following:

“§ 339. Devolution of share acquired on partition. – The effect of a partition is to dissolve the coparcenary, with the result, that the separating members thenceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. However, if a member while separating from his other coparceners continues joint with his own male issue, the share allotted to him on partition, will in his hands, retain the character of a coparcenary property as regards the male issue [§ 221, sub§ (4)].” (emphasis supplied) 7.11. This Court in Valliammai Achi v. Nagappa Chettiar and others AIR 1967 SC 1153 held that:

“10. ... It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues. They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently: [see Hindu Law by Mulla, Thirteenth Edition p. 249, para 223 (2)(4)]. If that is so and the character of the ancestral property does not change so far as sons are concerned even after partition, we fail to see how that character can change merely because the father makes a will by which he gives the residue of the joint family property (after making certain bequests) to the son.” (emphasis supplied) 7.12. The suit property which came to the share of late Dharam Singh through partition, remained coparcenary property qua his son – the Appellant herein, who became a coparcener in the suit property on his birth i.e. on 22.08.1985.



Dharam Singh purportedly executed the two Sale Deeds on 01.09.1999 in favour of Respondent No. 1 after the Appellant became a coparcener in the suit property.”

8. In another judgment, the Hon'ble Supreme Court had held as follows:

“We have bestowed our consideration to the rival submission and we find substance in the submission of Mr. Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. The view which



we have taken finds support from a judgment of this Court in the case of *M.Yogendra v. Leelamma N.*, (2009) 15 SCC 184, in which it has been held as follows:

“29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid.” Now referring to the decision of this Court in the case of *Bhanwar Singh Vs. Puran* (2008) 3 SCC 87 (referred supra), relied on by respondents, the same is clearly distinguishable. In the said case the issue was in relation to succession whereas in the present case we are concerned with the status of the plaintiff vis-à-vis his father who got property on partition of the ancestral property.

A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which defendant no. 2 got on partition was an ancestral property



and till the birth of the plaintiff he was sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of defendant no. 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth defendant no. 2 could have alienated the property only as Karta for legal necessity. It is nobody's case that defendant no. 2 executed the sale deeds and release deed as Karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale- deeds and release deed, the parties can work out their remedies in appropriate proceeding.

In view of what we have observed above, the view taken by the lower appellate court as affirmed by the High Court is erroneous in law."

In the present case the plaintiff and the defendant being the grandsons had born prior to the amendment i.e. 1945 and 1955 respectively and during the partition on 1958 the father of the plaintiff and the defendant Saravudaya Mudaliar @ Saravana Mudaliar had got the properties as coparcenary along with the plaintiff and the defendant. In fact, in the alleged Will there is a reference that money is paid from the "common family fund", which means even the father had treated the



S.A.(MD).No.17 of 2024

property and the money as common family property and common family money.

Therefore, by applying Valliammai's case judgment referred supra, the Will executed by Sarvudaya Mudaliar will not change the character of the property. Hence, the suit property is only coparcenary property and not self-acquired property in the hands of Saravudaya Mudaliar @ Saravana Mudaliar and accordingly the substantial question of law A, B and C are answered in favour of the defendant and against the plaintiff.

9. Now the substantial question of law D is dealt with. It is the case of the defendant that while the said Saravudaya Mudaliar @ Saravana Mudaliar was alive there was a family arrangement by which the suit property was allotted to the defendant and the contiguous portions on the east was allotted to the plaintiff. After such family arrangement a dividing wall was raised by the father separating the suit property and the property on the east. Thereafter the suit property was assigned Door No.4/20, while the eastern house was assigned with Door No.4/19. But it is the case of the plaintiff that the suit property in Door No. 4/20 was bequeathed to the plaintiff through the Will dated 13.12.1978 and after the demise of the father dated 08.12.1985 the Will had come into effect. The Trial



S.A.(MD).No.17 of 2024

WEB COPY

Court had held that the earlier suit in O.S.No.50 of 2010 it has been held that the Will is not believable, further it was not acted upon, for the past 25 years the defendant is enjoying the suit property by obtaining patta and paying taxes, hence dismissed the suit filed by the plaintiff Muthu. But the First Appellate Court had held that in the earlier suit in O.S.No.50 of 2010 the Court had held that proving of Will may be considered separately but by long possession for the past 25 years by obtaining patta and paying taxes the defendant is entitled to injunction and by taking such injunction decree, it cannot be said that the Will is not proved and hence allowed the appeal and consequently allowed the suit. Now this Court proceeds to analysis the issue.

10. It is seen at the time of execution of partition deed dated 24.09.1958, the suit property was shown as single contiguous property with house in the plot. Both the plaintiff and the defendant had admitted that now there are two houses with same roof but separated with a wall in between the two houses. The suit property is one portion of the house and the other portion is on the eastern side of the suit property. When the suit property and the eastern portion was shown as single house during partition, what is the necessity to separate it as



S.A.(MD).No.17 of 2024

two houses. This would indicate that the father had intended to separate the same as two and give one to the plaintiff and the other one to the defendant. Further if the father is intended to give the entire property of two houses to the plaintiff, then the property need not be separated by wall at all. It is seen that in one portion i.e. Door No.4/19 the plaintiff Muthu's wife and children are residing and the plaintiff Muthu had obtained patta in his name as Muthu for the said Door No. 4/19 and paying taxes in his name as Muthu. The plaintiff had not proved how he got the said Door No.4/19 from his father. Obviously, the plaintiff would have got the same through the family arrangement. Further the alleged Will speaks about Door No.4/20 alone and it is silent about Door No.4/19. From this fact it is clear that there was family arrangement between the plaintiff and the defendant during the live time of father and the Door No.4/19 was allotted to the plaintiff and the Door No.4/20 was allotted to the defendant. In such circumstances the claim of the defendant Palanichamy about the family arrangement is true. Consequently, the Will cannot be true and there is a cloud over the Will. The Appellate Court had failed to considered this cloud over the Will and had accepted that the Will is proved. Even if it is considered the Will is proved, as held supra the father has no right to execute the Will since the property is coparcenary property. At the most



S.A.(MD).No.17 of 2024

the property can divide into three shares and father can write his share and not the share of the defendant Palanichamy. The Appellate Court had simply held that after partition the property is self-acquired property of the father but failed to see that the plaintiff and the defendant had acquired rights prior to the amendment of the Hindu Succession Act, 1956.

11. Further, it is seen that the defendant after the said family arrangement had changed the name from his father's name to the defendant's name Palanichamy in the revenue records by obtaining patta and paid taxes to the Municipality to the Door No.4/20 and was in possession and enjoyment of the same for the past more than 25 years. Even the plaintiff had changed the name from his father's name to the plaintiff's name in the revenue records by obtaining patta and paid taxes to the Municipality to the Door No.4/19 and was in possession and enjoyment for the past more than 25 years. Hence the claim of the plaintiff that he was not aware of the change of patta in the name of the defendant for the Door No.4/20 for all these years and suddenly the plaintiff had found that the taxes for Door No.4/20 are paid in the name of the defendant are totally unbelievable. Further as rightly held by the Trial Court there is no iota of evidence



S.A.(MD).No.17 of 2024

to prove that there was permissive possession to the defendant except for bare statement and the suit notice dated 12.03.2015. The said notice cannot be considered as evidence and at the most it can be considered as one of the causes of action. There should be some evidence for granting permissive possession during the past 25 years. When the same is not available then it cannot be stated that the said fact is proved. Unfortunately, the First Appellate Court had erred in accepting the permissive possession without any evidence and hence the Appellate Court judgment is liable to be set aside on this ground.

12. According to the defendant the family arrangement is prior to the death of the father Saravudaya Mudaliar @ Saravana Mudaliar. And according to the plaintiff the alleged Will executed on 13.12.1978 and the Will came into effect on 08.12.1985, the date of death of the father. When the Will was executed as early as 1978, then the father ought to have insisted that the taxes shall be paid in the father's name itself and the name of the defendant shall not be stated in the tax receipts since the property would go to the plaintiff in future, but the father had failed to do so. In such circumstances, both the father and the plaintiff had allowed the family arrangement to come into effect and was not keen enough to



S.A.(MD).No.17 of 2024

act based on the Will. Therefore, this Court is of the considered opinion that the property in Door No.4/20 is allotted to the defendant in family arrangement is proved. Consequently, the Will fails.

13. The defendant had produced additional evidence and the evidence shows that the defendant had paid taxes for the years from 1979-1980, 1980-1981, 1981-1982, 1983-1984, 1985-1986, 1986-1987. However, the plaintiff had objected for accepting this evidence on the ground the defendant had vigilantly contested the suit had selectively produced some tax receipts and now to fill up the lacuna the present documents are filed. Such an objection cannot be entertained since this Court had already held that the Door No.4/19 was given to the plaintiff through family arrangement at the time when the father was alive and simultaneously the Door No.4/20 was allotted to defendant. During the same time both the plaintiff and the defendants were paying the taxes in the name of the father only but it is only after death of the father the name was changed after 1990 by both the plaintiff and defendants. Therefore, the present additional documents would only substantiate the family arrangement. Infact this Court would put it on reverse. If the family arrangement is not accepted then the plaintiff would not get



S.A.(MD).No.17 of 2024

the Door No.4/19 at all, then the same would be available for partition among the plaintiff and the defendant and the father. Therefore, the plaintiff would not be prejudice if the additional evidence is admitted. Based on the additional evidence it is proved that the defendant was in enjoyment of the property in Door No.4/20 from 1979 onwards. As stated earlier if the Will is in existence then the father and the plaintiff would not have allowed the defendant to pay tax in his name since in future the suit property would go to the plaintiff.

14. Further, on perusing the counter affidavit filed in C.M.P.(MD)No. 478 of 2024 and C.M.P.(MD) No. 480 of 2024 by the plaintiff / respondent herein, it is seen that the plaintiff had stated that the Will was not produced earlier and only when the plaintiff was facing the threat of losing the suit property had produced the Will. Such a statement is absolutely shocking. The plaintiff is treating the alleged Will as a “secret document” for all these years from 1985 to 2010. As held supra, this Court is of the considered opinion that the family arrangement is acted upon and the alleged Will was never ever acted upon and the claim of the plaintiff based on the alleged Will fails. Hence, the substantial question of law D is held against the plaintiff and in favour of the defendant.



S.A.(MD).No.17 of 2024

15. Now, the substantial question of law E is dealt with. The contention of the defendant that the suit is barred by limitation since even as per the plaintiff the Will was executed on 13.12.1978 and due to death of the father on 08.12.1985 the Will came into effect from 08.12.1985. Based on the Will the plaintiff ought to have claimed rights over the suit property from 08.12.1985. When the plaintiff had allowed the defendant to reside in the suit property based on the family arrangement (it is to be noted again that the plaintiff had got right over the adjacent property in Door No.19 through family arrangement), then the suit filed after the lapse of 25 years is absolutely barred by limitation. Therefore the substantial question of law in D is held against the plaintiff and in favour of the defendant.

16. For the reasons stated above, the present second appeal in S.A. (MD)No.17 of 2024 is allowed by setting aside the Judgment and Decree, dated 14.09.2023 passed in A.S.No.41 of 2020 on the file of the II Additional District Court, Thoothukudi. Consequently, the Judgment and Decree, dated 18.12.2019, passed in O.S.No.41 of 2015, on the file of the Sub Court, Kovilpatti is confirmed.



S.A.(MD).No.17 of 2024

C.M.P.(MD)No.478 of 2024 is closed and C.M.P.(MD)No.480 of 2024 is allowed.

No costs.

19.06.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. II Additional District Court, Thoothukudi.

2. Sub Court, Kovilpatti.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.17 of 2024

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.17 of 2024

Dated:
19.06.2024