



A.S(MD)No.5 of 2020

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Dated: 07.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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1. Kamal Mohammed
2. Mohamed Abdullah

.. Appellants/ Plaintiffs

Vs.

- Noorjahan(Died)
1. Wahida Banu
 2. Faritha
 3. Ameer Ali
 4. S.Ismail
 5. R.Raja Mohamed
 - 6.P.Anisha Parveen
 - 7.B.Rahmathunnisa
 8. S.Beer Mohamed
 9. M.Chandrasekaran
 10. L.Veda Manickam'
 11. S. Habiba
 12. M.Arif
 13. M.Banumathi
 - 14.V. Baskar
 15. Zeenath Nathiba
 - 16.S.Abdul Majeeth
 - 17.M.Murugavel
 18. S. Bakrudeen
 - 19.Subaitha Begam
 - 20.Amsa Begam'
 - 21.Seeni Mohamed

..Respondents/Defendants

Prayer : This Appeal Suit has been filed under Section 96 C.P.C., against the judgment and decree of the learned District Judge, Sivagangai in O.S.No. 26 of 2009 on 15.04.2015



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For Appellant : Mr. S.Manikandan
For RRs1 to 10, 12 to 18 : Mrs. Jessi Jeeva Priya
RRs.11,19,20,21 : No appearance

JUDGMENT

This Appeal Suit has been filed as against the judgment and decree passed in O.S.No. 26 of 2009 on 15.04.2015 on the file of the learned District Judge, Sivagangai, wherein the appellants herein have filed suit for partition and the same was dismissed. As against the decree and judgment the present appeal has been filed by the plaintiffs.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

3. The averments of the plaint are as follows:

The suit property originally belongs to Seeni Rowthar, S/o. Mohamed Meera Rowthar through registered sale deed and he purchased the property of one acre from Syed Mohamed and Mohamed Hussain. The said Seeni Rowthar was survived by a daughter by name Syed Fathima Beevi and sons by name Syed



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Mohammed Rowthar and Mohamed Hussain Rowthar. Other two sons Mohamed Meera Rowthar and Naina Mohamed Rowthar died issueless before the life time of Seeni Rowthar.. After demise of Seeni Rowthar his legal heirs are in joint possession and enjoyment of the property. The son and daughters born to pre deceased would have no right to claim succession of the grand father's property. On 25.09.1953 the husband of the first defendant and the father of the defendants 2 and 3 namely Muthalif Ambalam had entered into sale deed with the legal heirs of Seeni Rawthor. Out of the purchasers of the said sale deed except Syed Fathima , Syed Mohamed Rowthar and Mohamed Hussain Rawthor who were all the legal heir of Seeni Rawthar nobody else have any title over the property and they have no any right to dispose the property. The said Mohamed Hussain Rowthar the father of the first plaintiff the vendor only possessed 2/5 share in the said property but in the sale deed it has been fraudulently mentioned as 2/9 share, hence the purchaser of property by Muthalif through sale deed dated 25.09.1953 is illegal and voidable. The plaintiff came to know only in the year 2009 and thereafter they have issued legal notice dated 19.07.2007 by demanding partition of their 2/5 share over the suit properties. The plaintiffs are entitled to 2/5 share in the suit property. The demand of partition made by the plaintiffs was refused by the defendants and



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they issued paper publication calling upon public not transact with the defendant relating the suit properties. The defendants also issued rejoinder, through paper publication with false averments. The alienation of suit property by the father of the first plaintiff is not binding upon the plaintiffs, hence the said sale deed has not been challenged. Therefore the suit is filed for partition.

4. The brief averments of the written submission filed by the defendants 1 to 3 are as follows:

The suit is false, frivolous and not maintainable either in law or on facts. All the averments made in the plaint are denied as false. It is true that the husband of the first defendant and the father of defendants 2 and 3 Muthalif Ambalam entered into sale deed dated 25.09.1953. The said Muthalif Ambalam on 25.09.1953 purchased the entire suit property and another six cents in R.S. No.342/2. The vendor of the sale deed are the true owners of the said land on the date of sale. The plaintiffs have no *locus standi* to question the sale. On and the from the date of sale deed itself the said Muthalif Ambalam had been in possession and enjoyment of the property. After his demise the present defendants are in continuous possession and enjoyment of the suit property with the knowledge of the



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plaintiff. The defendants are paying kist regularly to the property. It is false to state that the Mohamed Hussain Rawther who is the father of the first plaintiff had 2/5 share in the suit property and they fraudulently mentioned the share as 2/9 share. The plaintiffs knew fully about the possession and enjoyment of the defendants over the suit property. The plaintiffs have no rights and thereby they cannot claim 2/5 share in the suit property. The sale in favour of the first defendant/husband was on 25.09.1953. The plaintiffs has not filed the suit within 12 years from the date of dis possession, so the suit is barred by limitation. There is no cause of action for the suit and hence the suit is liable to be dismissed

5.The written statement filed by the 19th defendant are as follows:

The suit is false, frivolous and not maintainable either in law or on facts. The The defendants 6 to 19 are bonafide purchasers for value from the power agent of the defendants 1 to 3 and they are in possession and enjoyment of their respective portions purchased under those sale deeds and without prejudice to their rights adopt the statement of the defendants 1 to 3



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6. The written statement filed by the 22nd defendant are as follows:

The defendant denies all the averment made in the plaint except those that are specifically admitted by him as true herein and the legal heirs of Mohammed Hussain Rawther is also false. The plaintiff with covert intention to grab his share all the legal heirs of Mohammed Hussain Rawther had omitted to arraign as the defendants 20 to 22 as parties to the suit. Out of three daughters and two sons of Mohammed Hussain Rawther the defendants 20 to 22 are living legal heirs of one Son Samsudhin Rowthar . The defendants 20 to 22 have all along has been considered as legal heirs in the erst while transaction in the estate of MOhammed Hussain Rowthar, therefore the suit is liable to be dismissed.

7. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- a) Whether the suit is barred by limitation?
- b) Whether the plaintiff is entitled to partition of 2/5 share in the suit properties?
- d) To what relief the plaintiffs are entitled to?



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8. Before the trial Court on the side of plaintiff, P.W.1 and P.W.2 were examined and documents Ex.A1 to A8 were marked. On the side of the defendants D.W.1 and D.W.2 were examined and documents Ex.B.1 to B.10 were marked

9. After considering the evidenced adduced on both sides the trial Court dismissed the suit. As against the decree and judgment passed by the trial Court, the plaintiffs have preferred this appeal on the following grounds.

Grounds of Appeal

1) The dismissal of the suit for partition by the Court below on the preliminary ground of limitation is untenable and devoid of merits

2) The Courts below erred in not framing proper issues that arise in the pleading of either parties and to give proper findings on the said issue

3) Time and again it has been held by the High Court as well as Hon'ble Apex Court that the trial Court must frame all necessary issues that arise for consideration on the basis of pleadings of either parties and resort to disposal of the suit on only one issue without discussing other issues is not proper



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4) the Court below erred in finding that the suit is barred by limitation. The Court below erred in taking in account that in number of judicial pronouncement to the effect that in respect of any right relating to immovable property when title of the plaintiff is established, the burden would be upo the other person to prove adverse possession and the said aspect ought to have been taken into consideration by the court below

5) The Courts below ought to have seen that the plea of adverse possession or ouster cannot be presumed or assumed and there has to be specific pleadings to that effect and evidences and framing of issues and a discussion on that issues and finding should be rendered on the said issues. Without resorting to framing of issues, the trial court has simply dismissed the suit by finding that the suit is barred by limitation.

6) The Court below has failed to take into account the established legal principle that the possession of one co-owner is deemed to be the possession on behalf of all and any purchaser from co-owner cannot get more right than the vendor himself has and that as between co-owners, the plea of ouster cannot be readily inferred and there has to be strict proof regarding the same.

7) The question of limitation does not arise in this case since, it has not been made out that the plaintiffs had noticed about the



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alleged transactions of sale and in any event, the same will not amount to ouster of the plaintiffs.

8) The Court below has not properly appreciated the facts and the legal issues in their proper perspective and the Court has not properly appreciated the evidences and materials on record and the Court has erred in decreeing the suit on unsustainable grounds which calls for interference by this Court.

10. The learned counsel appearing for the appellant would contend that the appellants as plaintiffs herein have filed suit for their 2/5 share in the suit properties and the trial Court has dismissed the suit on the ground of limitation without considering the other issues which is contrary to law. As per Order 14 rule 2(2) of C.P.C, the trial Court ought to have answered all the issues but in this case the trial Court has not answered other issues and only dismissed the suit based on the issue of limitation. In the partition suit the cause of action is recurrent cause of action and hence the question of limitation per se not applicable in suit for partition among co-owner. When the ouster is established there is a question of fact and not mere question of law. Therefore the trial Court is not justified in deciding the suit purely on the question of limitation. Therefore the judgment of the trial Court is liable to be



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set aside and the matter has to be remitted for trial Court for fresh consideration.

11.The learned counsel appearing for the respondent would contend that the trial Court has framed proper issuses and the issue of limitation was also framed. The trial Court in the issue of limiation decided that the suit is barred by limitation and thereafter answered the other issues based on the issue of limitation. Therefore the trial Court has correctly followed the procedures under Order 14 Rule 2(2) of C.P.C. The trial Court in other issues stated that since the suit is barred by limitation the plaintiffs are not entitled to 2/5 share in the suit property and thereby there are not entitled to any other relief in this regard. Therefore the trial Court answered all the issues, hence the appeal is liable to be dismissed.

12. This Court has heard both sides and perused the documents. Upon hearing both sides and perusing the records including the judgment of the trial Court, the points for determination in this appeal are as follows:

- 1) Whether the suit is barred by limitation?
- 2) Whether the plaintiffs are entiled to 2/5 share over the suit property?



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3) Whether the decree and judgment passed by the trial Court are sustainable in law or in facts?

4) Whether the appeal is liable to be allowed or not?

5) To what relief the plaintiff is entitled to?

Point No.1

13. The appellants as plaintiffs before the trial Court filed suit for partition alleging that the property belongs to one Seeni Rowthar and the plaintiffs are also one the legal heirs of Seeni Rowthar and the plaintiffs are having 2/5 share over the suit properties but other legal heirs of Seeni Rowthar executed sale deed dated 25.09.1953 but in the sale deed some of the legal heirs alone executed sale deed and other executors have no right over the property, thereby the plaintiffs have 2/5 share over the suit property. The defendants have denied the share of the plaintiff. Already all the legal heirs of Seeni Rowthar have sold property to one Muthalif Ambalam through sale deed dated 25.09.1953. On and from the date of sale deed Muthalif Ambalam and his successors are in possession and enjoyment of the suit properties, therefore the suit is barred by limitation and already all the legal heirs of the Seeni Rowthar have executed sale deed and thereby the plaintiffs have no right over the suit properties, however the plaintiffs have not questioned the sale within limitation period, thereby the suit is barred by limitation.



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14. In this context it is admitted that the sale deed was executed on 25.09.1953. The sale deed was executed by the legal heirs of Seeni Rowthar. According to the plaintiffs they are sons of Mohamed Hussain Rowther. According to the plaint averments Syed Fathima, Syed Mohamed Rowther and Mohamed Hussain Rawther are the legal heirs of Seeni Rowther and the Mohamed Rawther father of plaintiff the vendor had 2/5 share in the suit property but in the said sale deed it has been mentioned as 2/9 share. Therefore the plaintiffs themselves admitted that their father himself sold the property to Muthalif Ambalam through sale deed dated 25.09.1953. Once the father of the plaintiff sold the property they have to challenge the said sale deed within the period of limitation. Now the plaintiffs have not challenged the sale deed they only claimed partition over the property. Even assuming that the plaintiffs are having share over the property the sale deed was executed on 25.09.1953 and the plaintiffs have not taken steps till 2009. The plaintiffs have not produced any document to prove that they are in joint possession along with the defendants. They also admitted that the sale deed was executed in the year 1953 but according to the defendant after the sale deed they are in exclusive possession of the suit property, to that effect they also produced documents/ExB.3



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to Ex.B.8 and they clearly shows that the defendants are in exclusive possession of the suit property and the plaintiffs have not proved their joint possession with the defendants. It is true that one possession of co-owner deemed to be possession of another co-owner but here the entire property was sold by the legal heirs of Seeni Rowther in the year 1953 itself, thereby the plaintiffs are not co-owners and already his father himself sold property to the defendants predecessor and therefore the plaintiffs ought to have filed the suit within a period of 12 years where the possession of the defendants adverse to the plaintiff. The plaintiffs also not denied the possession of the defendants over the suit property. The plaintiffs have stated that they only came to know about the sale in the year 2009 but the sale deed was registered in the year 1953 and thereby it is a presumption that the plaintiff had noticed about the sale deed in the year 1953, hence the contention of the plaintiff that they know the sale deed in the year 2009 is not acceptable. Therefore the plaintiffs have knowledge about the sale of the defendants also they very well know about the possession to the defendants but they failed to take any steps within 12 years from the date of sale. Therefore the suit is barred by limitation. Thus the point is answered.



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Point No.2

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15. This Court in the previous point decided that the suit is barred by limitation. Since the suit is barred by limitation the plaintiffs are not entitled to the relief of partition. According to the plaintiff his father already sold the property and his contention is that his father is having 2/5 share over the suit property but in the sale deed it has been mentioned as 2/9 share over the suit property, but in the sale deed there is no recital find place as alleged by the plaintiffs, since the plaintiffs themselves admitted that their father sold the property. They cannot question the same after his demise as already the property was sold in the year 1953 itself and further the suit is barred by limitation, thereby the plaintiffs are not entitled to the relief of partition. Thus the point is answered.

Point No.3

16. The plaintiffs have filed suit for partition over the suit properties. The trial Court has decided the issue of limitation as against the plaintiff and thereby the trial Court has dismissed the suit. According to the appellants/plaintiffs the trial Court has not discussed about other issues and only based on limitation issue, dismissed the suit and the the trial Court has not answered the other issues.



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17. The learned counsel appearing for the appellants/plaintiffs has relied on the following judgments:

1) Ramrameshwari Devi and ors. vs. Nirmala Devi and ors in Civil Appeal Nos.4912-4913 of 2011

2) Sejal Glass Limited.vs. Navilan Merchants Pvt Ltd in Civil Appeal No.10802 of 2017

3) Sathyanath and another .vs. Sarojamani in Civil Appeal No. 3680 of 2022.

18. On careful perusal of the above said judgment it is clear that under order XIV Rule 2(2) of C.P.C the Court has to pronounce judgment on all issues, notwithstanding that a case may be disposed of on a preliminary issue. In the case on hand also the trial Court has decided the issue of limitation and based on limitation the other issues were also answered by the trial Court. The trial Court has also followed the procedures contemplated under the code of Civil Procedure. Therefore the judgment and decree passed by the trial Court are in order and does not warrant any interference. In view of the above said discussions the present appeal has no merits and deserves to be dismissed.



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19.In the result, the appeal suit stands dismissed confirming the decree and judgment of the trial Court passed in O.S. No. 26 of 2009 dated 15.04.2015. No costs.

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

1. The District Judge, Sivagangai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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