



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-09-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

**SA No. 975 of 2009
and SA No. 976 of 2009
and M.P.No.1 of 2009**

1. Ayyavoo Mudaliar

S/o. Muruga Mudaliar Kollakottai
Veeranandal Village Pudupalayam Post
Chengam Tk Tiruvannamalai Dist.

Appellant(s)

Vs.

1. G. Rathnavalli

W/o. Gunasekaran Koothandavar Koil
Street Veeranandal Village
Pudupalayam Post Chengam Tk
Tiruvannamalai Dist.

Respondent(s)

SA No. 976 of 2009

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SA No. 975 of 2009

PRAYER: Second Appeal is filed under Section 100 CPC as against the decree and judgment dated 29.06.2009 in A.S.No.17/2008 on the file of the Principal Subordinate Judge, Tiruvannamalai confirming the decree and judgment dated 11.12.2007 in O.S.No.519/2004 on the file of Additional District Munsif, Chengam.

SA No. 976 of 2009

PRAYER: Second Appeal is filed under Section 100 CPC as against the decree and judgment dated 29.06.2009 in A.S.No.18/2008 on the file of the Principal Subordinate Judge, Tiruvannamalai confirming the decree and judgment dated 11.12.2007 in O.S.No.348/2005 on the file of Additional District Munsif, Chengam.

For Appellant(s): M/s. G. Rajan

For Respondent(s): Mr.M.Malar



COMMON ORDER

These appeals have been preferred challenging the common judgment dated 29.06.2009 passed by the learned Principal Subordinate Judge, Tiruvannamalai in A.S.Nos.17 & 18 of 2009 by confirming the judgment and decree of learned Additional District Munsif, Chengam dated 11.12.2007 in O.S.No. 519 & 348 of 2005 respectively.

2. The appellant is the defendant in the suit filed by the respondent as plaintiff in O.S.No.519/2004 and he is the plaintiff in the other suit in O.S.No.348 of 2005 filed against the respondent. The suit in O.S.No.519 of 2004 was filed by the respondent for claiming the relief of permanent injunction. The other suit filed by the appellant in O.S.No.348/2005 is for claiming partition of half share in the suit property. The suits were tried together and a common judgment has been passed by the trial Court on 11.12.2007 by decreeing the suit filed by the respondent in O.S.No.519/2004 and by dismissing the suit in O.S.No.348 of 2005 filed by the appellant. Hence the appellant had filed first appeals challenging both the judgments in A.S.Nos.17 & 18 of 2008 respectively. The first Appellate Court also confirmed the judgment of the trial Court and dismissed both the first appeals through its common judgment dated 29.06.2009. Aggrieved over that these Second Appeals have been filed by the appellant.



3. *The averments made in the plaint in O.S.No.519 of 2004 in brief :*

The plaintiff and defendants are sister and brother. The suit properties and other properties originally belonged to their father Muruga Mudaliyar by virtue of a registered sale deed dated 06.06.1964. The said Muruga Mudaliyar had two other sons namely Subbarayan and Arumugam and both of them died intestate and unmarried. During the lifetime of Muruga Mudaliyar some 35 years ago he orally gave the suit property to the plaintiff and from then onwards the plaintiff is in exclusive possession and enjoyment over the same. Her father Muruga Mudaliyar consented to effect the change of patta in her name. Hence Patta No.672 was granted in her name in respect of the suit property and she is paying the necessary property tax as well. The plaintiff is in uninterrupted, continuous and open possession of the suit property and title by adverse possession also.

3.1 Her father Muruga Mudaliyar purchased some more properties in the names of the defendant and the defendant's wife and his sons and also settled some other property to the defendant, his wife and children by way of a registered Will dated 24.11.1998. The defendants took possession of those properties and is in enjoyment of the same. The defendant is attempting to interfere with the peaceful possession of the suit property.



4. *The averments made in the written statement of the defendant in*

O.S.No.519 of 2004 in brief:

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The relationship between the parties is admitted. The father of the parties did not give any property orally to the plaintiff and the alleged consent for change of patta was also false. After the death of two unmarried sons, the defendant and the another son Arumugam along with Muruga Mudaliar entered into a registered partition on 24.07.1971 and in the said partition deed the suit properties and other properties were retained to the share of Muruga Mudliar and he was in enjoyment of the same. Except the suit property Muruga Mudaliar bequeathed all other properties under a registered Will dated 24.01.1988 to Radha Ammal and her children. The suit property was enjoyed by him until his death and he had constructed a house therein some 30 years ago. He was residing there along with the defendant and his children. He died intestate on 16.11.2001 and subsequent to his death the suit property remained as a joint undivided family property belonging to the plaintiff and the defendant. Since the defendant lived in his land, the plaintiff used to keep paddy bags in the suit property and enjoyed it jointly. After he sold the paddy bags in the year 2004, the plaintiff prevented him from entering the suit property. She encroached the entire suit property and denied the right of enjoyment of the defendant. The defendant issued legal notice for partition of his half share in the suit property



for which the plaintiff is not amenable. Hence the suit should be dismissed.

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5. On the basis of the above pleadings the trial Court has framed the following issues in O.S.No.519/2004:

- "1. Whether the plaintiff is in possession and enjoyment of the suit property ?*
- 2. Whether the plaintiff is entitled to the suit claims ?*
- 3. To what relief?"*

6. The facts pleaded in the plaint filed by the plaintiff in O.S.No.348/2008 in brief:

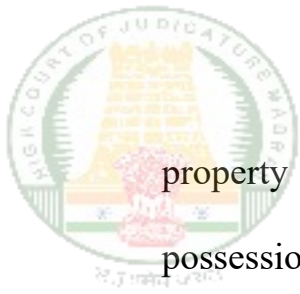
The suit properties are the self-acquired properties of Muruga Mudaliar. Muruga Mudaliar had 4 children including the plaintiff and the defendant and other two sons by name Subbarayan and Arumugam who died issueless. At present the only legal heirs of Muruga Mudaliar are the plaintiff and the defendant. The suit property was purchased by Muruga Mudaliar on 06.06.1964. Muruga Mudaliar, plaintiff and other son Arumugam entered into a registered partition on 24.07.1971. Muruga Mudaliar sold other properties and bequeathed some of the remaining properties under a registered Will dated 24.11.1998. The suit property was independently enjoyed by him till his death. After the death of Muruga Mudaliar the suit property is inherited by the plaintiff and the defendant equally. The plaintiff used the suit property to keep his agricultural produce as he was staying in his land and he removed the bags and



sold them in the year 2004. Thereafter, the defendant demanded partition of half share. Since the plaintiff refused to divide the property, the defendant prevented the plaintiff to enter into the suit property and locked the plaintiff's portion in the suit property. Hence, the plaintiff caused notice to the defendant. After receiving notice, the defendant filed the suit in O.S.No.519 of 2004. Hence, the plaintiff has also filed the present suit in O.S.No.348 of 2005 for partition of his half share.

7. The averments made in the written statement filed by the defendant in O.S.No.348/2004 in brief:

The suit property was orally gifted to the defendant during the partition on 24.07.1971. The suit property was not included in the said partition in order to avoid stamp duty. After marriage, the defendant's father Muruga Mudaliar made the defendant to reside in the suit village, as she was his only daughter. Muruga Mudaliar constructed a house in the year 1976 wherein himself and the family of the defendant lived together. The defendant's family is residing in the suit house since 30 years. The plaintiff never used to store his paddy bags in the suit property. The patta was transferred to the name of the defendant with the consent of Muruga Mudaliar and the plaintiff did not claim any right over the suit property after giving it to defendant. The plaintiff is not in possession of the suit property. However, the defendant is in continuous possession of the suit



property for the past 30 years and she had perfected title by way of adverse possession. Hence, the plaintiff is not entitled for any share in the suit property and the suit must be dismissed.

8. On the basis of the above pleadings the trial Court has framed the following issues in O.S.No.348/2005:

- “1. Whether the suit properties are the joint family properties of the plaintiff and defendant ?*
- 2. Whether the suit properties are available for partition ?*
- 3. Whether the plaintiff is entitled for ½ share in the suit property ?*
- 4. Whether the plaintiff is entitled for the decree of partition as prayed for?*
- 5. To what other relief are the parties entitled ?”*

9. During the course of the trial on the side of the plaintiff P.W.1 to P.W.4 were examined and Exs.A1 to A11 were marked. On the side of the defendant D.W.1 to D.W.3 were examined and Exs.B1 to B5 were marked. At the conclusion of the trial, the trial Court decreed the suit in O.S.No.519/2004 and dismissed the suit in O.S.No.348/2008. Aggrieved by the same, the plaintiff in O.S.No.348/2008 preferred first appeal in A.S.Nos.17 & 18 of 2008 and both the appeals were dismissed by the first appellate Court. Aggrieved by the same, the present Second Appeals have been preferred.



10. Both the second appeals are admitted on the following substantial question of law:

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“i) Whether there could be an oral gift of a property and whether such oral gift is recognized in law ?”

11. The learned counsel for the appellant submitted that there cannot be any oral gift in respect of the immovable property and hence the first appellate Court ought to have discarded the respondent's claim through oral gift and set aside the judgment of the trial Court; the findings with regard to the family arrangement is based only on the surmises and premises; the respondent has taken inconsistent plea and that was ignored by the Courts below; in the suit in O.S.No.519 of 2004 the respondent has raised the plea of oral partition and in the other suit she has claimed she had received the suit through an oral gift which are contradictory to each other; Muruga Mudaliar did not make any mention about the settlement in respect of the suit property in favour of the respondent in any of the documents; hence both the trial Court and the first appellate Court has not properly appreciated the materials on record.

12. The learned counsel for the respondent / defendant in C.S.No.348/2005 submitted that the father, Muruga Mudaliar, had purchased the suit property on 06.06.1964 and thereafter he entered into a partition on 24.07.1971 with his son; at that point of time the suit property was allotted to



his daughter who is the respondent herein and only for that purpose the suit property has not been included in the partition deed - Ex.B2; the patta for the suit property was also transferred in the name of the respondent in the year 1992 in Patta No.672 and the respondent has been in enjoyment of the suit property continuously without any interruption for more than 35 years since the year 1971 and thereafter perfected her title by way of adverse possession also; the respondent has got the family card by having the address of the suit property; the appellant is not in possession of the suit property; the suit has been filed with a *mala fide* intention; the trial Court and the first appellate Court has properly appreciated the evidence on record and rightly dismissed the suit.

13. For the sake of convenience, the parties are referred to as per their ranks in O.S.No.348/2005.

14. The fact that the suit property was purchased by the father of the parties namely Muruga Mudaliar, is not disputed. The further fact that Muruga Mudaliar had entered into partition with his sons on 24.07.1971 is also not disputed. For the reasons best known to the father of the parties - Muruga Mudaliar, he did not choose to include the suit property. The defendant claims that the suit property has been left to her enjoyment and that is exactly the reason that it has not been included in the partition deed - Ex.B2 dated 24.07.1971. Muruga Mudaliar has been allotted with certain properties in the



partition deed Ex.B2. Even according to the contention of the appellant, some of the properties have been sold by Muruga Mudaliar during his lifetime and the remaining properties were bequeathed to his son, the plaintiff, through a Will dated 24.11.1998 – Ex.B3. Until the death of the original owner Muruga Mudaliar, the plaintiff did not think of disturbing the suit property, knowing very well that his daughter, the defendant, is in enjoyment of the same. Muruga Mudaliar had entered into a partition deed in the year 1971 and thereafter had executed a registered Will on 24.11.1998 vide Exs.B2 and B3 and at no point of time Muruga Mudaliar thought of including the suit property also in the above documents. This would only strengthen the fact that the suit property has been left to the enjoyment of the defendant in her own capacity.

15. No doubt the plaintiff had claimed the allotment of the suit property to the defendant's exclusive enjoyment by making inconsistent pleas of oral gift and family arrangement. The holistic appreciation of facts and evidence would only confirm that it is a kind of family arrangement made by Muruga Mudaliar even while he was entering into the partition along with his son, the plaintiff herein. It would have cleared all the confusions if the defendant was also included as a party to the partition deed dated 24.07.1971 and if the suit property was allotted to her through the above partition deed. But the father of the parties have got other intentions in his mind and he had chosen to allow his daughter to be in the enjoyment of the suit property without anyone's



disturbance. Until the father (Muruga Mudaliar) was alive and after the execution of Ex.B2 partition deed and Ex.B3 – Will, the plaintiff never claimed that he has a common interest and enjoyment of the suit property and that it should be partitioned. Only after the demise of Muruga Mudaliar on 16.11.2001, the plaintiff had thought of filing a similar such suit. In fact Muruga Mudaliar himself has not been in joint enjoyment of the suit property along with his daughter. This is confirmed in view of the fact that the patta Ex.A2 has been granted in respect of the suit property exclusively in the name of the respondent on 31.07.1992.

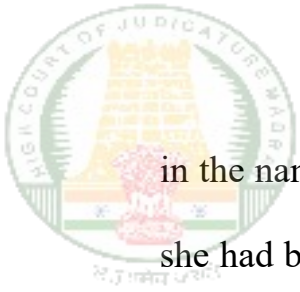
16. All the documents which have been marked as Exs.A3 to A10 would show that the defendant has been in exclusive possession of the suit property. According to his claim the defendant has started to claim her possession and enjoyment in respect of the suit property in entirety only from the month of May, 2004. The plaintiff claimed that until the month of May, 2004 he was storing paddy bags in the suit property and after he removed it during May, 2004 for the purpose of selling them, the defendant started to prevent the plaintiff from entering into the suit property. All these allegations would only show that the defendant has been in enjoyment of the suit property and despite the plaintiff's claim of enjoying it until the year 2004, the patta has been granted in her exclusive name in the year 1992 itself. Under such circumstances it can only be presumed that the plaintiff's father did not have any objection for



exclusive enjoyment of the respondent over the suit property and to get the patta also in her exclusive name in the year 1992. When the facts are so, even if it is presumed that the plaintiff has been storing his paddy bags, it could be only presumed as a permissive usage.

17. Until the father was alive, the plaintiff did not claim about his alleged entitlement in the suit property. Even when the partition deed was executed on 24.07.1971, the suit property was not included and the plaintiff did not make any objection for the same. So the conduct of the parties and the manner in which the documents have been executed vide Exs.B2 and B3 would only confirm the fact that the original owner Muruga Mudaliar himself has thought it fit to have an unwritten family arrangement to allot the suit property to the enjoyment of the respondent and thereby make entries in the relevant revenue record. The patta has been granted in the name of defendant in the year 1992 when the father was alive and hence there cannot be any fraud at the back of the defendant or her father.

18. The plaintiff has filed the suit for partition despite the fact that the suit property has not been included in the earlier partition deed and the subsequent Will executed by his father in favour of his son without claiming any relief of declaration. The very fact of non-inclusion of the suit property, the family partition between the plaintiff and his father and the issuance of individual patta



in the name of the defendant would only support the claim of the defendant that she had been in uninterrupted continuous possession over the suit property even from the year 1971. Under such circumstances the plaintiff cannot file a suit for partition without clearing the question of his entitlement over the suit property without seeking the relief of declaration.

19. There is no doubt that there cannot be any plea for oral gift in respect of the immovable property but when a person has proved her title by adverse possession and by prescription of title and produced relevant documents to substantiate the same, there is no need to look into any plea for any oral gift. In other words even without having any conveyance of title through document, the defendant has established that she has a possessory right over the suit property by act of parties.

20. Even if the substantial question of law is answered that there cannot be any oral gift in respect of the immovable property, the same cannot have any adverse consequences on the defendant. The Courts below have rightly appreciated the evidence on record and confirmed the title by adverse possession of right from the family arrangement made in favour of the respondent in the year 1971, by her father. Thus, the substantial question of law is answered.



21. As the appellant proved his joint title in the suit property but the respondent has proved her exclusive title over the suit property, it is right for the Courts below to deny the relief of partition as claimed by the appellant / plaintiff.

22. In the result, these Second Appeals are dismissed and the judgment and decree dated 29.06.2009 in A.S.Nos.17 & 18 of 2008 on the file of the Principal Subordinate Judge, Tiruvannamalai and the decree and judgment dated 11.12.2007 in O.S.No.519/2004 & O.S.No.348/2005 on the file of Additional District Munsif, Chengam, are confirmed. No costs. Connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-speaking order
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R.N.MANJULA J.

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