



S.A.No.358 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.358 of 2018

Irusa Gounder

... Appellant

Vs.

1. Palani
2. Sengodan
3. Subramanian
4. Marasamy
5. Chinna Sengodan
6. Arumugam
7. Emanan
8. Thangamuthu
9. Natarajan
10. Nanjappan
11. Chinnammal
12. Pachiyammal
13. Thamayanthi
14. Sathiyamoorthy
15. Dharmalingam
16. Dhanalakshmi
17. Selvaraj
18. Pappathi
19. Subramaniam
20. S.Sankar
21. Palaniappan
22. Sellammal
23. Vijayalakshmi



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24. Easwari

25. Irusayee

26. Sengottaiyan

... Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment, dated 20.11.2017 passed in A.S.No.22/2012, on the file of the Sub Court, Bhavani upholding the decree and judgment dated 28.02.2012 passed in O.S.No.184/2009, on the file of the II Additional District Munsif, Bhavani.

For Appellant : Mr.B.Kumarasamy

For Respondents

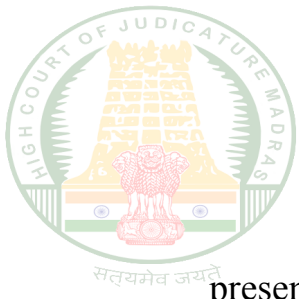
For R2 to R8 : Mr.S.Lakshmanasamy

For R9, R10 to R23 No appearance

JUDGMENT

The appellant is the first defendant in O.S.No.184/2009 on the file of the II Additional District Munsif Court, Bhavani. The Respondents/plaintiffs filed the suit for partition of the suit properties into four equal shares and to allot one such share to them.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the



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present second appeal would also be indicated.

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3. The case of the plaintiffs in a nutshell is as follows :

The suit properties originally belonged to one late Sengoda Gounder who had four sons by names Muthu Gounder, Arumugam, Chinna thambi and Emana Gounder and among them, Chinna thambi alone is alive and he has been shown as third defendant in the suit. Sengoda Gounder's wife died long back. The plaintiffs are the legal heirs of the deceased Muthu Gounder. The defendants 1 and 2 are the legal heirs of the deceased Arumugam, while the defendants 4 and 5 are the legal heirs of the third defendant. The sixth defendant is the legal heir of the deceased Emana Gounder. The plaintiffs have 1/4th share in the suit properties. Since the plaintiffs felt that they cannot enjoy the suit properties jointly with the defendants 1 and 2, they requested them (defendants 1 and 2) to partition the suit properties. However, the defendants 1 and 2 attempted to sell the suit properties to third parties and therefore the plaintiffs issued a legal notice, dated 27.12.2007 (Ex.A5) to the defendants calling upon them to divide the suit properties



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into four equal shares and to allot one such share to them. Subsequently, the plaintiffs came to understand that the defendants 1 and 2 had sold a portion of the suit properties in favour of the remaining defendants through two Registered Sale deeds, dated 13.07.1994 and 19.08.1996. Since the plaintiffs are not parties to the said sale, it would not bind them. Hence, the suit.

4. The defendants 3, 6, 8 to 16 and 18 remained absent and were set exparte. The suit was resisted by the defendants 1 and 2 on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The plaintiffs do not have any share in the suit properties.
- iii. Muthu Gounder married one Ayyammal and through her, he has a daughter by name Irusayi ammal.
- iv. Muthu Gounder, during the subsistence of the first marriage, was living with the mother of the plaintiffs and therefore the plaintiffs, who are illegitimate children cannot claim any share in the suit properties.



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- v. After the death of Sengoda Gounder, Muthu Gounder, the father of the plaintiffs migrated to Veppanatham pudur village, Dharmapuri District.
- vi. Thereafter the suit properties and the other properties were partitioned among Muthu Gounder and his brothers on 14.04.1970 in the presence of Panchayatdhars. Muthu Gounder thereafter sold his 1/4th share in the suit properties to his brother Arumuga Gounder orally. Thus the defendants are in possession and enjoyment of the entire suit properties. They have also prescribed title by way of adverse possession.
- vii. Muthu Gounder has in fact been ousted from the suit properties.

5. On the basis of the above pleadings, the Trial Court framed necessary issues and the second plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A26. The second defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B58. Ex.X1 to X5 were also marked.



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6. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 28.02.2012, decreed the suit in favour of the plaintiffs on the following grounds:

- i. Though the defendants 1 and 2 have contended that they are in exclusive possession of the suit properties, they have not adduced acceptable evidence to substantiate the same.
- ii. In the Revenue records, Ex.A1, Ex.A2, Ex.A22 to Ex.A26, the name of Muthu Gounder also finds place.
- iii. There is no clinching evidence to show that the defendants 1 and 2 are in exclusive possession of the suit properties separately and that Muthu Gounder was ousted.
- iv. Though the defendants 1 and 2 have claimed that there was an oral partition in the family on 14.04.1970, the same has not been established.
- v. According to the defendants, Muthu Gounder sold his share during the year 1975 orally. However, no details with regard to the properties sold in favour of the defendants 1 and 2 have been



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furnished by the defendants 1 and 2 in their written statement.

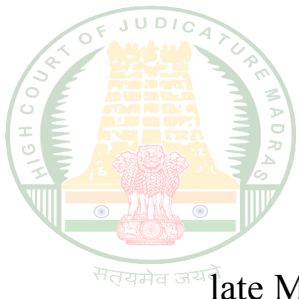
vi. Thus, the plaintiffs are entitled to 1/4th share in the suit properties.

7. Aggrieved over the decree and judgment passed by the Trial Court Judge, the first defendant filed an appeal in A.S.No.22/2012 before the Sub Court, Bhavani. The learned Sub Judge, Bhavani, on considering the oral and documentary evidence adduced on both sides, upheld the findings recorded by the Trial Court, vide his decree and judgment dated 20.11.2017, as against which, the present second appeal is filed.

8. Notice of motion was ordered on 25.06.2018, and after several adjournments, the second appeal is posted for hearing today.

9. Heard Mr.B.Kumarasamy, learned counsel for the appellant and Mr.S.Lakshmanasamy, learned counsel for the Respondents 2 to 8.

10. Mr.B.Kumarasamy, learned counsel appearing for the appellant contended that the plaintiffs are not the legitimate children of



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late Muthu Gounder and therefore they cannot claim any share in the suit properties. It is also his contention that there was an oral partition in the family in the presence of Panchayatdhars during the year 1970 and Muthu Gounder also sold his 1/4th share in favour of the defendants 1 and 2 orally. These aspects have not been considered properly by both the Courts below. He therefore prayed for allowing the present second appeal.

11. Per contra, Mr.S.Lakshmanasamy, learned counsel appearing for the Respondents 2 to 8 contended that both the Courts below by their well reasoned judgments had decreed the suit filed by the plaintiffs and therefore, there is no reason for this Court to interfere with the same.

12. The plaintiffs have filed the suit seeking partition of the suit properties into four equal shares and allot one such share to them. It is not in dispute that the suit properties originally belonged to one Sengoda Gounder ancestrally and he had four sons by names Muthu



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Gounder, Arumugam, Chinna thambi and Emana Gounder. Except Chinna thambi, the other sons are no more. Sengoda Gounder's wife predeceased him. The plaintiffs contend that they are the legal heirs of Muthu Gounder and that they are entitled to 1/4th share in the suit properties. The specific contention of the defendants 1 and 2 in their written statement is that the plaintiffs are not the legitimate children of late Muthu Gounder. According to them, Muthu Gounder married one Ayyammal and through her, he was blessed with a daughter by name Irusayi ammal. It is also averred that during the subsistence of the first marriage, Muthu Gounder lived with the mother of the plaintiffs and therefore, the plaintiffs cannot claim any share in the suit properties. The defendants 1 and 2 have not adduced any acceptable evidence in this regard. Mere bald allegation in the written statement that the plaintiffs are not the legitimate children of Muthu Gounder, without proof is not sufficient to hold that the plaintiffs are illegitimate children of Muthu Gounder. In fact, the legal heirship certificate, dated 26.09.2007 (Ex.A4) issued by Tahsildar, Harur, shows that the plaintiffs are the children of late Muthu Gounder.



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13. According to the defendants 1 and 2, there was an oral partition amongst the four sons of Sengoda Gounder on 14.04.1970 in the presence of Panchayatdhars. However, none of Panchayatdhars were examined by the defendants in the trial Court. Arunachalam (D.W.2) is the son of one of the Panchyatdars and it is admitted by him that his father is alive. However he has not been examined as a witness. Thus the oral partition has not been proved.

14. It is also contended by the defendants 1 and 2 that after the oral partition, the plaintiffs' father, Muthu Gounder sold his share in favour of the defendants 1 and 2 orally. It is pertinent to point out that the defendants 1 and 2 have not disclosed the description of the properties sold in their favour by late Muthu Gounder. The sale price has also not been indicated in the written statement.

15. The contentions of the defendants that they have prescribed title to the suit property by way of adverse possession and that Muthu



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Gounder was ousted from the suit properties, have not been established.

These aspects have in fact been analysed by the first appellate Court and the observation in this regard is extracted hereunder:

"07(8) According to the first two defendants, the suit properties were orally partitioned among the four sons of Sengoda Gounder on 14.04.1970. i.e. on the first day of Chithirai month in 1970. Immediately after this oral partition, the father of the plaintiffs namely Muthu Gounder is claimed to have sold his divided 1/4th share to the father of the first two defendants namely Arumugam. The plaintiffs deny both the above assertion. Now, let us apprise and consider the oral sale asserted before we could analyse oral partition. Irrespective of the fact as to whether the oral sale is valid or not, the details of oral sale is absolutely germane to analyse the oral sale. But, the defendants who assert oral sale by the father of the plaintiffs immediately after oral partition had disclosed no material facts as to what was the property that was sold and what was the sale



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price. These two ingredients are very vital for any sale.

Here, the first two defendants without even disclosing the details of the properties sold and the sale price parted, attempt to assert oral sale. The case of the first two defendants are not that the father of the plaintiffs had sold his undivided 1/4th share. Their specific case is that the father of the plaintiffs namely Muthu Gounder had sold his specific share allotted to him in the oral partition. In such event, the first two defendants are duty bound to disclose the definite description of the property that had been sold by Muthu Gounder in favour of his brother Arumugam, who is the father of the first two defendants. Likewise, they must also to prove the sale price is fixed and paid. Here, no such necessary details are available. the extent of the suit property is 4.11 acres as per the plaint schedule. In that event, the 1/4th share of Muthu Gounder would be more than one acre. It is common prudence in 1970, the one acre of land would certainly cost more than Rs.100/-. Therefore,



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the sale if any ought to have been registered. If any sale relates to an immovable property worth more then Rs.100/- is not registered, the said is invalid. Here, as the details of sale is also not provided and as the sale deed not brought on record by virtue of a registered deed, the assertion of the oral sale by the first two defendants assumes no significance and requires no further consideration. Therefore, the oral sale asserted by the first two defendants cannot be believed as done by the trial court."

.....

07(12) In the present case, the first two defendants contend that they are in exclusive possession over the entire suit properties. The plaintiffs stoutly oppose the said assertion. According to the plaintiffs, they have been in possession of one acre. They claim to cultivate by coming down to suit property village then and there. The first two defendants argued to disbelieve this version by relying on the oral evidence of PW.1 The second plaintiff



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had been examined as PW.1. Admittedly the second plaintiff during cross examination is unable to furnish any basic details about the suit property. The oral evidence of the second plaintiff namely PW.1, would clearly expose his poor knowledge about the details of the suit property. This would cause an inference that in all probability, the plaintiffs could not be in joint possession physically. However, we have already observed that among co-sharers, physical possession by one of the sharer can be deemed as possession by all others. In such context, the first two defendants are at duty to show that their exclusive possession was with animus to oust the plaintiffs and their father Muthu Gounder from their title over 1/4th share in the property. In this regard, plaintiffs had relied on the revenue records vide Ex.A1, Ex.A2 and Ex.A22 to Ex.A26. Ex. A1 is Patta extract that relates to suit property. If Ex.A1 is perused, it can be noticed that the father of the plaintiff, is also shown as one of the owner among others in respect



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of the suit property. This is the case in case of Ex.A2 namely the 'A' Register also. Ex.A22 to Ex.A26 are Adangal extracts that relates to suit properties for Fasali years 1392 to 1412. In all these Adangals, the person who cultivated the suit property, is shown as Muthu Gounder and others. These extracts almost covers 1984 to 2003. Therefore, it is clear from these documents that as per the revenue records Muthu Gounder is also allowed to be shown as one of the sharers along with others. If really, the first two defendants had intentionally ousted Muthu Gounder from possession and title right from 1970, then there is no reason for the first two defendants to allow the entries in the revenue records as against them are intention. Therefore, the revenue records relied by the plaintiffs is no good sign for the exclusive hostile possession and ouster asserted by the first two defendants. Therefore, these revenue records would clearly support the deemed joint possession by the plaintiffs, even assuming that they are not physical



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possession of the suit property. Thus, the revenue records relied by the plaintiff would weaken the assertion of the ouster by the first two defendants.

07(13) Though the first two defendants assert title to the share of Muthu Gounder by way of Ouster, as evident from Ex.B2, even during 1994, the right of Muthu Gounder is acknowledged by the first defendant from Ex.A1, A2 and Ex.A22 to A26, we can infer deemed possession of the suit property by plaintiffs. There is no clinching evidence which would impeach theses aspects and could confer hostile possession and consequent title in favour of the first two defendants.

16. The above observation of the first appellate Court is based on well laid down principles of law and by no stretch of imagination they can be termed as perverse. In fact, there is no substantial question of law involved in the present second appeal.



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17. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 20.11.2017 passed in A.S.No.22/2012, on the file of the Sub Court, Bhavani are upheld.
- iii. The suit in O.S.No.184/2009, on the file of the II Additional District Munsif, Bhavani is decreed.

17.02.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Sub Court, Bhavani.
2. The II Additional District Munsif, Bhavani.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.

vum

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