



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.02.2025

Pronounced on : 14.02.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

A.S.No.26 of 2023

and

C.M.P.Nos.6390 & 13414 of 2024

1.Devanna Gounder @ Devannasamy

2.Kalamani

3.Paramesh

.. Petitioners

Versus

Umaiya

.. Respondent

Prayer:- Appeal filed under Section 96 of CPC read with Order 41 Rule 1 of CPC, to set aside the judgment and decree dated 25.03.2022 made in O.S.No.320 of 2017 on the file of I Additional District Judge at Coimbatore.

For Appellants : Mr.Rajesh Vivekananthan

For Respondent : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.C.T.Murugappan

JUDGMENT

Challenging the decree and judgment granting declaration in favour of the plaintiff and recovery of possession, the present appeal has been filed.



WEB COPY 2. For the sake of convenience, parties are referred to as per their own ranking in the Trial Court.

3. Brief background of the case is as follows:

3.a. The second defendant is wife and the third defendant is the son of the first defendant. The suit property originally belonged to ancestral property of Chellappa Gounder, who is the father of the 1st defendant. The Chellappa Gounder and their heirs entered into a partition deed dated 02.04.1976, in which, property to an extent of 1.27 acres in S.F.No.518/1 at Veerapandi village was allotted to the 1st defendant. Though they have entered into a partition deed in the year 1976, since, the first defendant was a minor, the property was enjoyed as a joint family properties. As the first defendant is addicted to alcohol, the Chellappa Gounder was maintaining all the properties as a joint family. Further, the first defendant has entered into a sale agreement dated 26.10.1989 with one Manoharan. Therefore, Chellappa Gounder has filed a suit for permanent injunction in O.S.No.2601 of 1989 against his sons and the first defendant. He also filed another suit for permanent injunction in O.S.No.2833 of 1990 against the first defendant and



agreement holders. Thereafter, the father of the agreement holder Ramasamy has filed a suit for permanent injunction in O.S.No.2970 of 1989 against the first defendant and his father Chellappa Gounder.

3.b. Thereafter, Chellappa Gounder, agreement holder Manoharan and the first defendant entered into a sale agreement dated 08.10.19990, which Chellappa Gounder agreed to pay a sum of Rs.1,30,000/- to the agreement holder and Rs.1,45,000/- to the first defendant. However, the first defendant has sold the property to an extent of 10 cents in S.F.No.518/1 at Veerapandi Village in favour of Manoharan, that apart, sold the property to an extent of 15 cents in S.F.No.518/1 at Veerapandi Village in favour of one Arputharaj.

3.c. At that time, the daughter of Chellappa Gounder namely Amirthamani has filed a suit for partition in O.S.No.1 of 1991 against his father and other legal heirs. In the above suit, a compromise decree was passed on 10.01.1991. As per the compromise decree, the suit property to an extent of 1.02 acres in S.F.No.518/1A was allotted to Amirthamani and her father Chellappa Gounder was allotted 0.25 acres in S.F.No.518/1A. Prior to the compromise, the first defendant had already sold 25 cents in



S.F.No.518/1A in favour of Ramasamy and Maria Arputharaj. Therefore, the first defendant, Manoharan and Chellappa Gounder entered into an agreement dated 19.05.1993, in which the first defendant has agreed and accepted the compromise decree and also he agreed that he received the settlement amount from Amirthamani. On the same day, Chellappa Gounder has entered into another agreement with Ramasamy and Maria Arputharaj. As per the said agreement Chellappa Gounder has purchased the property, what the first defendant sold before the compromise. Therefore, the entire property has been enjoyed by Chellappa Gounder and family members only as per the compromise decree passed in O.S.No.1 of 1991.

3.d. After 7 years of passing of the decree for partition, the first defendant has filed another suit in O.S.No.1382 of 1998 and the same was re-numbered in O.S.No.3755 of 2004 on the file of II Additional District Munsif, Coimbatore questioning the compromise decree passed in O.S.No.1 of 1991. The plaintiff has filed an application under Order VII Rule 11 of CPC and the same was dismissed on 30.03.2011. Challenging the dismissal, the plaintiff have filed revision before this Court in CRP.No.3996 of 2011, wherein, this Court allowed the revision on 01.04.2013. SLP was filed before



the Hon'ble Supreme Court in SLP.No.5831 of 2014 and the same was dismissed. The plaintiff has entered an agreement of sale with Amirthamani in respect of the suit property. After the agreement, the first defendant tried to interfere with the plaintiff possession and enjoyment. Therefore, the plaintiff filed a suit in O.S.No.2305 of 2005 and obtained interim injunction, thereafter, the defendants kept quiet and the plaintiff did not proceed the case and left the case as dismissed for default. It was further learnt by the plaintiff that the first defendant after dismissal of the SLP in challenging the compromise decree has conveniently executed a settlement deed in favour of his wife on 06.11.2005. In this regard, FIR is also registered against them. Hence, the plaintiff filed a suit.

3.f. The stand of the defendants in the written statement is that the suit property originally owned by Chellappa Gounder. The first defendant is the son born of the marriage with the third wife of the Chellappa Gounder. It is admitted by the defendant that the partition deed was entered into between Chellappa Gounder and his legal heirs on 02.04.1976, at that time, the first defendant was 14 years and his sister Amirthamani was 4 years. As per the partition deed, Chellappa Gounder allotted with 95 cents of land in S.F.No.519,



10 cents of land in S.F.No.450 and 40 cents of land in S.F.No.518.

Palanisamy was allotted 37 cents of land in S.F.No.519. After partition, since, the first defendant had to share the property in S.F.No.518 to an extent of 1.27 acres of land and a tiled house in the property with well, motor and electricity connection. Hence, the property allotted to the first defendant was subdivided as 518/1. The Chellappa Gounder as the guardian of first defendant administered the property allotted to the first defendant.

3.g. It is also denied that he was addicted to alcohol. Admitting that Chellappa Gounder filed a suit for injunction as against his sons in O.S.No.2601 of 1989 and compromise was entered into between Chellappa Gounder and Manoharan. Further, it is contention that the first defendant was not aware of the compromise, since, he did not sign the compromise. He gained knowledge of the compromise decree only in the year 1998. Therefore, he filed a suit in O.S.No.1382 of 1998 which was re-numbered as O.S.No.3755 of 2024. According to him, he did not receive any summons from the Court or he did not engage any counsel on his behalf. The first defendant's sister filed a suit in O.S.No.1 of 1991 seeking for partition, wherein, no relief was sought to cancel the partition deed dated 02.04.1976.



The first defendant's sister instead of claiming a share over her father's property in S.F.No.518 and 450 to an extent of 40 cents and 10 cents respectively misrepresented and claimed to an extent of 2.72 acres of land and managed to get compromise decree in her favour. However, after the decree being obtained, the property allotted to Amirthamani was not divided by metes and bounds.

3.h. The first defendant has executed a settlement deed in favour of the second defendant on 06.11.2006 for an extent of 1.02 acres in S.F.No.518/1. As per the partition deed in 1976, he was allotted 1.27 acres and the property was allotted by metes and bounds, out of which, he sold 25 cents of land to Manokaran and Arputharaj and the balance was settled in favour of the second defendant. Hence, disputed the title of the plaintiff.

3.i. In light of the above submissions, the Trial Court framed the following issues:

- a. Whether the plaintiff is the absolute owner of the suit property?
- b. Whether the plaintiff is entitled for declaration and delivery of possession of the suit property?



c. To what other relief?

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3.j. On the side of the plaintiff, the plaintiff had examined PW1 and PW2 and marked Ex.A1 to Ex.A18. On the side of defendants, the second defendant was examined as DW1 and no exhibits was marked. Based on the above pleadings, the Trial Court has decreed the suit vide judgment and decree dated 25.03.2022. Challenging the same, the present appeal has been filed.

4. During the pendency of this appeal suit, the second appellant has filed two applications were filed in CMP.Nos.13414 and 6390 of 2024 for producing additional documents. According to her, she has acquired the property by virtue of settlement deed executed by the first defendant on 06.11.2006. The first defendant acquired the property by way of partition deed dated 02.04.1976 in respect of S.F.No.518/1. The first appellant's sister Amirthamani filed a suit for partition in O.S.No.1 of 1991, the same was decreed in 10 days without the knowledge of the 1st appellant. Hence, she filed an application to set aside the order in O.S.No.3755 of 2024. Later the first defendant had executed a settlement deed in favour of the second appellant in S.F.No.518/1 to an extent of 1.02 acres. While so, Amirthamani



had executed a sale deed without mentioning the metes and bounds of property and also by mentioning the sub-division of the property wrongly as 518/1A by virtue of compromise decree. The plaintiff had not produced any documents to show that she was in possession from the date of sale deed till the date of alleged dispossession, hence, the second appellant intends to produce additional documents which were in the custody of the first defendant, but could not produced, since he was bedridden since 2017.

5. The said application has been opposed by the respondent/plaintiff on the ground that the documents sought to be produced as additional evidence are not relevant. The ingredients of Order XLI Rule 27 of CPC have not been satisfied.

6. The learned counsel for the appellants submitted that additional documents now sought to be filed are absolutely necessary to prove her possession in the suit property. According to them, compromise decree though reached finality, the same can be questioned in any collateral proceedings. He would further submit that no proper description has been given in the plaint particularly in a suit filed for declaration and recovery of



possession. Several properties were originally allotted to the first defendant in a partition deed of the year 1976, further, ever since the date of allotment, the first defendant is in possession of the property, he also sold the property to an extent of 25 cents, however, the suit came to be filed later including the property already sold out. The said suit came to be decreed on the basis of a compromise decree, therefore, the same is not valid in the eye of law. It is the further contention that plaintiff has already filed a suit for injunction in earlier occasion, however, at that time, the relief of declaration has not been sought, therefore, the suit is barred under Order II Rule 2 of CPC. Hence, seeks for allowing the appeal along with the application for adducing additional evidences.

7. Whereas, the learned senior counsel for the respondent submitted that though the partition deed was entered between the first defendant and his father and brother, the said partition deed has not been acted upon. In fact, partition suit has been filed by the sister of the first defendant, wherein, first defendant was unsuccessful in challenging the compromise decree, now, cannot contend that he has derived title pursuant to the partition deed dated 02.04.1976. Therefore, any settlement deed executed in favour of wife after



his attempt to challenge the compromise decree will not give any better title.

As far as the adducing of additional document is concerned, it is the contention of the learned senior counsel that those documents are no way related to for the present issue. Even assuming that those documents will be useful to prove the possession of the appellants, it is the admitted case of the respondent that the appellants are in possession of the property. Therefore, those documents are no way relevant for disposal of the appeal suit. Hence, he contended that the Trial Court has analysed the entire issue and granted declaration and seeks for dismissal of the appeal suit.

8. Heard both sides and perused the materials placed on record.

9. In light of the above submissions, now the points arise for consideration are as follows:

- i) Whether the additional documents sought to be filed are relevant for disposal of the appeal suit
- ii) Whether the second appellant became absolute owner of the property in pursuant to the settlement deed executed by the first defendant, that too, after the compromise decree reached finality where the suit property has been



allotted to the sister of the first defendant?

iii) Whether the plaintiff is entitled for declaration?

Points (i) to (iii)

10. As far as the additional documents sought to be filed is concerned, the reasons assigned by the second appellant that since, the document came into her custody at a later point of time, she could not file those documents in the Trial Court, whereas, the Trial Court has held that defendant has not produced any documents to show that she was in possession of the property. Therefore, those documents are required to be filed. It is relevant to note that reception of additional documents cannot be encouraged in routine matter. Only if the party establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after the exercise of due diligence, be produced before the Trial Court, document could be received in appeal suit as additional document. That apart, when the Court is of the view that the document now sought to be filed would enable the Court to pronounce judgment or for any other substantial cause may receive such documents. Therefore, merely on the request of the parties, document cannot be received as a matter of right. The appellants contention



to the effect that those documents are relevant to prove their possession, this

Court is of the view that proof of possession is not an issue at all. The suit itself is filed for declaration and recovery of possession. It is the admitted case of the plaintiff that the defendants have trespassed into the property and the plaintiff was dispossessed. Therefore, documents now sought to be filed by the defendant to prove the possession will not have any impact in deciding the suit. Therefore, this Court is of the view that for deciding the issue of title, those documents now sought to be filed as additional documents is not at all relevant. Accordingly, the applications in CMP.Nos.13414 and 6390 of 2024 are dismissed.

11. The suit has been proceeded as if the suit property originally belonged to the father of the first defendant namely Chellappa Gounder ancestrally. Though there was a partition deed on 02.04.1976, when the first defendant was minor, as the first defendant became addicted to alcoholic and started dealing with the property, Chellappa Gounder only in order to save the family properties filed a suit against the agreement holder and he had also entered into an agreement to re-purchase the family properties to the family. It is the specific contention that though there was partition deed in the year



1976 and the property was maintained by the father of the first defendant as a joint family properties. Despite filing of suit as against the agreement holder, the first defendant has sold the property to an extent of 25 cents in S.No.518/1. Therefore, at this stage, sister of the first defendant namely Amirthamani filed a suit in O.S.No.1 of 1991 against the first defendant, her father and other legal heir. The suit came to be decreed on the basis of compromise entered into between the parties on 10.01.1991. As per the compromise decree, the suit property to an extent of 1.02 acres in S.F.No.518/1A was allotted to Amirthamani which was the subject matter of the allotment in earlier partition deed of the year 1976. Thereafter, as the compromise decree has reached finality, the plaintiff purchased the property from Amirthamani only on that strength, the suit has been filed.

12. Written statement has been filed defendants, wherein, there is no denial with regard to the specific assertions made in the plaint that the first defendant's father was maintaining the property as a joint family property, even after partition deed and Chellappa Gounder has filed a suit against the agreement holder in O.S.No.2833 of 1990. Further, the defendants have admitted that Chellappa Gounder also entered into agreement with the



agreement holder to repurchase the property. It is also not disputed that the first defendant's sister has filed a partition suit in OS.No.1 of 1991 seeking partition against the first defendant, her father and other legal heirs. In the said suit, compromise decree was passed on 10.01.1991, wherein, property to an extent of 1.02 acres in S.F.No.518/1A was allotted to Amirthamani.

13. Though it is the contention of the defendants in the written statement that before the compromise decree the first defendant had already sold property to an extent of 25 cents in S.F.No.518/1A in favour of Ramasamy and Maria Arputharaj and the property allotted to the Amirthamani was not divided by metes and bounds; it is the specific allegation in the plaint that after the compromise decree, property originally sold by the first defendant is also repurchased by his father on entering the agreement with the purchaser of the said property and the property has been in enjoyment only as per the compromise decree passed in O.S.No.1 of 1991. These facts have not been specifically denied in the entire pleadings. Therefore, facts asserted in the plaint has not been denied specifically, only evasive denial has been made. Such evasive denial cannot be denial under law and such evasive denial is deemed to be an admission.



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14. It is also to be noted that the first defendant has challenged the compromise decree in O.S.No.1382 of 1998 (re-numbered as O.S.No.3755 of 2004) on the file of II Additional District Munsif, Coimbatore, wherein, the respondent has filed an application to reject the suit under Order VII Rule 11 of CPC in I.A.No.24 of 2011 and the said application was dismissed by the Trial Court. Challenging the said order, the plaintiff have filed revision before this Court in CRP.No.3996 of 2011, wherein, this Court allowed the revision on 01.04.2013. While rejecting the suit, this Court in CRP.No.3996 of 2011 has specifically directed that the compromise decree can be challenged in the same proceedings, there cannot be any separate suit. Special Leave Petition was filed before the Hon'ble Supreme Court in SLP.No.5831 of 2014 and the same was dismissed. Thereafter, it appears that compromise decree has not been challenged and no application whatsoever filed to recall the compromise decree. Therefore, once the compromise decree has reached finality and parties have acted upon based on the compromise decree which came to be passed on 10.01.1991. The first defendant having failed in his attempt to challenge the compromise decree in which he is also party to the proceedings, now, contending that he has a title to the property,



therefore, settled the property in favour of his wife cannot be countenanced.

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15. It is relevant to note that the compromise decree and its challenge reached finality upto the Hon'ble Supreme Court, therefore, when his attempt to challenge the compromise decree failed in the year 2014 itself, question of transferring the title by way of settlement deed dated 06.11.2006 will not give any better title to the second defendant. Since the very suit property was already allotted to one Amirthamani/sister of the first defendant as per the compromise decree, these facts are not disputed in the pleadings.

16. Now, the suit property has been sub-divided as 518/1A. PW2 examined in this regard proves the fact that originally S.No.518/1 has now become S.No.518/1A. The evidence of PW2 also clearly proves the fact that original patta is only 229 and there was sub divisions effected in the patta. DW1 also admitted in her evidence with regard to the sub-division. Further, in her evidence, she has clearly admitted with regard to the compromise decree and its challenge etc., Though she feign ignorance and deny that her husband has not signed the compromise decree, it is, too late to contend. The first defendant who is competent to state about all these facts has not come before this Court. Be that as it may, when the party to the proceedings has



already challenged the compromise and failed his attempt cannot go beyond the compromise decree. Therefore, still he cannot contend that he has title to the property even after the compromise decree is passed allotting the property in favour of one Amirthamani.

17. It is stated that plaintiff has filed a suit earlier in O.S.No.2305 of 2005. It is relevant to note that it is only based on the agreement, the suit has been filed for bare injunction. The property itself is registered in favour of the plaintiff on 27.12.2006. Therefore, when there was no cause of action to file a suit at the relevant point of time, it cannot be said that Order II Rule 2 will apply in the present case.

18. Normally, Order II Rule 2 will apply only if the plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Bar under Order II Rule 2 of CPC cannot be applied mechanically, further, there was no pleadings whatsoever made in this regard in the written statement. That apart, when the earlier suit is based on the separate and distinct cause of action, only after purchase made by the plaintiff, she has



sought for declaration in respect of the legal character and also recovery of possession. Therefore, it cannot be said that second *lis* is barred. Therefore, the contention in this regard also has no legs to stand.

19. As the property has been allotted to the sister of the first defendant in a compromise decree which has reached finality and challenge to the compromise decree has ended in vain and only based on the right accrued in the partition suit, the property has been dealt by the sister of the first defendant in favour of the plaintiff. Therefore, the plaintiff is certainly entitled to establish the legal character and seek recovery of possession. Further, identity of property is not in dispute, therefore, merely, because the boundaries has not been set out and as long as the identity of the property has not been disputed and it is the admitted case of the both sides that the property situated in S.No.518/1 which also clearly co-relates. This Court do not find any infirmity in the decree and judgment of the Trial Court.

Accordingly, this appeal stands dismissed. No costs.

14.02.2025

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Index : Yes/No

Neutral Citation : Yes/No

N.SATHISH KUMAR, J.

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To

The Additional District Judge
Additional District Court, Coimbatore

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