

IN THE COURT OF SUBORDINATE JUDGE, AVINASHI

Present : **Thiru.K.Sureshkumar, B.A., B.L.,**
Subordinate Judge, Avinashi.

Thursday, the 27th day of April, 2022
 (Thiruvalluvar Aandu 2054, Sri Sobakiruthu year, 14th day of Chithirai month)

IA.No.840 / 2022
in
OS.No.41 / 2021

N. Balachandar

...Petitioner/22nd Defendant

//Versus//

K.N. Subramaniam

...Respondent/Plaintiff

This petition coming before me for final hearing on 25.04.2023, in the presence of Thiru.P.Gunasekaran, Advocate for the petitioner and of Thiru.K.Saravanakumar, Advocate for the respondent and upon hearing the arguments of both sides and upon perusing the documents on record and having stood over till this day for consideration, this Court delivered the following;

ORDER

The Petitioner/22nd Defendant filed the petition under Order 7 Rule 11 and Section 151 of the Code of Civil Procedure to reject the plaint.

2) The petitioner is the 22nd defendant in the suit. The petitioner states that the suit properties and other properties originally belonged to his great grand father Nanjappa gounder. had 6 sons namely Kuppusamy gounder, Palani gounder, Arunachala Gounder, Ramasamy gounder, Chinnapalani gounder and Venkatachala gounder and the said Nanjappa gounder and his sons had partitioned the suit properties and other properties through a registered partition deed dated 18.11.1912 under Document No.4433/1912. In the said partition deed though their great grand father had participated as a guardian for his minor sons Chinna Palani gounder and Venkatachala gounder, he had not taken any share

for himself. In the said partition deed 'A' schedule properties were absolutely allotted to Kuppusamy gounder, 'B' Schedule properties were allotted to Palani gounder, 'C' schedule properties were absolutely allotted to Arunachala gounder, 'D' schedule properties were absolutely allotted to Ramasamy gounder, 'E' schedule properties were allotted jointly to Kuppusamy gounder, Palani gounder and Arunachala gounder and Ramasamy gounder, and 'F' schedule properties were allotted jointly to minor sons Chinna Palani gounder and Venkatachala gounder represented by father guardian Nanjappa gounder. The plaintiff has filed this suit with respect to the 'A' schedule properties in the partition deed dated 18.11.1912 which was allotted to Kuppusamy gounder.

3) Further the petitioner states that, the plaintiff had pleaded that as per the instructions of their great grand father Nanjappa gounder that the 'A' schedule properties of the partition deed dated 18.11.1912 was enjoyed commonly by all the sons of Nanjappa gounder and that there was a oral agreement regarding the same. The relevant portion of plaint is as, the plaintiff submits that the said very great grand father Nanjappa gounder allotted the Item No.1 of the suit property through a registered partition deed to his son Late. Kuppusamy gounder dated 18.11.1912 and the item No.1 of the suit property was again enjoyed by all the ancestors of plaintiff in common as per the instructions of said Nanjappa gounder whom was the great ancestor for the welfare of joint family.

4) The petitioner states that the plaintiff has taken a stand that joint family properties are partitioned by registered partition deed dated 18.01.1912 per contra also 'A' schedule properties were enjoyed in common of the coparceners. Further the petitioner states that, as per the recitals in the above said partition deed from the date of the partition the sharers mentioned therein have been is to enjoy separate shares, in accordance with the conditions the partition deed.

5) Whereas the plaintiff/respondent had pleaded that an contrary oral agreement which is against the Sec.91 and 92 of Indian Evidence Act. Further the petitioner states that as per the terms and conditions of partition deed dated 18.11.1912. The great grandfather Nanjappa gounder was provided with

maintenance from the 'F' Schedule properties allotted to minor sons Chinna Palani gounder and Venkatachala gounder. Further, the petitioner states that right of maintenance was not attached to the 'A' schedule properties allotted to Kuppusamy gounder. Hence the 'A' schedule properties absolutely belonged to Kuppusamy gounder.

6) Whereas the plaintiff is the descendant of Venkatachala gounder as per the genealogy provided by the plaintiff. Hence the suit of the plaintiff is barred by law and prima facie from the pleadings of the plaintiff. Hence the suit is liable to be rejected.

7) The Respondent states that, the item No.1 of the suit property is enjoyed by the plaintiff and primary defendants in common since the RSR extract dated 25.05.2015 stands in the name of said Nanjappa gounder and the respondent does not have any absolute ownership over item No.1 of suit property. The said properties was allotted to Natarajan whom is the 20th defendant through partition deed which is under challenge through the suit and in the said partition deed. No history of tracing of title to father of this petitioner whom is Natarajan whom is arrayed as the 20th defendant in the suit and the said dispute regarding title can only decided through adjudication between parties by way of adducing evidence. Further the respondent states that the ancestor of the petitioner namely Ramasamy gounder was allotted properties in S.F.No.229 to the extent of 5.75 acres but the said extent in said S.F.No.229 was subject matter of O.S.No.579/1942 and it was decreed in favour of deceased Venkatachala gounder who was allotted 1/6 share as per the said decree in suit dated 08.07.1944 and the plaintiff is claiming 1/5 share since deceased Chinnapalani gounder whom was brother of Venkatachala gounder already passed away without any heirs and hence all brothers of Chinnapalani gounder have stepped in the shoes of Chinnapalani gounder though their respective shares in the suit properties and the plaintiff is claiming 1/25 share in the suit properties.

8) Further the item No.2 of the suit property in S.F.No.212 is the subject matter claimed as per the recital in decree and judgment in O.S.579/1942

and affirmed in A.S.No.293/1994 which is decreed in favour of Venkatachala gounder whom is ancestor of this respondent/plaintiff. Further, the respondent states that the suit for reconveyance and execution a sale deed in respect of sale deed in 1/6 share in the suit properties is rightly decreed in favour of ancestor of respondent namely Venkatachala gounder as per Judgment and decree in O.S.No.597/1942 and affirmed by Subordinate Court, Coimbatore in A.S.No.293/1994 which remains prevailed over the contents of the partition deed dated 18.12.1912 which is filed as plaint document No.5 and hence this suit is not barred by Limitation and petition is liable to be dismissed.

9) The main contention of the petitioner is that the plaintiff has pleaded in the plaint that a registered partition deed has taken place between the legalheirs of Nanjappa gounder and his 6 sons namely Kuppusamy gounder, Palani gounder, Aunachala gounder, Ramasamy gounder, Chinnapalani gounder and Venkatachala gounder. Vide registered partition deed 08.11.1912 and as per the registered partition deed 'A' sschedule property was absolutely allotted to Kuppusamy gounder and other properties were allotted to other sons of said Nanjappa gounder. Further the petitioner states that the plaintiff/respondent has subsequently pleaded that even though item No.1 of the suit property was allotted to Kuppusamy gounder. The said Nanjappa gounder had instructed that item 1 of the suit property shall be enjoyed in common by all the sons of Nanjappa gounder including the said Nanjappa gounder and accordingly the RSR copy of schedule No.1 still stands in the name of said Nanjappa gounder and hence the plaintiff are entitled to partition in the said suit property and whereas, the petitioner contends that since the plaintiff has pleaded in contravention to section 91 and 92 of Indian Evidence Act, i.e., separate oral agreement contrary to a written document is not possible. The plaint is liable to rejected as it is barred by law.

10) Whereas the plaintiff/respondent per contra contends that RSR extract 20.05.2015 will come to show that the suit property is still in the name of Nanjappa gounder and till date. No partition have taken place by the

descendants of said Nanjappa gounder and further the ancestor of the petitioner Ramasamy gounder was allotted property in S.F.No.229 to the extent of 5.75 acres. The said extent in S.F.No.229 was subject of the matter of O.S.579/1943 and it was decreed in favour of deceased Venkatachala gounder who was allotted 1/6 share as per the said decree in O.S.No.579/1942, dated 08/07/1944 and the plaintiff has claimed 1/5 share since deceased Chinna Palani gounder, the brother of Vekatachala gounder died without any heirs. Now the plaintiff have claimed 1/25 share in the suit property. Further the respondent states that the said Venkatachala gounder have obtained in decree in O.S.No.579/1942 and the same is confirmed by in AS.293/1944 and the said judgment and decree prevailed over the contents of the partition deed dated 18.12.1912. Further the respondent states that the suit is not barred by limitation.

11) On perusal of the plaint and the documents filed along the plaint it is pertinent to note that the plaintiff/respondent has pleaded that he has handed over the enjoyment for management of item 1 of the suit property to the respondents 20 to 22 due to their over work , but the defendants 20 to 22 have not allowed the plaintiff to cultivate the land in Item 1 of the suit property . Over the shift of the management of the said plaintiff from defendants 20 to 22 on May, 2016 and hence the plaintiff was out of the possession of Item No.1 of the suit property since May, 2016 till date and further as far as the suit item 2 of the property is concerned both the plaintiff and defendants are in enjoying the lands comprising of 2.20 acres in common till 2019 and the plaintiff has asked for partition of item 1 and 2 of the suit property on January, 2019 from the defendants 20 to 22 who are managing item 1 of the suit property on behalf of the plaintiff and all other defendants. But the defendants 20 to 22 denied the plea and said that item 1 and 2 of the suit property was owned by them and owing to suspicious conduct of the defendants 20 to 22, the plaintiff/respondent viewed the online encumbrance certificate pertaining the item 1 and 2 of the suit property on 10.10.2019. They found that defendant 20 and his deceased father Kumarasamy gounder have partitioned the property by registered partition deed dated

14.06.1986, in Sub Registrar Office, Avinashi and in continuation of the same a settlement deed was executed by defendant 20 in favour of defendants 21, 22 vide settlement deed dated 17.06.2010, Document No.5842/2010, Sub Registrar, Avinashi. The Respondent/plaintiff allege that the date of knowledge of the above said documents is only on 10.10.2019 and hence the suit is not barred by limitation. As far as the point of limitation is concerned, the respondent/plaintiff states that they were aware of the registered partition deed dated 14.06.1985 and registered settlement deed dated 17.06.2010 is only on 10.10.2019.

12) Whereas the learned counsel for the petitioners are argued that since the partition has taken place in the year 1985 and the settlement deed has been executed in the year 2010. The suit is clearly barred by Sec.58 of the Limitation act. The learned counsel for the respondent argued that the Limitation is can be computed only from the date of knowledge and hence the suit is verymuch within limitation. As far as the averment in the plaint is concerned the plaintiff himself has sated that he has been kept away by the defendants from item 1 of the suit property since May, 2016 and also whereas the plaintiff states that they were aware of the above said registered a document only on 10.10.2019 . Hence it is highly unbelievable and improbable that the date of the knowledge of the said above registered document by the plaintiff is only 10.10.209. Even the cause of action had araised in the year May, 2016 as alleged by the plaintiff. Further the registered partition deed has taken place in the year on 14.06.1985 that is nearly 36 years before the filing of the suit and also the settlement deed has been executed by defendants 20 – 22 on 17.06.2010 that is nearly more than 11 years before filing of the suit. In the context of the Honourable Supreme Court of India in the case Diluboo Vs Dhanraji, (2000) 7 SCC 702 have stated that whenever a document is registered the date of registration becomes the date of deemed knowledge. It was further observed that in other cases where a fact could be discovered by due to diligence then deemed knowledge would be attributed to the plaintiff, because a party cannot be allowed to extend the period of limitation of merely claiming that he had no knowledge.

13) Further the petitioners/defendants have created a genuine dispute as to title over the property by way of those registered partition deed 16.04.1985 and registered settlement deed dated 17.06.2010. Under these circumstances the respondent/plaintiff should have sought the relief to declare document as null and void within period of limitation as contemplated under Sec. Article 58 of the limitation Act. In view of the reasons and discussions stated above and in view of the settled legal position as the plaint is to be rejected in cases of claims barred by limitation, the same cannot be brought in the limitation by claiming an imaginary date of knowledge and further even though the plaintiff/respondent has claimed that he had viewed the online encumbrance on 10.10.2019. The said encumbrance copy has not been produced along with plaint and further there is not even a single document filed by the respondent/plaintiff to show that he was in possession of the suit property at any point of time. Under these circumstances the suit is liable to be rejected as the same is barred by limitation.

In the result, this petition is allowed and the plaint in O.S.No.41/2021 is rejected.

Dictated to the Stenographer and typed by her directly in the computer, corrected and pronounced by me in the Open Court on this, the 27th day of April, 2023.

(Sd/-) K.Suresh Kumar,
Subordinate Judge,
Avinashi.

Draft/Fair Order
I.A. 840/2022 in
O.S.41/2021
Date: 27.04.2023