



S.A. No. 831 of 2024
and C.M.P. Nos. 12510 & 12511 of 2024

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S.A. No. 831 of 2024

T.V.THAMILSELVI, J.

Heard and considered the submissions of learned counsel for appellant and perused the records available on record.

2. The appellant, who are the plaintiff filed the suit in O.S.No. 431 of 2013, challenging the concurrent findings of the courts below, had preferred this Second Appeal. Before the trial court, he filed a suit for the relief of partition and separate possession against defendants 1 and 2, who are his brothers. According to plaintiff, he purchased the property along with the defendants on 11.07.1979. Based on that, he claimed 1/3rd share, but the defendants claimed that the property was purchased by the 1st defendant alone and the plaintiff and the 2nd defendant have not paid any sale consideration. Accordingly, he contended that he is only a new member. Further, in the year 1981, he constructed a house and living there and by long possession, he perfected title. Both parties have adduced oral and documentary evidence and on considering the same, the trial court



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concludes that the house was constructed by 1st defendant and residing in the property by long possession, thereby he perfected title. Accordingly, the suit was dismissed. Against which, the appeal was filed in A.S.No. 16 of 2021 and the same was also dismissed by confirming the findings of the trial court. Now, challenging the concurrent findings of the court below, the plaintiff preferred this Second Appeal and prayed to set aside the findings of the courts below on raising the following grounds :-

- (1) There cannot be any denial of partition for the appellant in respect of partitioning the suit property on the basis of technical terms or in the nature of claim of ouster.
- (2) When the registered sale deed stands in favour of the appellant, naturally, the appellant has got right of 1/3rd share over the suit property and applying the claim of ouster in the presence by courts below are improper and the courts below have miserably failed to decree the suit as prayed for.
- (3) The courts below erred in applying the principle of ouster since the parties to the sale deed are brothers.



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(4) Admittedly, there are vacant lands are available and in such event, the courts below have committed error in refusing to grant partition.

3. Considering the facts and circumstances as well as considering his submissions, this Second Appeal is admitted on the following question of law :-

“(1) Whether or not the Courts below rightly applied the principles of “ouster” as against the co-heir that too when admittedly there is sale deed Ex.A1 in joint name of the parties to the suit?

(2) Whether or not the courts below have committed error in law in refusing the relief of partition as per sale deed dated 11.07.1979 Ex.A1?

(3) Whether or not the courts below have committed error in law in refuting the relief of partition as per Sale deed dated 11.07.1979 i.e. Ex.A1?



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(4) Whether or not the courts below failed to held that possession of a co-heir is in law treated as possession of all the co-heirs?

4. Issue notice to the respondents through court returnable by 06.01.2025. Private notice is also permitted.

5. Post the matter on 06.01.2025.

21.11.2024

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T.V.THAMILSELVI, J.

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