

Mariammal and anr. Vs. Augustine Roy and ors.

Mariammal and anr. Vs. Augustine Roy and ors.

SooperKanoon Citation : sooperkanoon.com/801598

Court : Chennai

Decided On : Jul-27-1926

Reported in : AIR1927Mad170

Appellant : Mariammal and anr.

Respondent : Augustine Roy and ors.

Judgement :

Devadoss, J.

1. The plaintiffs are the daughter and grand-daughter of one Anthonimuthu Goundan, an Indian Christian, who died in 1885 leaving his daughters, the 1st plaintiff and Souri Ammal, the mother of the 2nd plaintiff and a son, Siluvamuthu Goundan the 1st defendant. The plaintiffs sue for their share of the property of Anthonimuthu Goundan. The Subordinate Judge decreed the plaintiffs' suit but the District Judge on appeal dismissed the suit on the ground that it is barred by limitation.

2. The main contention of Mr. Ananthakrisnna Iyer for the appellant is that the District Judge has not addressed himself to the real question in the case and that his finding that the plaintiffs' suit is barred by limitation is not a satisfactory finding; in other words, that the learned Judge has misdirected himself as to the real question at issue and that, therefore, his judgment cannot be allowed to stand. In para. 13 of his judgment, he says:

I have no hesitation in holding on Issues Nos. 6 and 10 that the plaintiff or the 1st plaintiff and the mother of the 2nd plaintiff never enjoyed Anthonimuthu's property from the time of his death and they allowed the 1st defendant to enjoy their share to the exclusion of their enjoyment and that the suit is, therefore, barred by limitation.

3. This judgment, I must say, is not a satisfactory one, nor has the Judge stated the issue which ought to be found in order to dispose of the case. But the question is whether I should interfere in second appeal with the findings of fact by the District Judge. If the judgment does not contain materials, which would justify his conclusion, no doubt the judgment should not be allowed to stand, but on reading the judgment I find that he has adverted to a number of circumstances, from which the Judge, as a judge of fact, is entitled to come to a certain conclusion. I do not think that it would be right in second appeal to upset the finding merely on the ground that there are certain expressions in the judgment which are not satisfactory. If by the use of the expression

they allowed 1st defendant to enjoy their share to the exclusion of their enjoyment

4. the learned Judge meant to say that it was with the leave and license and the permission of the plaintiff that the 1st defendant enjoyed the property, no doubt, his finding that the suit is barred by limitation would not be correct. But I do not think the word 'allowed' should be understood in the sense that the plaintiffs gave leave or license to enjoy their property. What the learned Judge meant to say was that they stood by, while the the 1st defendant enjoyed the property to their exclusion.

5. The two issues found against the plaintiffs are Issues Nos. (6) and (10). Issue No. (6) is:

is the suit barred by limitation in respect of whole of the claim or by reason of adverse possession in respect of Items 1 to 11 and 12 to 26, 33 to 38 and 40?

and Issue No. (10) is:

whether the plaintiffs were in possession of the suit properties at any time within 12 years preceding the date of the suit.

6. It has been urged by Mr. Ananthakrishna Iyer, that the plaintiffs and the 1st defendant being tenants-in-common, possession of the property by the 1st defendant is not necessarily adverse to the plaintiffs. No doubt, it is well established that if one tenant is in possession of the property which belongs to him as well as to other tenants-in-common, his possession should not be considered to be adverse, unless there be circumstances from which the Court or the jury could come to the conclusion that the possession is adverse. This principle was laid down in *Corea v. Appuhamy* [1912] A. C. 230 and it was followed in this Court in *Marian Beeviammal v. Kadir Meera Sahib Taragan* [1915] 29 I. C. 275 Reference is also made to *Hardit Singh v. Gurmukh Singh* [1918] 20 Bom. L. R. 1054 and *Dada Sahib v. Azi Mohideen Saheb* A. I. R. 1925 Mad. 287 But, as I said, the real question is not one of pure law but is a question of fact. If from the circumstances the Court Should come to the conclusion that the possession of one tenant-in-common was not on behalf of the other tenants-in-common, the Court is entitled to do so notwithstanding the fact that the possession of one co-tenant is not necessarily adverse to that of the others.

7. In this case, there are a number of circumstances which justify the finding of the learned Judge. If the learned Judge had only marshalled the facts in the order in which they should have been, there would have been no difficulty. In the first place, the 1st plaintiff and 2nd plaintiff's mother attained majority about the year 1890 and 1893 or 1894. The dates of birth are not clear. Anyhow, from the evidence it can be safely concluded that the 2nd plaintiff's mother was about 13 years of age and the 1st plaintiff about 11 years of age in 1885. Their mother died in 1891 and they were married before 1895. What did they do to assert their title to or claim their share in Anthonimuthu's property till they brought this suit in 1917? In this connexion one fact has to be remembered, that was the consciousness of the Indian Christians in this part of Coimbatore that the Hindu Law applied to them and that, therefore, daughters were not entitled to share in their father's property. Considerable evidence has been adduced on this point and it was very likely that the plaintiffs also were under the impression that they were not entitled to a share

in the property of Anthonimuthu. They were in the village in which the 1st defendant lived and when the family shifted to another village, they also went there and they must have been aware of the fact that the 1st defendant was dealing with the property as his own. He was mortgaging the properties; he was selling them; and in fact, he was dealing with them as his own. It is also in evidence that the plaintiffs were very badly off. One witness, D. W. No. 4 the Parish Priest, says that they worked as coolies. Even if they did not work as ordinary coolies, their position in life was low and it was very unlikely, if they thought they were entitled to share in the property of Anthonimuthu, who was said to be one of the richest, if not the richest man in the village, that they would have denied themselves the necessities of life and would have gone and worked as coolies. It is also in evidence that there was a partition of the properties between the 1st defendant and his sons and the 1st plaintiff purchased an item of property from the first defendant under Ex. 54 for Rs. 200.

8. It is suggested that this property was put in the name of the 1st defendant by the 2nd plaintiff's father as the family was afraid that he might waste it, and it was transferred to the first plaintiff after the marriage of the 2nd plaintiff. The 1st plaintiff seems to have fought shy of this transaction as is clear from her evidence. There are also other circumstances in the case which would go to show that the plaintiffs were kept out of the property of Anthonimuthu and that the 1st defendant dealt with the property as his own. The question is whether in these circumstances the Judge, as a judge of fact was entitled to come to the conclusion that there was ouster. Though the learned Judge does not use the word 'ouster,' though he did not consider the thing from that stand-point, the question is whether he has really found all the facts necessary to put the plaintiffs out of Court. As observed by Lord Mansfield in *Deo v. Prosser* [1774] 98 E. R. 1052

an undisturbed and quiet possession for such a length of time is a sufficient ground for the Jury to presume actual ouster.

9. In this case, the facts are sufficient to warrant the finding of the District Judge and I do not think that the finding has in any way been vitiated by his not keeping before him the question of ouster. In this connexion reference may also be made

to Varada Pillai v. Jeevarathnammal [1920] 43 Mad. 244 .

10. There is one other point in the case, namely, the District Judge's dismissing the suit of the plaintiffs in regard to items in respect of which no appeal was preferred to him against the decision of the Subordinate Judge. The respondents who are interested in those items have not appeared before this Court and I do not think that, in the circumstances of the case, the District Judge was justified in dismissing the suit as regards these items. The plaintiffs are entitled to those items and the decree of the Subordinate Judge will be restored in regard to them. Subject to the modification indicated above, the second appeal is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com