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S.A.No.440 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.440 of 2021

Chennakesavan

... Appellants

Vs.

1.Devendiran

2.Rajendiran

3.Radhakrishnan

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to allow the Second Appeal setting aside the Judgment and Decree of the Learned Subordinate Judge Tirupattur Vellore District dated 04.11.2019 in AS.No.46 of 2013 partly reversing the Judgment and Decree of the Learned District Munsif Tirupattur, Vellore District dated 13.03.2013 in OS.217 of 2004.

For Appellant : M/s.Leela Raman for

M/s.T.M.Hariharan

For Respondent : M/s.PA Sudesh Kumar [R.1 and R.2]



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JUDGEMENT

The 2nd plaintiff is the appellant before this Court challenging the judgement and decree passed by the learned Subordinate Judge, Tirupattur, Vellore District in A.S.No.46 of 2013 in and by which the learned Judge has confirmed the judgement and decree of the District Munsif, Tirupattur in O.S.No.217 of 2004. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The suit was originally filed by Chinnamal seeking a decree for cancelling the document dated 21.08.1995 registered as document no.667 of 1995, pass a preliminary decree for partition and separate possession of the plaintiff's half share in the A schedule property and 1/4th share in the B schedule property and to appoint an Advocate Commissioner for effecting the division and allotment of plaintiff's share in A and B schedule properties.



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3. The A schedule property is described as follows:-

"Vellore Dt, Tirupattur Taluk, Ammanakoil Village

*S.No.316 ac: 2.78 kist 3.13.0 in this ac 1.38
excluding ac 1.40 acquired by the Government.*

*S.No.317 ac:4.20 Kist 5.12.0 with 1/3rd right in
well.*

*S.No.318 ac: 3.29 kist 4.8.0 with a well, tamarind
trees and Elluppai Trees."*

4. The B schedule property is described as follows:-

"Vellore Dt, Tirupattur Taluk, Ammanakoil Village

1.S.No.331/2 ac: 1.28 kist 6.40.

2. S.No.332 ac: 1.85 kist 9.25

3. S.No.315/2 ac: 0.21 kist 0.29

4. S.No.321/2 ac: 0.57 kist 0.10

5. S.No.322/2 ac: 0.22 kist 0.61

6. S.No.383/3 ac: 2.34 kist 11.70

7. S.No.384 ac: 2.32 kist 2.69 in this

to the south of Thirupathy lands

to the west of Arunagiri lands

to the north of Arunagiri lands



to the east of item No.8 in this ac: 0.80 kist 0.90.

8. S.No.385 ac: 2.58 kist 2.85 in this

to the west of item No.7

to the south of Thirupathy lands

to the east of Kolandai lands

to the north of Arunagiri lands of an extent of ac:

0.70 kist 0.80.

9. S.No.315/3 ac: 0.44 kist 0.58

10. S.No.322/2 in this ½ right in well

11. 1/4th right in well in S.No.314/1

12. 1/6th right in well in S.No.303/1

13. Full right in well in S No.321/2 and titled house

14. S.No.314/3 ac: 0.40 kist 0.58."

5. It is her case that the properties described both in the A and B schedules originally belonged to one Thiruvallural wife of Thayappan @ Perumal Gounder of Nainathiyur Village and she was in possession and enjoyment of the same absolutely. The said Thiruvallural had a son and two daughters. The son Rajappan @ Thirupathy was insane and he



had no issues and his wife had also deserted him. He was under the care and protection of Thiruvallural. The said Thiruvallural had two daughters, namely, Chinnammal (plaintiff) and Kolandaiammal @ Lakshmiammal.

6. During her life time, the said Thiruvallural had executed a settlement deed dated 15.11.1954 in favour of her daughters in respect of A schedule properties and delivered possession of the same to her daughters. The plaintiff and Kolandaiammal @ Lakshmiammal had taken possession of their respective shares in the properties and were in enjoyment of the same. The plaintiff would contend that under the settlement deed, the daughters were given a limited right to enjoy the property. After coming into force of the Hindu Succession Act 1956, the limited right given to the daughters had enlarged into an absolute right and therefore the plaintiff and Kolandaiammal @ Lakshmiammal both became entitled to the said property.



7. The said Kolandaiammal @ Lakshmiammal died leaving behind her surviving two sons, namely, Rajendran and Radhakrishnan who are defendants 2 and 3 in the suit and her husband Krishnan as her legal heirs to succeed to her estate. Thiruvallural during her lifetime had also executed a registered Will dated 20.12.1971 bequeathing the B schedule property in favour of the plaintiff and defendants 1 to 3. This Will is the last Will of the deceased Thiruvallural who died on 08.12.1980.

8. After the death of the said Kolandaiammal @ Lakshmiammal, A schedule properties were being jointly enjoyed by the plaintiff and the defendants 2 and 3 and the plaintiff had got a half share in the A schedule property and the defendants 2 and 3 were jointly entitled to a half share in the A schedule property. In respect of the B schedule properties, the plaintiff had a 1/4th share and the defendants 1 to 3 had 1/4th share each. The patta in respect of both these properties stood jointly in the names of the plaintiff and the defendants.



9. The plaintiff would submit that there was no partition in the family and the defendants were acting against the interest of the plaintiff and were also trying to create documents to defeat the right of the plaintiff. Therefore, the plaintiff had demanded partition of the property.

10. While so, the plaintiff came to learn about the fraud that has been played on Court. The plaintiff would submit that in the deed of partition, she was not made a party and she was allotted only a sum of Rs.2,000/-. The plaintiff would submit that in the said deed it was described that she is a widow whereas her husband is very much alive and the father's name of defendants 2 and 3 have also been wrongly given. That apart, the partition was not with reference to the entire property. Since the defendants were not coming forward to partition the property, the plaintiff had filed the above suit for the relief stated supra. Pending the suit, the 1st plaintiff had died and the 2nd plaintiff was brought on record as her legal representative.



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11. The 2nd defendant had filed a written statement inter alia denying the plaintiff's claim. He would submit that the relief cannot be granted as the same had become infructuous. That apart, the 2nd plaintiff is not the legal heir of the deceased 1st plaintiff. He would submit that Chinnammal, the 1st plaintiff was not legally married to the 2nd plaintiff but was only living with him and through this illegitimate relationship, the 1st defendant was born. He would submit that the 2nd plaintiff was already married to one Annammal through whom the 2nd plaintiff had 4 daughters and 2 sons. Therefore, Chinnammal was not his legally wedded wife. He had admitted that the properties belonged to Thiruvallural and that she had two daughters, the 1st plaintiff and the mother of defendants 2 and 3. That apart, she had a son who had died in the early ages. The said Chinnammal had only one son D.1 and Kuldaiammal @ Lakshmiammal had 2 sons D.2 and D.3. Therefore, they alone are entitled to the suit property.



12. With reference to the B schedule properties, the said Thiruvallural had executed a registered Will dated 20.12.1971 in favour of the deceased plaintiff and defendants 1 to 3. After the death of Thiruvallural on 08.02.1980, the Will came into force and the Defendants had taken possession of the suit properties. The 2nd defendant would submit that the 2nd plaintiff has no right to the suit property as he is not the legally wedded husband of Chinnammal. On 18.01.2003, the said Will properties in B schedule have been partitioned amongst Defendants 1 to 3 and they are in the enjoyment of their respective shares. Therefore, the plaintiff is not entitled to claim any share in the suit property.

13. The Trial Court had framed the following issues:-

" 1. 21.08.1995 ஆவண எண்.66/95 ஆவணத்தை ரத்து செய்ய வேண்டும் என கோரியுள்ள பரிகாரம் வாதிக்கு அளிக்கத்தக்கதா?

2. வழக்கு சொத்தில் வாதிக்கு பாக உரிமை உள்ளதா?



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3. வழக்கில் கோரியுள்ள 1/4 பங்கு பாகம் வாதிக்கு

அளிக்கத்தக்கதா?

4. 2ம் வாதிக்கும், 1ம் வாதிக்கும் சட்டப்படி திருமணம்

நடைபெறவில்லை என பிரதிவாதிகள் கூறுவது உண்மையா?

5. வேறு என்ன பரிகாரம் வாதிக்கு அளிக்கத்தக்கது? "

14. The 2nd plaintiff had examined himself as P.W.1 and one Karunakaran as P.W.2 and Ex.A.1 to A.3 were marked. On the side of the defendants, the 2nd defendant had examined himself as D.W.1 and apart from him 3 other witnesses were examined as D.W.2 to D.W.4 and Ex.B.1 to Ex.B.8 were marked. The true copy of the Will dated 20.12.1971 was filed as a third-party document.

15. Ultimately, the learned Trial Judge had decreed the suit granting a partition in respect of the B schedule properties and dismissed the suit against the A schedule properties. Challenging the same, the 2nd plaintiff had filed A.S.No.46 of 2013 on the file of the



Sub Court, Tirupattur. The 2nd plaintiff had not challenged the judgment and decree in respect of the B schedule properties. However, without an appeal the Lower Appellate Court proceeded to reverse the judgment even with reference to the B schedule properties and ultimately dismissed the appeal as well as the suit. Aggrieved by the same, the appellant is before this Court.

16. The Second Appeal had been admitted on the following Substantial Questions of Law:-

“Whether a First Appellate Court in exercise of powers under Section 96 of CPC non-suit the plaintiff by disturbing one limb of the decree in favour of plaintiff which is not in appeal and when no other party to the lis has preferred an appeal against the decree?”

17. Heard the counsels on either side.

18. A perusal of the judgment and decree of the Lower Appellate Court would clearly indicate that the appeal has only been filed by the



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plaintiff who had challenged the dismissal of the suit only with reference to the A schedule properties. The defendants have neither filed an appeal nor a cross-appeal in the plaintiff's appeal. The Lower Appellate Court has proceeded to dismiss the suit in toto on the ground that the 2nd plaintiff is not the legally wedded husband of the deceased 1st plaintiff, Chinnammal. However, a perusal of the Trial Court judgment would indicate that issue no.4, which was framed by the learned Trial Judge, was whether the 1st and the 2nd plaintiffs have been legally wedded. The learned Judge had answered this issue in favour the plaintiff and held that plaintiffs 1 and 2 were legally wedded. In fact, the Lower Appellate Court had observed that on the death of Chinnammal, the 2nd plaintiff and the 1st defendant were her only legal heirs. The 2nd plaintiff has a right to claim a share in the suit property along with his son the, 1st defendant. This finding has not been challenged by the defendants and the same has attained finality.



19. While so, the Lower Appellate Court has proceeded to dismiss the suit not only with reference to the A schedule properties but also with reference to the B schedule properties which has been decreed by the Trial Court without an appeal being pleaded in this regard. In the light of the above narration, it is clear that the Lower Appellate Court had erred in reversing the judgement and decree of the Trial Court with reference to the B schedule properties without an appeal being filed against the same. Therefore, the Substantial Question of law is answered in favour of the appellant.

20. As regards the claim of the plaintiff for a share in the A schedule property, the Trial Court had dismissed the suit by stating that the limited right granted in the settlement deed executed by Tiruvalural on 15.11.1954 does not enlarge into an absolute right as per Section 14(2) of the Hindu Succession Act. I see no reason to disagree with the findings of the Trial Court with reference to the A schedule property. The lower Appellate Court has erred in dismissing the appeal in toto both with reference to the A as well as B schedule properties.



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21. In fine, the Second Appeal is allowed, the Judgement and Decree of the Lower Appellate Court is set aside and the Judgement and Decree of the Trial Court is confirmed. No costs.

14.03.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
shr

To

1. The Subordinate Judge Tirupattur Vellore District.
2. The District Munsif Tirupattur, Vellore District.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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