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S.A(MD)No.562 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A(MD)No.562 of 2006

and

M.P(MD)No.1 of 2006

Thiravia Murugan

... Appellant /
Appellant /
Defendant

-Vs-

A.V.S.Velusamy

... Respondent /
Respondent /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Additional Sub Judge, Tenkasi in A.S.No.92 of 2005 dated 30.12.2005 confirming the judgment and decree of the learned District Munsif, Shencottai in O.S.No.89 of 2003 dated 19.04.2005 declaring that the respondent plaintiff is entitled to the suit property and for recovery of possession.

For Appellant : Mr.Sankara Ramasubramanian

For Respondent : Mr.D.Nallathambi



JUDGMENT

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This Second Appeal has been filed against the judgment and decree of the learned Additional Sub Judge, Tenkasi in A.S.No.92 of 2005 dated 30.12.2005 confirming the judgment and decree of the learned District Munsif, Shencottai in O.S.No.89 of 2003 dated 19.04.2005 declaring that the respondent plaintiff is entitled to the suit property and for recovery of possession.

2. The defendant in O.S.No.89 of 2003 on the file of District Munsif, Senkottai is the appellant herein. The respondent herein is the plaintiff in the above suit.

3. The substance of the plaintiff's case is that the plaintiff is the husband of Santhanayagi. The plaint schedule property was purchased by the father of Santhanayagi vide sale deed dated 26.08.1970. Santhanayagi died on 19.10.1979 intestate left her husband as only legal heir without any children. The plaintiff's father-in-law and mother-in-law were enjoyed the property. He employed at Chennai and frequently visited the properties. Thereafter, he came to know that her mother-in-law Petchiammal executed a Will dated 26.08.2003 and give the property to the defendant and thereby he denied the plaintiff's title and possession.



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4. The respondent plaintiff filed the suit to declare his title over the plaintiff schedule property besides recovery of possession and consequently declaration of plaintiff schedule property against the defendant and consequently recovery of possession of plaintiff schedule property of the defendant besides within stipulated time.

5. The defendant filed a written statement and contested the suit stating that the properties have been purchased by the father of Santhanayagi by utilising his own income. After the marriage, within two months the plaintiff left his wife and moved to Chennai and married second marriage and he has not taken care of his wife, father-in-law and mother-in-law. The defendant take care of Petchiammal and her husband. The defendant is the relative of Petchiammal and Nataraja Thevar. Santhanayagi died on 19.10.1979. Subsequently Nataraja Thevar also died on 13.04.1999. While Petchiammal was healthy, she executed a Will dated 26.08.2003 and bequeath the plaintiff schedule property to the defendant after the death, the Will came into force and the defendant title over the plaintiff schedule property and he is enjoying the property. Petchiammal enjoyed the property and prescribed title by adverse possession for long period the plaintiff on his own enjoyment of the property lost his title. Petchiammal



died on 25.10.2003. The plaintiff is not entitled for declaration and possession. No merits in the case seeking to dismiss the case.

6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:-

- “1) வழக்குச்சொத்து, வாதியின் மனைவி சாந்தநாயகியின் ஒரே சட்டக்கால் வாரிசு என்பதால் வாதிக்கு பாத்தியப்பட்டதா?
- 2) 26.8.2003 தேதியிட்ட உயிலை எழுதிவைக்க பேச்சியம்மாளுக்கு அருகதை உள்ளதா?
- 3) வழக்கு சொத்தைப் பொறுத்து வாதிக்கு விளம்புகை பரிகாரம் வழங்கத்தக்கதா?
- 4) வாதிக்கு வழக்குசொத்தின் சுவாதீனம் வழங்கத்தக்கதா?
- 5) வாதி கோரும் ஏதிர்கால மகசூல் ஆதாயம் வாதிக்கு கிடைக்கத்தக்கதா?
- 6) வாதிக்கு என்ன பரிகாரம் வழங்கத்தக்கது? ”

7. Before the trial Court, in support of the plaintiff's case, the plaintiff himself examined as P.W.1 and 9 documents were marked as Ex.A1 to A9. On the side of defendant, the defendant himself examined as D.W.1 and one Velayutha Devar examined as D.W.2 and one Isakkiyappan examined as D.W.3 and 15 documents were marked as Ex.B1 to Ex.B15.

8. On a consideration of the oral and documentary evidence adduced



by the respective parties and the submissions made, the trial Court declared that the respondent plaintiff is entitled to the suit property and for recovery of possession on 19.04.2005. Aggrieved over the same, the defendant filed an appeal before the Additional Sub Court, Tenkasi in A.S.No.92 of 2005. The first appellate Court upon hearing the argument of the counsel for the parties and based on records confined in the judgment and decree of the trial Court, dismissed the appeal. Aggrieved over the same, the defendant has filed Second Appeal before this Court.

9. This Court while admitting the Second Appeal has framed the following substantial questions of law:

“1) When the marriage between Santhanayagi and the respondent-plaintiff took place when Santhanayagi was minor girl and in violation of Section 5 of the Hindu Marriage Act, 1955, and when the respondent-plaintiff contracted second marriage, can the respondent-plaintiff be a legal heir to the deceased wife?

2) When the registered will has been proved by the examining the attestors, are the Court's below justified in holding that there is suspicious circumstance in the execution of the Will dated 26.08.2003 in favour of the appellant-defendant?”

10. The learned counsel appearing for the appellants submits that the



trial Court and the first appellate Court failed to note the fact that the marriage between Santhanayagi and the plaintiff respondent is void one not valid since Santhanayagi was minor at the time of marriage. He further contended that Santhanayagi was left within two months of marriage and the plaintiff married another women and lived at Chennai, not taken care of Santhanayagi and her family. He further contended that the trial Court and the first appellate Court failed to consider the fact that the property had been purchased by the father of Santhanayagi while she was at the age of 10 by utilising his income. Further, the property was enjoyed by the father and mother of the Santhanayagi while she was at the age of 10 and executed a registered Will in favour of the defendant. The Will has been proved before the trial Court by examining the attestors of the Will and the parents of Santhanayagi also prescribed title by law and enjoyment of the properties and got title over the property. She was competent to execute a registered Will. The trial Court and the first appellate Court have failed to appreciate the fact and decreed the suit and hence, he pleaded to allow the Second Appeal.

11. The learned counsel appearing for the respondent supported the judgment and decree of the trial Court and First Appellate Court and further contended that admittedly the property stands in the name of Santhanayagi



though it was purchased while she was minor. Her father purchased the property for the benefit of Santhanayagi and therefore, she is the owner after she became major. The marriage of Santhanayagi with the plaintiff is not disputed. She died leaving behind no children. Being her husband, he is the legal heir as per Hindu Succession Act. Therefore, he succeeded the property after the death of Santhanayagi. The claim of adverse possession described title by Petchiammal is not supported by any material. She is incompetent to execute a Will Ex.B9. Therefore, pursuance of the Will, the defendant will not get any title over the property. The trial Court and the First Appellate Court rightly come to the conclusion decreed the suit as prayed for and no ground for interference and no merits in the Second Appeal and hence pleaded to dismiss the Second Appeal as it has no merits.

12. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

13. On perusal of the records it is seen that the property is admittedly purchased in the name of Santhanayagi by her father while she was at the age of 10 by utilising his income. It is evident by Ex.A1 sale deed dated 26.08.1970. On perusal of Ex.A1 sale deed dated 26.08.1970, it is notice



that the property has been purchased while Santhanayagi was at the age of 10 years for the benefit of Santhanayagi and it is also specifically mentioned in the sale deed that her father Vellasamy Thevar, S/o.Nataraja Thevar stands as a guardian alone. Under these circumstances, it exposes the fact that the property has been purchased for the benefit of Santhanayagi.

14. Further, on perusal of the records, it reveals that the plaintiff is the husband of Santhanayagi. The marriage between Santhanayagi and the husband / plaintiff is now disputed. The marriage took place when she was minor that it is unsustainable in the belated stage. Santhanayagi died on 19.10.1979. On perusal of records it reveals that though the plaintiff not lived with Santhanayagi and lived with another women, there is no legal divorce between Santhanayagi and the plaintiff. In these circumstances, the marriage between Santhanayagi and the plaintiff is voidable. It is also not disputed that Santhanayagi died in the year 1979 and they have no children and she died intestate. Therefore, the plaintiff as husband become the legal heir of his wife.

15. I have considered the argument of the learned counsel for the



appellant with regard to prescription of title enjoying long period by adverse possession by Petchiammal. On perusal of the Will dated 26.08.2003 executed by Petchiammal, on reading of the Will, it reveals that she had prescribed title over the property stands in the name of Santhanayagi for a long period for getting title executed Will in favour of the defendant. In the absence of any claim that she had prescribed title over the property, he may not have right to execute Will in favour of the defendant. Petchiammal being competent to execute the Will, though it is registered one, she cannot pass any valid title, but the defendant in the absence of any valid title, the Petchiammal executed the Will. Therefore, upon the Will Ex.B9, the defendant cannot claim a valid title over the plaint schedule property.

16. In the absence of any material to deny the title of the plaintiff over the plaint schedule properties she is entitled to declare the plaint schedule property and recovery of possession. The trial Court rightly come to the conclusion that evidence on record the first appellate Court upon the judgment and decree there is no ground to interfere in the finding. The substantial questions of law are answer accordingly. I find no merit in the Second Appeal. It is liable to be dismissed.

17. Accordingly, this Second Appeal is dismissed. No costs.



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Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No

Index : Yes/No

NCC : Yes/No

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To

1.The Additional Sub Judge,
Tenkasi.

2.The District Munsif Court,
Shencottai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
S.A(MD)No.562 of 2006

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