

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1208 of 2014 and

M.P.No.1 of 2014

Sakunthala ... Appellant/Plaintiff

Vs.

1.Chinnaponnu
2.Sivaraman

... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree in A.S.No.21 of 2012 on the file of the learned Subordinate Judge, Nagapattinam dated 18.12.2012 in confirming the judgement and decree in O.S.No.27 of 2008 on the file of the learned District Munsif, Nagapattinam dated 22.11.2011.

For Appellants : Mr.S.Arokia Maniraj
For Respondent : Mr.M.S.Palaniswamy

JUDGEMENT

The plaintiff in O.S.No.27 of 2008 on the file of the learned District Munsif, Nagapattinam is the appellant herein. The respondents are the defendants in the suit. The suit was filed for declaration of title and for recovery of possession of the land comprised in S.No.150/17 at Puragramam, Katumavadi Taluk. The extent of the suit property is 2 kulis. The trial Court by decree and judgement dated 22.11.2011, dismissed the suit. As against the same, the appellant/plaintiff filed an appeal in A.S.No.21 of 2012 before the learned Subordinate Judge, Nagapattinam. The learned Subordinate Judge by decree and judgement dated 18.12.2012 dismissed the appeal thereby confirming the decree and judgement of the trial Court. As against the same, the appellant/plaintiff is before this Court with this second appeal.

2.This second appeal has come up today for admission. The respondents have also made appearance through learned counsel. I have heard the learned counsel for the appellant and the learned counsel for the respondents and I have also perused the records carefully.

3.According to the plaintiff, a total extent of 8 cents comprised in R.S.No.150/17 was purchased by one Mr.Iyyaru. Mr.Iyyaru had a wife by name Mrs.Neelatchi Ammal. During their life time, Mr.Iyyaru and Mrs.Neelatchi Ammal had brought up the appellant/plaintiff as their foster daughter. During the year 2002, an attempt was made by the second respondent herein to encroach upon a part of the suit property. Therefore, the appellant/plaintiff

filed a suit in O.S.No.334/2002 on the file of the learned District Munsif, Nagapattinam for permanent injunction to restrain the second respondent herein from in any manner interfering with her peaceful possession and enjoyment of the suit property. The said suit property was described as 8 cents in R.S.No.150/7B. The trial Court decreed the suit as prayed for. As against the same, the second respondent herein filed a first appeal in A.S.No.56 of 2006 on the file of the learned Subordinate Judge, Nagapattinam. The First Appellate Court found that the plaintiff had no proof for her possession and accordingly, allowed the appeal and reversed the decree and judgement of the trial Court. That judgement has become final.

4.In those circumstances, the appellant herein filed the present suit in O.S.No.27 of 2008 in respect of only 2 kulis out of 8 cents. According to the appellant/plaintiff, as the foster daughter of Mr.Iyyaru and Mrs.Neelatchi Ammal, she has inherited the entire extent of 8 cents in R.S.No.150/17 of which, Mr.Iyyaru was the absolute owner. Out of the said 8 cents, 2 kulis have been encroached upon by the defendants in the suit, it is alleged. The encroached portion has been shown as "AEFG" in the rough sketch appended to the plaint.

5.The defendants in the suit contended before the trial Court that they have not encroached upon any property belonging to Mr.Iyyaru. Their further contention was that they are in possession of the suit property for several decades and there is a house also on the same. It is their further case that the appellant/plaintiff is not a foster daughter of Mr.Iyyaru and Mrs.Neelatchi Ammal. At any rate, being a foster daughter, she cannot be termed as the legal representative of Mr.Iyyaru and Mrs.Neelatchi Ammal, as per the Hindu Succession Act and thus, she cannot claim title, it is contended.

6.Based on the above pleadings, the trial Court framed appropriate issues and the parties were called upon to let in oral as well as documentary evidence. On the side of the plaintiff, as many as 9 documents were marked more particularly, Ex.A.1 is the sale deed dated 19.09.1971 in the name of one Mr.Iyyaru. Ex.A.2 is the patta issued in the name of Mr.Iyyaru and two witnesses were examined as P.Ws 1 and 2. On the side of the defendants no documentary evidence was marked however, one witness was examined as D.W.1. After considering the above oral as well as documentary evidences, the trial Court dismissed the suit. The First Appellate Court has also dismissed the appeal thereby confirming the decree and judgement passed by the trial Court.

7.In this second appeal, the learned counsel for the appellant would submit that as per the judgement of the Hon'ble Supreme Court in K.V.Muthu v. Angamuthu Ammal (AIR 1997 SC 628), the appellant is a legal representative of Mr.Iyyaru and Mrs.Neelatchi Ammal and thus, the appellant/plaintiff has inherited the entire property measuring 8 cents in R.S.No.150/17 which was originally owned by Mr.Iyyaru. The learned counsel has also relied on yet another judgement of this Court in C.Rasinathan v. N.Athiappan Servai and others (1998 MLJ 137). The learned counsel would further submit that since, the defendants have not proved their title in respect of the suit

property both the Courts below ought not to have dismissed the suit filed by the appellant/ plaintiff.

8.The learned counsel for the respondents would vehemently oppose this appeal. According to him, as of now, there is no evidence to show that the appellant/plaintiff is the foster daughter of Mr.Iyyaru and Mrs.Neelatchi Ammal. Assuming that she is the foster daughter of Mr.Iyyaru and Mrs.Neelatchi Ammal, she cannot be termed as the legal representative of them and therefore, she cannot claim title for the suit property. He would further submit that though the defendants have not proved their title in respect of the suit property, on that score, the plaintiff cannot be declared to be the owner of the suit property.

9.I have considered the above submissions.

10.In this second appeal, in my considered opinion, the following substantial questions of law emerge for consideration by this Court.:-

"Whether a foster daughter can claim right of inheritance under the Hindu Succession Act of a property left behind either by a male or female who died intestate?

2.Whether the failure of the respondents herein to prove their title by adverse possession would inure in favour of the plaintiff for a decree of declaration of title."

11.At the outset, I should say that it is not the case of the appellant/plaintiff that she was ever adopted by means of adoption deed by Mr.Iyyaru and Mrs.Neelatchi Ammal. If she is an adopted daughter, there can be no difficulty for this Court to come to the conclusion that she would be the legal representative of the deceased Mr.Iyyaru and Mrs.Neelatchi Ammal to inherit the property left behind intestate. The question is whether the appellant/plaintiff is the legal representative of Mr.Iyyaru and Mrs.Neelatchi Ammal being a foster daughter.

12.The learned counsel for the appellant would submit that in the earlier suit in O.S.No.334 of 2002, Mrs.Neelatchi Ammal was examined as P.W.2 wherein, she has very categorically stated that the appellant herein is her foster daughter and she has been given all the properties of Mr.Iyyaru. Assuming that a legal weightage is to be given in respect of the said evidence of Mrs.Neelatchi Ammal, in terms of Section 33 of the Evidence Act, even then, the question as to whether a foster daughter can be equated to a daughter or an adopted daughter as per the Hindu Succession Act.

13.In K.V.Muthu v. Angamuthu Ammal's case (cited supra), the issue was whether the foster daughter is a member of the family so as to be vested with the rights of the landlord to collect rent from the tenant and to take steps for eviction. In that case, the Hon'ble Supreme Court was to consider the meaning of the term "member of landlord's family" as defined in Section 2(6A) of the Tamil Nadu

Buildings (Lease and Rent Control) Act (18 of 1960). The definition given for the said term in the said provision is as follows:-

"Member of his family in relation to a landlord was his spouse, son, daughter, grand child or dependent parent."

14.While interpreting this provision, the Hon'ble Supreme Court has held that a foster son can be construed to be a member of the family in terms of Section 2(6A) of the Tamil Nadu Buildings (Lease and Rent Control) Act. However, the Hon'ble Supreme Court added a word caution "from the above, it would appear that it is not in every case that a son who is not the real son of a person would be treated to be a member of family of that person but would depend upon the facts and circumstances of a particular case."

15.So far as the Hindu Succession Act is concerned, not every member of a family is entitled for inheritance. In the instant case, assuming that the appellant was brought up by Mr.Iyyaru and Mrs.Neelatchi Ammal as their foster daughter and assuming that on that score, she has become a member of Mr.Iyyaru and Mrs.Neelatchi Ammal family and on that score, we cannot equate her as a daughter of Mr.Iyyaru and Mrs.Neelatchi Ammal. Thus, the Courts below were right in holding that the appellant/plaintiff has not established her title. Apart from that, assuming that she is entitled for the property left behind by Mr.Iyyaru and Mrs.Neelatchi Ammal, even then she has to fail in the suit for the simple reason that Mr.Iyyaru had purchased 8 cents under Ex.A.1 whereas, the suit is only in respect of 2 kulis (1 kuli means 144 square feet). Therefore, in my considered opinion, the Courts below were right in dismissing the suit. Thus, I do not find any merit in the second appeal.

16.In the result, the second appeal fails and accordingly, the same is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dated:24.2.15

True Copy

Sub Assistant Registrar

To

1.The Subordinate Judge,Nagapattinam.

2.The District Munsif Court,
Nagapattinam.

+1 cc to Mr.M.S.Palaniswamy, Advocate,SR.4678

+1 cc to Mr.S.Arokiamaniraj, Advocate,SR.4790.