

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal Nos.610 & 879 of 2014
and
M.P.Nos.1 of 2014

1.Vijayalakshmi
2.M.Parameswari
3.M.Manoj

... Appellants in S.A.No.610 of 2014
(Defendants)

-Versus-

Mrs.Vasanthi

... Respondent in S.A.No.610 of 2014
(Plaintiff)

This second appeal is filed against the judgment and decree dated 11.12.2013 made in A.S.No.111 of 2011 by the learned V Additional District and Sessions Judge, Coimbatore, confirming the judgement and decree dated 10.08.2011 made in O.S.No.305 of 2007 by the learned I Additional Subordinate Judge, Coimbatore.

1.Vijayalakshmi
2.M.Parameswari @ Nithya
3.M.Manoj

... Appellants in S.A.No.879 of 2014
(Defendants)

-Versus-

Mrs.Chandra

... Respondent in S.A.No.879 of 2014
(Plaintiff)

This second appeal is filed against the judgment and decree dated 11.12.2013 made in A.S.No.113 of 2011 by the learned V Additional District and Sessions Judge, Coimbatore, confirming the judgment and decree dated 10.08.2011 made in O.S.No.250 of 2010 by the learned I Additional Subordinate Judge, Coimbatore.

For Appellants in both : Mr.K.M.Ramesh
the Second Appeals

For Respondent in both : Mr.M.Velmurugan
the Second Appeals

COMMON JUDGMENT

The appellants in S.A.No.610 of 2014 are the defendants in O.S.No.305 of 2007. The 1st appellant in S.A.No.879 of 2014 is the defendant in O.S.No.250 of 2010 on the file of the learned I Additional Subordinate Judge, Coimbatore and the other appellants are the daughter and son of the 1st appellant. The sole respondent in S.A.No.610 of 2014 is the plaintiff in O.S.No.305 of 2007 and the sole respondent in S.A.No.879 of 2014 is the plaintiff in O.S.No.250 of 2010 on the file of the learned I Additional Subordinate Judge, Coimbatore. Both the suits were tried together and they were disposed of by means of a common judgment. Aggrieved over the same, the appellants herein filed an appeal in A.S.No.111 of 2011 against the decree and common judgment in O.S.No.305 of 2007 and an appeal in A.S.No.113 of 2011 against the decree and common judgment in O.S.No.250 of 2010. Both the appeals were heard together by the learned V Additional District and Sessions Judge, Coimbatore and both the appeals were dismissed by a common judgment dated 11.12.2013. As against the decree and common judgment of the first appellate court in A.S.No.111 of 2011, the defendants have come up with S.A.No.610 of 2014 and as against the decree and common judgment in A.S.No.113 of 2011, the defendants have come up with S.A.No.879 of 2014. Since both the appeals have arisen out of common judgment, both the second appeals have been listed together.

2. These second appeals have come up to day for admission.

3. I have heard Mr.K.M.Ramesh, the learned counsel for the appellants in both the appeals and Mr.M.Velmurugan, the learned counsel for the respondent in each appeal and also perused the records carefully.

4. The case of the plaintiff in both the suit in brief is as follows:- The suit property in both the suits is comprised in S.F.Nos.384/1 and 388/2 [T.S.Nos.213, 215/A and 219] at Sanganoor Village, Coimbatore Taluk. The total extent of the property comprised in the said survey numbers is 5 cents and 332 square feet. This property was purchased by one Sri.M.M.Muthu by means of a

registered sale deed dated 23.08.1961. Sri.Muthu is still alive. He has got two daughters and a son. The plaintiff in both the suits are the daughters of Sri.Muthu. He had a son by name Sri.Rajan. The said Sri.Rajan died in the year 2002. The 1st appellant in both the appeals is the wife of Sri.Rajan and the other appellants are his children. According to the plaintiffs, Sri.Muthu has executed a settlement deed in their favour on 25.02.2004 by which the northern portion has been bequeathed to Mrs.Chandra and the southern half portion has been bequeathed to Mrs.Vasanthi. Thus, according to the plaintiffs, they have got title to their respective portion. Mrs.Chandra is in possession and enjoyment of her portion. It is the further case of the plaintiffs that so far as the portion in which Mrs.Vasanthi has got title, the defendants are in possession. Therefore, she has come up with the suit in O.S.No.305 of 2007 for recovery of possession and for other reliefs. So far as the other portion, which is the subject matter in the suit in O.S.No.250 of 2010, is concerned, Mrs.Chandra claims that she is in possession and enjoyment of the same and, therefore, she has come up with that suit for permanent injunction restraining the defendant and her agents and servants from in any manner whatsoever impairing or impeding her peaceful possession and enjoyment of the suit property.

5. In both the suits, the appellants herein took the plea that the suit property [viz., both portions] was not the self acquired property of Sri.Muthu. According to them, though it was purchased in the name of Sri.Muthu, it is his joint family property over which Sri.Rajan by birth had an undivided share. Thus, according to the appellants, the settlement deed dated 25.02.2004 would not have conveyed absolute title in favour of the plaintiffs Mrs.Vasanthi and Mrs.Chandra. It is also stated in the written statement that a partition suit has been filed by the appellants herein in O.S.No.462 of 2005 on the file of the learned Additional District Judge, Fast Track Court No.I, Coimbatore. Therefore, according to the appellants, since they are co-owners, the relief sought for in the plaint should not be granted.

6. Based on the above said pleadings, the trial court framed appropriate issues and called upon the parties to let in both oral as well as documentary evidence. On the side of the plaintiff(s) 3 witnesses were examined and 14 documents were marked. On the side of the defendants, 3 witnesses were examined and no document was marked. Having considered the said oral and documentary evidence, the trial court decreed both the suits. As against the same, the defendants preferred appeals. The first appellate court dismissed both the appeals. That is how, the defendants are now before this court with these second appeals.

7. As I have already pointed out, these second appeals have come up today for admission. The learned counsel for the appellants would submit that Sri.Rajan by birth had an undivided share in the property in question since it is not the self acquired property of Sri.M.M.Muthu. He would further submit that there are ample evidence available to show that the settlement deed dated 25.02.2014 would not have been executed by Sri.M.M.Muthu out of his own volition and free will and, therefore, the same is void in law.

8. But, the learned counsel appearing for the respondents in both the appeals would submit that earlier, the defendants filed a suit in O.S.No.1130 of 2004 before the learned I Additional District Munsif, Coimbatore, for permanent injunction against Sri.M.M.Muthu claiming that they have got title. That suit was dismissed for default. Thereafter, the defendants filed a suit in O.S.No.462 of 2005 for partition on the footing that the property in question is the ancestral property standing in the name of Sri.Muthu over which, Sri.Rajan by birth had an undivided half share. The learned counsel would further point out that the said suit in O.S.No.462 of 2005 was dismissed as early as on 20.12.2007 on the finding that the suit property therein [which is also the suit property in the present suit], is the self acquired property of Sri.Muthu and, therefore, the settlement deed executed by Sri.Muthu in favour of Mrs.Vasanthi and Mrs.Chandra [plaintiffs in the suits] is valid. The court has further held that neither Sri.Rajan nor after his death, the defendants have got any right to claim a share in the suit property.

9. Referring to the same, the learned counsel for the respondents would submit that since it has already been declared by the court that the suit property is the self acquired property of Sri.Muthu and since Sri.Muthu himself has given evidence before the trial court that he has executed a settlement deed in favour of the plaintiffs Mrs.Vasanthi and Mrs.Chandra, it is not open for the defendants now to contend that they have got undivided share in the suit property.

10. I have considered the above submissions carefully.

11. It is not in dispute before this court that the suit for partition filed by the appellants/defendants in O.S.No.462 of 2005 before the learned Additional District Judge, Fast Track Court No.I, Coimbatore, has been dismissed wherein the court has categorically held under a specific issue that the suit property therein is not the ancestral property of Sri.Muthu and Sri.Rajan and it is in fact only the self acquired property of Sri.Muthu and, therefore, Sri.Rajan had no right to ask for partition. Similarly, the appellants, who claimed

right under Sri.Rajan did not have any semblance of right over the suit property. There is no dispute before this court that the suit property in O.S.No.462 of 2005 is the suit property in the present suits. Since in the earlier suit in O.S.No.426 of 2005, the court below has already declared that the suit property is the self acquired property of Sri.Muthu, the same cannot be reopened in the present proceedings for the principle of resjudicata is squarely applicable. Therefore, the courts below were right in holding that in the suit properties in both the suits, the defendants/appellants herein have got no right whatsoever.

12. It is the admitted case that so far as the property, which is the subject matter in S.A.No.610 of 2014, is concerned, the possession is in the hands of the appellants herein. Since the appellants have got no legal right to continue to be in possession, they are bound to vacate and handover the vacant possession to the respondent - Mrs.Vasanthi [the plaintiff in O.S.No.305 of 2007]. Thus, the courts below were right in decreeing the suit as prayed for. Similarly, the courts below, on facts have held that the property in question in S.A.No.879 of 2014 is a vacant site and the same is now in the possession and enjoyment of the respondent - Mrs.Chandra [the plaintiff in O.S.No.250 of 2010]. The courts below have rightly granted decree for permanent injunction as the defendants do not have any right over the suit property.

13. For the above said reasons, I am of the view that there is no question of law involved, much less, any substantial question of law, in these second appeals and the courts below were right in decreeing the suits. I do not find any merit at all warranting admission of these second appeals.

14. In the result, both the second appeals fail and the they are, accordingly, dismissed. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

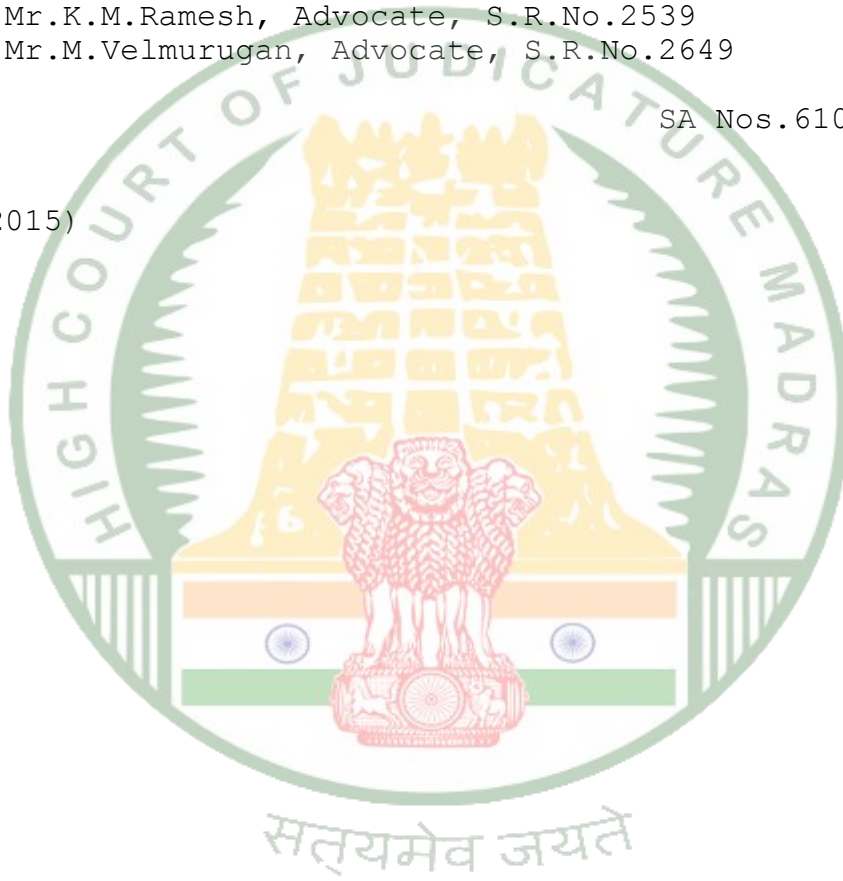
1. The V Addl. District Judge,
Coimbatore,
Coimbatore District.
2. The I Addl. Subordinate Judge,
Coimbatore,
Coimbatore District.

+2cc's to Mr.K.M.Ramesh, Advocate, S.R.No.2539

+2cc's to Mr.M.Velmurugan, Advocate, S.R.No.2649

SA Nos.610 and 879 of 2014

KM(CO)
CA(18/03/2015)



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