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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.9 of 2010

R.Banumathi

... Appellant/1st Defendant

vs.

1.R.Balasubramaniam
2. Mahalakshmi
Sivakami Ammal (died)
4.M.K.Vasu
M.K.Balan (died)
6.Rukiya Beevi

... 1st Respondent/Plaintiff

... 2 to 6 Respondents/
Defendants 2 to 5 & 7

Second Appeal against the judgment and decree dated 17.04.2007 passed in A.S.No.6 of 2006 on the file of first Additional Subordinate Judge, Coimbatore confirming the judgment and decree passed in O.S.No.3743 of 2004 on the file of Principal District Munsif Court, Coimbatore dated 17.08.2005.

For appellant : Mr.R.Subramanian

For respondent : Mr.R.T.Duraisamy for R1
Mr.C.R.Prasannan for R5 & R4
No Appearance for R2 & R6
R3 died (no steps taken - but appellant
is her LR)
R5 died no steps taken

JUDGMENT

This second appeal has been preferred against the decree dated 17.04.2007 made in A.S.No.6 of 2006 on the file of the lower appellate Court (Sub-Court, Coimbatore) confirming the decree of the trial Court, namely the Principal District Munsif, Coimbatore dated 17.08.2005 made in O.S.No.3743 of 2004 dismissing the suit.



2. R.Banumathi, the first defendant in the original suit is the appellant in the second appeal. R.Balasubramaniam, the plaintiff in the original suit is the first respondent. Defendants 2 to 6 in the original suit are the respondents 2 to 6 in the second appeal. R.Balasubramaniam, the first respondent/plaintiff and Mahalakshmi, the second respondent/second defendant are the son and daughter of Late Rawuther Pannadi. Banumathi, the appellant/first defendant is their mother. According to the first respondent/plaintiff, the respondents 3 to 6/defendants 3 to 6 are tenants in respect of portions of the suit property. Three more persons by names Rukiya Beevi, Sekar and Sachu Kumar were also tenants in respect of portions of the suit property and they have subsequently vacated the said portions.

3. M.K.Balan (5th respondent) has been reported dead in the connected C.R.P.(NPD) No.4029 of 2013. His LR's were impleaded as petitioners 2 to 4 in the said CRP. However no steps for impleading the LR's of M.K.Balan, who figured as 5th respondent in the second appeal. Hence the second appeal insofar as the 5th respondent is concerned stands abated. Sivakami Ammal (3rd respondent) died and no steps came to be taken. However the appellant being the daughter of Sivakami Ammal was already on record. Hence the appeal as against the third respondent is not abated.

4. Admittedly, Rawuther Pannadi had married one Lakshmi Ammal and the said Lakshmi Ammal died issue less. After the death of Lakshmi Ammal, Rawuther Pannadi married Banumathi, the appellant herein/first defendant and she gave birth to the first and second respondents/plaintiff and the second defendant and one Sasikala, who is no more. It is also not in dispute that the suit properties and other properties were the self-acquisitions and thus, absolute properties of Rawuther Pannadi. It is also an admitted fact that the said Rawuther Pannadi, out of his own volition, made a registered Will dated 27.01.1995 bequeathing the suit properties and other properties to his children, namely respondents 1 and 2/ plaintiff and the second defendant. He also incorporated a clause in the said Will that in case of birth of other children to him, they would be entitled to equal shares.

5. According to the first respondent/plaintiff, the said Will came into force on the death of Rawuther Pannadi on 06.07.1982 and as per the Will, the respondents 1 and 2/plaintiff and the second defendant alone became the testamentary legal heirs, each one entitled to $\frac{1}{2}$ share in the properties left by Rawuther Pannadi. It was also contended that since respondents 1 and 2 were minors on the date of death of the testator Rawuther Pannadi, as per the recital



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found in the Will, their mother, namely the appellant /first defendant, maintained the property on their behalf as their guardian; that even after they attained majority, they allowed their mother appellant/first defendant to manage the property as their mother; that taking advantage of the same, the appellant/first defendant sold a house site comprised in S.No.166 at Kumarapalayam village to one Kasirajan, Son of Ramasamy for a sum of Rs.10,00,000/- and kept the entire sale consideration for herself and that the respondents 1 and 2 did not question the propriety of the same and did not make any claim since the appellant/first defendant was their mother. Further contention made in the plaint is to the effect that the respondents 1 and 2/plaintiff and second defendant effected a partition of the other properties except the house site comprised in S.No.166 sold to Kasirajan by a registered partition deed dated 09.06.1997; that in the said partition, the suit properties came to be allotted to the share of the first respondent/plaintiff and the other properties were allotted to the share of the second respondent/second defendant; that even after such partition, respondents 1 and 2/plaintiff and the second defendant permitted their mother, namely the appellant/first defendant to collect rent from the tenants and maintain the properties as the mother of the respondents 1 and 2; that since the first respondent/plaintiff married a girl of his choice against the wishes of the appellant/first defendant and the third respondent/third defendant, who is the mother of the appellant, they refused to recognize his marriage and started neglecting him besides avoiding furnishing of accounts for the income derived from the suit properties and that therefore, the first respondent/plaintiff was constrained to file the suit for a decree against first defendant to pay a sum of Rs.37,000/- towards the net income derived from the rent collected for the suit properties from the tenants for one year prior to the filing of the suit and a permanent injunction restraining the appellant/first defendant from collecting rent from the tenants and a mandatory injunction to the tenants to pay the rent to the first respondent /plaintiff and also for costs.

6. Except the appellant/first defendant, the other defendants did not contest the suit and they remained ex parte. The appellant/first defendant filed a written statement admitting the plaint averments regarding the execution of the Will dated 27.01.1975 by her husband Rawuther Pannadi and the fact that the said Will having come into force on the death of Rawuther Pannadi. However, she would contend that one more child by name Sasikala was born to her and Rawuther Pannadi on 18.10.1976; that the said Sasikala also survived Rawuther Pannadi and she died after the demise of Rawuther Pannadi; that hence the properties as per the Will devolved upon the respondents 1 and 2 and Sasikala; that the said Sasikala died on 05.10.1982 and that on



the death of Sasikala, her 1/3rd share came to the appellant/first defendant as her only legal heir. In addition to the above said contention, the appellant/first defendant contended that it was not correct to state that she sold one of the properties and took the sale consideration of Rs.10,00,000/- for herself and that on the other hand, respondents 1 and 2/plaintiff and the second defendant entered into an agreement with Kasirajan to sell an extent of 65 cents during August 1996; that the first respondent executed a registered Power of Attorney on 10.04.1997 in favour of Kaliappan empowering to sell the said land and that the entire sale consideration was received by the first respondent/plaintiff from Kaliappan on executing necessary receipt. It was further contended by her that since she was also entitled to 1/3rd share in the properties left by her husband, as legal heir of her deceased daughter Sasikala and that the partition deed dated 09.06.1997 would not be binding upon her. Besides disputing the quantum of rent payable by the other respondents, it was also contended by her that the third respondent/third defendant was not a tenant.

7. Based on the above said pleadings, the trial Court framed four issues and one additional issue, which read as follows:

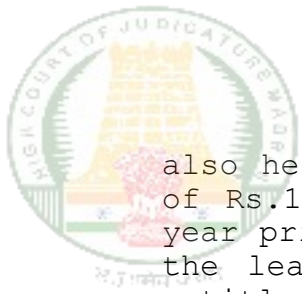
Issues:

- 1) Whether a daughter by name Sasikala was born to the first defendant?
- 2) Pursuant to the death of Sasikala, whether the first defendant became entitled to 1/3rd share?
- 3) Is the first defendant entitled to collect the rent?
- 4) Whether the plaintiff is entitled to a mandatory injunction for payment of rent directly to the plaintiff?
- 5) To what other reliefs?

Additional Issue:

- 1) Whether the plaintiff is entitled to recover the rent from the first defendant? What is the amount to which he is entitled?

8. PW1 was examined and Exs.A1 to A10 were marked on the side of the first respondent herein/plaintiff, whereas DWs 1 and 2 were examined and Exs.B1 to B5 were marked on the side of the appellant/first defendant. The learned Principal District Munsif, Coimbatore, upon considering the pleadings and evidence, and on an appreciation of evidence held that the third child of Rawvuthar Pannadi and the appellant herein/first defendant, namely Sasikala predeceased Rawvuthar Pannadi; that hence the bequest made in her favour under the Will of Rawvuthar Pannadi marked as Ex.A1 stood lapsed and was ineffective and that the respondents 1 and 2/plaintiff and the second defendant alone were the legatees under the Will entitled to half share each. The learned Principal District Munsif



also held that the appellant/first defendant was liable to pay a sum of Rs.10,000/- as the net income from the land for a period of one year prior to the date of filing of the suit. It was further held by the learned trial Judge that the appellant/first defendant was not entitled to collect the rent for the subsequent period; that hence the first respondent/plaintiff was entitled to a permanent injunction restraining the appellant/first defendant from collecting the rent and that the first respondent/plaintiff was entitled to a mandatory injunction against the tenants, namely defendants 3 to 9 to pay the future rents from the date of plaint to the first respondent/plaintiff. Accordingly, the learned trial Judge passed a decree granting: 1) a direction to the appellant/first defendant to pay a sum of Rs.10,000/- towards net rent collected by her from the suit properties for a period of one year prior to the filing of the suit; 2) a permanent injunction restraining her from collecting rent from the tenants of the suit properties; and 3) a mandatory injunction directing the tenants, namely defendants 3 to 9 to pay the future rent to the first respondent/plaintiff.

9. As against the decree of the trial Court dated 17.08.2005, the appellant herein/first defendant alone preferred an appeal in A.S.No.6 of 2006 on the file of the Subordinate Court, Coimbatore. The learned lower appellate Judge (First Additional Subordinate Judge, Coimbatore), after hearing, by judgment and decree dated 17.04.2007, concurred with all the findings of the trial Court and dismissed the appeal confirming the decree passed by the trial Court. As against the said decree of lower appellate Court dated 17.04.2007 confirming the decree passed by the trial Court, the present second appeal came to be filed by the appellant herein / first defendant on various grounds set out in the memorandum of grounds of second appeal.

10. Notice before admission was issued to the respondents 2 to 6 and with the consent of the counsel for the contesting parties, the appeal is taken up for disposal without formally admitting the same.

11. The arguments advanced by Mr.R.Subramanian, learned counsel for the appellant, by Mr.R.T.Duraisamy, learned counsel for the contesting respondent, namely the first respondent were heard. The judgments of the Courts below and the other materials available on record received from the Courts below were perused and taken into consideration by this Court.

12. The first respondent herein, as plaintiff, filed the suit against his mother, namely the appellant herein claiming a sum of Rs.37,000/- as net rental income derived from the suit properties, for a perpetual injunction against his mother not to collect rent



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from the tenants and for a mandatory injunction against the tenants to pay the rent to the first respondent herein/plaintiff. The first respondent/plaintiff claims to be entitled to the rent for the suit properties on the basis of his contention that he is the absolute owner of the suit properties having got it for his share in a partition with his sister, namely the 2nd respondent/2nd defendant. Their mother, namely the appellant herein/first defendant, contends that the partition effected between the respondents 1 and 2/plaintiff and the second defendant shall not be binding on her as she is also entitled to a share in the properties left by her husband Rawuther Pannadi and that each one of the appellant and respondents 1 and 2 is entitled to 1/3rd share. Such a claim came to be made by her, based on her contention that she got another daughter by name Sasikala in whose favour also a bequest was made by her husband in his Will dated 27.01.1995, since the said Sasikala survived the testator, namely Rawuther Pannadi and she died subsequent to the death of Rawuther Pannadi.

13. There is no dispute regarding the fact that Rawuther Pannadi was the absolute owner of the suit properties and other properties said to have been allotted to the share of the second respondent/second defendant. It is also an admitted fact that Rawuther Pannadi died on 06.07.1982 leaving a registered Will dated 27.01.1975 and on his death, the Will came into effect. The contention of the first respondent that the Will is in the custody of the appellant/first defendant is also not disputed. A certified copy of the Will has been produced as Ex.A1. The Death Certificate of Rawuther Pannadi has been produced as Ex.A2. It is also an admitted fact that the first respondent herein/plaintiff and the second respondent herein/second defendant were minors on the date of death of their father Rawuther Pannadi. On the date of execution of the Will dated 27.01.1975, a certified copy of which has been marked as Ex.A1, the respondents 1 and 2 herein alone were the children of Rawuther Pannadi and hence, he bequeathed his properties equally between respondents 1 and 2 / plaintiff and the second defendant, but with a rider that in case of birth of more children to him, all of them would be joint legatees and all the children of the testator, including the respondents 1 and 2 herein, would get equal shares in the properties bequeathed.

14. Though the first respondent/plaintiff had not referred to the birth of a sister by name Sasikala in his pleadings, the same was admitted during the course of evidence. Accordingly, as per the admitted fact the Rawuther Pannadi had three children, namely R.Balasubramaniam (son), Mahalakshmi (daughter) and Sasikala (daughter). If at all the said Sasikala was alive on the date of



death of Rawuther Pannadi, then as per the Will, she would have become entitled to 1/3rd share and the shares of respondents 1 and 2 would have been restricted to 1/3 each on the death of Sasikala. Her only legal heir, namely mother would have become entitled to her share. But in case Sasikala predeceased the testator Rawuther Pannadi, on the date of the Will coming into force, the respondents 1 and 2 alone would have been the legatees entitled to $\frac{1}{2}$ share each. That is the reason why the appellant/first defendant took a stand that Sasikala survived Rawuther Pannadi and only after the death of Rawuther Pannadi, Sasikala died.

15. It is an admitted fact that the first respondent married a girl of his choice disregarding the decision made by his mother, namely the appellant and maternal grandmother, namely the third respondent. The same happened to be the reason for the appellant acting against her son, namely the first respondent/plaintiff. The appellant/first defendant, who has made such a claim, has not chosen to state in the written statement the date of death of her husband Rawuther Pannadi. Besides making a clear plea that Rawuther Pannadi died on 06.07.1982, the first respondent/plaintiff has also produced the Death Certificate as Ex.A2 in proof of the said contention. It is the clear and categorical case of the first respondent/plaintiff that Sasikala predeceased Rawuther Pannadi. The appellant/first defendant in her written statement has stated that her younger daughter Sasikala died on 05.10.1982. But, she failed to produce any document to show the date of death of the said Sasikala. On the other hand, the first respondent/plaintiff has chosen to produce the Death Certificate of Sasikala as Ex.A6. From Ex.A6 it is obvious that Sasikala, the daughter of Rawuther Pannadi aged about 4 years died on 15.10.1980 and the death was registered on 24.10.1980 itself. By producing Exs.A2 and A6, the first respondent/plaintiff has clearly proved that Sasikala died on 15.10.1980, much before the death of the testator Rawuther Pannadi who died on 06.07.1982. Therefore, there cannot be any doubt over the fact that Sasikala predeceased her father Rawuther Pannadi and on the date of Ex.A1 came into force, she was not alive.

16. Both the Courts below, on a proper appreciation of evidence, rendered a correct and concurrent finding that the appellant herein/first defendant failed to prove her contention that Sasikala Survived her father Rawuther Pannadi and that on the other hand, the first respondent/plaintiff proved by unimpeachable evidence that Sasikala predeceased Rawuther Pannadi. Based on the said finding alone, the Courts below came to the conclusion that respondents 1 and 2/plaintiff and the second defendant alone were the legatees under Ex.A1 Will as on the date of death of Rawuther Pannadi



and each one was entitled an half share.

17. It is also proved by the first respondent/plaintiff that except a property which was sold to a third party, all other properties which were bequeathed to them were partitioned by respondents 1 and 2/plaintiff and the second defendant between them under a registered partition deed dated 09.06.1997. A certified copy of the said registered partition deed has been produced as Ex.A4. Hence, the appellant/first defendant cannot contend that the partition effected between the respondents 1 and 2 without making her a party could be invalid or would not be binding on her. The Courts below, on proper analysis, rendered a clear finding that the said partition was valid and it was binding on the appellant/first defendant also and that the plaintiff became entitled to the suit properties as they were allotted to his share in the above said partition.

18. It is also obvious from pleadings and evidence, besides an admission, that respondents 1 and 2 were minors when Rawuther Pannadi died and as per the recital found in Ex.A1 Will, the appellant/first defendant was maintaining the properties bequeathed under the said Will as guardian of respondents 1 and 2. It is also made clear from evidence that even after respondents 1 and 2 attained majority, they permitted their mother, namely the appellant /first defendant to collect the rent from the tenants and manage the properties on their behalf. Even though it was contended by the first respondent/plaintiff that in respect of a property measuring 68 cents, there was an agreement for sale and his mother, namely the appellant/first defendant executed the sale deed in favour of the agreement holder, obtained the entire sale consideration of Rs.10,00,000/- and appropriated for herself, the same was disputed by the appellant/first defendant, who contended that the entire sale consideration was taken by the first respondent/plaintiff. Who took the sale consideration for the said property, which is not the subject matter of the suit, is immaterial for the purpose of deciding the issues raised in this case, since neither the first respondent/plaintiff nor the second respondent/second defendant did make any claim against the appellant/first defendant for payment of the said amount. On the other hand, the first respondent/plaintiff restricted his claim to the rent collected by the appellant/first defendant in respect of the suit properties for one year prior to the filing of the suit. Though the quantum was in dispute, both the courts below, on appreciation of evidence, rendered a finding of fact that the net amount realized from the rent for the suit properties for a period of one year prior to the filing of the suit after meeting the expenses of maintenance was only Rs.10,000/- and that the



said amount alone was recoverable by the first respondent/plaintiff from the appellant/first defendant. Such a concurrent finding of fact does not deserve to be interfered with and cannot be interfered with since the same cannot be said to be perverse.

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19. The respondents 3 to 6/defendants 3 to 6 and three other persons who figured as defendants 7 to 9, according to the first respondent/plaintiff, were the tenants in respect of various portions in the suit properties. The said contention has not been disputed by them. Not even the third respondent, who is the mother of the appellant, disputed the fact that she is a tenant in respect of a portion. However, the appellant/first defendant alone contended that the third respondent was not a tenant. Discountenancing her contention and upholding the contention of the first respondent/plaintiff, the Courts below have rendered a factual finding that the third respondent is also a tenant. Such a finding cannot be interfered with as the same cannot be termed perverse. In view of the said findings, the trial Court and the lower appellate Court held that the first respondent/plaintiff to be entitled to a prohibitory perpetual injunction against his mother, namely the appellant/first defendant from collecting rent from the tenants and also a mandatory injunction against the tenants to pay the rent to the first respondent /plaintiff. This Court does not find any defect or infirmity in the said findings, which led to the passing of the decree by the trial Court and confirmation of the same by the lower appellate Court.

20. For the reasons appearing above, this Court comes to the conclusion that there is no substantial question of law involved in the second appeal. This Court also comes to the conclusion that there is no defect or error in the decree of the lower appellate Court confirming the decree passed by the trial Court in favour of the first respondent herein/plaintiff and that there is no merit in the second appeal and the same deserves to be dismissed. However, considering the relationship between the appellant and the first respondent, this Court decides to refrain from passing any order regarding costs in the second appeal.

21. In the result, the second appeal fails and the same is dismissed without costs. Connected M.P is also dismissed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar



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To

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1. The first Additional Subordinate Judge,
Coimbatore
2. The Principal District Munsif,
Coimbatore

Copy To

The Section Officer,
VR Section,
High Court, Madras.

+2cc's to Mr.C.R.Prasanan, Advocate, S.R.No.25941
+1cc to Mr.R.T.Doraisamy, Advocate, S.R.No.26193

S.A.No.9 of 2010

KU(CO)
CA(29/06/2015)