

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01 - 06 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. Nos. 229 and 230 of 2015

and

M.P. No. 1 of 2015 in S.A. No. 229 of 2015

and

M.P. No. 1 of 2015 in S.A. No. 230 of 2015

Pushpavathi

.. Appellant in both S.As./Plaintiff

vs.

1. Saraswathi

2. Murugesan

3. Chinnammal

.. Respondents in S.A. 229 of 2015/
Defendants

1. Chinnammal

2. Murugesan

3. Saraswathi

4. K.C. Loganathan

.. Respondents in S.A. 230 of 2015/
Defendants

Appeals filed under Section 100 of the Code of Civil Procedure against the common judgment and decree dated 31.07.2014 passed by the Principal District Judge, Erode, in A.S. Nos. 110 and 111 of 2013 respectively confirming the common judgment and decree dated 26.04.2013 passed by the II Additional Subordinate Judge, Erode, in O.S. Nos. 222 of 2007 and 345 of 2004 respectively.

For Appellants in both Appeals : Mr. N. Manokaran

COMMON JUDGMENT

The plaintiff in O.S. No. 348 of 2004, who is the third defendant in O.S. No. 222 of 2007, has preferred the instant Second Appeals S.A. Nos. 229 and 230 of 2015 against the common judgment and decree dated 31.07.2014 passed by the Principal District Judge, Erode, in

A.S. Nos. 110 and 111 of 2013 respectively confirming the common judgment and decree dated 26.04.2013 passed by the II Additional Subordinate Judge, Erode, in O.S. Nos. 222 of 2007 and 345 of 2004 respectively.

2. Since the issue involved in these two appeals is inter-connected and as they arise out of common judgment and decree by the Courts below, they are disposed of by this common judgment.

3. From the materials available on record, it is seen that the appellant Pushpavathi and the second respondent Murugesan are children born to Ramasamy Gounder and Chinnammal. One Saraswathi claims to be the purchaser of the suit properties from Ramasamy Gounder through power agent K.C. Loganathan.

4. Pushpavathi, the appellant herein filed O.S. No. 345 of 2004 claiming partition and separate possession of her half share in the suit properties. Her case is that her father Ramasamy purchased the suit property on 29.01.1973 and that during his lifetime, a family arrangement was arrived at by which she was put in possession of western portion of the suit property and her brother second defendant was allotted the eastern portion of the suit property. As one Saraswathi, third defendant claimed title to the suit properties by virtue of a sale deed, the suit for partition in O.S. No. 345 of 2004 was filed.

5. One Saraswathi, who claims to have purchased the suit properties, filed O.S. No. 222 of 2007 for delivery of possession and arrears of rent. According to her, she purchased the suit properties from Ramasamy Gounder through his power agent K.C. Loganathan on 10.4.2000. It is further contended that she has been in possession of the property from the date of purchase and that subsequently, Murugesan / the first defendant therein was put in possession as a tenant. According to her, since the wife and children of Ramasamy are colluding together to defeat her rights, she filed the suit in O.S. No. 222 of 2007 for recovery of possession.

6. Both suits were tried in common. In respect of O.S. No. 346 of 2004, the plaintiff Pushpavathi examined herself as P.W.1 besides examining one Radhamani as P.W.2 and marked Exs. A.1 to A.6. On behalf of the defendant, the power agent K.C. Loganathan was examined as D.W.1 and Ex. A.1 was marked. In respect of O.S. No. 222 of 2007, the plaintiff Saraswathi examined herself as P.W.1 and also examined one Sathishkumar as P.W.2 and marked 11 documents as Exs. A.1 to A.11. To nullify the case of the plaintiff, the first defendant Murugesan was examined as D.W.1 and Exs. B.1 and B.2 were marked as documents.

7. The trial Court, on appreciation of the documents and the evidence placed thereon, decreed the suit for recovery of possession in O.S. No. 222 of 2007 and dismissed the suit for partition in O.S. No. 345 of 2004. Aggrieved by the same, the plaintiff in O.S. No. 345 of 2004 filed appeals in A.S. Nos. 111 of 2013 and 110 of 2013 and the same also met with the same fate. Challenging the same, the instant second appeals are directed before this Court.

8. Heard Mr. N. Manokaran, learned counsel appearing for the appellant and perused the records.

9. It is admitted that the suit properties are the self-acquired properties of Ramasamy Gounder and he had left behind his widow, son and a daughter, who is the plaintiff in O.S. No. 345 of 2004. Though the appellant had pleaded oral partition, the same has not established. The lower appellate Court as a final court of facts, had considered the evidence of P.W.2 and Ex. B.1 and B.2 and held that the oral partition claimed by the appellant was not proved.

10. The plaintiff in O.S. No. 222 of 2007 had claimed that she had purchased the property even during the life time of the owner Ramasamy Gounder through Power of Attorney K.C. Loganathan, the fourth respondent in S.A. No. 230 of 2015, by which she becomes the absolute owner of the properties. It is the further case of the plaintiff that the heirs of Ramasamy cannot have any claim over the suit properties as the same was alienated even during the lifetime of the owner. The wife and son of Ramasamy Gounder are residing in the suit properties as tenants under lease agreement dated 11.4.2000. Besides, Saraswathi had also produced Ex. A.4 patta transfer order dated 11.12.2004 and Exs. A.5 to A.7 Property Tax receipts and Register to prove the name change after the purchase.

11. From the above, it is evident that Saraswathi, the plaintiff in O.S. No. 222 of 2007 is the owner having purchased the same from Ramasamy Gounder and effected mutation of documents. It is also established that plaintiff in O.S. No. 345 of 2004 was never in possession of the property and that there was no oral partition as claimed by her.

12. In view of the aforesaid facts as noticed in each suit and in view of the concurrent findings of the Courts below which are not perverse, this court finds no reason to interfere with the same. As such, there is no substantial question of law arising for consideration. In such view of the matter, the plaintiff in O.S. No. 222 of 2007 is entitled to the relief of delivery of possession as claimed in the suit and resultantly, the appeals fails and the decree granted in favour of the plaintiff in O.S. No. 222 of 2007 decreeing the suit requires no interference.

In view of the foregoing discussion, the both the appeals fail and stand dismissed. Consequently, the common judgment and decree dated 31.07.2014 passed by the Principal District Judge, Erode, in A.S. Nos. 110 and 111 of 2013 respectively confirming the judgment and decree dated 26.04.2013 passed by the II Additional Subordinate Judge, Erode, in O.S. Nos. 222 of 2007 and 345 of 2004 respectively are affirmed for the reasons assigned by this Court in these appeals. Having regard to the facts and circumstances of the case, the parties are directed to suffer their respective costs. Connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Principal District Judge
Erode
2. The II Additional Subordinate Judge
Erode

+2 cc's to M/s.N.manokaran, Advocate,Sr.25829, 831.

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common Judgment in

S.A. Nos. 229 and 230 of 2015

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