

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.760 of 2015
& M.P.No. 1 of 2015

1. Sakthi Gopalakrishnan
2. Jayaraman ...Appellants/Appellants/Plaintiffs

-Vs-

1. Mylathal
2. S.Jayakumar
3. S.Vijayakumar
4. S.Santhakumar
5. S.Sundaravalli
6. S.Senthilkumar ...Respondents/Respondents/Defendants

SECOND APPEAL filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 09.10.2014 in A.S.No.27 of 2013 on the file of the Subordinate Judge, Pollachi confirming the judgment and decree dated 22.07.2013 in O.S.No.401 of 2003 on the file of the District Munsif, Pollachi.

For Appellants : Mr.K.Selvaraj

For Respondents 3 to 5 : Mr.K.Sridhar

J U D G M E N T

The plaintiffs in O.S.No.401 of 2003 on the file of the learned District Munsif, Pollachi are the appellants herein and the respondents are the defendants in the suit. The said suit was filed for partition and for allotment of 1/3rd share each to the appellants herein from and out of the suit property. The trial court dismissed the suit by decree and judgment dated 22.07.2013. As against the same, the appellants filed an appeal in A.S.No.27 of 2013 on the file of the learned Subordinate Judge, Pollachi. By decree and judgment dated 09.10.2014, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. As against the same, the appellants are before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and the learned Counsel for the respondents 3 to 5 and the 1st respondent herein remained ex-parte throughout. I have also perused the records carefully.

3. The case of the plaintiffs in brief is as follows:

The suit property and the other properties were originally owned by one Krishnammal. Krishnammal had a son by name Kandasamy and 3 daughters by name Valliamal, Sellammal and Mylathal. According to the plaintiffs, Krishnammal performed the marriages of Kandasamy, Valliamal and Sellammal in a grand manner by spending huge sum whereas she spent a meagre amount for the marriage of Mylathal. It is the further case of the plaintiffs that Mylathal was also not given any other property by Krishnammal. Therefore, according to the plaintiffs, Krishnammal executed a registered Will dated 18.08.1961 in favour of her daughter Mylathal bequeathing the suit property and other properties in her favour. It is the further case of the plaintiffs that there was a condition in the Will that the property should be acquired and enjoyed by Mylathal along with her children. Krishnammal died on 15.03.1970. Therefore, the Will had taken the effect. Mylathal is the 1st defendant herein. She has got two sons and a daughter. The plaintiffs 1 and 2 are the sons and the daughter is no more. Thus, according to the plaintiffs, as per the terms and conditions of the Will, the 1st defendant Mylathal and the plaintiffs are entitled for 1/3rd share each. The property remains undivided. It is further stated that Mylathal, the 1st defendant herein, has executed some document in favour of the 2nd defendant who is none other than their sister's husband. If any such transaction has been made, the same is not valid. Thus, according to the plaintiffs, they are entitled for 1/3rd share each. Claiming the same, they have filed the present suit.

4. As I have already mentioned, the 1st defendant Mylathal remained ex-parte. The 1st defendant died during the pendency of the suit. It is the case of the defendants that the suit property was absolutely owned by Krishnammal who by means of a registered Will dated 18.08.1961 had bequeathed the suit property absolutely in favour of Mylathal and thus, Mylathal, the 1st defendant was the absolute owner of the suit property. Mylathal had entered into a sale agreement with the 2nd defendant on 28.10.1972. But she did not perform her part of contract. A suit was filed by the 2nd defendant for Specific Performance. The suit was decreed. As against the same, an appeal was filed by Mylathal. The First Appeal was dismissed. The Second Appeal was also dismissed. The matter went up to the Supreme Court.

Before the Supreme Court, a compromise was reached and the Special Leave Petition was, accordingly, dismissed. Accordingly, the trial court executed a sale deed on 20.08.1987 in favour of the 2nd defendant. Thus, the 2nd defendant had become the absolute owner of the suit property. The 2nd defendant has settled the property in favour of the defendants 3 to 5 who are his sons. Thus, the plaintiffs are not entitled for any right whatsoever over the suit property to ask for partition.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiffs, two witnesses were examined and 12 documents have been exhibited. Ex.A.1 is the Certified copy of the Will dated 18.08.1969. On the side of the defendants, the 4th defendant Mr.Vijaya Kumar was examined as D.W.1 and as many as 53 documents have been exhibited. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how the appellants are before this Court with this Second Appeal.

6. In this Second Appeal, it is submitted by the learned Counsel for the appellants that the courts below have erred in appreciating Ex.A.1 which according to the learned Counsel contains a clause that the bequeathed property under the Will shall be acquired by the 1st defendant Mylathal and her children. The learned Counsel would further submit that the courts below have failed to appreciate the said fact.

7. The learned Counsel appearing for the respondents 3 to 5 would submit that there is no such clause at all in the Will. According to the Will, the property has been absolutely bequeathed in favour of Mylathal, the 1st defendant herein.

8. I have considered the above submissions.

9. At the outset, I should say that there is no question of law much less a substantial question of law involved in this Second Appeal warranting admission. I should not fail to state that this is an unscrupulous litigation filed by the appellants only to litigate for the purpose of litigation in order to cause disturbance and anguish to the real owners of the suit property. This observation is absolutely necessary because there is no controversy over the fact that Krishnammal was the original owner of the suit property. There is also no dispute that under Ex.A.1 Will, the suit property was bequeathed in the name of the 1st defendant, the mother of the appellants herein. Krishnammal died as early as on 15.03.1970 and thus the Will has taken force.

10. Now the crucial question is as to whether the Will contains any clause that the suit property should be held by Mylathal only for life and the remainder should go to the hands of her children or atleast Mylathal and her children have got equal right over the suit property. A reading of the Will would go to show that there is no such clause at all in the Will as it is claimed by the appellants. The terms of the Will would go to show that the property was bequeathed only in the name of the 1st defendant absolutely. Thus, Mylathal was the absolute owner of the suit property on account of the Will.

11. There is no dispute now that Mylathal, the 1st defendant entered into the sale agreement under Ex.B.4 as early as on 28.10.1972 itself. There is no dispute that Mylathal did not execute the sale deed in performance of her part of contract and therefore, a civil suit was filed by the 2nd defendant. The said suit for Specific Performance was decreed and the appeals both First and Second were all dismissed. In pursuance of the said specific performance decree, a sale deed was executed by the trial court as early as on 20.08.1987. The said sale deed has not been challenged at all by the plaintiffs. It is not as though the plaintiffs were not aware of the said sale deed. In the compromise which was reported before the Supreme Court, the plaintiffs were also parties. After 20.08.1987, there can be no dispute that the 2nd defendant had become the absolute owner of the suit property. The plea that Mylathal had only a share in the property and she did not have absolute title for the suit property was negatived in the earlier civil suit in respect of specific performance. Again, such a plea is now taken in the present suit. At any rate, since the Will does not contain any such clause giving only a share to Mylathal and in view of the fact that the sale deed executed in pursuance of the specific performance decree had become final and the same has not been challenged, the plaintiffs cannot have any right whatsoever over the suit property. The courts below have appreciated these facts correctly and have dismissed the suit.

12. The sale agreement about which I have referred to above is dated 28.10.1972 and the suit for specific performance was filed in O.S.No.24 of 1984 in the year 1984. The sale deed was executed as early as on 20.08.1987 and the present suit was filed in the year 2003 i.e. after 16 years of the said sale deed. A perusal of the documents filed before this Court would go to show that there were number of proceedings filed in one court or the other by the plaintiffs. All these facts would go to show that the plaintiffs are vexatious litigants and they have not come forward with clean hands. The very fact that there is no mention about the earlier litigations made, in the

present plaint would go to show the intention behind the present suit. For these reasons, I have to impose cost upon the appellants/plaintiffs while dismissing the Second Appeal. To repeat, I hold that there is no substantial question of law and there is no merit at all in this Second Appeal, even on facts, warranting admission.

13. In the result, the Second Appeal fails and the same is accordingly dismissed with cost of this Second Appeal to be paid by the appellants to the respondents 3 to 5. The decree and judgment of the lower appellate court is confirmed. Consequently, connected Miscellaneous Petition is closed.

MEMORANDUM OF COSTS

Respondent's () Costs	Rs. P.
Stamp for Vakalatnama	10.00
Advocate's fee on rupees [F.C not received]	--
Translation and Printing/Typing charges	nil

To be paid to the Respondent[]	10.00
By the Appellant[]	

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsi
To

1. The Subordinate Judge,
Pollachi.
2. The District Munsif,
Pollachi.

Copy To : The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.69346
+2cc's to Mr.K.Sridhar, Advocate, S.R.No.69374

S.A.No.760 OF 2015
& M.P. No. 1 of 2015

AK(CO)
CA(02/02/2016)