

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.2012 OF 2004

S.A.Ramalingam

... Appellant/Defendant.

Vs.

Elumalai

... Respondent/Plaintiff.

PRAYER : This second appeal filed under Section 100 C.P.C. against the judgment and decree dated 10.06.2004 in A.S.No.39 of 2002 on the file of the Additional District Judge (Fast Track Court II), Salem, and confirming the judgment and decree of the 20.11.2001 in O.S.No.887 of 1995 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.T.M.Hariharan
For Respondent : M/s.R.Ezhilarasan

J U D G M E N T

The unsuccessful defendant before the courts below is the appellant herein. The suit is filed by the respondent/plaintiff for declaration of his right, title and interest in respect of and recovery of the suit items 1 to 4, which admittedly belong to one Sampoorammal, who is none other than the step-mother of the plaintiff herein.

2.The facts that Sampoorammal, who is the senior wife of Ramasamy Padaiyachi, is the original owner of the property and during the subsistence of the first marriage, Ramasamy Padaiyachi married one Rajammal as his second wife and Rajammal gave birth to the plaintiff through Ramasamy Padaiyachi and her husband Ramasamy Padaiyachi predeceased the senior and junior wives and the senior and junior wives also died thereafter and after their death, the defendant has been in possession and enjoyment of the suit properties, are not seriously denied.

3.The dispute in respect of the suit items 1 to 4 arises between the plaintiff/step-son of Sampoorammal and the defendant, who is the son of one of the paternal uncles of Sampoorammal. The plaintiff has come forward with the present suit for declaration of his right, title and interest and recovery of possession by claiming that he is under Section 15(1) of the Hindu Succession Act entitled to succeed

to the estate of Sampoorammal as her sole legal heir. As far as the defendant is concerned, he seeks to deny the claim of the plaintiff by denying any marriage between Ramasamy Padaiyachi and the plaintiff's mother Rajammal and the validity of such marriage during the subsistence of the first marriage and by claiming title in himself on the strength of Ex.B49 release deed dated 10.3.1983 executed by Rajammal for herself and on behalf of the minor plaintiff in favour of the defendant in respect of their right in the suit properties.

4.The parties have in support of their respective claims, adduced oral and documentary evidence. Both the courts below after detailed analysis and discussion of the relationship between the parties and by relying on the documents produced on their side and also in the light of the relevant provisions of Hindu Succession Act, held that the suit items 1 to 4 belong to Sampoorammal and Ramasamy Padaiyachi married Rajammal and both of them lived as husband and wife with the knowledge of the first wife and Rajammal gave birth to the plaintiff and the plaintiff was brought up by Ramasamy Padaiyachi, Sampoorammal and Rajammal and the defendant has come to the occupation of the properties since 1988-89 and the plaintiff's mother Rajammal has no right to execute the property belonging to Sampoorammal and Ex.B49 release deed is not legally valid for want of any registration and the plaintiff need not seek for setting aside the same within 3 years from the date of his attaining majority and the plaintiff, being the step son of Sampoorammal, become her legal heir to succeed to her estate under section 15(1)(b) in his capacity as heir of her husband and as there was no other legal heir for Sampoorammal, the plaintiff became entitled to the suit items 1 to 4 and on the basis of such findings, granted the relief sought for in the suit and decreed the suit in entirety in favour of the plaintiff. Hence, this second appeal by the defendant before this court.

5.The defendant/appellant has in this second appeal sought to question the correctness of the findings rendered by the courts below on the following substantial questions of law:

"1. Whether when admittedly even as per the claim of the respondent, Ramaswami Padayachi married Rajammal during the subsistence of the earlier marriage, is not the respondent precluded from inheriting the properties of any other relation except than that of his parents?

2. Can the respondent born of an illegal wedlock seek to inherit the properties of Sampoorammal as a heir of her husband?

3. Whether the suit filed without a prayer for setting aside Ex.B.49 is maintainable."

6. Heard the rival submissions made on both sides and perused the records.

7. As already stated, the claim raised herein is in respect of right, title and interest in respect of the suit items 1 to 4 belonging to Sampoornammal. The relationship between the parties is not disputed herein. As per the same, the plaintiff is the step son of Sampoornammal i.e., son of the husband through the second wife Rajammal. Whereas the defendant is the son of one of the paternal uncles of Sampoornammal. The findings of the courts below regarding the marriage between Ramasamy Padaiyachi and Sampoornammal and Ramasamy Padaiyachi and Rajammal during the subsistence of the first marriage and the birth of the plaintiff to Rajammal through Ramasamy Padaiyachi are based on sufficient materials supported by proper reasoning. In that event, the factual findings so rendered cannot be canvassed herein. The plaintiff being the step son of the owner falls in the category of the heir of the husband as referred to in clause (b) of Section 15(1) and will come as legal heir of female dying intestate.

8. Thus in order to go into the claim of the plaintiff, the relevant provision of law to be looked into is Section 15 of the Hindu Succession Act which deals with General rules of succession in the case of female Hindus. For better appreciation, the same is extracted hereunder:

"15. General rules of succession in the case of female Hindus: (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,--

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother."

9. The Hon'ble Apex Court in the decision reported in (1987) 2 SCC 547 (Lachman Singh v. Kirpa Singh and others), has categorically laid down that in the case of a female Hindu dying intestate, a step son, that is, the son of her husband by his another wife falls in the category of the heirs of the husband referred to in clause (b) of Section 15(1) and will come in as her heir. That being the legal position, both the courts below by relying on the law so laid down by the Apex court, rightly held that the plaintiff being step son of Sampoornammal, under clause 15(1)(b) of the Hindu Succession Act, is entitled to succeed to her property, in the absence of any other legal heirs and the denial of his right, title and interest by the defendant insofar as the suit items are concerned, is hence legally

not sustainable. When the plaintiff is held to be entitled to the suit items, the possession of the suit items by the defendant without any right would amount to trespass and encroachment. Though the defendant would seek to set up title on the strength of Ex.B49 release deed executed by the plaintiff's mother for her herself and on behalf of the plaintiff, who is the erstwhile minor son, the same for want of any right to do so by Rajammal and for want of registration is rightly held to be not valid document and the same hence does not convey any right to the defendant. When Ex.B49 is held to be invalid, the question of taking steps to set aside the same for the purpose of establishing the right of the plaintiff does not at all arise herein. Both the courts below have thus rightly negated the claim of the defendant either under succession law or on the strength of Ex.B49 in respect of the suit items and no valid ground is made out by the defendant/appellant to interfere with well considered judgments of the courts below and the substantial questions of law are hence answered against the defendant.

10.In the result, the second Appeal is dismissed. No costs.

kal/rk

s/d-
Assistant Registrar)

True Copy

Sub-Assistant Registrar

To

1. The Additional District Judge
(Fast Track Court II),
Salem.
2. The Principal District Munsif,
Salem.
3. The Section Officer,
V.R.Section, High Court,
Madras 104.

+ 1 cc to Mr.R.Ezhilarasan, Advocate SR 11004

+ 1 cc to Mr.T.M.Hariharan, Advocate SR 11618

rv(co)
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S.A.No.2012 OF 2004