



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE P.R. SHIVAKUMAR

Second Appeal (MD) No.335 of 2015

Chinnammal

... Appellant/Respondent/Plaintiff
Vs.

Anburani

... Respondent/Appellant/Defendant

Second Appeal is filed under Section 100 C.P.C against the judgment and decree in A.S.No.18 of 2011, dated 29.04.2013 on the file of the Additional Sub Court, Dindigul, reversing the judgment and decree made in O.S.No.41 of 2009, dated 10.11.2010 on the file of the District Munsif cum Judicial Magistrate, Natham.

For Appellant

: Mr.R.Aravindan

JUDGMENT

The plaintiff in the Original Suit is the appellant in the Second Appeal. The sole defendant in the suit is the respondent in the Second Appeal. The respondent-Anburani is none other than the daughter-in-law of the appellant Chinnammal. The Suit in O.S.No.41 of 2009 came to be filed on the file of the District Munsif cum Judicial Magistrate, Natham for a bare injunction not to interfere with the possession and enjoyment of the appellant herein in respect of the suit property. The suit was decreed by the trial Court by a judgment and decree dated 10.11.2010 and an appeal preferred by the respondent herein in A.S.No.18 of 2011 in the Court of the Additional Sub Judge, Dindigul was allowed by the lower Appellate Court by a judgment and decree dated 29.04.2013. As against the decree of the lower appellate Court, the present Second Appeal has been filed.

2.The Original Suit came to be filed based on the following averments in the plaint:-

The suit properties were the ancestral properties of Late Murugesan, the son of appellant herein. In a partition that took place on 15.06.1999 under a registered deed of partition, a copy of which has been marked as Ex.A.1, the suit properties were allotted to the share of Murugesan. The said Murugesan due to love and affection he had towards his mother, namely the appellant herein executed a gift settlement deed under Ex.A.2, dated 05.07.2006 giving the suit properties to the appellant herein. Subsequently, the said Murugesan died. After the execution of Ex.A.2, the appellant herein got possession and thereafter, she was in exclusive possession and enjoyment of the suit properties. However, the respondent herein/defendant, who is none other than widow of Murugesan, was proclaiming that she was having a right to share in the properties and she was making attempts to cause disturbance to the possession and enjoyment of the appellant herein/plaintiff in respect of the suit properties. Hence, the appellant



herein/plaintiff was constrained to file the suit for permanent injunction.

3.The suit was resisted by the respondent herein/defendant contending that the gift settlement deed dated 05.07.2006 could not be genuine and the same could have been fabricated; that late Murugesan was not in a sound disposing state of mind on 05.07.2006, the date on which he allegedly executed the settlement deed; that the omission to mention the two female children of Murugesan, who had got a right to share in the property, in the settlement deed would make it clear that the same could not have been executed by Murugesan in a sound disposing state of mind, knowing fully well what he was doing; that the suit properties are in the possession and enjoyment of the respondent herein/defendant and that hence, the suit filed by the appellant herein/plaintiff should be dismissed with costs.

4.In the trial conducted before the trial Court, three witnesses were examined as P.Ws.1 to 3 and three documents were marked as Exs.A1 to A3 on the side of the appellant herein/plaintiff. One witness was examined as D.W.1 and two documents were marked as Exs.B1 and B2 on behalf of the respondent herein/defendant.

5.The learned trial Judge, on appreciation of evidence, came to a conclusion that the execution of the settlement deed by Murugesan with sound disposing state of mind was proved by the appellant herein/plaintiff and accordingly decreed the suit as prayed for by the appellant herein/plaintiff for the relief of permanent injunction as sought for. On appeal also the Appellate Judge differed with the said finding of the trial Judge, allowed the appeal set aside the decree of the trial Court and dismissed the suit O.S.No.41 of 2009. It is as against the said judgment and decree of the lower appellate Court dated 29.04.2013 made in A.S.No.18 of 2011, the present appeal has been filed.

6.The arguments advanced by Mr.R.Aravindan, learned counsel for the appellant are heard. The copies of the judgments and decrees of the Courts below and the copies of other documents produced in the form of typed set of papers are also perused.

7.Under Section 100 of the Code of Civil Procedure 1908, a Second Appeal will lie against the decree of a Court subordinate to the High Court, if it involves a substantial question of law. In the case on hand, no such substantial question of law is proved to have arisen for consideration in this second appeal. The suit filed by the appellant herein/plaintiff was one for a bare injunction against her own daughter-in-law. Admittedly, the suit properties and other properties were the ancestral properties of Murugesan and his father Alagu. The suit properties and other ancestral properties came to be divided under Ex.B1-original deed of partition between Alagu and Murugesan and the suit properties are the properties that fell to the share of Murugesan. The said partition took place long back in

1999. Though Murugesan, through his wife Anbumani (respondent/defendant) had got two female children, no reference has been made by the appellant herein/plaintiff in her plaint. If at all, the suit properties were ancestral properties and allotted to Murugesan in a partition as a coparcener of the joint family, of which he and his father were the coparceners, on the birth of a daughter in Tamil Nadu she would have become a coparcener provided the father was alive and the daughter remained unmarried as on 25.03.1989, when Tamil Nadu Act 1 of 1990 amending the Hindu Succession Act, 1956 came into force. Even otherwise, by virtue of Hindu Succession (Amendment) Act, 2005, irrespective of the marital status of the daughter, the daughter becomes a coparcener with her father, in respect of the property inherited by him as a coparcener, provided the father was alive on the date of coming into force of the said amendment.

8. Admittedly, there were two daughters of Murugesan and they were minors on the date of the alleged execution of Ex.A.2 settlement deed. Therefore, the non mentioning of the existence of the daughters and their rights in Ex.A.2 is a factor that may go against the genuineness of Ex.A.2 and the sound disposing state of mind of Murugesan on the date of execution of the said deed. It is an admitted fact that the said Murugesan died on 25.07.2006 , i.e. within 20 days from the date of execution of Ex.A.2 settlement deed. The said document is surrounded with suspicious circumstances. It was stated by the attestors that an attempt was made by Murugesan to put his signature but however, he affixed his thump impression.

9. Admittedly, Murugesan was a person who used to sign. If at all he was in a sound disposing state of mind, he shall not have chosen to put his left thump impression rather than signing the document. Above all, P.W.1 herself made a clear admission which has the clinching effect on the issue as to the genuineness of Ex.A.2 and the sound disposing state of mind of Murugesan on the date of execution of Ex.A.2. The admission is that Murugesan was taking treatment for serious illness for a long period and for three months prior to the date of his death, he did not have consciousness. The relevant portion of the deposition as extracted by the learned lower appellate Judge is reproduced hereunder:-

“முருகேசன் உடல்நிலை சரியில்லாமல் நடமாட்டம் இல்லாமல் இருந்தார் என்றால் சரிதான். அவர் இறப்பிற்கு 3 மாதங்களுக்கு முன்பு இருந்து சுயநினைவு இல்லாமல் இருந்தார் என்றால் சரிதான்.”

The said categorical admission and the fact that Murugesan died within 20 days from the date of execution of Ex.A.2, will make it clear that he was not possessed of sound disposing state of mind to execute Ex.A.2 on 05.07.2006. The necessary inference shall be that the document should have been created by taking the thump impression of Murugesan and getting the document some how or other registered.

10. In view of the fact that the appellant herein/plaintiff <https://hcservices.reports.gov.in/hcservices/> the sound disposing state of mind of Murugesan on the date of execution of Ex.A.2, the claim made by the appellant herein/plaintiff on the basis of Ex.A.2/settlement deed cannot be

sustained and the lower Appellate Court has rightly held so. There is no reason whatsoever to interfere with the said finding of the lower Appellate Court.

11. Admittedly, Murugesan got the suit properties allotted to him as his share in the ancestral property, in a partition between himself and his father as evidenced by Ex.A1. Each one of his daughters has got a right to share equal to that of their father and thus, Murugesan and each one of his daughter would have got an undivided $1/3^{\text{rd}}$ share in the suit properties. Since the settlement deed has not been proved to have been executed by Murugesan while possessing sound disposing state of mind, the same has got to be disregarded in respect of $1/3^{\text{rd}}$ of Murugesan. On his death on 25.07.2006, his daughters, wife and mother would have become entitled to equal shares by the rule of succession. Thus, the appellant herein/plaintiff would have become entitled to $1/12^{\text{th}}$ and the respondent would have become entitled to $1/12^{\text{th}}$ and the rest would be the shares of the daughters of Murugesan. That is the reason why, the appellant herein/plaintiff has not chosen to file the suit for declaration and on the other hand has chosen to file the suit for bare injunction, that too, against her daughter-in-law alone, without making the daughters of Murugesan as parties and without referring to them at all. The same will show lack of *bona fide* on the part of the appellant herein/plaintiff, besides the fact that the appellant herein/plaintiff has approached the Court with unclean hands.

12. It is also pertinent to note that the appellant/plaintiff has sought for an injunction regarding enjoyment against a co-owner, namely the respondent herein/defendant who holds an undivided $1/12^{\text{th}}$ share in the suit properties. Such an injunction regarding enjoyment cannot be granted in favour of a co-owner against another co-owner. Hence, there is no defect or infirmity, much less perversity in the finding of the lower Appellate Court that the appellant herein/plaintiff was not entitled to the relief of injunction sought for in the plaint. This Court does not find any merit in the Second Appeal. The appellant herein/plaintiff has also failed to show that the Second Appeal involves any substantial question of law. Hence, the Second Appeal is unfit for admission and the same deserves to be dismissed at the threshold.

13. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

1. The Additional Subordinate Court, Dindigul,
2. The District Munsif cum Judicial Magistrate, Natham.

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<https://heservices.ecourts.gov.in/hcservices/>

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