

In the High Court of Judicature at Madras

Dated: 27.06.2016

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.359 of 2016

and

C.M.P.No.6459 of 2016

M.Aarthi Appellant/Plaintiff

Vs.

1. M.Rajendran

2. M.Gajendran

.....Respondents/Defendants

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree of dismissing the Appeal Suit in A.S.No.3 of 2011 dated 11.12.2013 passed by the learned I Additional Judge, City Civil Court at Chennai, which was confirmed the judgment and decree in O.S.No.2801 of 2003 dated 07.06.2010 passed by the learned XV Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.B.Gopalakrisnan

For Respondents : Mr.G.Thiagarajan

J U D G M E N T

The unsuccessful plaintiff before both the Courts below in a suit for declaration and permanent injunction is the appellant before this Court. The matter is listed today under the 'adjourned admission' caption. Hence, this Court has to see as to whether any substantial question of law arises for consideration to admit the Appeal and entertain the same for further hearing.

2. Heard the learned counsel for the appellant and perused the materials placed before the Court.

3. The appellant claims right over the suit property through a Will marked as Ex.A2 said to have been executed by one Kuppammal in her favour who is claimed to be the grandmother of the plaintiff. It is the case of the plaintiff that the said Kuppammal was born to one Nainiyappan. The Courts below found that the plaintiff has not proved that she is the legal heir of the said Nainiyappan, when it is claimed by the plaintiff that Kuppammal is the daughter of the said Nainiyappan, from whom, both the parties are claiming title to the suit property.

Admittedly, the plaintiff has not produced any legal heirship certificate to show that she is the descendant of Nainiyappan. It is also found by the Courts below that the property shown in the schedule of the plaint is totally a different property compared to the one mentioned in the schedule of the Will marked as Ex.A2 through which the plaintiff claims title. Further, the Courts below have pointed out that no probate was granted to the said Will in favour of the plaintiff on the date of filing of the suit. With all these factual findings rendered by both the Courts below, the plaintiff's case came to be rejected.

4. Learned counsel for the appellant submitted that now the plaintiff may be given a chance to prove the relationship between the plaintiff and testator of the Will. I do not think that for such purpose, the Second Appeal can be entertained, as it is the bounden duty of the plaintiff to prove all the factual aspects of the matter by adducing evidence before the trial Court and if not, atleast before the Appellate Court if she can able to establish that such evidence was not available at the time of trial. I am not saying that there is no scope at all for entertaining such request for marking additional documents at the stage of Second Appeal. That can be done only in an appropriate case where this Court prima facie finds that the appellant is having a case on merits. In this case, the very basis of the claim is placed on Ex.A2-Will and both the Courts below have concurrently found that the schedule mentioned in the Will and the plaint differ with each other. When that being the factual finding rendered, I do not think that any purpose would be served in entertaining this Appeal even by allowing the appellant to mark additional evidence. Therefore, I do not find any substantial question of law arises for consideration to entertain this Appeal for further hearing of the matter. Hence, this Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

vsi

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The I Additional Judge, City Civil Court at Chennai
2. The XV Assistant Judge, City Civil Court at Chennai.

+ 2 ccs to Mr.G.Thiagarajan, Advocate SR 35833

+ 1 cc to Mr.B.Gopalakrishnan, Advocate SR 35750

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