

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.776 of 2016

1.S.R.Srinivasan
2.Pakiyavathi
3.Durgadevi
4.Kalyani
5.Gowri
6.Dhanam
7.Alamelu
8.Devi
9.Durga
10.Dheepa
11.Karthika
12.Bhavani

... Appellants

vs.

1.S.Pandurangan
2.Pandarinathan
3.Sainathan
4.Rajagopal
5.Srinivasan

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Sub-Judge, Thiruvarur, dated 25.08.2014 in A.S.No.18 of 2013 by confirming the judgment and decree passed by the learned District Munsif, Thiruvarur in O.S.No.26 of 2012 dated 13.03.2013.

For Appellants : Mr.S.Balasubramanian
For Respondents : Mr.S.Mohan

J U D G M E N T

The appellants are the plaintiffs in a suit for permanent injunction. The respondents herein are the defendants in the said suit. The plaintiffs sought to restrain the defendants from alienating the suit property and from interfering with their right in enjoying and worshipping in the suit property.

2.The case of the plaintiffs is that the suit property viz., Krishnasamy Madam and adjoining vacant land is in joint enjoyment of both the parties by virtue of settlement deed executed by one Govindasamy Chettiar in favour of his son Srinivasa Chettiar. It is their case that they are the legal heirs of the said Srinivasa Chettiar and are entitled to joint worship along with the defendants, who are the son and grandsons of the said Srinivasa Chettiar.

3. The defendants contested the suit specifically denying the claim of heirship of the plaintiffs. It is their case that the first defendant is the only son of Srinivasa Chettiar and there are no other heirs to the said person except the

defendants 1 to 5. There is no dispute to the fact that the defendants 2 to 5 are the sons of the first defendant. Therefore, the defendants contended that the suit property is in enjoyment of the defendants alone, with which the plaintiffs cannot have any joint right of worshiping.

4. Upon considering the rival pleadings of the parties and the evidence let in by them, the trial court dismissed the suit on the reason that the plaintiffs have not established their claim over the suit property, more particularly, by establishing their so called status of the legal heirship. The appeal preferred by the plaintiffs before the lower appellate court also came to be dismissed by confirming such finding rendered by the trial court. Challenging the concurrent findings rendered by the courts below, the present second appeal is filed before this court.

5. Heard Mr.S.Balasubramaniam, learned counsel appearing for the appellants and Mr.S.Mohan, the learned counsel appearing for the respondent.

6. There is no dispute to the fact that the present suit is the one for bare injunction to restrain the defendants from interfering with the plaintiffs' right of enjoying and worshiping in the suit property and also from alienating the

same by the defendants. To seek such relief, the plaintiffs claim themselves as the legal heirs of one Srinivasa Chettiar, who is admittedly having other heirs viz., son and grandsons, who are the defendants 1 to 5. Such claim of the plaintiffs is opposed and denied by the defendants by specifically contending that the plaintiffs are not the legal heirs of Srinivasa Chettiar. Therefore, it is for the plaintiffs to establish such status first by seeking appropriate relief of declaration and to seek the consequential relief such as the one as sought for in the present suit along with such main relief. On the other hand, without seeking any declaratory relief, the plaintiffs have come forward with the present suit only for bare injunction which in my considered view, is not the proper course of action. It is also found by the courts below that the plaintiffs have not adduced any evidence except the oral testimony of P.W.2 and P.W.3 in support of their case to claim the legal heirship of Srinivasa Chettiar.

7. Needless to say that the legal heirship of a particular person cannot be decided solely based on oral testimony of some third party, in the absence of any material documents in support of such claim. Therefore, I find that the concurrent findings rendered by the courts below do not warrant interference by this court, as I also find no substantial question of law arises for consideration to entertain the second appeal for further hearing. Accordingly,

the second appeal is dismissed, however with liberty to the plaintiffs to file appropriate suit before the competent court of law seeking appropriate relief. If any such suit is filed, it is open to the respective parties to contest the same and the court will also hear and decide the said suit on merits and in accordance with law, uninfluenced by any of the observations made in this present proceedings. No costs. The connected miscellaneous petition is also dismissed.

23.09.2016

Note: Issue order copy on 28.09.2016.

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To

1. The Sub Court,
Tiruvarur.

2. The District Munsif,
Tiruvarur.

K.RAVICHANDRABAABU,J.
vri

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