

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 30.06.2017

Judgment delivered on : 11.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1549 of 1999

1. Jegadammal (died)
2. Kuppammal
3. Muniyammal

(First appellant died and appellants 2 and 3 are already on record as Legal Representatives of the deceased first appellant and the same is recorded - Vide order dated 30.06.2017 passed in the Memo, dated 23.06.2017) .. Appellants/Plaintiffs

Vs.

1. Munusamy
2. Saroja

(Respondents 1 and 2 are already on record as Legal Representatives of the deceased first appellant and the same is recorded - Vide order dated 30.06.2017 passed in the Memo, dated 23.06.2017)

.. Respondents/Defendants

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.01.1999 in A.S.No.39 of 1997 on the file of the Principal District Court, Vellore, against the judgment and decree dated 31.01.1997 in O.S.No.39 of 1991 on the file of the Subordinate Court, Vellore.

For appellants : Mr.E.Kannadasan for  
For respondents : RR-1 and 2 - set ex-parte,  
Vide Order of Court, dated 23.03.2017

JUDGMENT

The unsuccessful plaintiffs before both the Courts below, are the appellants herein. They challenge the judgment and decree of the trial Court in O.S.No.39 of 1991 in dismissing the suit, which had been confirmed by the lower appellate Court in A.S.No.39 of 1997.

2. It is the case of the appellants/plaintiffs that the first plaintiff is the wife of Thanja Gounder and the other two appellants are the daughters of the first plaintiff. The first and second defendants are the son and another daughter born to the first plaintiff and Thanja Gounder. It is the case of the plaintiffs that the entire properties belong to Thanja Gounder and they are self-acquired properties, and the said Thanja Gounder died intestate leaving behind the heirs, who are all parties in the suit and that they are entitled to equal shares in the property. As the defendants did not agree to the request of the plaintiffs, claiming 3/5 share in the plaint schedule property, after issuance of lawyer's notice, dated 19.11.1990, the plaintiffs have approached the trial Court for the relief of partition and allotment of respective shares.

3. The contesting first defendant contended before the Civil Court that his father Thanja Gounder died in the year 1955 leaving huge debts and that there was a house property mentioned in the schedule and that the said property has been sold along with the other movable items in order to discharge the loan and also for the performance of marriage of third appellant, namely the sister of the first defendant.

4. The plaintiffs have produced documents/exhibits and contended that the property stands in the name of Thanja Gounder and that there was no valid document produced by the defendants to substantiate their cause.

5. The trial Court dismissed the suit, which was confirmed by the lower appellate Court, against which, the plaintiffs have preferred this Second Appeal.

6. This Court ordered notice of motion on 02.11.1999. Now, the Second Appeal is taken up for final disposal and the same is being decided on merits.

7. Learned counsel for the appellants/plaintiffs contended that the first defendant has sold the property not only after issuance of the lawyer's notice in the suit with regard to the partition, but also during the pendency of the suit, and that the property sold during the pendency of the suit is hit by the Doctrine of Lis Pendens and any such sale would be void in terms of Section 52 of the Transfer of Property Act.

8. Learned counsel for the appellants further contended that even though the appellants had not produced the sale deed, which according to the trial Court is a must, as the Revenue Records stood in the name of Thanja Gounder, which has not been disputed and that the finding of the trial Court that the property had been sold during the pendency of the Civil Suit, cannot be

construed as Lis Pendens, may not be correct. Though it is correct that the appellants ought to have issued notice to the purchaser and made him as a party to the suit, in terms of Section 52 of the said Act, any sale during the pendency of the civil suit, is void.

9. It is true that patta is not a title to the property, but that patta will also not confer any title to a party, but the Adangal Register and other Revenue Records marked, bear the name of Thanja Gounder, and it cannot be said that there is no evidence at all to show that the property belongs to Thanja Gounder.

10. The finding of the trial Court that the appellants/plaintiffs have not established their title to the property and that the defendants have also not established their title with regard to the claim of self-acquired property of the said Thanja Gounder, and hence, the plaintiffs are not entitled to the relief sought for in the suit. It is the burden on the part of the appellants/plaintiffs to establish that the property belongs to Thanja Gounder, even though the Adangal Register and other Revenue Records may contain the name of the first plaintiff's husband, i.e. Thanja Gounder, this alone would not confer any title, unless the sale deed is produced.

11. Merely because the respondents/defendants have not produced any document with regard to the self-acquired property of the said Thanja Gounder, it does not mean that the property was purchased by the said Thanja Gounder. That apart, after detailed discussion, both the Courts below, after considering the evidence, oral and documentary, available on record, came to the conclusion that the appellants/plaintiffs have not established their title. This Court finds that there is no justification in interfering with the said finding of fact rendered by both the Courts below, much less when the findings are concurrent in nature.

12. The concurrent findings of the Courts below do not warrant any interference by this Court under Section 100 CPC. It is settled law from a catena of decisions of the Supreme Court and this Court that the findings of facts concurrently recorded by the trial court, as also by the lower appellate court, could not be legally upset by this Court, sitting in Second Appeal under Section 100 CPC, unless it is shown that the findings are perverse, being based on no evidence or that on the evidence on record, no reasonable person could come to that conclusion. Further, the scope for interference with the concurrent findings of fact, while exercising jurisdiction under Section 100 CPC, is very limited, and re-appreciation of evidence is not permissible, and if the trial court and the first appellate

court misdirected themselves in appreciating the question of law or placed the onus on the wrong party, certainly, there is a scope for interference under Section 100 CPC. This Court finds no illegality or perversity in the concurrent findings of both the Courts below, and hence, they are liable to be confirmed.

13. There being no question of law, much less substantial question of law involved in the Second Appeal, the same is dismissed, confirming the judgments and decrees of both the Courts below. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. The Principal District Judge,  
Vellore.
- 2.The Subordinate Judge,  
Vellore.
- 3.The Record Keeper,  
V.R. Section, High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate Sr. 58274

Judgment in  
S.A.No.1549 of 1999

AK(CO)  
VR(07/11/2017)

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