

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.01.2017

Date of Verdict : 22.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.Nos.857 and 912 of 2008
& Cross objection Nos. 81 and 102 of 2011
and M.P.No.1 of 2008 in S.A.No.912 of 2008

S.A.No.857 of 2008:-

1. Arukkathal
2. DeivanaiAppellants/Plaintiffs 2 & 5

Vs.

1. Kumarasamy
2. Nallamuthu
3. Chellammal
4. Palanisamy Goundar
5. Kannusamy ...Respondents/Defendants and
Plaintiffs 3 & 4

Cross Objection No.102 of 2011 in S.A.No.857 of 2008 :-

Kumarasamy Cross Objector

Vs.

1. Arukkathal
2. Deivanai
3. Nallamuthu
4. Chellammal
5. Palanisami Gounder
6. Kannusamy ... Respondents.

S.A.No.912 of 2008:-

1. Arukkathal
2. DeivanaiAppellants/Plaintiffs 2 & 5

Vs.

1. Kumarasamy
2. Palanisamy Goundar
3. Kannusamy ...Respondents/1st Defendant and
Plaintiffs 3 & 4

Cross Objection No.81 of 2011 in S.A.No.912 of 2008 :-

Kumarasamy

... Cross Objector/1st Defendant

Vs.

1. Arukkathal
2. Deivanai
3. Palanisami Gounder
4. Kannusamy

... Respondents/Plaintiffs 2 & 5 and
3 & 4

Prayer in S.A.No.857 of 2008 and Cross Objection 102 of 2011:-
This Second Appeal and Cross Objection have been filed against
the judgment and decree of the learned Principal District
Judge, Erode made in A.S.No.21 of 2007 dated 12.07.2007
reversing the judgment and decree passed in O.S.No.116 of 1995
dated 20.01.2007 on the file of the learned Subordinate Judge,
Darapuram.

Prayer in S.A.No.912 of 2008 and Cross Objection 81 of 2011 :-
This Second Appeal and the Cross Objection have been filed
against the judgment and decree of the learned Principal
District Judge, Erode made in A.S.No.19 of 2007 dated
12.07.2007 reversing the judgment and decree passed in
O.S.No.6 of 1996 dated 20.01.2007 on the file of the learned
Subordinate Judge, Darapuram.

For Appellants : M.Balasubramanian in both appeals

For Respondents: Mrs.Hema Sampath Senior Counsel
for Mr.S.Saravanan for R1 to R3 in
S.A.No.857 of 2008 and
R1 in S.A.No.912 of 2008

Mr.P.Muthukrishnan for R4 & R5
in S.A.No.857 of 2008 and
R2 and R3 in S.A.No.912 of 2008

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COMMON JUDGMENT

These appeals are directed against the common
judgment and decree passed in A.S.No.19 of 2007 and A.S.No.21
of 2007 reversing the common judgment and decree passed in
O.S.No.6 of 1996 and O.S.No.116 of 1995.

2. The parties are described as per status and
ranking found in the plaint.

3. The suit in O.S.No.6 of 1996 was filed for
declaration that A and B Schedule properties are the

properties of the plaintiff as per the Will executed by his father Komarasamy Gounder on 17.09.1987 and for permanent injunction restraining the defendants from interfering with their peaceful possession of the A and B schedule properties. The trial Court, which tried the suit in O.S.No.6 of 1996 and another suit in O.S.No.36 of 1997 filed by Komarasamy Gounder for permanent injunction and O.S.No.116 of 1995 filed by Veerathal, Arukathal who were defendants in the suit in O.S.No.6 of 1996 and O.S.No.36 of 1997, examined the witness in common and dismissed the suit in O.S.Nos. 6 of 1996 and 36 of 1997 filed by Komarasamy Gounder and allowed the suit for partition filed by Veerathal and others against Komarasamy and passed a preliminary decree granting $\frac{1}{4}$ share together for defendants 3,4 and 5, being the legal heirs of deceased first defendant Veerathal and $\frac{1}{4}$ share to the second defendant Arukathal. Aggrieved by that, the said Komarasamy Gounder preferred first appeals in A.S.Nos. 19 to 21 of 2007 as against the dismissal of the suits in O.S.No.6 of 1996 and 36 of 1997 and as against the decree passed in O.S.No.116 of 1997, allowing the suit against him. The first appellate Court, after considering the memorandum of grounds partly allowed the appeal and granted declaration and permanent injunction.

4. In A.S.No.19 of 2007 preferred against O.S.No.6 of 1996, permanent injunction was granted in respect of the item Nos. 3 and 4 of 'A' schedule property and item No.2 of B schedule property, confirming the judgment and decree of lower Court and in other respects, the appeal was dismissed. A.S.No.20 of 2007 preferred against the judgment and decree passed in O.S.No.36 of 1997 is partly allowed. In A.S.No.21 of 2007 a preliminary decree for partition declaring $\frac{2}{3}$ share for the plaintiffs 2-5 in O.S.No.116 of 1995, in respect of A and B schedule property was passed. Aggrieved by the judgment of lower appellate Court partly allowing the claim of the plaintiffs in O.S.No. 6 of 1996 and O.S.No.116 of 1995, two appeals in S.A.Nos. 912 of 2009 and 857 of 2008 have been filed respectively.

5. The admitted facts in the case are :- Originally the suit property owned by one Komarasamy Gounder as father of Komarasamy Gounder. Komarasamy married one Marayammal as his first wife and since he had no male issue he married one Chellammal as second wife. The plaintiff and one Nallamuthu are the sons of Komarasamy Gounder born through his second wife Chellammal. The first defendant Veerathal and Arukathal are the daughters of Komarasamy Gounder born through his first wife Marayammal. A settlement deed dated 24.09.1964 was executed in favour of Marayammal by Komarasamy Gounder in respect of item Nos.1,2 and 5 of A schedule property and item No.1 in respect of the B schedule property. On 17.09.1987, he executed a Will in respect of A and B schedule property bequeathing it to the plaintiff absolutely. Thereafter, Komarasamy Gounder died on 02.07.1994. The first wife

Marayammal pre-deceased him five months earlier on 12.02.1994. While the plaintiff Kumarasamy Gounder claims absolute right over the A and B schedule property based on the Will, the defendants Veerathaal and others claim right over the item Nos. 1,2 and 5 in A schedule property and item No.1 in B schedule property based on the settlement deed executed by Komarasamy Gounder in favour of Marayammal.

6. It is the case of the defendants that the settlement was absolute during the life time of Marayammal, first wife of Komarasamy Gounder. It was given in lieu of maintenance, since Komarasamy Gounder wedded Chellammal, the mother of the plaintiff as second wife to have male progeny. The property which was settled in favour of the defendant's mother as life interest holder enlarged into the absolute property under Section 14 of Indian Succession Act and therefore, the plaintiff has no right over the properties covered under the settlement deed.

7. With these basic averments the parties contested the suits. The trial Court after analysing the recital found in Ex.A.1-settlement deed held that in Ex.A.1, Komarasamy Gounder has clearly mentioned that the property found in the settlement deed should be enjoyed by Marayammal till her life time without granting any title and after her life time it would revert back to the descendant of the settlor namely Komarasamy Gounder. Therefore, it could not be construed as an absolute property of Marayammal as contested by the defendants. From the evidence, the plaintiff, defendants 1 and 2 and the brother of the plaintiff one Nallamuthu are the legal heirs of the deceased Komarasamy Gounder. Therefore, on the death of Marayammal on 12.02.1994, the properties have been reverted back to the heirs of Komarasamy Gounder. In respect of Ex.A.3 Will, the trial Court has observed that Komarasamy Gounder had no right to execute the Will in respect of the properties settled in favour of Marayammal, while Marayammal was alive. With these observations the trial Court rejected the Will in toto and dismissed the suit in O.S.No.6 of 1996 filed for declaration and O.S.No.36 of 1997 filed for permanent injunction. Insofar as the suit in O.S.No.116 of 1995 filed by Veerathal and others, the trial Court held that Veerathaal and Arukathal, the daughters of Komarasamy Gounder born through Marayammal have to share the suit schedule properties along with the sons of Komarasamy Gounder born through his second wife Chellammal, who are the plaintiff-Kumarasamy and his brother Nallamuthu.

8. On the appeal filed by the plaintiff Kumarasamy, the first appellate Court formulated the following points for consideration:-

1. Whether the settlement deed dated 20.04.1964 Ex.A.1, conferred absolute title over the settlee Marayammal?
2. Whether the registered Will dated 17.09.1987,

- Ex.A.3 is proved as per law?
3. Whether the appellant is entitled for the decree as prayed for?
 4. To what other relief?

9. In respect of Ex.A.1 settlement deed, the provision of Section 14(1) and 14(2) of the Indian Succession Act and the judgment rendered in connection with the same, the lower appellate Court concluded that Marayammal interest in the properties settled in her favour for life time as enlarges into absolute right, in view of the Thulasamma's case and held that she has the absolute title over the property given under Ex.A.1 and in respect of Will Ex.A.3, the first appellate Court held that the Will has been proved in the manner known to law and to the satisfaction of the Court, and therefore except the property mentioned in Ex.A.1, the said Komarasamy is entitled to execute the Will for the remaining property and accordingly, the plaintiff is entitled for the benefits under the Will Ex.A.3 excluding the property covered under Ex.A.1 settlement deed. As a result, excluding the properties under the settlement deed, the first appellate Court granted the relief of declaration and permanent injunction in favour of the plaintiff in O.S.6 of 1996 which are the item Nos. 3 and 4 of A schedule property and item No.2 of B schedule property. Regarding the partition suit filed by Veerathaal and his sister Arukathaal, the first appellate Court, taking note of the fact that Veerathaal died pending appeal, Marayammal died on 12.02.1994, leaving behind her husband Komarasamy Gounder and two daughters Veerathaal and Arukkathaal. Held each of them are entitled for 1/3 share and the plaintiff Kumarasamy Gounder is entitled to get 1/3 share of his father Komarasamy by virtue of Ex.A.3. Aggrieved by the findings of the lower appellate Court, the defendants in O.S.No.6 of 1995 and plaintiff in O.S.No.116 of 1995 has preferred two appeal viz., S.A.No. 857 of 2008, questioning the validity of Ex.A.3 Will and S.A.No.912 of 2008, questioning the decree and declaration granted in favour of the plaintiffs in respect of the item Nos. 3 and 4 of 'A' schedule property and item No.2 of B schedule property.

10. The point for consideration before this Court is that whether the judgment and decree of the Courts below are perverse on account of misconception of documents in Ex.A.1 and A.3. Since the substantial question of law raised in the both cases are same and the entire dispute revolves around the application of Section 14 of Indian Succession Act to Ex.A.1 settlement deed and Ex.A.3 Will, this Court has formulated the same substantial question of law for both appeals.

11. The learned counsel appearing for the respective parties enlightened this Court with regard to enlargement of female heir under Section 14 of the Indian succession Act and the recital found in Exs.A.1 and A.3 through various judgments of the Hon'ble High Courts and the Hon'ble Supreme Court.

12. The learned counsel for the appellant pointed out that the suit properties are ancestral properties and Komarasamy Gounder settled certain properties in favour of his first wife in lieu of maintenance as early as 1964 and then she has been in possession and enjoyment of the property along with her daughters. It has also been amply proved that Exs.B.1 to 5, the tax receipts stands in their name. Since the properties were conveyed in lieu of maintenance though the recital found in Ex.A.1 restricting the enjoyment only up to the life time of Marayammal, it is enlarged into absolute ownership of Marayammal under Section 14(1) of the Indian Succession Act, which has rightly been held by the Courts below. However, the first appellate Court ought not to have held that Ex.A.1 is also valid since when Komarasamy Gounder executed Will in respect of the property in which he had no testamentary right or capacity to execute the Will. More over Komarasamy Gounder was a chronic diabetic patient from 1975 with amputate leg could not have executed the Will. The testator who normally used to sign, had affixed his thumb impression in the Will which causes doubt over the genuines of the Will. Therefore, the Courts below ought to have rejected the Will Ex.A.3 out rightly and should have given share in the suit property shown as item Nos. 3 and 4 in A schedule property and item No.2 in B schedule property.

13. Per contra, the learned counsel for the respondent submitted that the march of law regarding the interpretation of Section 14(1) and 14(2) of Indian Succession Act after Thulasamma case has under gone a rational change and if that is taken note, Ex.A.1 settlement deed was after the enactment of Indian Succession Act. Therefore it falls under Section 14(2) of Indian Succession Act, since Marayammal acquisition of the property was subsequent to the enactment and not prior to the enactment. Only if there is existing right at the time of enactment in the year 1956, that right alone will get enlarged and any other right conferred with limitation subsequent to the enactment of Hindu Succession Act, 1956 will not get enlarged.

14. In support of his submission the learned counsel for the appellant referred "(1996) 8 SCC 525 in C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswami Thirukoil and others" wherein in paragraph 27, the Hon'ble Supreme Court has held as follows:-

"27. As held by this Court, if the acquisition of the property attracts sub-section (1) of Section 14, sub-section (2) does not come into play. If the acquisition is for the first time, without any vestige or pre-existing right under the instrument, documents or device etc., then sub-section (2) of Section 15 gets attracted. Sub-section 92) being in the nature of an

exception, it does not engulf and wipe out the operation of sub-section (1). Sub-section (2) of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu Under Section 30 is required to be understood in this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of pre-existing right. If the answer is in the positive, sub-section (1) of Section 14 will be given their full play without rendering either as otiose or aids as means of avoidance."

15. Per contra, the learned counsel for the respondent in support of his argument, cited the Apex Court judgment in "Shivdev Kaur and others Vs. R.S.Grewal reported in (2013) 4 SCC 636" .

"14. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a "life interest" through Will or gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallised into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a will or gift, giving her only a "life interest", it would remain the same even after commencement of the 1956 Act, and such a Hindu female cannot acquire absolute title"

16. Insofar as the genuineness of the Will Ex.A.3 is concerned, the trial Court has accepted that it has been validly executed and proved through one of the attesting witness and it being a registered document, mere illness of

the testator is not a reason to suspect the document. Similarly, this Court finds no force in the submission of the appellant that on the date of Will the testator had no testamentary right. It is well settled principle of law that properties bequeathed under the Will may not be his absolute property, even an ostensible right over a property can be bequeathed. Even otherwise, so far as Ex.A.3 is concerned, it is nobody's case that the testator had no right at all over the properties bequeathed since he has inherited the property through his ancestors, the plaintiff being a male descendant, such a devolution even without Will is automatic. The only question is that whether the testament is un-natural and suspicious one. Except the vague doubt raised about the documents, the appellant could not establish anything about the incapacity of the testator or the against the genuineness of the execution. Hence, this Court finds no force in the submission of the appellants regarding the genuineness of Ex.A.3. The intention of the testator could be seen palpable from the recital of the settlement deed. He has settled some properties in favour of his first wife and married other lady for male progeny. He did not live with plaintiff till his death and it is natural to bequeath his property to his sons in the said circumstances excluding the daughters born through his first wife, for whom he has settled some properties.

17. Insofar as the findings of the lower appellate Court in respect of Ex.A.1 settlement deed the respondent has preferred a cross objection stating that the lower appellate Court has erred in holding that Marayammal has conferred with absolute right under Ex.A.1 which is erroneous and contra to the recital found in Ex.A.1 settlement deed. When there is no specific recital in Ex.A.1 that after the life time of Marayammal, the property will revert back to the settlee and their heirs and it is proved that she pre-deceased the settlor and the properties should devolve upon the settlee and his heir and not upon the daughter of Marayammal. Since Marayammal had only life interest over the property, the findings of the Court below that the properties should devolve upon the legal heirs of Marayammal is against law.

18. After going through the judgment cited by the respective counsel regarding the enlargement of family estate as well as the recital found in Ex.A.1, the intention of the settlor which matters to arrive at the just and equitable conclusion. As pointed out by the Courts below after execution of Ex.A.1, the settlor has delinked himself from the family of his first wife and there is no evidence to show that he had considered them as part of his family. He had been living with his second wife and sons born through her. The revenue receipt relied by the appellants show that the properties had been enjoyed by them absolutely. Probably, that may be the reason for Komarasamy Gounder to bequeath his remaining land to his sons through Will Ex.A.3. Harmonious interpretation of Ex.A.1 and A3 alone will give the equitable relief to the rival claimants. For that purpose the interpretation given by the

Courts below regarding Ex.A.1 settlement deed has to be left undisbursed. As a result, both appeal and the Cross Objections are liable to be dismissed.

19. In the result, the second appeals and Cross Objections are dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

rts

To

1. The Principal District Judge, Erode.

2. The Subordinate Judge, Dharapuram.

3.The Section Officer,
VR Section,High Court,Madras.

+1cc to M/s.M.Bala Subraminian,Advocate sr.11309

+1cc to M/s.S.Saravanan,Advocate sr.11619

Common Judgment
in S.A.Nos.857 and 912 of 2008
& Cross objection Nos. 81 and 102 of 2011
and M.P.No.1 of 2008 in S.A.No.912 of 2008

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ss(14/3/2017)

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