

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.776 of 2008

K.Badrinarayana Chetty @ Badri

..Appellant/Plaintiff

..Vs..

1.P.Vijayanthi
2.A.N.Radhakrishnan
3.Srinivasan
4.P.Lakshminarayana
5.Naveenkumar
6.P.Dhanalakshmi
7.Thomas
8.Kennedy

..Respondents/Defendants

Prayer:- Appeal filed Under Section 96 of Civil Procedure Code, to set aside the judgement and decree dated 23.08.2006 in O.S.No.6501/1996 on the file of II Additional Judge, City Civil Court, Chennai.

For Appellant : Mr. Venkatesan

For R-7 & 8 : Mr.R.Raveendran

JUDGEMENT

This appeal is by the plaintiff in O.S.No.6501/1996 on the file of the City Civil Court, Chennai.

2. The said suit was filed by the plaintiff seeking declaration that he is the absolute owner of the property described in the schedule B, C and D in the suit and for delivery of possession of B schedule property by the first defendant, C schedule by the third defendant, and D schedule property by the defendants 2, 3 and 4 as well as for mesne profits.

3. According to the plaintiff, the properties described in B, C and D schedule property belonged to one K.Ranganatham Chetty who had adopted the plaintiff on 31.07.1957 under the registered deed of adoption. Thereafter, the said K.Ranganatham Chetty died on 13.07.1967 and he was survived by his wife Andalammal alias Subburathanammal and the plaintiff himself.

During in the year 1984 the adopted mother fell seriously ill and had to undergo a major surgery on 10.11.84 at C.M.K.Reddy Nursing Home. Though, she was discharged, she had to be admitted again for kidney trouble on 22.11.1984. Her condition became serious and finally the plaintiff brought her to the house. She died on 14.02.1985. Therefore, according to the plaintiff, his adoptive mother viz., Andalammal alias Subburathanammal died intestate. He would claim that the defendants who are the sisters, brother's wife, and brother's daughters of Andalammal alias Subburathanammal are claiming that she had left a Will dated 02.01.1985. His adoptive mother Andalammal alias Subburathanammal was terminally ill and she was not in a sound and disposing state of mind to execute a Will. However, an objection was also taken to the effect, that the Will has not been duly prorated and hence the same cannot be relied upon to establish any right in a Court of law in view of Section 213 of the Indian Succession Act. So far as 'D' schedule property is concerned, the plaintiff would contend that his father K.Ranganatham Chetty had executed a settlement deed dated 31.07.1957 which has been registered as document No.610/1963 retaining life estate for himself and providing a life estate in favour of his wife. After the death of Andalammal alias Subburathanammal, the 'D' schedule property was to be taken absolutely by his brother-in-law T.V.Subba Rao alias Thatha Venkatasubba Rao who predeceased the plaintiff's mother. Therefore, being the legal heir Andalammal alias Subburathanammal, he became the absolute owner in respect of the 'D' schedule property.

4. Contending that as an adopted son, he had become owner of the properties, the plaintiff sought for the above reliefs in the suit.

5. The said suit was resisted by the defendants 1 to 4 who are the sister, brother's wife and brother's daughters of Andalammal alias Subburathanammal.

6. Pending suit, the defendants 1 to 3 viz., the sister, brother's wife and one of the brother's daughters of Andalammal alias Subburathanammal died and their legal representatives who were brought on record as defendants 6 to 9. 'D' schedule property was sold by the defendants 7 and 8 to the defendants 10 and 11. Hence, the defendants 10 and 11 were impleaded in the suit on 16.09.2004 by an order in I.A.No.409/2004.

7. The defendants would contend that a Will was executed by Andalammal alias Subburathanammal on 02.01.1985. As per the said Will, it is the defendants 1 to 4, who got all the properties of Andalammal alias Subburathanammal and the plaintiff has no right over the said properties. So far as 'D'

schedule properties are concerned, it was contended that after the death of Andalammal alias Subburathanammal the heirs of T.V.Subba Rao alias Thatha Venkatasubba Rao had become entitled to the property.

8. The learned Additional Judge, City Civil Court, Cehnnai, on the above pleadings, framed the following issues:-

- a)Whether the plaintiff is entitled to the relief of declaration as owner of B, C and D schedule properties?
- b)Whether the plaintiff is entitled to seek vacant possession of B schedule property from the first defendant?
- c)Whether the plaintiff is entitled to seek vacant possession of 'C' schedule property from 3rd defendant?
- d)Whether the plaintiff is entitled to seek vacant possession of D schedule property from the defendants 2 to 4?
- e)Whether the plaintiff is entitled to mesne profits from the defendants 1 to 4 as sought for?
- f)Whether the court fee paid is correct?
- g)Whether there is cause of action for the suit?
- h)Whether the suit is barred by limitation with regard to defendants 10 and 11?
- i)Whether the defendants 10 and 11 are unnecessary parties to the suit?
- j)To what other relief, if any, the plaintiff is entitled to?

9. On the side of the plaintiff, he was examined as PW-1 and Exs.A-1 to A-6 were marked. On the side of the defendants D.W-1 and D.W-2 were examined and Exs.B-1 to B-13 were marked.

10. At this juncture it should be pointed out that pending suit, the Will was probated and this Court had granted probate for the Will dated 02.01.1985 in O.P.No.260/96 on 31.10.1996. It is also an admitted case that the plaintiff has not challenged the order granting probate till date. Insofar as the said 'C' schedule property is concerned, the plaintiff had given up his claim against the defendants 10 and 11 and a partial compromise was entered into. Therefore, the trial Court dismissed the suit in respect of 'C' schedule property which was purchased by the defendants 10 and 11. The said dismissal is not questioned in this appeal. The trial Court, taking note of the probate granted dismissed the suit.

11. I have heard Mr.M.Venkatesan, learned counsel appearing for the appellant, and Mr.R.Raveendran, learned counsel for the respondents 7 and 8. Though the other respondents were served,

they have not entered appearance either in person or through counsel.

12. The following point arises for determination in this appeal:-

1. Whether the trial Court was right in dismissing the suit in respect of 'B' and 'D' schedule properties, more so when the adoption of the plaintiff by K.Ranganatham Chetty is not in dispute?

13. The factum of adoption is not in dispute, but it is seen from the records that on the date of adoption, the adoptive father K.Ranganatham Chetty had settled a property in favour of the plaintiff viz., adopted deed under Ex.A-2. It is also seen from the records that the adoptive son viz., the plaintiff had executed a deed of release giving up his claim over the other properties of K.Ranganatham Chetty viz., adoptive father under Ex.B-3. Under Ex.B-4 dated 17.03.1965 K.Ranganatham Chetty had settled the other properties in favour of his wife Andalammal alias Subburathanammal. Insofar as the 'D' schedule suit properties are concerned, it is claimed that K.Ranganatham Chetty had executed a settlement deed dated 31.07.1957, retaining life estate for himself and his wife Andalammal alias Subburathanammal and after the death of his wife., the property shall be taken by his brother-in-law T.V.Subba Rao alias Thatha Venkatasubba Rao. Therefore, K.Ranganatham Chetty was not in possession of any property on the date of his death. The claim of the plaintiff is that the Will is not genuine and it has been brought about by the defendants 1 to 4 cannot be countenanced in this appeal, in view of the order granting probate for the said Will under Ex.B-12. The plaintiff in his oral evidence has admitted that he has not questioned the order of probate by filing necessary application for its revocation. Insofar as 'B' and 'C' schedule properties are concerned they were bequeathed to the 1st and the 3rd defendant by Andalammal alias Subburathanammal and therefore, the plaintiff claim insofar as these properties cannot be sustained, in view of the fact that the Will dated 02.01.1985 has been proved in accordance with law. Insofar as 'D' schedule properties are concerned it is claimed by the plaintiff that it was to vest in T.V.Subba Rao who died even prior to Andalammal alias Subburathanammal. Andalammal alias Subburathanammal therefore became the absolute owner and she died intestate in respect of the said property. The plaintiff, though, refers to the settlement deed dated 31.0.07.63 in his plaint, he has not chosen to produce the said document. Therefore, the recitals of the said document are not available to ascertain the intention. The Will executed by Andalammal alias Subburathanammal has been duly probated. In the said Will it is stated that on the death

of T.V.Subba Rao his legal representatives viz., the defendants 2, 3 and 4 are in a possession and enjoyment of the 'D' schedule property, as per the wish of K.Ranganatham Chetty. Therefore, it cannot be construed that Andalammal alias Subburathanammal died intestate in respect of the 'D' schedule property. The recitals under the Will, make it clear that she had bequeathed the property to the legal representatives of T.V.Subba Rao, since T.V. Subba Rao pre-deceased her. The trial Court had rightly concluded that the plaintiff is not entitled to the declaration of title or for the relief of the possession and mesne profits as prayed for in the plaint.

14. Mr.M.Venkatesan, learned counsel for the appellant would contend that the trial Court was wrong in entering a finding that the plaintiff has not proved the title of K.Ranganatham Chetty over 'D' schedule property. Though, the learned counsel is right in his submissions, since title of K.Ranganatham Chetty was never disputed in the present suit, the trial Court was not right in recording a finding that the plaintiff has not proved the title of K.Ranganatham Chetty.

15. Since the Will has been proved in accordance with law the plaintiff cannot claim any right over the said properties as the adoptive son, particularly when it is an admitted case that all the properties are self acquired properties of K.Ranganatham Chetty and he had absolute right to dispose it of during his life time. In view of the above, I do not see any reason to interfere with the finding of the trial Court.

16. In fine, the appeal is dismissed confirming the judgement and decree dated 23.08.2006 in O.S.No.6501/1996 on the file of II Additional Judge, City Civil Court, Chennai. There will be no order to costs in this appeal.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KP

To

1.The II Additional Judge,
City Civil Court, Chennai.

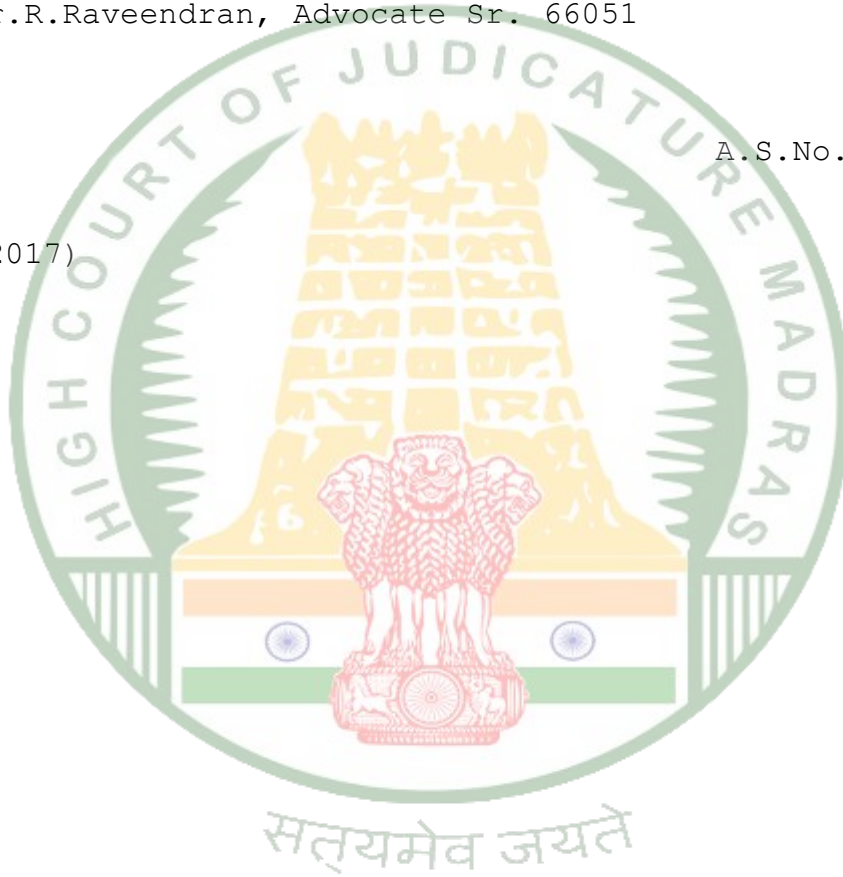
2.The Section Officer,
V.R.Section,
Madras.

+2cc to Mr.M.Venkatesan, Advocate Sr. 66067

+1cc to Mr.R.Raveendran, Advocate Sr. 66051

A.S.No.776 of 2008

SAI (CO)
VR(30/10/2017)



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