

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

PRONOUNCED ON : 08.03.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.123 of 2011

Gunasekaran ... Appellant/Appellant/Defendant

Vs.

Jumbulingam ... Respondent/Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.06.2010 in A.S.No.7 of 2007 on the file of Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 01.11.2006 in O.S.No.217 of 2003 on the file of the III Additional District Munsif, Kallakuruchi.

For Appellant : Mr.R.Sunilkumar

For Respondent : Mr.V.Bhiman

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 30.06.2010 made in A.S.No.7 of 2007 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 01.11.2006 made in O.S.No.217 of 2003 on the file of the III Additional District Munsif Court, Kallakuruchi.

2. The suit has been laid by the plaintiff for declaration and permanent injunction.

3. The declaration is sought for by the plaintiff that he is entitled to act as Nattanmai heriditarily and the permanent injunction relief is sought for to restrain the defendant from disturbing the plaintiff to act as Nattanmai. The post of Nattanmai is sought with reference to the Senguntha Mudaliyar Community of Chinnasalem Village.

4. Contesting the plaintiff's case, the defendant has raised the pleas that the plaintiff is not entitled to seek the relief of declaration that he is entitled to act as Nattanmai heriditarily and according to the defendant, only eminent person with administrative capacity is entitled to hold the post of Nattanmai amongst the family members of the earlier Nattanmai and further, according to the defendant, there are several instances, where, even persons other than elder members had acted as Nattanmai and further plea has also been taken by the defendant that Periyasamy Madaliyar, the father of the plaintiff had executed a registered Will on 29.07.2002 empowering the defendant to perform the duty of Nattanmai after him and therefore, according to the defendant, the plaintiff has laid the suit, without any cause of action and hence, the suit is liable to be dismissed.

5. It is found that the defendant has admitted that as regards the post of Nattanmai for Senguntha Mudaliyar community of Chinnasalem village, the plaintiff's grandfather Chinnasamy Mudaliyar and after him, the plaintiff's father Periyasamy Mudaliyear had acted as Nattanmai. However, according to the defendant, on that basis, the plaintiff is not entitled to claim the Nattanmai Post heriditarily as Periyasamy Mudaliyar had executed a Will in favour of the defendant empowering him to act as Nattanmai after him.

6. As adverted to earlier, the defendant has also taken a plea that it is not the custom to appoint elderly person to act as Nattanmai and there are instances, where, other than elderly persons, others have also acted as Nattanmai. In this connection, the defendant has placed reliance upon the documents marked as Exs.B8 to 11. However, the above case of the defendant did not find acceptance by the Courts below.

7. Considering the evidence adduced by the respective parties, it could be seen that in respect of the post of Nattanmai of Senguntha Mudaliyar community of Chinnasalem Village, proceedings were initiated earlier in O.S.No.116 of 1977 and the same was taken up to the High Court in Second appeal No.1457 of 1979, wherein, the matter ended in a compromise and the compromise decree has been marked as Ex.A4. It is found that the plaintiff's father Periyasamy Mudaliyar and another person by name Murugesu Mudaliyar had taken the initiative in the above said matter, which ultimately culminated in the compromise decree by the High Court.

8. Under the compromise decree, it is found that the Nattanmaikarars and Kariyasthars shall hold the office heriditarily and if any one does not have any issues, the office ceases to hold and the eldest male member succeeds to the office

on the eve of the demise of the father and if the heir happens to be minor, he holds the office on his attaining majority. Therefore, it could be seen that the office of the Nattanmai had been conferred heriditarily only upon the eldest member as per the compromise decree effected in the second appeal No.1457 of 1979. In such view of the matter, as rightly found by the Courts below, the proceedings are pertaining to Exs.B8 to 11 having come into existence prior to the compromise decree, it could be seen that after the compromise decree marked as Ex.A4, it is evident that the post of Nattanmai, in particular, shall be held by the succeeding eldest member heriditarily, if he is found fit to hold the post. In such view of the matter, the contention put forth by the defendant that there are earlier instances, where under, other than the eldest member, persons who had the efficiency, also occupied the post of Nattanmai as such cannot be accepted henceforth. In such view of the matter, the findings of the Courts below in not placing acceptance upon the Exs.B8 to 11, vis-a-vis, the compromise decree marked as Ex.A4 does not warrant any interference.

9. As regards the reliance placed by the defendant upon the Will said to have been executed by Periyasamy Mudaliyar in favour of the defendant, which has been marked as Ex.B21, as rightly found by the Courts below, when Periyasamy Mudaliyar had not been conferred with any right to demise the office of Nattanmai by way of bequeathment, it is found that the Will marked as Ex.B21 alleged to have been executed by Periyasamy Mudaliyar bequeathing the office of Nattanmai to the defendant cannot be termed as a valid document. That apart, when the defendant relies upon the Will Ex.B21 for claiming the post of Nattanmai in the place of the plaintiff, it is for him to establish the authenticity of the said Will as required under law. In this connection, the defendant has endeavored to prove the authenticity of the above mentioned Will through the attestors examined as DWs3 & 4. However, as rightly found by the Courts below, the evidence of DWs3 & 4 did not conform to the requirements of law. As regards the proof of the Will, it is found by the Courts below that in particular, both DWs3 & 4 have not testified that they had directly witnessed Periyasamy Mudaliyar executing the Will Ex.B21 and further, they have also not testified that Periyasamy Mudaliyar had seen them attesting the said Will in question. In such view of the matter, the essential ingredients for the proof of the Will, conspicuously being absent in the testimony of DWs3 & 4, no interference is called for in the decisions of the Courts below for not accepting the evidence of DWs 3 & 4 examined in support of Ex.B21. In such view of the matter, it could be seen that the defendant has failed to establish the validity and the authenticity of the Will and also failed to establish that the Will had been executed by Periyasamy Mudaliyar in the manner

known to law.

10. As regards the other documents, on which, the defendant placed reliance, it could be seen that the Courts below have rightly discussed the same in the correct perspective and they are not found to be germane for deciding the issues involved in this matter.

11. In conclusion, it is found that the plaintiff has laid the claim to the post of Nattanmai heriditarily following the demise of his father and it is also found that the plaintiff is empowered to claim the office of post of Nattanmai heriditarily as per the terms of the compromise decree marked as Ex.A4. In addition to that, it has not been pointed out or established by the defendant that the plaintiff is otherwise disentitled to hold the post of Nattanmai. The Courts below, on the proper appreciation of the evidence placed in the matter in the right perspective and on giving proper reasonings and conclusions, have accepted the plaintiff's case and rejected the defence version. No interference is called for with reference to the same.

In conclusion, no substantial question of law is found to be involved in this second appeal. The second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lok/sms

To

1. The Subordinate Judge, Kallakurichi.
2. The III Additional District Munsif, Kallakuruchi.

+1cc to Mr.R. Sunil Kumar, Advocate, S.R.No.14788

+1cc to Mr.V. Bhiman, Advocate, S.R.No.15050

+1cc to the Government Pleader, S.R.No.

ev(CO)

md(03/04/2017)

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