

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2016

PRONOUNCED ON : 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Second Appeal Nos.153 and 154 of 2011
and
M.P.Nos.1 and 1 of 2011

Muniammal Appellant in both Appeals/Plaintiff

Versus

1.Subaramanian
2.Srirangammal (deceased)
3.Kamatchi Ammal ... Respondents in S.A.153/2011
/Defendants

(3rd respondent recorded as LR of the deceased 2nd respondent vide order of the Court dated 19.10.2016 made in Memo USR No.2206 dated 16.03.2012 in S.A.No.153 of 2011)

1.Srirangammal (deceased)
2.Kamatchi Ammal
3.Subramanian ... Respondents in S.A.154/2011
/Defendants

(2nd respondent recorded as LR of the deceased 1st respondent vide order of the Court dated 19.10.2016 made in Memo USR No.2205 dated 16.03.2012 in S.A.No.154 of 2011)

Second Appeal No.153 of 2011 filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 26.08.2010 made in A.S.No.35 of 2009 on the file of the Subordinate Judge, Kanchipuram, Kanchipuram District, reversing the judgment and decree dated 31.12.2008 made in O.S.No.61 of 2001 on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

Second Appeal No.154 of 2011 filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 26.08.2010 made in Cross Appeal No.42 of 2009 on the file of the Subordinate Judge, Kanchipuram, Kanchipuram District, reversing

the judgment and decree dated 31.12.2008 made in O.S.No.61 of 2001 on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

For Appellant in both appeals : Mr.N.Nagu Sah

For Respondent-1 in S.A.153/2011
and

For Respondent-3 in S.A.154/2011 : Mr.K.Govi Ganesan

For Respondent 3 in S.A.153/2011
and

For Respondent 2 in S.A.154/2011 : Mr.N.Nityanandan

COMMON JUDGMENT

S.A.No.153/2011:

Challenge in this appeal is made by the plaintiff against the judgment and decree dated 26.08.2010 passed in A.S.No.35 of 2009 on the file of the Subordinate Judge, Kanchipuram, reversing the judgment and decree dated 31.12.2008 passed in O.S.No.61 of 2001 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

2. S.A.No.154/2011:

Challenge in this appeal is made by the plaintiff against the judgment and decree dated 26.08.2010 passed in Cross Appeal No.42 of 2009 on the file of the Subordinate Judge, Kanchipuram, reversing the judgment and decree dated 31.12.2008 passed in O.S.No.61 of 2001 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

3.The suit has been laid by the plaintiff for possession.

4.The Second Appeals have been admitted and the following substantial question of law is formulated for consideration in these Second Appeals :- सत्यमेव जयते

"Whether the judgment and decree of the first Appellate Court are based on presumptions, perverse findings and against the evidence on record and also against the principles of law pertaining to the case ? "

5. The plaintiff is the daughter of Thangavel and Ramu Ammal. There is no dispute with respect to the same. It is also not in dispute that the suit properties belonged to Thangavel absolutely. The plaintiff examined as PW.1 has during the course of cross examination admitted that the suit properties belonged to her father and the sale deeds in respect of the same are in the name of her father and her father was in

the custody of the sale deeds. It could therefore be seen that the suit properties originally belonged to Thangavel.

6. It is also admitted that Thangavel married Srirangammal, the first defendant, as his second wife and out of the said marriage, the third defendant Kamatchi Ammal was born to them. In this connection, PW.1 during her evidence has admitted that Kamatchi Ammal is the daughter of Srirangammal and her father Thangavel had married Srirangammal. It could therefore be seen that Srirangammal is the second wife of Thangavel and Kamatchi Ammal was born to Thangavel and Srirangammal. It is also admitted by PW.1 that in O.S.No.471 of 1967 laid by her mother Ramu Ammal against Thangavel and Srirangammal, it has been admitted that items 1 and 2 of the suit properties had been settled by Thangavel in favour of Srirangammal. The copy of the settlement deed dated 14.10.1966 has been marked as Ex.B4. It appears that Ramu Ammal had laid a suit in O.S.No.471 of 1967 against Thangavel and Srirangammal claiming that she has title to the suit properties and also seeking 1/2 share in the suit properties. The above said suit came to be dismissed on 01.11.1968 and the same could be evidenced by the certified copy of the decree passed in the above suit marked as Ex.B14. It could therefore be seen that even prior to the institution of O.S.No.471 of 1967 Thangavel, as the full owner of the suit properties, had settled items 1 and 2 of the suit properties in favour of Srirangammal under Ex.B4. Now according to the plaintiff, after the institution of O.S.No.471 of 1967, a panchayat was convened where under it had been agreed between the parties that the suit properties are to be enjoyed by Thangavel till his lifetime and Ramu Ammal, the mother of the plaintiff, should be given the proceeds of the suit properties for her livelihood and after the lifetime of Thangavel, the suit properties are to be taken by Ramu Ammal absolutely. Therefore, basing upon the above said panchayat, according to the plaintiff, Ramu Ammal had laid another suit against Thangavel and others in O.S.No.668 of 1990 for declaration and permanent injunction. That suit, according to the plaintiff, had been instituted by Ramu Ammal on finding that Thangavel had been making arrangements to sell the suit properties to one Srinivasa Pillai. No doubt, that suit ended in favour of Ramu Ammal. The decree passed in the above said suit is found to be an ex parte decree and the certified copy of the judgment and decree passed in the above suit are marked as Exs.A2 and A1 respectively.

7. As adverted to earlier, it is admitted that the suit properties are the absolute properties of Thangavel. It is also found that pending O.S.No.668 of 1990, Thangavel had bequeathed a portion of the 3rd item of the suit properties in favour of the 3rd defendant Kamatchi Ammal under the Will dated 26.02.1992 and

the same has been marked as Ex.B10. Pending O.S.No.668 of 1990, which was decreed on 06.03.1997, it is found that Thangavel had died and accordingly, the plaintiff has been impleaded as the 3rd defendant in the said suit as the legal heir of Thangavel. It is also found that Srirangammal, who is a party in O.S.No.668 of 1990 has also taken out an application to set aside the ex parte decree. However, the same did not yield any result and it could therefore be seen that the decree passed in O.S.No.668 of 1990 has become final declaring the rights of Ramu Ammal in respect of the entitlement of the properties belonging to Thangavel after his lifetime. Ramu Ammal has sought the relief of declaration in O.S.No.668 of 1990 that she is entitled to the suit properties after the lifetime of her husband Thangavel. On the other hand, as seen earlier, even on 14.10.1966, much prior to the institution of O.S.No.471 of 1967 by Ramu Ammal against Thangavel and Srirangammal, Thangavel had settled items 1 and 2 of the suit properties in favour of Srirangammal.

8. In the settlement marked as Ex.B4, Srirangammal has been described as the wife of Thangavel. Similarly, in the Will marked as Ex.B10, Kamatchi Ammal has been described as the daughter of Thangavel born through Srirangammal. Now, as per the arguments put forth by the respective counsel and also as seen from the pleadings, it could be seen that the plaintiff seems to claim title to the suit properties based upon the decree obtained by her mother in O.S.No.668 of 1990. When Ramu Ammal, the plaintiff's mother, had been granted a decree in respect of the properties of Thangavel after his life time, it has to be seen as to what are the properties standing in the name of Thangavel on his death. As adverted to earlier, Thangavel had already settled items 1 and 2 of the suit properties in favour of Srirangammal, the first defendant. Similarly, he had already bequeathed a portion of the 3rd item of the suit properties in favour of Kamatchi Ammal under Ex.B10. That apart, it is also admitted by the plaintiff - PW.1 that the other portion of the 3rd item of the suit properties to an extent of 1 acre had been alienated by her father in favour of one Mani. It could therefore be seen that prior to his death Thangavel had either settled, bequeathed or alienated the properties belonging to him. Pending O.S.No.668 of 1990, Thangavel had died. It could therefore be seen that on his death, the Will executed by him in favour of Srirangammal would come into effect. In conclusion, it could be seen that Thangavel had not owned the suit properties at the time of his death. In such circumstances, even though a decree had been granted in favour of Ramu Ammal that she is entitled to the suit properties of her husband after his lifetime, when it is found that Thangavel had no title to the suit properties at the time of his death and when it is found that he had already settled/bequeathed/alienated the suit properties in favour of

Srirangammal, Kamatchi Ammal and one Mani, as adverted to earlier, the case of the plaintiff that Ramu Ammal had obtained title to the suit properties after the death of Thangavel, by virtue of the decree passed in O.S.No.668 of 1990 and accordingly, after the death of Ramu Ammal, the plaintiff had become the owner of the suit properties, as such cannot be accepted.

9. Now it has to be seen that whether the plea of panchayat put forth by the plaintiff during the pendency of O.S.No.471 of 1967 has been established. As found earlier, according to the plaintiff, after the institution of O.S.No.471 of 1967 by Ramu Ammal against Thangavel and Srirangammal, a panchayat was convened where under it has been agreed by the parties concerned that Thangavel is to enjoy the suit properties during his lifetime and giving the proceeds of the same to Ramu Ammal and after the death of Thangavel, the properties should go to Ramu Ammal absolutely. The above said plea of the plaintiff has been stoutly disputed by the defendants. To establish the plea of panchayat above mentioned, the plaintiff has examined PW.2 Pavun, S/o. Ponnusamy. PW.2, during the cross examination, has admitted that Thangavel had a second wife, but he does not know whether her name is Srirangammal and whether a daughter was born to the second wife through Thangavel. Such being his admission, it is highly doubtful whether his plea in the chief examination that even Srirangammal had taken part in the panchayat put forth by the plaintiff can be accepted. Further, PW.2 during the course of cross examination has admitted that the decision of the panchayat had not been recorded. It could therefore be seen that no written proof is available to hold that the panchayat had been convened and the panchayat had taken the decision as put forth by the plaintiff. Now according to the plaintiff's case, only after the decision of the panchayat, the suit in O.S.No.471 of 1967 came to be disposed of. It has been already found that O.S.No.471 of 1967 has been dismissed. If really a panchayat had been convened during the pendency of O.S.No.471 of 1967 and accordingly, it had been agreed that the suit properties should go absolutely to Ramu Ammal after the lifetime of Thangavel, as rightly argued, the parties would have recorded the compromise under a document and accordingly, placed the same before the Court concerned for effecting a compromise decree in the suit. On the other hand, it is found that O.S.No.471 of 1967 has come to be dismissed. It is therefore clear that when Thangavel had already settled items 1 & 2 of the suit properties in favour of Srirangammal even prior to the institution of O.S.No. 471 of 1967, even assuming that the panchayat had been held as pleaded by the plaintiff is true, it could be seen that when it is found that Thangavel had no title in respect of items 1 and 2 of the suit properties on the date of the alleged panchayat, the case of the plaintiff that Thangavel had agreed that Ramu Ammal should take the properties

absolutely after his lifetime, as such cannot be countenanced in any manner. It has not been established that Srirangammal was a party to the panchayat proceedings. If at all any panchayat had been held and a decision had been taken therein as put forth by the plaintiff, the true owner of the suit properties viz., items 1 & 2 of the suit properties, being Srirangammal, she should have agreed to the decision of the panchayat. When the same is not established, when Srirangammal was not a party to the panchayat proceedings, and the only witness examined to prove the panchayat, viz., PW.2 does not know even the name of Srirangammal, it could be seen that Srirangammal is not a party to the alleged panchayat proceedings. Further as found earlier, if really a panchayat had been convened and a decision had been taken therein as claimed by the plaintiff, the same would have been put in black and white and accordingly, placed before the court concerned for recording the same and accordingly, an appropriate decree would have been obtained from the Court in O.S.No. 471 of 1967. On the other hand, when it is found that the suit laid by Ramu Ammal in O.S.No. 471 of 1967 claiming title to the suit properties and also 1/2 share in the suit properties had come to be dismissed, the plea of the panchayat put forth by the plaintiff cannot be accepted in any manner. Further, when it is found that items 1 & 2 of the suit properties are not owned by Thangavel, the plea that Thangavel had agreed to Ramu Ammal taking the suit properties absolutely after his lifetime, as such cannot be believed. It has also not been established by the plaintiff that pursuant to the panchayat decision, Thangavel had been given the proceeds of the suit properties to Ramu Ammal as per the decision of the panchayat. With reference to the above case of the plaintiff, there is NIL evidence. Even as per the case of the plaintiff, only for three years thereafter, Thangavel had given the proceeds and subsequently stopped in giving the same and consequently, Ramu Ammal left the suit village and came to live with the plaintiff. Even the above case of the plaintiff that Thangavel had given the proceeds for three years has not been established by acceptable and reliable evidence. Therefore, it could be seen that the plea of panchayat put forth by the plaintiff has not been established in any manner. That apart, it has also been admitted by PW.2 that it is true that the party to the panchayat cannot agree to convey title to the properties not belonging to him. In such view of the matter, when it is found that even prior to the institution of O.S.No.471 of 1967, Thangavel had already settled items 1 and 2 of the suit properties in favour of Srirangammal, the plea put forth by the plaintiff that he had agreed that Ramu Ammal should take the said properties after his lifetime in the panchayat, as such cannot be believed and accepted in any manner. Cumulatively, it could be seen that the panchayat plea projected by the plaintiff is found to be not true and accordingly, it could be seen that the plaintiff is

unable to place reliable evidence to sustain the said plea. For the reasons aforesaid stated, the evidence of PW.2 cannot be safely relied upon to uphold the plea of panchayat.

10. The plea of panchayat not having been established by the plaintiff, it could be seen that the plaintiff's claim of title to the suit properties is now based only upon the decree obtained by Ramu Ammal in O.S.No.668 of 1990. When it is found that the suit properties are the self acquired properties of Thangavel, it could be seen that he is entitled to settle/bequeath/alienate the same in favour of third parties as he desires. Therefore, it could be seen that during the pendency of O.S.No.668 of 1990, Thangavel had bequeathed a portion of 3rd item of the suit properties in favour of the 3rd defendant Kamatchi Ammal under Ex.B10 Will and also alienated the remaining portion of the said item to one Mani. As regards the proof of Will, the defendants have examined DW.3 and a perusal of the evidence of DW.3 would go to show that he, being one of the attestors to the said Will Ex.B10, has deposed clearly that Thangavel had bequeathed a portion of the 3rd item in the suit properties in favour of Kamatchi Ammal, out of his free will, volition and in a fit state of mind, and that he had attested the same. It could therefore be seen that Ex.B10 Will has been duly established by the defendants through the evidence of DW.3. As seen earlier, on the death of Thangavel, the Will would come into effect.

11. In the light of the above position, when as per the decree passed in O.S.No.668 of 1990 Ramu Ammal was granted title to the properties belonging to Thangavel after his lifetime and when it is found that Thangavel had no title to the suit properties at the time of his death as he had already settled/bequeathed/alienated the same in respect of various persons as discussed above, it could be seen that Ramu Ammal cannot lay any claim over the suit properties based upon the decree passed in O.S.No.668 of 1990. If at all any property vests with Thangavel at his demise, Ramu Ammal at the best could lay a claim only in respect of the same, as per the decree passed in the above said suit. When it is found that Thangavel had no title to the suit properties as such at the time of his death, the decree passed in O.S.No.668 of 1990 would not enable Ramu Ammal to claim any title to the suit properties, based upon the said decree and in such view of the matter, the plaintiff as the legal heir of Ramu Ammal would not be entitled to claim any title in respect of the suit properties.

12. The plaintiff's counsel in support of his case placed reliance upon the decisions reported in (2004) 2 SCC 601 (Raj Kumar ..vs.. Sardari Lal and others) and (2013) 14 SCC 689 (Jehal Tanti and others ..vs.. Nageshwar Singh (dead) through

LRs.). The principles of law outlined in the above decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

13. In the light of the above discussions, it is found that the judgment and decree of the first Appellate Court in rejecting the plaintiff's case and upholding the defendant's case are found to be in the right perspective based upon the evidence on record and also in accordance with the principles of law pertaining to the case and not based upon any presumptions. The findings of the first Appellate Court are not found to be erroneous or perverse as put forth by the plaintiff. Hence, the substantial question of law formulated in the Second Appeals is answered against the plaintiff and in favour of the defendants.

14. In conclusion, the Second Appeals fail and are accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mra

To

- 1.The Subordinate Judge,
Kanchipuram.
- 2.The District Munsif cum Judicial Magistrate,
Uthiramerur.

+2cc's to Mr.N.Nagusah, Advocate, S.R.Nos.2848 & 2849
+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.3161
+2cc's to Mr.N.Nithianandam, Advocate, S.R.Nos.2997 & 2998

Second Appeal Nos.153 and 154 of 2011

GJ(CO)
CA(23/02/2017)