

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2017

PRONOUNCED ON: 05.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1614 of 2001

1.Gopal
2.Chinna Thambi
3.Marimuthu
4.Chinnasamy

... Appellants/Respondents/Defendants

Vs.

Chinnakkannu ... Respondent/Appellant/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.36 of 96 on the file of the Subordinate Court at Dharmapuri dated 30-01-2001 in reversing the Judgment and decree made in O.S.No.33 of 90 on the file of the District Munsiff Court at Dharmapuri, dated 31-07-1996.

For Appellants : Mr.V.Ayyathurai,
Senior counsel
for M/s.R.Bharanidharan

For Respondent : Mr.M.Muruganatham
for M/s.V.Raghavachari

J U D G M E N T
सत्यमेव जयते

Challenge in the Second Appeal is directed against the judgment and decree dated 30-01-2001 passed in A.S.No.36 of 1996 on the file of the Subordinate Court, Dharmapuri, reversing the judgment and decree dated 31-07-1996 passed in O.S.No.33 of 1990 on the file of the District Munsif Court, Dharmapuri.

2. Parties are referred to as per the rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff, in brief, is that the suit property absolutely belonged to her mother Chinnammal and that,

her mother had settled the suit property in her favour by way of a registered settlement deed dated 14-12-1989 and handed over the possession of the suit property to the plaintiff on the same date and thence from, it is only the plaintiff, who has been in possession and enjoyment of the suit property by paying Kist etc., The plaintiff's father Muthu Gounder died about three years ago and thereafter, in the presence of Panchayathars, an oral partition took place in respect of the properties of Muthu Gounder between the plaintiff's mother and the plaintiff's brothers viz., the defendants 1 to 3 and under the said partition, the defendants were each given 5 acres of land separately with Well and other irrigational facilities and the plaintiff's mother was allotted the suit property and accordingly, the plaintiff's mother had obtained patta in respect of the suit property and enjoyed the same as absolute owner thereof by paying Kist etc., and thereafter, out of love and affection, settled the suit property in favour of the plaintiff as above stated and on account of the same, the defendants have colluded together in order to grab the suit property from the plaintiff and attempted to interfere with her possession and enjoyment and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the suit property belonged to the plaintiff's mother Chinnammal absolutely and that, she had settled the suit property in favour of the plaintiff on account of love and affection by way of a registered settlement deed dated 14-12-1989 and the said deed is not true, valid and binding upon the defendants. Chinnammal was aged more than 70 years at the time of the alleged execution of settlement deed and not hale and healthy and also immobile due to her loss of mind etc., and the plaintiff had fabricated the above said settlement deed as if the same had been executed by Chinnammal. The plaintiff, the defendants 1 to 3 and Muthammal, Azhagammal, Seedachiammal and Ponnuthayee are the children of Muthu Gounder and Chinnammal and the four daughters are living separately with their husbands and the father Muthu Gounder and the mother Chinnammal were residing with the defendants 1 to 3 and the defendants 1 to 3 were maintaining them and therefore, the plea of the plaintiff that Chinnammal ignoring the defendants had settled the suit property in favour of the plaintiff cannot be true and valid and it is false to state that after the death of Muthu Gounder, Chinnammal and the defendants 1 to 3 had orally partitioned the properties of Muthu Gounder and in the said partition, the suit property had been allotted to Chinnammal and that, the defendants were allotted other properties and it is false to state that thereafter, Chinnammal by obtaining patta, had been enjoying the suit property as absolute owner thereof. The

defendants 1 to 3 and their father Muthu Gounder were owning 4 ½ acres of ancestral lands with Well etc., and about 15 years ago, they had partitioned the above said properties orally and in the said partition, Muthu Gounder was allotted the suit property for enjoyment of the same till his lifetime in lieu of maintenance and it is also accepted by the parties that after the death of Mutu Gounder, the suit property should be taken equally by the defendants 1 to 3 and after the said partition, Muthu Gounder and Chinnammal were cultivating the suit property and during his last days, without the knowledge of the defendants, patta had been changed in the name of Chinnammal and on the basis of the same, Chinnammal cannot claim any right or title to the suit property as lawful owner thereof and it is only the defendants, who have title to the suit property and after the death of Muthu Gounder, it is only the defendants, who are enjoying the suit property by paying Kist etc, and also looking after Chinnammal their mother by providing food, shelter etc., and hence, the plea of the plaintiff that she has acquired title of the suit property by way of settlement deed said to have been executed by Chinnammal is not true and in any event, on the death of Muthu Gounder, the suit property would devolve upon all his legal heirs and as such, his legal heirs, namely, his wife Chinnammal, the defendants 1 to 3, the daughters five in numbers would be each entitled to acquire 1/9th share in the suit property and the suit property is bad for non joinder of other daughters of Muthu Gounder and the defendants 1 to 3 are in that situation being the co-owners, the plaintiff is not entitled to obtain the relief of injunction against them and hence, the suit laid by the plaintiff, without any cause of action, is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 to 3 were examined and Exs.A1 to A8 were marked. On the side of the defendants, DWs1 to 4 were examined and Exs.B1 to B13 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and by allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Challenging the same, the second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

“ (i) Whether the judgment and decree of the lower appellate Court is liable to be set aside on the ground of misapplication of law inasmuch as it was held that the

property to the share of father would be construed as pre-existing right of the widow and the same would get enlarged in terms of Sections 14(1) & 14(2) of the Hindu Succession Act?

(ii) Whether the judgment and decree under appeal is liable to be set aside for mis appreciation of evidence and on the ground of erroneous approach?

9. It is found that the defendants 1 to 3, the plaintiff and Muthammal, Azhagammal, Seedachiammal and Ponnuthayee are the children of Muthu Gounder and Chinnammal. According to the plaintiff, after the death of Muthu Gounder, Chinnammal and the defendants 1 to 3 partitioned the properties of Muthu Gounder orally and in the said oral partition, the suit property was allotted to Chinnammal and accordingly, Chinnammal by obtaining patta in respect of the suit property, enjoyed the same as absolute owner thereof and thereafter, settled the suit property in favour of the plaintiff out of love and affection as the plaintiff had been maintaining her by way of a registered settlement deed dated 14.12.1989 and thus, by way of the above said settlement deed, the plaintiff has title to the suit property and inasmuch as the defendants attempted to interfere with her possession and enjoyment of the suit property, it is stated that she had been necessitated to lay the suit for appropriate reliefs.

10. The defendants have also admitted that an oral partition took place in respect of the ancestral properties of Muthu Gounder and according to them, the said oral partition took place during the life time of Muthu Gounder and in the said oral partition, Muthu Gounder was allotted the suit property towards his share in lieu of maintenance and they were allotted the other properties and it is also admitted by them in the written statement that it is only Muthu Gounder and his wife Chinnammal, who have been cultivating the suit property by keeping the same in their possession and enjoyment and it is also admitted by them that during the life time of Muthu Gounder, patta in respect of the suit property had been changed in favour of Chinnammal their mother and however, it is contended on their behalf by way of the same, Chinnammal could not acquire any valid title to the suit property and hence, it is contended that the settlement deed dated 14.12.1989 is not true, valid and binding on the defendants and Chinnammal had no legal competency to execute the above said settlement deed in favour of the plaintiff and hence, by way of the same, the plaintiff cannot claim any valid title to the suit property and that, the plaintiff is not in possession and enjoyment of the suit property.

11. From the evidence adduced by the parties in this matter, as rightly determined by the Courts below, it is found that the suit property had been allotted to Muthu Gounder in the partition effected amongst the family members and it is further found that only in lieu of maintenance, Muthu Gounder had been allotted the suit property and it is also found further that pursuant thereof, it is only Muthu Gounder and his wife Chinnammal, who had been enjoying the suit property by cultivating the same and hence, it is found that out of the sale proceeds derived from the suit property, they were able to sustain themselves and accordingly, it is further seen that Muthu Gounder had ensured that the patta for the suit property had been changed in favour of his wife Chinnammal during his life time and accordingly, it is seen that the parties had intended to allot the suit property to Muthu Gounder and Chinnammal in lieu of maintenance and thus, it is rightly found by the Courts below that Chinnammal had been given the suit property in lieu of maintenance.

12. No doubt, the defendants would contend that it has been understood between the parties that after the lifetime of Muthu Gounder, the suit property should be taken only by the defendants 1 to 3 and hence, according to them, their mother Chinnammal cannot claim any absolute title to the suit property. However, when it has been admitted by them that after the alleged oral partition, it is only Muthu gounder and his wife Chinnammal, who had been enjoying the property as their property in lieu of maintenance and accordingly, patta had also been obtained by Chinnammal even during the life time of Muthu Gounder, it is seen that the parties had intended to give the suit property to Muthu Gounder and Chinnammal in lieu of Maintenance. After the death of Muthu Gounder in lieu of maintenance, it is seen that Chinnammal had retained the suit property to herself and been enjoying the same.

13. In the light of the above position, as rightly determined by the first appellate Court, when the suit property had been found to be allotted to Chinnammal for her maintenance even during the life time of Muthu Gounder, it is seen that the said right granted to Chinnammal in respect of the suit property in lieu of maintenance would blossom into absolute right as provided under Section 14 (1) of the Hindu Succession Act, 1956 and in such view of the matter, it is seen that the first appellate Court, has rightly by invoking the Section 14 (1) of the Hindu Succession Act, 1956 to the facts and circumstances of the present case, held that the limited right granted to Chinnammal in the suit property by way of maintenance would ripen into full title in her favour on the advent of Hindu Succession Act, 1956 by virtue of Section 14 (1) incorporated therein and therefore, it is seen that the suit property

possessed by Chinnammal should be determined to be held by her as full owner thereof and not as a limited owner on the coming into force of the above said Act. In this connection, the counsel for the plaintiff placed strong reliance upon the decisions reported in (1999) 2 Supreme Court Cases 656 (Naresh Kumari (Smt) (DEAD) By Lrs and another Vs. Shakshi Lal (DEAD) BY LRS and another), AIR 2001 Mad 320 (Kuthalakannu Ammal and another Vs. Lakshmana Nadar and others), (1979) 1 Mad LJ 87 (Venugopala Pillai Vs. Thayyanayaki Ammal and others) and 2001 (2) CTC 342 (Thoppa Naicker Vs. Tmt. Chinnammal and another). On a perusal of the above said decisions and the principles of law outlined in the above said decisions, would go to show that the right conferred on a female Hindu under Section 14 (1) of the Hindu Succession Act 1956 is not an empty formality and on the other hand, it is a tangible right against the property held by her in lieu of maintenance and accordingly, the said limited right on the advent of the above said Act would blossom into absolute right and it is found that based on the same, the female Hindu would acquire a legally enforceable claim to the property as her absolute estate and in such view of the matter, it is seen that no exception could be taken to the determination of the first appellate Court that the limited right granted to Chinnammal in the suit property in lieu of maintenance had ripened into a full right thereof and thus, it is seen that Chinnammal had become the lawful owner of the suit property. In such view of the matter, it is seen that the first appellate Court has rightly invoked the applicability of Section 14 (1) of the Hindu Succession Act to the facts and circumstances of the present case and accordingly, held that Chinnammal had acquired a valid right in the suit property.

14. The defendants in the written pleas have admitted the conversion of patta in favour of their mother Chinnammal even during the life time of Muthu Gounder. Further, admitted that the suit property had been allotted to Muthu gounder and Chinnammal for their maintenance. Accordingly, it is seen that the suit property was intended to be taken only by Muthu Gounder and Chinnammal for their maintenance. Further, they have also admitted that if their plea that they should take the suit property on the demise of Muthu Gounder is not acceptable, even otherwise, according to them, the suit property having been allotted to Muthu Gounder, on his demise, would survive to all his legal heirs and thus, it is pleaded by them that the legal heirs of Muthu gounder would be each entitled to secure 1/9 share in the suit property. However, the materials placed on record would go to show that the suit property had been allotted only to Muthu Gounder and Chinnammal for their maintenance and after the demise of Muthu gounder, the suit property had been enjoyed by Chinnammal for her maintenance and accordingly, the said limited right had become her absolute right by virtue of Section 14 (1) of the Hindu Succession Act, 1956.

15. Chinnammal having acquired full right to the suit property as above stated is found to be competent to convey the suit property as she desire and accordingly, it is seen that she had chosen to settle the suit property in favour of her daughter, the plaintiff on 14.12.1989 by way of a registered settlement deed and in this connection, we have the evidence of Pws1 to 3. It is found that Chinnammal has been examined as PW2 and she has spoken clearly about her being given support and maintenance only by the plaintiff and accordingly, she had settled the suit property in favour of the plaintiff. It is thus found from the evidence of the plaintiff examined as PW1 and Chinnammal examined as PW2, out of love and affection Chinnammal had chosen to settle the property in faovur of the plaintiff and in such view of the matter, when the evidence of Pws 1 to 3 has not been shown to be unacceptable and unreliable and on the otherhand, when it is found that their evidence are trustworthy and convincing and when Chinnammal is found to be having all the competency to settle the suit property to any one she likes, it is seen that it is only the plaintiff, who has acquired absolute title to the suit property by virtue of the settlement deed dated 14.12.1989. It is further seen that pursuant to the settlement deed, the plaintiff has kept the suit property in her possession and enjoyment and been enjoying the same by paying kist etc., The defendants have not placed any acceptable and reliable materials to show that pursuant to the allotment of the suit property to Muthu Gounder and Chinnammal, they had, to their exclusion been enjoying the suit property on their own by paying kist obtaining patta etc., particularly, the defendants have not placed any acceptable and reliable material to show that they had enjoyed the suit property on the demise of Muthu Gounder as full owners thereof denying the title of Chinnammal or the plaintiff as the case may be and in such view of the matter, it is found that in the light of the above position, it is only Chinnammal and thereafter, pursuant to the settlement deed dated 14.12.1989, the plaintiff, who have been enjoying the suit property as absolute owners thereof and in such view of the matter, the contention put forth by the defendants' counsel that the first appellate Court has erred in applying section 14 (1) of the Hindu Succession Act, 1956 to the case at hand is erroneous as such cannot be countenanced.

16. In the light of the above discussions, it is found that as rightly determined by the first appellate Court, inasmuch as the suit property had been allotted to Chinnammal in lieu of her pre-existing right of maintenance, it is seen that the same had got enlarged into the absolute estate in terms of Section 14 (1) of the Hindu Succession Act 1956 and accordingly, it is seen that the first appellate Court has rightly applied the above provisions of law to the case at hand and on a proper appreciation of the materials placed on record, both factually

as well as legally, upheld the plaintiff's case and in view of the above position, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff against the defendants.

17. In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sms

To

1. The Subordinate Court, Dharmapuri.
2. The District Munsiff Court, Dharmapuri.

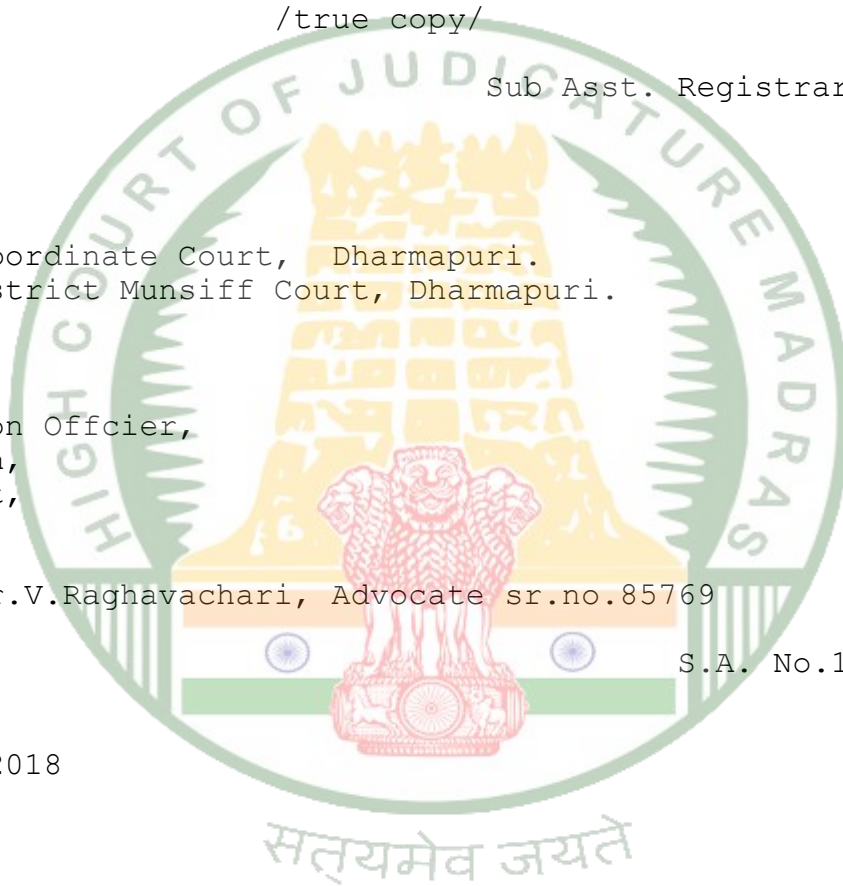
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+1cc to Mr.V.Raghavachari, Advocate sr.no.85769

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