

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

Second Appeal No.515 of 2016

&

C.M.P.No.9130 of 2016

Elangovan ... Appellant/1st Respondent/
1st Defendant
vs.

1.Minor Harivignesh
Rep. by next friend and mother
Anitha

2.Balasubramaniam ... Respondents/Appellant/
Plaintiff/2nd Respondent/
2nd Defendant

This appeal is preferred under Section 100 CPC against the judgment and decree made in A.S.No.108 of 2014 dated 20.04.2015 on the file of the III Additional District and Sessions Judge, Salem, reversing the judgment and decree made in the suit in O.S.No.266 of 2012, dated 19.09.2014 on the file of the Principal Subordinate Judge, Salem.

For Appellant : M/s.A.K.Kumarasamy
For Respondent : Mr.B.Kumarasamy for R1
No appearance for R2

J U D G M E N T

The appellant herein, who is the first defendant in the suit has filed the present appeal by framing the following Substantial Questions of Law:

a. In view of the recitals in the WILL dated 17.01.1948, marked as Ex.A1, is the inference of the lower appellate Court that the properties are presumed to be joint family properties in which the plaintiff is entitled to a share, legally sustainable?

b. As the recitals in Ex.A1 WILL specifically mention that the properties dealt with under the WILL belonged to the testator absolutely by purchase, is it legally sustainable to hold that the properties dealt with under Ex.A1 WILL are joint family properties?

2.This is a dispute between the father and son being plaintiff and defendant with the subsequent purchaser, who is arrayed as second defendant. Now the suit has been filed for partition and allot separate possession to the plaintiff as minor, represented by his mother.

3.The suit property admittedly belonged to the great grand father of the plaintiff by name Sengoda Mudalaiyar, who has executed a registered Will under Ex.A1, dated 17.01.1948 and the life interest of the suit property was given to the minor son of the testator, by name Manickam @ Kadalai Mudalaiyar, who is incidentally, the son of the appellant and thus, the great grand father of the plaintiff/first respondent.

4.A perusal of Ex.A1 would make it clear that the beneficiary of the Will, namely, Manickam @ Kadalai Mudalaiyar was given life interest and thereafter, his male descendants/male legal heirs can enjoy the same. Admittedly, during the life time of the beneficiary, viz., Manickam @ Kadalai Mudalaiyar, the plaintiff in the present suit was born to the appellant. At the time of execution of Ex.A1, Manickam @ Kadalai Mudalaiyar, was only aged about 7 years that is the reason why he is represented by his mother.

5.The trial Court dismissed the suit that after the death of Manickam @ Kadalai Mudalaiyar, the suit property would devolve on the appellant absolutely. The lower Appellate Court reversed the judgment and decree of the trial Court by holding that in as much as Manickam @ Kadalai Mudalaiyar himself was having life interest, coupled with the fact that the plaintiff was born during his life time. Ex.A1 only states that after the life interest of the Manickam @ Kadalai Mudalaiyar, the male descendants would enjoy the suit property and the plaintiff is not entitled for the relief sought for.

6.Learned counsel for the appellant would submit that after the demise of Manickam @ Kadalai Mudalaiyar, the appellant is entitled to the suit property absolutely. When Manickam @ Kadalai Mudalaiyar life interest no longer available, the title becomes absolute even under Ex.A1. Therefore, the judgment and decree of the lower Appellate Court is required to be set aside.

7.Learned counsel for the first respondent submits that Ex.A1 is very clear and it only states about the male descendants/legal heirs. Admittedly, at the time of lifetime of Manickam @ Kadalai Mudalaiyar, the plaintiff was born. Therefore, after his death, both the appellant and the respondent/plaintiff would become co-owners under Ex.A1 and even otherwise, the property would become joint one. Thus, it is submitted that no interference is required in the order passed by the first Appellate Court.

8.Despite notice having been served, none appeared on behalf of the second respondent. More over, the respondents have not challenged the judgment and decree of the lower Appellate Court.

9.Admittedly, the execution of Ex.A1 is not in dispute. In fact, both the parties made reliance upon Ex.A1. As rightly held by the lower Appellate Court, the covenants under Ex.A1 are very clear. It merely gives a lifetime interest to Manickam @ Kadalai Mudalaiyar and thereafter, the property should go to male descendants/legal heirs of testator. Therefore, the technical interpretation cannot be given to hold that only the appellant alone is male descendant. It is to be noted that at the time of execution of Ex.A1, even the father of the appellant himself was minor, aged about 7 years. Thus, the right, if any, subsequently in favour of the appellant cannot be considered to exclude the respondent/plaintiff. This is not the intention of the testator. Further more, as observed earlier, if during lifetime of Manickam @ Kadalai Mudalaiyar, the first respondent/plaintiff was born. Thus, looking from any perspective, this Court does not find any reason to interfere with the judgment and decree of the lower appellate Court.

10.Accordingly, the Second Appeal is dismissed and the Substantial Questions of Law are answered as against the appellant and in favour of the first respondent/plaintiff. Consequently, connected miscellaneous petition is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The III Additional District and Sessions Judge,
Salem.

2.The Principal Subordinate Judge,
Salem.

+1 cc to Mr.A.K.Kumarasamy, Advocate sr 668
+1 cc to Mr.B.Kumarasamy Advocate sr 1127

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