

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2017
PRONOUNCED ON : 24.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.264 of 2001 and
CMP.2806 of 2001

1. Pushpaleelavathi Ammal
2. Sulochana Ammal
3. Shanthi ... Appellants/Plaintiffs

Vs.

1. Mottaiya Gounder
2. Adhimoola Gounder
3. Sambandam
4. MuthuAmmal
5. Varrthi @ Periyapappa Ammal
6.Pavunu Ammal ... Respondents/Defendants 2 to 4 and
6 to 8

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and decree on the file of the Principal District Judge Tiruvannamalai in A.S.No. 79/2000 dated 28.09.2000, in confirming the judgment and decree on the file of the District Munsif-cum-Judicial Magistrate Court, Chengam in O.S.No.44/1996 dated 29.10.1999.

For Appellants : Mr.Murugananthan for
M/s.V.Raghavachari

For Respondents : Mr.P.Dinesh Kumar
No.2 M/s.Sarvabhauman Associates

For Respondent
Nos.1,3,5 & 6 : No appearance

R4 : Died

JUDGMENT

This second appeal is directed against the judgment and decree dated 28.09.2000 passed in A.S.No. 79/2000 on the file of the Principal District Court, Tiruvannamalai confirming the judgment and decree dated 29.10.1999 passed in O.S.No.44/1996

on the file of the District Munsif-cum-Judicial Magistrate Court, Chengam.

2. The parties are referred to as per their rankings in the Trial Court.

3. Suit for declaration and possession.

4. The case of the plaintiff in brief is that the suit property originally belonged to Appadurai Gounder of Thanipadi village and the plaintiff's father Malayappa Gramani was a close friend of Appadurai Gounder and on account of love and affection, Appadurai Gounder had executed a Will dated 05.07.1957, in favour of the Malayappa Gramani and accordingly, Malayappa Gramani had discharged various debts incurred by Appadurai Gounder and after the death of the Appadurai Gounder and Malayappa Gramani, the plaintiffs took the possession of the suit property by virtue of the above said Will and also discharged the loan due by the deceased Malayappa Gramani and one Govindasamy Chettiar filed a suit in O.S No.419/56, on the file of the District Munsif Court, Tiruvannamalai, claiming $\frac{1}{2}$ share on the footing that he had purchased the $\frac{1}{2}$ share from the brother of Appadurai Gounder by name Mottaiyan and based on the decree passed in the said suit, Govindasamy Chettiar did not take possession of the suit property and the said property is still in the enjoyment of the plaintiffs and while so, the claim of the first defendant that she had purchased the suit property from Govindasamy Chettiar is not valid and however, the defendants had demolished the structure in the suit property and constructed a new house to which they have no right to do so. Hence, the plaintiffs being the absolute owner of the suit property are constrained to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that the suit property never belonged to Appadurai Gounder and the claim of the plaintiffs that Appadurai Gounder had executed the Will dated 05.07.1957, in favour of Malayappa Gramani is false and a forged one. Five years prior to his death, Appadurai Gounder was attacked with paralysis and therefore, the alleged Will could not have been executed by him and the plaintiffs are not the legal heirs of Appadurai Gounder and the decree passed in O.S. No.419/56 is binding on the plaintiffs and the construction of the new house in the suit property by the first defendant had not been objected by the plaintiffs in any manner and by virtue of the decree passed in O.S. No.419/56, Govindasamy Chettiar became entitle to the suit property and took delivery of the same and after his death, the suit property and other properties were conveyed by his heirs to the first defendant under the registered sale deed dated 15.12.1975 and since then, it is only the first defendant who is in possession and enjoyment of the suit property and the first defendant is a bonafide purchaser for value and hence, the plaintiffs have no title to the suit

property and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWS1 to 3 were examined and Exs.A1 to A4 were marked and on the side of the defendants DW1 was examined Exs.B1 to B40 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below was pleased to dismiss the suit laid by the plaintiffs. Aggrieved over the same, the present second appeal has been preferred.

8. The plaintiffs' case is that they are the daughters of the Malayappa Gramani. According to the plaintiffs, the suit property originally belonged to Appadurai Gounder and their father Malayappa Gramani is a close friend of Appadurai Gounder and looking after his needs and accordingly, on account of love and affection, Appadurai Gounder had executed a Will, bequeathing the suit property in favour of Malayappa Gramani dated 05.07.1957 and as such, pursuant to the Will, following the death of Appadurai Gounder and Malayappa Gramani, it is the plaintiffs, who have title to the suit property and while so, the first defendant claiming to have purchased the suit property from the legal heirs of the Govindasamy Chettiar laid a false claim to the suit property and thereby, put up construction in the suit property to which she is not entitled to and hence, according to the plaintiffs they had been necessitated to lay the suit for appropriate reliefs.

9. The defendants have disputed the claim of title to the suit property of the plaintiffs, by virtue of the Will dated 05.07.1957, alleged to have been executed by Appadurai Gounder, in favour of Malayappa Gramani, the father of the plaintiffs. According to the defendants, the said Will is not a true document and it is a forged one and by virtue of the same, the plaintiffs cannot claim any title to the suit property and hence, the suit is liable to be dismissed.

10. In the light of the defence put forth by the defendants, it is found that the plaintiffs having laid a claim to the suit property by virtue of the Will dated 05.07.1957 and when the same is challenged by the defendants as a forged document, it is found that the plaintiffs are expected to prove the said Will, as required under law. It is seen that the above said Will has been marked as Ex.A1. Now according to the plaintiffs, pursuant to the above said Will, it is they, who are in the possession and enjoyment of the suit property as full owners thereof. However, there is absolutely no material put forth on the side of the plaintiffs to hold that they at any point of time had enjoyed the suit property as absolute owners.

That apart, they have also not placed any material to hold that their father Malayappa Gramani had enjoyed the suit property as the absolute owner pursuant to the Will dated 05.07.1957.

11. It is mainly argued by the plaintiffs' counsel that inasmuch as Ex.A1 Will is a registered document, there is no requirement to prove the Will through the attestors, as required under law and further according to him, Ex.A1 Will, being a document of more than 30 years old, according to him, the presumption enunciated under Section 90 of the Indian Evidence Act would operate and in such view of the matter, according to him, the Courts below should have accepted Ex.A1 Will as a true document and granted the necessary reliefs in favour of the plaintiffs. Controverting the above contention of the plaintiffs counsel, it is put forth by the defendants counsel that de hors the registration of the Will, the plaintiffs should establish the Will to be a true document as mandated under law, particularly, when the said document has been challenged by the defendants and in the absence of any material placed by the plaintiffs, to show the veracity of the will as required under law, it is contended that the Courts below have rightly rejected the plaintiffs' case and there is no need to interfere with the reasonings and conclusions of the Court below as regards the same.

12. In this connection, as rightly argued by the counsel for the defendants, it is found that the presumption under section 90 of the Indian Evidence Act could not be raised as regards the Will document and in this connection, we have the decision of the Apex Court reported in (2009) 3 SCC 687 (Bharpur Singh and others Vs. Shamsheer Singh), Similarly, in the decision reported in 2017 (1) CTC 165, Saraswathi Vs.M.Maruthachalam 2. M.Krishnamurthy) it has been held that mere registration of the Will would not preclude the propounders from examining the attesting witness to prove the genuineness of the Will or establish the genuineness of the Will in the manner known to law. In so far as this case is concerned, other than marking the Will document as Ex.A1, the plaintiffs have not endeavoured to establish the genuineness of the same, as required under law. In such view of the matter, when the plaintiffs claim title to the suit property only by virtue of the above said Will, it is found that the sans legal proof of the same, the plaintiffs cannot be granted the relief of declaration of title to the suit property under the said document.

13. As rightly found by the Courts below, if really Appadurai Gounder had conveyed the suit property and other property in favour of Malayappa Gramani, as per the Will dated 05.07.1957, it is seen that some documents would have been placed by the plaintiffs to establish that Malayappa Gramani and

after his death, the plaintiffs had been in possession and enjoyment of the suit property as absolute owners. However, as adverted above, there is no material at all to hold that above said persons had been in possession and enjoyment of the suit property at any point of time. It is further found that it has not been established at all by the plaintiffs that Appadurai Gounder had the legal capacity or the mental capacity to execute the Will in question, in favour of Malayappa Gramani as pleaded by the plaintiffs.

14. It is found that the based upon the suit filed in O.S No.419/56, Govindasamy Chettiar had been granted the decree in his favour and accordingly, he has taken the possession of the properties allotted to him. However, it is contended by the plaintiffs counsel that as regards the suit property, there is no material to hold that he had taken possession of the suit property pursuant to the decree obtained by him in OS No.419/56 and hence, the Court should hold that the possession of the suit property remains with the plaintiffs. In this connection, the documents Ex.A3 and A4 are pressed into service by the plaintiffs. However, the fact remains that there is no material placed by the plaintiffs to show that, they, at any point of time, enjoyed the suit property as claimed by them. Even, there is no material to hold that their father enjoyed suit property as such. Further, it is admitted by the plaintiffs in the plaint itself that the defendants are in the possession and enjoyment of the suit property and accordingly, it is also the case of the plaintiffs that the defendants have put up new structure in the suit property.

15. It is thus found that, inasmuch as the plaintiffs have no title to the suit property, it is seen that they had not resisted the action of the defendants in putting up new structure in the suit property and accordingly, it is found that inasmuch as the suit property had been taken possession of by the lawful owners and accordingly, the lawful owners has conveyed suit property in favour of the defendants, it is found that the defendants acquiring title to the suit property had put up new structure in the suit property and enjoying the same as such. In such view of the matter, it is found that the case of the plaintiffs that the defendants are not entitled to the suit property cannot be accepted in any manner.

16. In the light of the above position, it is found that the plaintiffs have miserably failed to established that they have title to the suit property and entitled to recover the possession of the same. In such view of the matter, it is found that the Courts below have rightly discountenanced the case of the plaintiffs and the reasonings and conclusions of the Courts below for not accepting the plaintiffs' case are not shown to be

vitiated by any infirmities or errors as such.

17. In support of his submissions the counsel for the plaintiffs has placed reliance upon the decisions reported in (2005) 8 SCC 67 Pentakota Satyanarayana and others Vs. Pentakota Seetharatnam and others, 86 LW 122 SCC Irudayam Ammal Vs. Salayath Mary, 2011 (2) MWN (Civil) 626 Sarangapani Vs. 1. Kalidoss 2. Narayanan, (2005) 2 SCC 673 Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and another, 2006 (3) CTC 391 K. Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal and 2008 (2) CTC 241 Sundaravalli Ammal Vs. The Government of Tamil Nadu and others. The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

18. In the light of the above discussions, it is seen that no substantial question of law is found to be involved in this Second Appeal and accordingly the same is dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Tiruvannamalai.

2. The District Munsif-cum-Judicial Magistrate Court,
Chengam.

Copy To
The Section Officer,
VR Section, High court, Madras.

+1cc to Mr. Sarvabhuman Associates, Advocate SR.No.74803
+1cc to Mr. V. Raghavachari, Advocate SR.No.74690

S. A.No. 264 of 2001

VD(CO)
GN(28/12/2017)