



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

S.A.(MD)No.723 of 2016

WEB COPY

1.Amsaveni Ammal

2.Gopinathan

3.Kalavathy

.. Appellants/Appellants/Plaintiffs

Vs.

1.Jeevarathnammal

2.Ravi

3.Baanumathi

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment of the Principal District Court, Thanjavur, made in A.S.No.109 of 1995, dated 05.03.1998, confirming the decree and judgment of the Subordinate Court, Kumbakonam, made in O.S.No.96 of 1990, dated 15.10.1993.

For Appellants : Mr.G.Gomathi Shankar
for Mr.M.V.Krishnan

JUDGMENT

The above Second Appeal arises against the judgment and decree passed in A.S.No.109 of 1995, on the file of the Principal District Court, Thanjavur, confirming the judgment and decree passed in O.S.No.96 of 1990, on the file of the Subordinate Court, Kumbakonam.

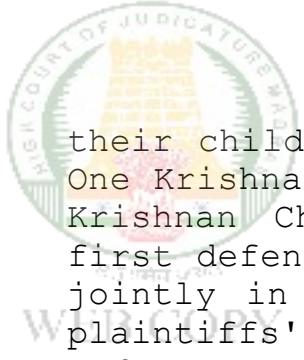
2. The plaintiffs are the appellants and the respondents are the defendants in the suit. The brief case of the plaintiffs is as follows:

The plaintiffs filed the suit in O.S.No.96 of 1990 for declaration and for recovery of possession. According to the plaintiffs, the suit property is originally belonged to one Swaminathan Chettiar, who is the husband of the first plaintiff and the father of the plaintiffs 2 and 3 and the third defendant. He died on 14.05.1985, leaving behind the plaintiffs and the third defendant as his legal heirs. Since he died intestate, the plaintiffs and the third defendant are entitled to the suit property. When Swaminathan Chettiar was alive, he leased out the suit property to one Murugesan, who is the father of the second defendant on a monthly rent of Rs.50/-. After the death of Murugesan, the defendants 1 and 2 continued to be in possession of the suit property as tenants. The defendants 1 and 2 disputed the rights of the plaintiffs over the suit property. The mother of Murugesan viz., Govindammal is not the wife of Swaminathan Chettiar. The defendants are causing damage to the suit property. In these circumstances, the plaintiffs have filed the suit.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The brief case of the defendants 1 and 2 is as follows:

Govindammal is the first wife of Swaminathan Chettiar and their son is Murugesan. The first defendant is the wife of Murugesan. The second defendant was born to the first defendant and Murugesan. The first plaintiff is the second wife of Swaminathan Chettiar and



their children are the plaintiffs 2 and 3 and the third defendant. One Krishnan Chettiar is the elder brother of Swaminathan Chettiar. Krishnan Chettiar, Swaminathan Chettiar, Govindammal, Murugesan, first defendant, the plaintiffs and the third defendant were living jointly in Door No.10/6. There was misunderstanding between the plaintiffs' family and the first and second defendants' family. In order to prevent the defendants 1 and 2 from claiming share in the suit property, the plaintiffs have filed the present suit. The defendants 1 and 2 are not the tenants under the plaintiffs. In these circumstances, the defendants 1 and 2 prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiffs, three witnesses were examined and 6 documents viz., Exs.A.1 to A.6 were marked and on the side of the defendants, three witnesses were examined and 44 documents viz., Exs.B.1 to B.44 were marked. The trial Court, after taking into consideration the oral and documentary evidences let in by both sides, dismissed the suit.

5. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal in A.S.No.109 of 1995 and the lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the plaintiffs have filed the above Second Appeal.

6. Heard Mr.G.Gomathi Shankar learned Counsel for Mr.M.V.Krishnan, appearing for the appellants.

7. The appellants have raised the following Substantial Questions of Law in the Second Appeal:

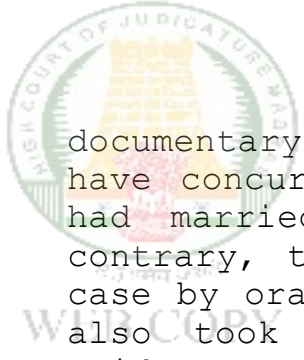
(a) Whether the judgment of the lower Appellate Court is vitiated by not stating the points for determination correctly as required under Order 41 Rule 31 C.P.C.?

(b) Whether there was no proof that Swaminathan and Govindammal were legally married and that Murugesan was their son?

(c) Whether the presumption of marriage by man and woman living under the same roof and cohabiting for number of years laid down by the Supreme Court in the case reported in AIR 1992 SC 756 was not applicable to the case since there is no acceptable evidence that Swaminathan and Govindammal lived together in the same house for number of years?

(d) Whether the Courts below ought to have held that the defendants are only tenants under the plaintiffs and therefore cannot set up title in themselves?"

8. The plaintiffs have filed the above Second Appeal challenging the judgment and decree, dated 05.03.1998, passed in A.S.No.109 of 1995, confirming the judgment and decree, dated 15.10.1993, in O.S.No.96 of 1990. The Second Appeal was filed before this Court as early as on 26-October-1998. Though the Second Appeal was filed on 26.10.1998, the Second Appeal has been numbered and listed for admission only on 29.11.2016. On the basis of the defendants' side witnesses viz., D.W.1 to D.W.3 and the



documentary evidences produced by the defendants, the Courts below have concurrently come to the conclusion that Swaminthan Chettiar had married Govindammal and Murugesan is their son. On the contrary, the plaintiffs have miserably failed to establish their case by oral and documentary evidences. The lower Appellate Court also took into consideration the entire oral and documentary evidences and rightly dismissed the suit after framing proper points for consideration.

9. On a perusal of the depositions of D.Ws, it is clear that Swaminathan Chettiar, his wife Govindammal, his elder brother Krishnan Chettiar, Murugesan, Murugesan's wife - first defendant and their children were residing in the suit property jointly. Since the plaintiffs have not established that Murugesan was a tenant under them, the Courts below have rightly rejected the said contention.

10. In Exs.B.28, B.29 and B.30, it has been mentioned that Murugesan's father's name is Swaminathan Chettiar. Suppressing that fact, the plaintiffs have filed the suit for declaration and for recovery of possession, which was rightly dismissed by the Courts below. Ex.B.38 is the legal heirship certificate issued in favour of Murugesan. In the absence any acceptable evidence produced by the plaintiffs, the Courts below have rightly dismissed the suit.

11. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal District Judge, Thanjavur.
2. The Subordinate Judge, Kumbakonam.

Copy to

The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to MR.M.V.Krishnan ADVOCATE, SR NO:5164
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