

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.274 to 276 of 2018  
and M.P Nos.7090 to 7092 of 2018

1.Umarani  
2.Pushpanathan  
3.Anandprakash  
4.Punniaseelan

.... Appellants in  
S.A.Nos.274 and 275 of 2018/Defendants

1.Umarani  
2.Punniaseelan

... Appellants in  
S.A.No.276 of 2018/Plaintiffs

Vs.

Dr.A.Senthil Kumar

Respondent in SA No.274/2018/Plaintiff

1.Kalaimani  
2.Charmila @ Thenmozhi  
3.Annamalai  
4.Senthil kumar  
5.Vijayakumar

Respondents in SA No.275/2018/Plaintiff

1.Kalaimani  
2.Charmila @ Thenmozhi  
3.Senthil kumar  
4.Vijayakumar  
5.Annamalai

Respondents in SA No.276/2018/Defendants

PRAYER IN S.A. NO.274 OF 2018: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 03.11.2017 made in A.S.No.43 of 2015 on the file of the Additional Sub Court, Tindivanam, reversing the judgment and decree dated 16.10.2015 made in O.S.No.237 of 2008 on the file of the Additional District Munsif Court, Tindivanam.

PRAYER IN S.A. NO.275 OF 2018: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 03.11.2017 made in A.S.No.44 of 2015 on the file of the Additional Sub Court, Tindivanam, reversing the judgment and decree dated 16.10.2015 made in O.S.No.247 of 2008 on the file of the Additional District Munsif Court, Tindivanam.

PRAYER IN S.A. NO.276 OF 2018: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 03.11.2017 made in A.S.No.45 of 2015 on the file of the Additional Sub Court, Tindivanam, reversing the judgment and decree dated 16.10.2015 made in O.S.No.314 of 2008 on the file of the Additional District Munsif Court, Tindivanam.

For Appellants : Mr.T.Sundaranathan  
in all Second Appeals for Mr.M.Sellavel

For Respondents : Mr.V.Raghavachari  
in all Second Appeals

COMMON JUDGMENT

Second Appeals have been filed against the judgment and decree dated 03.11.2017 made in A.S.Nos.43 to 45 of 2015 on the file of the Additional Sub Court, Tindivanam, reversing the judgment and decree dated 16.10.2015 made in O.S.Nos.237, 247 and 314 of 2008 on the file of the Additional District Munsif Court, Tindivanam.

2.The issues and parties involved in all the Second Appeals are one and the same and hence, they are disposed of by this common judgment.

3. O.S.No.237 of 2008 is filed by one Dr.A.Senthil Kumar and O.S.No.247 of 2008 is filed by Muniammal and others for declaration of title of the suit properties described respectively in the suit schedule and permanent injunction. The appellants filed O.S.No.314 of 2008 against the plaintiffs in O.S.No.247 of 2008 for declaration of title and permanent injunction. The two suits filed by the respondents were dismissed and the suit filed by the appellants was decreed by three separate judgments all dated 16.10.2015. The three First Appeals A.S.Nos.43 to 45 of 2015 were allowed.

4. The case of the appellants in O.S.No.314 of 2008 as plaintiffs and defendants in other two suits viz. O.S.Nos.237 & 247 of 2008 is that Annamallai, Sengalani and Muthumani are sons of Muthupavadai. The said Muthupavadai owned 1 acre 65 cents. The same was given to third parties by way of usufructuary mortgage. Muthumani (father of the first appellant, father-in-law of second appellant and grandfather of appellants 3 & 4), by his own physical exertion earned income and purchased properties in his name. He is the junior member of the family and the properties standing in his name are self-acquired properties. Amirthalingam is son of Annamalai, first son of Muthupavadai. Annamalai died in the year 1934, when Amirthalingam was 8 months

old. At the time of marriage of Amirthalingam to one Saroja, at the instance of the parents of said Saroja, Sengalani and Muthumani, sons of Muthupavadai and Amirthalingam, grandson of Muthupavadai, settled the properties in the name of Saroja by settlement deed dated 11.05.1959 with a condition that if Amirthalingam and Saroja do not get any children, the properties must revert back to the settlors. Most of the properties belong to Muthumani. Settlement was not acted upon and properties were not handed over to settlee Saroja.

4(a) Saroja and Amirthalingam did not have any children and the properties must be reverted back to Muthumani. Muthumani is now died. The first appellant and Kalaimani are the only legalheirs and they inherited the suit properties and they are in possession and enjoyment of the same. The settlement deed executed by Saroja on 27.05.1978 in favour of Sengalani, Muthumani and Amirthalingam was secured by Sengalani and Amirthalingam. The said documents are created one and recitals in the said documents are false. There was no oral partition in the year 2004 between Amirthalingam and legalheirs of Muthumani and Sengalani as claimed by the respondents. There cannot be any partition as properties belong exclusively to Muthumani. The appellants are not aware of the sub-division and patta proceedings. The signature of the mother of the first appellant was forged.

5. The case of the respondents is that the suit properties are joint family properties of Muthupavadai and his three sons. Amirthalingam is son of Annamalai. The plaintiffs in O.S.No.247 of 2008 are the legalheirs of Sengalani. Plaintiff in O.S.No.237 of 2008 is the purchaser from Amirthalingam. The suit properties are joint family properties. Out of the income of the joint family properties, certain properties were purchased in the name of Sengalani who was managing the joint family after the death of Muthupavadai and Annamalai. At the time of marriage of Amirthalingam, certain properties were settled on Saroja by settlement deed dated 11.05.1959 by Sengalani, Muthumani and Amirthalingam. Saroja and Amirthalingam did not have any children. Subsequently, Saroja, by deed of settlement dated 27.05.1978 re-settled the properties on Sengalani, Muthumani and Amirthalingam. Sengalani died in the year 1990 and Muthumani died in the year 1992. In the year 2004, Amirthalingam and legalheirs of Sengalani and Muthumani partitioned the properties orally and property in O.S.No.237 of 2008 were allotted to the share of Amirthalingam and properties in O.S.No.247 of 2008 were allotted to the share of legalheirs of Sengalani. Amirthalingam sold the property in O.S.No.237 of 2008 to Dr.A.Senthil Kumar, the plaintiff in O.S.No.237 of 2008 / respondent in S.A.No.274 of 2018.

5(a) According to the respondents, the appellants tried to

interfere with their peaceful possession in respect of those properties and they have filed two suits for declaration and injunction. The appellants filed O.S.No.314 of 2008 in respect of the properties measuring 1 acre 65 cents in S.No.25/1 which is the subject matter of other two suits. The appellants and respondents have claimed declaration of title and injunction.

6. Based on the above pleadings, necessary issues were framed separately in three suits. Before the Trial Judge, witnesses were examined and documents were marked. The learned Trial Judge, considering the pleadings, oral and documentary evidence and arguments of the counsel for parties, dismissed two suits filed by the respondents in O.S.Nos.237 & 247 of 2008 and decreed the suit filed by the appellants in O.S.No.314 of 2008.

7. Against the said three separate judgments and decrees, all dated 16.10.2015, the respondents filed three First Appeals A.S.Nos.43, 44 & 45 of 2015. The learned First Appellate Judge took all the three appeals for hearing jointly and framed necessary points for consideration. Considering the materials on record, judgment of the Trial Court, all the three appeals were allowed by common judgment dated 03.11.2017, reversing the judgment and decree of the Trial Court in all the three suits.

8. Against the said common judgment and decree dated 03.11.2017 made in A.S.Nos.43 to 45 of 2015, the present three Second Appeals are filed.

9. The learned counsel appearing for the respondent in S.A.No.274 of 2018 filed caveat and other respondents entered appearance. By consent of counsel for the appellants as well as respondents, the Second Appeals are taken up for hearing.

10. The learned counsel for the appellants contended that the First Appellate Court has not answered all the points for consideration. The settlement in favour of Saroja, wife of Annamalai is a conditional settlement and only life estate has been granted to Saroja. Saroja, in such circumstances, has no right to execute settlement deed in favour of Sengalani, Muthumani and Amirthalingam. Number of properties are included in settlement deed in favour of Saroja including self-acquired properties of Muthumani. In the settlement deed, it has been stated that the properties belong to settlors, i.e. Sengalani, Muthumani and Amirthalingam and that it will not amount to joint family properties in their hands. The appellants have produced documents to show that properties in Survey No.25/1 was purchased by Muthumani and it is his separate properties by marking Exs.P4 to P7. The First Appellate Court, having admitted that said properties were purchased by Muthumani, erred in holding that the said properties are joint family properties. Evidence of DW1

with regard to settlement deed is concerned, it relates to only settlement in favour of Saroja and not the settlement executed by Saroja. The first appellant, in her evidence has stated that there is no oral partition in the year 2004. If really, there is any oral partition, then there is no necessity for partition between the legalheirs of Muthumani in the year 2000, marked as Ex.B3,

11. Per contra, the learned counsel appearing for the respondents contended that the suit properties are joint family properties in the hands of sons of Muthupavadai. Two sons, Sengalani and Muthumani and Amirthalingam, son of first son Annamalai had executed settlement deed in favour of Saroja wherein they have stated that the properties settled on her belong to all of them. The said Saroja had life interest. She had voluntarily surrendered the said life interest on her settlors and the same is valid. The respondents have proved the oral partition that was effected in the year 2004 by producing the proceedings for sub-division and patta issued in their respective names. The first appellant as DW1 has admitted oral partition and subsequent proceedings of sub-division and issue of patta. Both oral and documentary evidence produced by the parties clearly show that properties purchased in the name of Muthumani in Exs.B4 to B7 were in possession of Sengalani, Muthumani and Amirthalingam as joint family properties.

12. Heard the learned counsel for the appellants as well as respondents and perused the materials available on record.

13. The properties involved in two suits filed by the respondents relate to the properties in Survey No.25/1. Both the appellants and respondents claim title over the properties and that they are in possession of the said properties. According to the appellants, all the suit properties are separate properties of Muthumani and it is not joint family properties in the hands of Muthupavadai. To substantiate this contention, appellants have produced Exs.B4 to B7. On the other hand, the respondents have produced Ex.A1 settlement deed dated 11.05.1959 which was executed by Sengalani, Muthumani and Amirthalingam in favour of Saroja who married Amirthalingam. In the settlement deed, it has been stated that the properties settled in favour of Saroja belong to all the three persons. There is no mention that certain properties are joint family properties belonging to all of them and certain properties belong to Muthumani absolutely as he is the owner of those properties. Similarly, in Ex.A2 settlement deed dated 27.05.1978 executed by Saroja in favour of above three persons, it has been mentioned that all of them must enjoy the properties equally with all rights.

14. The first appellant, as DW1 has admitted that Saroja

handed over the properties to settlors from whom she got the properties as she did not have any children. The first appellant has also admitted that the properties were divided into three shares in the year 1998 itself. She also admitted that properties in Survey Nos.5/1 and 5/10 were allotted to the appellants and separate patta was issued to the said properties. She also admitted that for the properties allotted to Amirthalingam and legalheirs of Sengalani, separate pattas were issued to them. Even though the appellants denied the knowledge about sub-division and patta proceedings, they contended that signature of their mother was forged. She knew about the proceedings. They have not taken any steps to get the sub-division and issue of patta cancelled. From Exs.A1 to A3 and A8, the respondents have proved that the suit properties are joint family properties in the hands of Sengalani and Amirthalingam.

15. The learned First Appellate Judge, considering the oral and documentary evidence have concluded that oral partition took place in the year 2004 and as per the said partition, the properties were sub-divided, patta was issued to the parties in respect of the properties allotted to them. Partition as per Ex.B3 between legalheirs of Muthumani is relating to other properties belonging to Muthumani. The learned First Appellate Judge has come to this conclusion after considering Ex.B3. In view of such finding, Ex.B3 has no relevance to the issue in the suits. The contention of the learned counsel for the appellants that the suit filed by the respondent is in respect of not only Survey No.25/1, but also relates to other properties belonging to the appellants. The respondents do not claim any right in respect of those properties and the learned First Appellate Judge, without considering the same, dismissed the suits filed by the appellants. This contention is without merits. The respondents have sought for declaration of title in respect of the property in Survey No.25/1 and prayed for injunction as according to them, the appellants tried to interfere with their possession.

16. In the suit filed by the appellants, they have not alleged that the respondents are trying to interfere with their possession in respect of other properties also. The issue involved is only with regard to title to the property in Survey No.25/1 and for injunction. The respondents have proved their title as well as their possession. The respondents are not claiming any title or possession in respect of other properties mentioned in the suit filed by the appellants. When there is no dispute with regard to other properties, the learned First Appellate Judge has rightly dismissed the suit filed by the appellants. The reasonings of the learned First Appellate Judge for allowing all the three appeals are based on facts and law and there is no error in the said judgment warranting interference by

this Court. No question of law much less than substantial question of law has arisen for consideration by this Court.

17. In the result, all the three Second Appeals are dismissed confirming the common judgment and decree dated 03.11.2017 made in A.S.No.43 to 45 of 2015. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

rgr

To

- 1.The Additional Subordinate Judge,  
Tindivanam.
- 2.The Additional District Munsif,  
Tindivanam.
- 3.The Section Officer,  
V.R. Section, High Court,  
Madras.

+3cc to Mr.S.Muthiah, Advocate SR.No.50717 to 50719  
+1cc to Mr.V.Raghavachari, Advocate SR.No.50661

S.A.Nos.274 to 276 of 2018

TM(CO)  
GN(29/08/2018)

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