

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.30 of 2018
and CMP No.469 of 2018

1. Ranganathan
2. Nagammal
3. Kothandam

..Appellants/
Appellants/Defendants

Vs.

1. Balamurugan
2. Anandharaju
3. Sivaraj
4. Mannangatti Ammal

.. Respondents/
Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 18.01.2017 made in A.S.No.33 of 2015 on the file of the I Additional Subordinate Court, Villupuram, confirming the decree and judgement dated 26.02.2015, in O.S.No.322 of 2009 on the file of the II Additional District Munsif Court, Ulundurpet.

For Appellants : Mr.R.Rajarajan

For Respondents : Mr.T.Gandhi

सत्यमेव जयते
J U D G E M E N T

Aggrieved by the unanimous decisions of the Courts below, the defendants in a suit for declaration of title and for permanent injunction have preferred the above second appeal.

2. One Ramasamy and Iyyakannu are brothers. The suit properties consist of two items. The first item of the property belongs to the said brothers jointly. The second item of the property was purchased by Iyyakannu by way of sale on 27.12.1950. Thus, both the properties were jointly enjoyed by them. The above said Ramasamy, by leaving behind his wife, the fourth defendant, as legal heir, died, as Ramasamy's daughter

one Kathayee predeceased him. Iyyakannu's first wife is one Kathayee, who had deserted him. Thereafter, he married one Amirtha @ Meenammal and out of the said wedlock, they had a son by name Subramanian, whose children are the plaintiffs 1 to 3. The first defendant is Kathayee Ammal's uncle's son. Though, he had no right over the suit property, he had executed a settlement deed in favour of his daughter, the second defendant, and she, along with the third defendant, who is her husband, claimed right over the same. Hence, the suit came to be filed.

3. The suit was resisted by the first defendant and adopted by the second and third defendants contending that Iyyakannu alone has right over the suit properties and he had executed the settlement deed in favour of his first wife Kathayee Ammal on 25.06.1961 and put her in possession of his properties. The said Kathayee Ammal had executed a Power of Attorney dated 04.06.1962 in favour of the first defendant and the first defendant, in turn, had executed a settlement deed dated 28.09.2005 in favour of his daughter with respect to the suit properties. The first defendant also claimed that the settlement deed has been acted upon and hence, the plaintiffs have got no right over the suit properties and prayed for dismissal of the suit.

4. Before the trial court, the second plaintiff was examined as P.W.1, besides examining P.Ws.2 and 3. Exs.A.1 to A.19 were marked on the side of the plaintiffs. On the side of the defendants, D.Ws.1 to 3 were examined, of whom, D.W.1 is the first defendant and Exs.B.1 to B.10 were marked. Ex.C.1-Power of Attorney was also marked.

5. On the above facts, after considering the oral and documentary evidence, the Courts below have concurrently held that the plaintiffs are entitled for a decree as prayed for.

6. Learned counsel for the appellants/defendants would contend that if Ex.B.1, Settlement deed dated 25.07.1961, which is more than 30 years old, is proved, then only the appellants/defendants would have title over the suit properties and the plaintiffs cannot have any right. While claiming title to the property, the plaintiffs have produced Ex.A.1, the original sale deed dated 27.12.1950 and the second plaintiff had examined himself as P.W.1. On a perusal of Ex.A.1, it is evident that Iyyakannu had purchased the suit properties along with other properties. The validity of Ex.A.1 is not disputed by the defendants. The said Iyyakannu had also executed a Will dated 03.03.1992 in favour of the plaintiffs 1 to 3 in respect of his half share in the suit properties. In the process of proving the said Will under Ex.A.4, P.W.2 was examined, who is one of the attestors of the Will. The said P.W.2 had deposed that he had signed the Will as an attesor along with another

attestor, namely, Kesavan and the name of the scribe is Kuppusamy. He had categorically deposed that he had seen Iyyakannu execute the Will and put his signature. He had also identified the signature in Ex.A.4, Will. The evidence of P.W.2 had not been contradicted by the defendants. Thus, Ex.A.4 Will had been proved in the manner known to law.

7. The case of the defendants is that they are entitled to the property based on Ex.B.1-settlement deed executed by the very same Iyyakannu in favour of Kathayee Ammal and the said Kathayee Ammal had executed a Power of Attorney in favour of the first defendant, based on which, the settlement deed was executed by the first defendant in favour of the second defendant. The plaintiffs have categorically denied the execution of settlement deed, Ex.B.1, by Iyyakannu. When the execution is denied and the validity is challenged, the burden is on the defendants to prove the same.

8. The Lower Appellate Court has found that in Ex.B.1, the signature of Iyyakannu is found only on the first page of the stamp paper and the stamp paper was also purchased not in the name of settlee, but in the name of one Marimuthu Padayachi. So far as the registration of the said document is concerned, it was executed on 25.09.1961, but it was presented for registration on 10.11.1961 and 23.11.1961 and the same was rejected by the Registering Authority. Though it is claimed to have been registered on 03.02.1962 by the District Registrar, Chidambaram, there is no explanation given by the defendant as to why the said Iyyakannu had not signed on each page of the document. Being registered document, the defendants had not proved the same in accordance with Section 68 of the Indian Evidence Act, by examining the attestors. If the original owner Iyyakanu had executed the settlement deed in favour of his wife Kathayee Ammal under Ex.B.1 only in the year 1961, he could not have executed the Will in favour of the plaintiffs under Ex.A.4 on 03.03.1992.

9. It is relevant at this point to refer to the cross-examination of the defendant, wherein, he has admitted that a Will had been executed by Iyyakannu in favour of the plaintiffs 1 to 3. Yet another aspect, that is relevant, is the original sale deed dated 27.12.1950, Ex.A.1, was produced only by the plaintiffs and the defendants could not produce the same, though the alleged settlement deed is prior in point of time. If the settlement deed was true and intended to be acted upon, the original title deeds should have been handed over to the settlee. Therefore, the settlement alleged by the defendants is safely held to be not proved.

10. In fact, the plaintiffs have also produced Exs.A.2 and A.3 mortgage deeds executed by Iyyakannu in favour of a Co-operative Society in the year 1972 and 1975 respectively. In the said mortgage deeds, the said Iyyakannu specifically mentioned that the properties were owned by him. From the above, it is clear and evident that the settlement deed alleged to have been executed by Iyyakannu in favour of the first defendant is not true and valid and the same has not been proved beyond reasonable doubt. Accordingly, the subsequent execution of the Power of Attorney by Kathayee Ammal in favour of the first defendant would automatically lose its validity, as the Kathayee Ammal has no right or title over the suit property.

11. The other contention put forward by the learned counsel for the appellants is that the said Kathayee Ammal, being the first wife of Iyyakannu, would automatically become legal heir of Iyyakannu. The Lower Appellate Court has held that presuming that the said Kathayee Ammal would be the legal heir of the said Iyyakannu, on the date of death of the Kathayee Ammal, who died intestate, the property would devolve on the husband's heirs only, and that, no stretch of imagination the first defendant, who is the only uncle's son of the Kathayee Ammal will have any right over the suit properties. It is also stated that if the plaintiffs 1 to 3s' father Subramanian is alive then, the defendants cannot have any right over the same.

12. Thus, the plaintiffs, having established their title based on Ex.A.4 and by producing Exs.A.6 to 17, the Courts below have rightly decreed the suit and there is no infirmity in the judgements of the Courts below to interfere with the same in this second appeal.

13. The Second Appeal is, accordingly, dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Court,
Villupuram.

2. The II Additional District Munsif Court,
Ulundurpet.

3. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.T.Gandhi, Advocate, S.R.No.12636

S.A.No.30 of 2018

RSK (CO)
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