

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

Coram:

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

C.M.A.No.1942 of 2012

and

M.P.No.1 of 2012

1.Sivagamiammal

2.Mangayarkarasi

3.Rajareshwaran

4.M.M.Devarajan

... Appellants/Plaintiffs

vs.

Syndicate Bank,
Salem Town Branch,
Rep. by its Senior Manager,
Salem 1.

... Respondent/Defendant

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of C.P.C, against the Judgment and Decree of the Learned II Additional Subordinate Judge, Salem in A.S.No.22 of 2011 dated 30.09.2011 in reversing the judgment and decree of the Learned Principal District Munsif, Salem in O.S.No.637 of 2009 dated 06.09.2010.

For Appellants : Ms.J.Prithivi

for Mr.S.Kaithamalai Kumaran

For Respondent: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Learned Additional Subordinate Judge, Salem in A.S.No.22 of 2011 dated 30.09.2011 reversing the judgment and decree of the Learned Principal District Munsif, Salem in O.S.No.637 of 2009 dated 06.09.2010.

2 The case of the appellants is that one Duraisamy and Kandasamy are brothers and Kandasamy died on 08.10.1966 leaving

behind his heirs wife Sivagamiammal (1st appellant) and two daughters Mangayarkarasi (2nd appellant) and Rajeshwari who died leaving her husband Devarajan (4th appellant) and son Rajarajeshwaran (3rd appellant). Duraisamy died on 31.10.1984 leaving his wife Gowriammal as his only heir as they had no issues. The said Gowriammal has purchased immovable property, made Fixed Deposits and opened a safety locker in the defendant Bank. The said Gowriammal was suffering from Cancer and died on 12.09.1996. Since, the Duraisamy predeceased her and no issues to them, under Section 15(1)(b) of Hindu Succession Act, the appellants herein become the class II (surviving) heirs. When the appellants wanted to open the locker of deceased Gowriammal, one Sidhammal, claims to be the sister of Gowriammal, also claim to open the locker with the help of the defendant Bank. The said attempt was stopped by the appellants herein by informing the Bank that they are the legal heirs of the deceased Gowriammal. The appellants produced death certificate of Gowriammal. Since, there are two parties claiming for the same, the Bank authorities directed them to produce Succession Certificate from a Competent Court. The Revenue officials have not issued any legal heir certificate. Hence, they filed an application before the District Munsif Court to get Succession Certificate, which was contested by the said Sidhammal and the Court dismissed the petition stating that Succession Certificate cannot be issued for the the purpose of opening Bank locker.

3 The learned counsel for the appellants would submit that they have filed Rent Control Petitions against the tenants of the deceased Gowriammal and they have succeeded in the same and the Rent controller has given a finding that the appellants herein are the legal heirs of Gowriammal as per Section 15(1)(b) of the Hindu Succession Act, 1956 and the appellants herein are entitled to receive the rent. Accordingly, the appellants approached the defendant to withdraw the Fixed Deposit amount, but they refused. As the defendant directed the appellants to get Succession Certificate, the appellants are before this Court praying to declare the appellants as legal heirs of the deceased Gowriammal.

4 The defendant has filed a written statement stating that there are counter claims and the petition filed by the appellants in S.O.P.No.9 of 1998 praying to issue succession certificate in their favour was dismissed by the Court. After the lapse of 9 years, the appellants have filed the present suit without impleading the Sidhammal as legal heir. Therefore they prayed for dismissal of the suit.

5 After hearing the parties, the lower Court has come to a conclusion that eventhough the Rent Controller has given a finding that the appellants are the legal heirs of the deceased Gowriammal, it was decided only for getting the rent and not for any other purpose.

6 The respondent in their counter claimed that Sidhammal has been made as a party when the appellants have filed a Succession original petition by impleading the said Sidhammal as respondent in S.O.P.No.9/98, wherein, she has filed a counter statement and contested the case and only after that the same has been dismissed. Here, the present suit has to be dismissed as non-joinder of party as the said Sidhammal has not been made as a party and on this ground also the suit should be dismissed. When the appellants have not made the said Sidhammal as a party wherein the property belonging to Gowriammal and how she has inherited is not stated in the plaint. As per S.O.P.No.9 of 1998, Sidhammal has filed a counter statement stating that jewellery, movable and immovable properties were inherited by Gowriammal through her parents and some of the jewels has been bought with the help of Sidhammal and hence, the same has to be decided only when Sidhammal has made as a party to the present suit. When the appellants have stated that the said Sidhammal died, they ought to have produce the death certificate of Sidhammal otherwise they could have brought the legal heirs on record, which has not been done by the appellants.

7 When there is no direct descendants and the property and other things were purchased by Gowriammal from and out of the funds given by her parents, then the same will devolve on the paternal side of the deceased as per Section 15(1)(a) of the Hindu Succession Act. There is no evidence produced by the appellants to the extent to prove that the deceased Gowriammal has earned everything on her own income or given by the husband, in that case, it has to be devolved on the legal heirs of the husband, as per Section 15(1)(b) of the Hindu Succession Act. Sidhammal has stated that it has been granted by her parents, which has not been clearly proved. The appellants have also not pleaded how Gowriammal has acquired those movable and immovable properties and the legal heirs have also not been properly impleaded and also the said Sidhammal has not been made as a party in this case. When there is no evidence or materials produced to show the legal heirs of Kulanthavel, father of said Duraisamy and Kandasamy, the said suit was dismissed and the lower Court has also given option to the appellant to implead the said Sidhammal as one of the parties and to file a fresh suit.

8 Against which, appeal has been filed by the appellants before the Sub-Court and in the Sub-Court the appellants have filed an application under Order 41 Rule 27 to receive the additional documents. The appellants have filed the sale deed dated 22.07.1959 which stands in the name of the deceased Gowriammal, a passbook of the Indian Bank, Syndicate Bank and F.D receipt of Syndicate Bank and the fair order in R.C.A.No.4/2006 and the order passed by this Court in C.R.P.No.2831. Apart from that they have filed receipts for the payment of rent for the locker. These documents were not filed before trial Court. The appellants have not contended that these documents rendered before trial Court but it was refused to admit by the trial Court. The appellants were unable to prove that despite exercise of due diligence, these documents were not within their knowledge or could not be produced by them before the trial Court. Except the 1st document, i.e., sale deed and other documents produced by the appellants are of no use to decide the substantial questions of law and facts. In the sale deed dated 22.07.1959 it has been stated that FLk;g ghu;j;j_tdk; nfsupak;khs; vd;gtUf;F. From that it is clear that Gowriammal was not employed. The property has been purchased in the year 1959. The husband did not own any immovable property. So there was no evidence either oral or document, how the property and the Fixed Deposit came into the hands of Gowriammal. The trial Court has not framed any issues regarding the non joinder of necessary party. If proper issues have been framed, the parties would be able to let in evidence according to the issues. The defendant has stated in his written statement that Sidhammal was not added as a party in the suit hence, the suit has been dismissed for non joinder of necessary party. As per the Rule 61 of the Civil Rules of Practice, every material proposition of fact and every proposition of law, which is affirmed by the one side and denied by the other shall be made the subject of a separate issue and every issue of fact shall be so framed as to indicate on whom the burden of proof lies. Therefore, as per the Civil Rules of Practice, the trial Court has not framed a separate issue regarding the non joinder of parties. If the issue has framed, then the appellants would have let in proper evidence. Since, the appellants have not proved that the property belongs to Gowriammal exclusively and the property purchased out of her own income or given by the husband of Gowriammal, as per Section 15(2) (a) of the Hindu Succession Act, if the property was inherited by a female Hindu from her father or mother it shall devolve upon the heirs of her father and as per Section 15(2) (b) if the property was inherited from her husband, then it shall devolve upon the heirs of the husband. Hence, in the absence of any concrete evidence, the appellants cannot maintain the suit and the appeal was allowed and the decree and judgment of the trial Court was reversed the

suit was remanded back to the trial Court and the trial Court was directed to frame an issue regarding the non joinder of necessary parties and permit both the parties to adduce additional oral and documentary evidence and dispose of the case on merits.

9 Heard the learned counsel for appellants.

10 From the perusal of records it is clear that there was no concrete evidence produced by the appellants to prove that Gowriammal was shareholder of those properties and whether it has been acquired by inheriting from her husband side. In the absence of proper evidence, this Court is not in a position to decide the issue.

11 The query raised by the defendant that Sidhammal has filed a counter claim and S.O.P. was also filed seeking Succession Certificate before the Court and the appellants have not impleaded Sidhammal as party, due to which the same was dismissed. The appellants ought to have made Sidhammal as a party to the suit. Admittedly the appellants have not done so. The counsel for the appellants herein vehemently argued that the Section 15(2)(b) of the Hindu Succession Act will not be applicable to this case and as per 15(2)(a) Sidhammal being the class II heir of the said Gowriammal the property devolve on her. When there is counter claim by one Sidhammal claiming to be the elder sister of Gowriammal and whether she is legal heir of the deceased Gowriammal has not been clearly established. The appellants ought to have made Sidhammal as a party to the suit and prove that they are the legal heirs of the said deceased Gowriammal. In the absence of any materials before the Court, the Court cannot go into the matter and decide the issue.

12 Since, the suit has been filed in the year 2009 and valuable time has been lost, the matter need not be remanded back to the lower Court and the lower Appellate Court can decide the issue. The issue relating to the non joinder of necessary party can be taken up by the lower Appellate Court itself. The lower Appellate Court can direct the parties to adduce further evidence on its own to decide the issue whether the said appellants are the legal heirs of the said deceased Gowriammal. In spite of remanding the matter to trial Court, the lower Appellate Court itself can frame the issue and decide the same in accordance with law within a period of three months from the date of receipt of copy of this order.

With the above observation and direction, this civil miscellaneous appeal is disposed of and the order of the lower Appellate Court is set aside and the matter is remanded back to the lower Appellate Court for the reasons stated above. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

+1cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.76179

C.M.A.No.1942 of 2012

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