

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.Nos.59 of 2009 and 1450 of 2011
and

C.M.P.Nos.20663, 20684, 20694, 21222, 21224, 21226 of 2018
and M.P.No.1 of 2011

1. Arokianathan ... 1st Appellant in S.A.No.59/2009 &
Sole Appellant in S.A.No.1450/2011
2. Mahimaimary
3. Merlin
4. Ammu
5. Prakash ...Appellants 2 to 5 in
S.A.No.59/2009

(Cause title accepted vide
order of Court dated 17.12.2008
made in M.P.No.1/08 in
S.A.SR.No.49689/08.)

versus

1. S.Mohan
2. S.Shankar
3. Rubi @ Rajini
4. Nandhini ... Respondents in both Appeals
5. Chandra
6. Oliyiya
7. Salim
8. Salomi
9. Agnus
10. Syman
11. Paulin
12. Antoniammal
13. Irudayanathan
14. Victor
15. Mary Nirmala
16. Mathues
17. Philip
18. Therasa
19. Sekar
20. Williams
21. Antony
22. Alex

- 23. Therasa
- 24. John
- 25. Susainathan
- 26. Irudayanathan
- 27. Edwin
- 28. Mary

... Respondents in S.A.No.59 of 2009

Prayer in S.A.No.59 of 2009: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 26.02.2008 passed in A.S.No.444 of 2005 on the file of the VII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 07.01.2005 in O.S.No.5025 of 1995 on the file of the III Assistant City Civil Court, Chennai.

Prayer in S.A.No.1450 of 2011: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 19.08.2010 passed in A.S.No.365 of 2007 on the file of the II Fast Track Court, Chennai confirming the judgment and decree dated 26.04.2007 in O.S.No.8216 of 1995 on the file of the XII Assistant City Civil Court, Chennai.

For Appellants : Mr.K.Mohanamurali
in both SAs

For Respondents: Mr.R.Subramanian
for Mr.T.I.Ramanathan[R1 to R4] &
and [R6 to R8] in SA 59/2009
No Appearance [R5, R9 to R17]
in SA 59/2009
Mr.R.Subramanian for
Mr.T.I.Ramanathan for
R1 to R4 in SA 1450 of 2011

COMMON JUDGMENT

These two appeals were preferred by the same set of appellants challenging the separate decrees passed by the First Appellate Court, which arose out of the decrees in two independent suits. The suits were tried and decided by separate judgments.

2.1 S.A.No.59 of 2009 arises out of O.S.No.5025 of 1995, and the same was laid for partition of plaintiffs' 1/4 share in the suit property. The said suit came to be dismissed successively both by the trial court as well as by the First Appellate Court. S.A.No.59 of 2009 arises out of this decree.

2.2 S.A.No.1450 of 2011 arises out of O.S.No.8216 of 1995. The said suit was laid by few of the children of the 1st defendant in

the earlier mentioned suit in O.S.No.5025 of 1995, against the plaintiffs in that suit. O.S.No.8216 of 1995 was decreed by the trial court and the defendant in that suit had preferred A.S.No.365 of 2007 before the II Fast Track Court, Chennai, and the same came to be dismissed. Challenging this decree S.A.No.1450 of 2011 was preferred by the defendants in O.S.No.8216 of 1995.

2.3 For the sake of narrative convenience parties would be referred to by their ranks in the partition suit in O.S.No.5025 of 1995.

3.1. The substantial facts in the case are admitted, therefore, they may be bullet-pointed as below:

- The suit property is a plot measuring 1,200 sq.ft., in R.S.No.36/2. This was purchased jointly by a certain Rettaimalai and his wife Lakshmi on 12.06.1929. The original sale deed is available on record as Ext.B-5 dated 12.06.1929 and B-6, the property tax receipts and the copy of the original sale deed dated 12.06.1929 was marked as Ext.A4. Both Rettaimalai and Lakshmi died respectively in the year 1958 and 1961. They had three daughters and a son. The daughters are Ranganayaki, Pattammal and Rukmani and their only son was Shanmugam.
- Be that as it may, Ranganayaki had converted to Christianity and had married a certain Antony, and begot plaintiffs 2 to 4. Shanmugam is the 1st defendant in O.S.No.5025 of 1995. The suit was laid by Ranganayaki initially and she died shortly after the institution of the suit, consequent to which, her three children came to be impleaded as plaintiffs 2 to 4. The 1st defendant Shanmugam also died and his children were impleaded as defendants 5 to 12. Rukmani has died by then and her children are defendants 2 and 3. 4th defendant is pattammal's daughter.

3.2 Ranganayaki in her suit has claimed that on the death of Rettaimalai and Lakshmi, she became entitled to 1/4 share in the suit property. The suit was essentially resisted by Shanmugam and his heirs. The points in defence are:

- a) That Ranganayaki was not the daughter of Rettaimalai and as such, she is not entitled to any right.
- b) That inasmuch as Ranganayaki has converted to Christianity and plaintiffs 2 to 4 continues to be Christians, they are dis-entitled to claim a share in the suit property under Section 26 of the Hindu Succession Act.

✕

4.1 The dispute went for trial and before the trial court, the 2nd plaintiff has examined himself as P.W.1. On their side, Exhibits A1 to A13 were marked. For the defendants, 5th defendant has stepped into witness box to testify and on their side, Exhibits B1 to B25 were marked.

4.2 It may be stated here that prior to the institution of the suit, Shanmugam has issued a suit notice, dated 24.03.1993 for evicting Ranganayaki from the suit property and in that notice, he has described Ranganayaki as his tenant. This was opposed by Ranganayaki and when that dispute culminated in R.C.O.P.No.1331 of 1993, the same came to be dismissed in view of Ranganayaki's assertion that she is a co-sharer with Shanmugam. This dispute pertains to the property involved in S.A.No.1450 of 2011.

4.3 On an appreciation of evidence, the trial court has relied on Ext.A-3 rejoinder notice given by Shanmugam and his oral testimony before the 16th Court of Small Causes, Chennai (marked in the partition suit as Ext.A11), in both of which he described Ranganayaki as 6th defendant's aunt and accordingly rejected the theory of the defendants that Ranganayaki was not born to Rettaimalai and Lakshmi. However, the trial court proceeded to hold that inasmuch as Ranganayaki has converted to Christianity, and since the plaintiffs born to Ranganayaki continues to be in Christianity when Ranganayaki died, they were dis-entitled to inherit any right under Ranganayaki in view of Section 26 of the Hindu Succession Act.

4.4. When the matter reach in the First Appellate Court in A.S.No.444 of 2005, the First Appellate Court found little material on record to differ from the trial court and accordingly it dismissed the appeal and confirmed the decree passed.

5. This appeal was admitted on the following substantial questions of law:

1. Whether the 1st appellate Court has rendered an erroneous finding by accepting the oral submission of the respondent's in contrary to Ex.A3 and Ex.A11 in concluding the issue of relationship between the parties?

2. Whether the Courts below are miserably failed to observe Ex.A3 and Ex.A11 which clearly speaks about the relationship of the parties from the common ancestor Rettaimalai and Velankanni?

3. Whether the Courts below are right in concluding that Section 26 of the Hindu Succession Act is applicable to the case of the plaintiff when the

plaintiffs heir ship is covered by the provisions of Section 37 to 40 of Indian Succession Act?

6.1. The learned counsel for the appellant fairly conceded that the substantial questions 1 and 2 may not arise for consideration, since the finding has been actually entered in favour of the plaintiffs by both the courts below.

6.2. The other issue is whether the plaintiffs are prohibited from claiming share in the suit property under Section 26 of the Hindu Succession Act. The said Section reads as follows:

'26. Converts descendants disqualified.

Converts descendants disqualified. Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.'

The learned counsel for the appellants would argue, and if it may be stated so, with some strain, that the phrase 'when succession opens' as is provided under concluding part of Section 26 would refer only to Ranganayaki.

7. Both the courts below have held that the plaintiffs have not proved that Ranganayaki was born to Rettaimalai and Lakshmi. The learned counsel for the defendants/respondents contended that there is no credible material on record to show that Ranganayaki was born to Rettaimalai and Lakshmi, and irrespective of whether she was born to Rettaimalai and Lakshmi, and even it were to be presumed that she was indeed their child, yet since she had converted to Christianity, Section 26 of the Hindu Succession Act there is an embargo on the plaintiffs to stake a claim in the suit property.

8. This Court views that the interpretation that the appellants' counsel put on the expression 'when succession opens' in sec.26 of the Hindu succession Act as relating to Ranganayaki is incompatible with the remainder of the provision. This is because, even de hors the phrase 'when succession opens', Ranganayaki is not barred from inheriting. Ranganayaki, in fact would fall under the 1st part of Section 26. To expatiate it, Section 26 focuses not on the immediate heir of a deceased, but on the heirs of such of the heir of the deceased who have converted to other religion. In this regard, this Court finds that the only rider available for the plaintiffs is to take a

claim in the suit property to prove that they have reconverted to Hinduism when succession opened, that is to mean when Ranganayaki died. To state it differently, unless the plaintiffs prove that they are Hindus on the date when Ranganayaki died and succession opened, they cannot have a right in the suit property. This proposition is the basis of the conclusion arrived by both the Courts below and this Court finds no necessity to interfere with the same. Necessarily, the appeal in S.A.No.59 of 2009 has to be dismissed.

9. Turning to the other appeal in S.A.No.1450 of 2011 is concerned, the subject matter of the suit is a vacant plot of 910 sq.ft., that lie to the immediate east of the hut bearing Door No.22 of Kaliyamman Koil Street. This hut is the subject matter of R.C.O.P.No.1331 of 1993 referred to in paragraph 4.2 above. The defendant, as plaintiff in that suit, would trace the title essentially to the settlement deed dated 08.03.1993, executed by Shanmugam, in his favour. The settlement deed recites about the sale deed obtained by Rettaimalai in 1929. Both the courts below have come to the conclusion that the vacant plot of 910 sq.ft., is in the possession of the plaintiffs in that suit and accordingly, granted a decree for injunction.

10. This second appeal is not admitted. The learned counsel for the appellant submitted that while the sale deed in favour of Rettaimalai only refers to a total extent of 1,200 sq.ft., in the settlement deed, which Shanmugam has executed in favour of his children under Ext. B14, dated 08.03.1993. It deals with a larger extent of 2,512.5 sq.ft. This is untenable in the boundaries stated therein are considered.

11. On the aspect of title, the trial court has made it clear in its judgment that since the suit is for injunction, it would not go into the issue on title. The First Appellate Court also did not consider it necessary to deal with that aspect. This Court in S.A.No.59 of 2009 has already held that the plaintiff (2nd Defendant in S.A.No.1450 of 2011) would not be entitled to any share in the property covered under the sale deed 12.06.1929 in the name of Rettaimalai and Lakshmi. If however, there is any dispute relating to any property that falls outside 1,200 sq.ft., of the property mentioned in the said sale deed, that cannot be decided here and that issue is left open for the parties to decide. So far as the property pertaining to which injunction has been granted by this Court on perusal of the materials this Court does not find any merit in the appeal and hence, this appeal is liable to be dismissed.

12. In the result, S.A.No.59 of 2009 is dismissed with costs and S.A.No.1450 of 2011 is dismissed subject to the observation made

in the above paragraphs. During the pendency of the appeal the respondents 19 and 26 are dead and therefore, the petitions in C.M.P.Nos.20663, 20684, 20694, 21222, 21224, 21226 of 2018 in S.A.No.59 of 2009 are filed to condone the delay, to set aside the abatement and to bring on record the legal representatives of the deceased 19th and 26th respondent. However, since this Court has taken a decision to dismiss the appeal and non-impleadment would not affect any of the vested right of the legal representatives of the deceased respondents 19 and 26, this Court is not considering it necessary to order notice to all of them. Therefore, all the above miscellaneous petitions are closed. Consequently, connected M.P.No.1 of 2011 is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The VII Additional Judge,
City Civil Court, Chennai.
2. The III Assistant Judge,
City Civil Court, Chennai.
3. The Additional District Judge,
II Fast Track Court,
Chennai.
4. The XII Assistant Judge,
City Civil Court, Chennai.

Copy to
The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.K.Mohanamurali, Advocate Sr.36162, 86163
+2cc to Mr.T.I.Ramanathan, Advocate Sr.85785, 85786

S.A.No.59 of 2009
and
S.A.No.1450 of 2011

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srg 7/5/2019