

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1397 of 1999
and
C.M.P.No.10934 of 2018

- 1.Dhanalakshmi (Deceased)
- 2.Ranganayaki

... Appellants/Plaintiff

2nd appellant brought on
record as Lr of the deceased
sole appellant vide order of Court
dated 22.06.2012 made in
CMP.Nos.403 to 405/2012 in
S.A.No.1397/1999

/Vs/

- 1.Yogeshwaran (Deceased)
2. Sivasakthi Nesan
3. Jayakumari
4. Y.Kousalya
5. Y.Jayalakshmi
6. Y.Vijayalakshmi
7. Y.Rajalakshmi

... Respondents/Defendents

RR4 to 7 brought on
record as Lrs of the deceased
1st respondent vide Court dated
06.03.2017 made in CMP.Nos.
407 and 408 of 2012 in
S.A.No.1397/1999.

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the decree and judgment of the Court of the Additional
Subordinate Judge, Mayiladuthurai, dated 02.04.1998, passed in
A.S.No.84 of 1997, upholding the decree and judgment of the
Court of the Additional District Munsif, Mayiladuthurai, dated
18.12.1996 passed in O.S.No.131 of 1993.

For Appellants : Mr.A.Muthukumar
For Respondents : R1- Died
R2 - Dispensed with vide order
dated 13.08.2018.
Mr.S.Parthasarathy for R3
Mr.S.Sounthar for R4 to R7

O R D E R

The unsuccessful plaintiff is the appellant in the present Appeal. Since she died during the pendency of the second appeal, her legal heir namely, her daughter Ranganayaki, has been brought on record in the Second Appeal.

2. The plaintiff filed a suit in O.S.No.131/1993 before the learned Additional District Subordinate Judge, Mayiladuthurai, for a declaration of her title to the superstructure in the suit property and for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property situate in S.No.465/1W of Sitharkadu Village, Mayiladuthurai Taluk. The main contention of the plaintiff is that the suit property belonged to Arulmigu Sambandaswamy Devasthanam, Sitharkadu, Mayiladuthurai that the said property was leased out to her by the said Devasthanam and that she was regularly paying rents for the same. According to the plaintiff she constructed a house in the suit property and also brought up the respondents/ defendants' who were then minors in the same house as their parents died. She has further prayed for a declaration of her title to the super structure of the suit property and also for a permanent injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment over the suit property.

3. The defendants 2 and 3 remained absent and were set aside. The first defendant alone contested the suit by filing a written statement. The first defendant in his written statement has contended that the suit property was leased out to his father Narayanasamy, during the year 1959 and that he only constructed a super structure in the suit property. According to the first defendant since his father died in the year 1963 and their mother died during 1964, the plaintiff's mother late Valiammai took care of them and thereafter, the plaintiff, as a care taker, was managing the suit property. According to the first defendant, he filed a suit in OS.163/89 against the defendants 2 and 3 for partition of the suit property into three equal shares and to allot one such share to him and that the defendants 2 and 3 in collusion with the present plaintiff denied the lawful rights of the first defendant. It is also

contended by him that since the plaintiff does not have any right over the suit property, the suit is liable to be dismissed.

4. The learned Additional District Munsif, Mayiladuthurai, after full contest dismissed the suit, on the ground that the plaintiff Dhanalakshmi (since deceased) had admitted during the course of cross examination that her mother was taking care of the defendants 1 to 3 in the house put up by late Narayanasamy, father of the defendants 1 to 3 and that after the death of her mother, she started taking care of the defendants 1 to 3 from the year 1965. Based on the admissions made by the plaintiff in her deposition the trial Court dismissed the suit by holding that the plaintiff has not established her right over the suit property.

5. Aggrieved over the same, the plaintiff filed an appeal before the Additional Subordinate Judge, Mayiladuthurai, in A.S.No.84/1997 and the said Appeal was also dismissed. Now, the present appeal is filed by the plaintiff, who failed in both the Courts below.

6. The Second Appeal is admitted on the following substantial questions of law:-

i) Whether the finding of the Courts below that the appellant did not prove that she was paying the Puguthi to the Temple, in spite of Exs.A2 and A5 from the year 1977 is against the principles of burden of proof laid down in Sections 101 and 102 of the Evidence Act and the judicial pronouncements on the above?

ii) Whether the finding of the trial Court that the appellant had admitted during her cross examination whereas she denied the same is against Order 10 Rule 3 of the Code of Civil Procedure?

Iii) Whether the Courts below ought to have given a finding on the issue relating to the grant of patta under Act 40 of 1971, as per Order 14 Rule 2 of the Civil Procedure Code?

7. The main contention of the appellant herein is that the suit property was leased out to her by Sitharkadu, Arulmigu Sambandaswamy Devasthanam. However, no such document was adduced by her to prove her contention in this regard she also did not adduce any acceptable evidence to show that she

constructed the house in the suit property.

8. Apart from that, in her deposition, she had clearly admitted that the vacant site of the suit property was leased out to one Narayanasmy father of the defendants 1 to 3 and that she and her mother as care takers went over to the house of the defendants 1 to 3 and were managing the suit property. She had further admitted during the course of cross examination that the suit in O.S.No.163/89 filed by the first defendant before the Additional Subordinate Judge, Mayiladuthurai, in respect of the same suit property for partition and separate possession by the first defendant was dismissed for non payment of the Court fees by the first defendant.

9. It is also admitted by her that she was helping defendants 2 and 3 in contesting the said suit. The evidence of Mr.Muthaiyyan (PW2) is also to the fact that the plaintiff late Dhanalakshmi, was only a care taker. Both the Courts below, after analysing the evidence of PW1 and PW2 had come to the conclusion that, the plaintiff has not established her right over the suit property. The reason given by both the Courts below are well founded and the plaintiff who had filed the suit seeking a declaration and permanent injunction failed to establish her case. On the other hand, she had deposed that she came over to the suit property only as a care taker in the year 1965. She had also admitted that the super structure was put up by the father of the respondents/defendants.

10. The learned counsel appearing for the respondents 4 to 7 would contend that since the respondents 2 and 3 did not contest the suit and they are also sailing with the plaintiff, 2/3 share can be allotted to the plaintiffs. This request made by the counsel for the respondents 4 to 7 cannot be considered because the plaintiff has no right over the suit property and therefore 2/3 share which would devolve upon the defendants 2 and 3 could not be granted to the present plaintiff.

11. Since the findings of the both the Courts below are well founded, I do not find any reason to interfere with the same and therefore, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bkn/dna

To

1.The Additional Subordinate Judge, Mayiladuthurai.

2.The Additional District Munsif Court, Mayiladuthurai.

Copy to

The Section Officer,
VR Section,
High Court, Madras-104

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.57347

+1cc to Mr.S.Sounthar, Advocate, S.R.No.57316

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.57458

S.A.No.1397 of 1999
& C.M.P.No.10934 of 2018

RJ(CO)
GSP(09/10/2018)



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