

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

Second Appeal No.736 of 1999

Vembu @ Velammal

... Appellant / Plaintiff

Vs.

1.Marutha Muthu

2.Amirtham

3.Valliammal

4.Chinnammal (Deceased)

(R4 died - Memo filed seeking exemption to bring LRs of R4 is recorded as per order of this Court dated 08.12.2017 made in memo SR.11176/2017 dated 04/12/2017 in S.A.No.736 of 1999)

5.Kamatchiammal

6.Natesa Udaiyar

7.Rajagopal Udaiyar

8.Thangavel Padaiyachi

9.Malarkodi

10.Balakrishnan

11.Santhi

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed on 19.09.1997 in A.S.No.12/1993 by the learned Subordinate Judge of Ariyalur confirming the judgment and decree passed on 07.07.1992 in O.S.No.403/1990 by the learned District Munsif of Ariyalur.

For Appellant : Mr.R.Rajesh
for Mr.S.Balasubramaniam

For Respondents: Mr.K.S.Navin Balaji
for M/S.Sarvabhauman Associates
(for RR1,3 & 5)

J U D G E M E N T

The appellant/plaintiff has filed the second appeal as against the concurrent Judgment rendered by both the Courts below.

2.The case of the appellant/plaintiff is as follows:

(i) The appellant/plaintiff is the daughter of one Subraya Udaiyar. The first respondent/first defendant is the son-in-law of Subraya Udaiyar, respondents 2 to 4/defendants 2 to 4 are the daughters of Subraya Udaiyar and the 5th respondent/5th defendant is the wife of Subraya Udaiyar and the respondents 6 to 11/defendants 6 to 11 were the purchasers of the properties from defendants 1 and 2.

(ii) The appellant/plaintiff filed a suit for partition, claiming the 20 items of the suit schedule properties are ancestral properties, which were enjoyed by Subraya Udaiyar. The said Subraya Udaiyar executed a Settlement Deed, which was marked as Ex.B1, before the Lower Court settling the properties in favour of the Defendants 1 and 3.

(iii)As against the settlement deed, the appellant/plaintiff, claiming partition of the ancestral property, filed the suit for partition before the Lower Court. The Lower Court, after examining the witnesses and on a perusal of the entire records, allowed the suit in part and granted decree in respect of the suit schedule property in respect of item Nos.12 to 14, 17 to 19 and 20. Accordingly, the appellant/plaintiff is entitled for 1/5th share in the above said properties. However, the Lower Court rejected the claim in respect of item Nos.1 to 11, 15 and 16.

(iv)As against the order of Lower Court, the appellant/plaintiff has filed an appeal before the Lower Appellate Court. The Lower Appellate Court also confirmed the order passed by the Lower Court. As against the concurrent Judgments passed by both the Courts below the present second appeal is filed.

3.The respondents/defendants have filed written statement as follows:-

(i) Admittedly, the property was enjoyed by Subraya Udaiyar and he died on 14.10.1977. The said Subraya Udaiyar executed a Settlement Deed in favour of the defendants 1 and 3 and handed over the possession. Thereafter, the appellant/plaintiff, claimed 1/5th share in respect of the property, which was already settled in favour of the defendants 1 and 3.

(ii) After the settlement, defendants 1 and 3 have executed a Sale Deed in favour of defendants 6 to 11. The Sale Deed is binding on the other defendants and the plaintiff's allegation that the Settlement Deed was obtained by the respondents from Subraya Udaiyar, in an unsound mind, in favour of them, is not sustainable.

(iii) In fact, the fifth defendant, who was examined as DW1 in the above said suit, categorically admitted that the settlement deed was executed in favour of defendants 1 and 3. Hence, he prayed for the dismissal of the Second Appeal.

4.The Lower Court as well as the Lower Appellate Court considering the above facts in detail, granted a decree in favour of the plaintiff, in respect of the property which she is entitled. In respect of other properties, the Lower Court rejected the same, which was confirmed by the Lower Appellate Court. Since there is no substantial question of law involved in this case, the learned counsel for the respondents prayed for the dismissal of the Second Appeal.

5.This Court has not framed any substantial questions of law, when the case came up for admission. However, on 15.12.2017 this Court has framed the following substantial questions of law:

"1.Whether the reasonings of the Courts below that Ex.B.1 Settlement Deed executed by the father of the appellant in favour of the respondents 1 and 3 is binding on the appellant is legally sustainable in as much as Ex.B1 has not been properly proved.

2.Whether the reasonings of the Courts below that Exhibit B1 is binding on the appellant is legally sustainable in as much as they have failed to note that he executant of the Settlement Deed had only a share in the properties settled and not entitled to the entirety in the property settled."

6.One of the substantial question of law raised by the appellant herein is that whether the Ex.B1, Settlement Deed executed by the father of the plaintiff/appellant in favour of the respondents 1 and 3 not binding on the appellant and it is not legally sustainable.

7.The Settlement Deed, Ex.B1 is executed on 14.10.1977. The suit is filed after 13 years in the year 1990. In order to substantiate the Settlement Deed, the respondents 1 to 5 were examined. The wife of the Subraya Udaiyar was examined as DW1 and she has categorically admitted that the Settlement Deed was executed in favour of the Son-in-law and the daughter. However, no contra evidence is adduced. The appellant did not established that the Settlement Deed was obtained by the respondents from Subraya Udaiyar in coercion and utilizing the unsounded mind. In the absence of any materials, this Court is not inclined to interfere with the orders of both the Courts below.

8.In view of the same, the substantial question of law is answered against the appellant and re-appreciation of the

factual finding rendered by the Lower Appellate Court is not permissible.

9. Accordingly, the Second Appeal is dismissed and therefore, the order of the Lower Court and Lower Appellate Court is confirmed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sji/ah
To

1. The Subordinate Judge,
Ariyalur.

2. The District Munsif,
Ariyalur.

3. The Section Officer, (2-copies)
V.R. Section,
High Court, Madras.

+ 1 cc to M/s. Sarvabhauman Associates, SR.1039
+ 1 cc to MR. S. Balasubramanian, Advocate Sr.870

Second Appeal No.736 of 1999

CA (CO)
EU (09/03/2018)

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