

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.424 of 2018
and
C.M.P.No.11630 of 2018

Subbayal

...Appellant

Versus

1. K.Rangasamy
2. The District Collector,
Erode District.
3. The Tahsildhar,
Taluk Office,
Sathyamangalam,
Sathyamangalam Taluk,
Erode District.

...Respondents

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree dated 28.04.2017 made in A.S.No.38 of 2016 on the file of Subordinate Court, Sathyamangalam, confirming the judgment and decree dated 11.07.2016 made in O.S.No.167 of 2015 on the file of the District Munsif's Court Sathyamangalam.

For Appellant : Mr.M.Roshan Atiq

J U D G M E N T
सत्यमेव जयते

The above Second Appeal arises from a proceedings in O.S.No.167 of 2015 on the file of the District Munsif's Court, Sathyamangalam instituted by the first respondent/plaintiff for a declaration that he and the third defendant are the legal representatives of the deceased Kasiappa Gounder and for a mandatory injunction directing the defendants 1 & 2 to issue a legal heirship certificate to the plaintiff.

2. The facts in brief are as follows:

The third defendant is the appellant in the above Second Appeal. The plaintiff claims that he was the son of Kasiappa

Gounder through his second wife Valliammal. The third defendant was the daughter of the said Kasiappa Gounder through his first wife, Kaliammal. It is the case of the defendant that there are two Wills, one in favour of the plaintiff and the other in favour of the third defendant. Unfortunately, the Will in favour of the plaintiff was cancelled by the Kasiappa Gounder on the instigation of the third defendant. Ultimately, Kasiappa Gounder died on 31.08.2005 and the plaintiff had approached the second defendant to issue a legal heirship certificate wherein he came to know that the third defendant had obtained a legal heirship certificate concealing the second marriage of the deceased Kasiappa Gounder as well as the birth of the plaintiff. The plaintiff thereafter filed a petition before the Revenue Divisional Officer, Gobichettipalayam challenging the said legal heirship certificate and had obtained an order in his favour. This was challenged by the third defendant before the District Revenue Officer and the same is pending disposal. Considering the fact that the proceedings are pending before the District Revenue Officer, the second respondent had refused to grant the legal heirship certificate. Therefore, the plaintiff was constrained to file the suit for the reliefs stated above.

3. The third defendant had filed her written statement in which she would contend that the plaintiff had been declared as an illegitimate child of deceased Kasiappa Gounder in the suit O.S.No.812 of 1982. The deceased Kasiappa Gounder cancelled the Will dated 06.05.2002 which he had executed in favour of the plaintiff in the sound state of mind, the properties covered under the two Wills only belong to the third defendant and her father and the plaintiff was not entitled to any share in the joint family property as held in the previous proceedings in O.S.No.812 of 1982 which was ultimately taken up on Appeal before this Court in S.A.No.879 of 1993.

4. The Appeal before the District Revenue Officer is also pending and in these circumstances, the plaintiff's suit was not maintainable. The respondent had also pleaded the bar of the provisions of Order 2 Rule 2 of C.P.C. The trial Court which heard the suit decreed it as prayed for against which the third defendant had come up by way of an Appeal in A.S.No.38 of 2016 on the file of the Subordinate Court, Sathyamangalam. The Appellate Court had dismissed the Appeal and confirmed the judgment and decree passed by the learned District Munsif, Sathyamangalam in O.S.No.167 of 2015 dated 28.04.2017. Aggrieved by this concurrent judgment and decree, the appellant is before this Court.

5. Mr.M.Roshan Atiq, learned counsel appearing for appellant would vehemently argue that in paragraph No.5 of the plaint, he would contend that the plaintiff had circulated the

legal heirship certificate for mutating the revenue records which according to the appellant was a back door method of obtaining the partition without filing a suit for partition. This argument may not be correct since even when a joint patta is obtained as and when a party requires a specific portion of the property be allotted to him, he has to only file a suit for partition. Once the plaintiff has been held to be the son of late Kasiappa Gounder, legitimate or illegitimate he is entitled to be included in the legal heirship certificate as the legal representative of the deceased Kasiappa Gounder. The Courts below have only followed this dicta and no exception can be taken to this finding.

6. In the result, this Second Appeal is dismissed as there is no question of law much less a substantial question of law warranting the admission of the Appeal. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Sathyamangalam,
2. The District Munsif's Court,
Sathyamangalam.

+1 cc to Mr.M.Roshan Atiq, Advocate, S.R.No.86415

S.A.No.424 of 2018

PP(CO)
SSM(21/03/2019).

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