

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :31.10.2018

PRONOUNCED ON:09.11.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 402 of 2015

Periyakal ... Appellant/2nd Defendant

Vs.

1.Chinnana Gounder

2.Chellammal

[The Second respondent remained
exparte in the I Appellate Court
and no notice need to be served
on her] ... Respondents/Plaintiff, 1st defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.1 of 2007 dated 02.08.2013 on the file of the Subordinate Court, Bavani reversing the judgment and decree dated 31.10.2006 made in O.S.No.418 of 2005 on the file of the Principal District Munsif Court, Bavani.

For Appellant : Mr.K.Sukumaran

For RR1 : Mr.N.Manokaran

सस्यमेव अपते
J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 02.08.2013 passed in A.S.No.1 of 2007 on the file of the Subordinate Court, Bavani reversing the judgment and decree dated 31.10.2006 passed in O.S.No.418 of 2005 on the file of the Principal District Munsif Court, Bavani.

2.The second appeal has been admitted on the following substantial questions of law.

(a) Whether or not the 1st appellate court is correct in decreeing the suit for partition on the basis of the Will dated 09.08.1965 and the cause of action to file the suit for

partition arose in the year 1989 itself on the death of life estate holder Muniammal, when the suit hopelessly barred by limitation?

(b) Whether or not the I Appellate court is correct in decreeing the suit for partition when the sale deed dated 28.02.2000 in favour of this appellant has not been set aside by means of declaratory relief?

(c) Whether or not the I Appellate Court is correct in decreeing the suit for partition on the basis of the misinterpretation of the Will dated 09.08.1965?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Suffice to state that the plaintiff/first respondent has laid the suit for partition against the defendants. The plaintiff claimed half share in the suit properties based upon the Will dated 09.08.1965 executed by his paternal grandfather Muniappa Gounder. The certified copy of the abovesaid Will has been marked as Ex.A1. It is seen that Muniappa Gounder is paternal grandfather of the plaintiff. Plaintiff's father Sengoda Gounder is one of the sons of Muniappa Gounder. It is also noted that the first defendant Sellammal is the granddaughter of Muniappal Gounder, born to his daughter Muniammal. It is found that Muniappa Gounder had bequeathed the properties by way of Ex.A1 Will granting the life interest in favour of Muniammal and thereafter directed that the properties comprised in the Will should devolve upon his grandson and granddaughter namely the plaintiff and the first defendant. Thus, it is noted that by way of Ex.A1 Will, after the life time of Muniammal, the properties comprised therein would devolve upon the plaintiff and the first defendant. It is seen that Muniammal, the life estate holder had died in the year 1989. It is thus found that thereafter the properties comprised in Ex.A1 Will would devolve upon the plaintiff and the first defendant equally. Alleging that the first defendant without any authority had alienated the entire suit properties in favour of the second defendant by way of a sale deed dated 28.02.2000 and contending that inasmuch as the first defendant is not entitled to convey the entire suit properties in favour of the second defendant and as the first defendant is not the absolute owner of the properties comprised in the Will marked as Ex.A1 and that as the plaintiff is entitled to half share in the same, accordingly, it is stated that the plaintiff has been necessitated to lay the suit for partition.

5. The first defendant had not contested the plaintiff's suit and remained exparte.

6. It is only the second defendant, who had resisted the plaintiff's case by contending that inasmuch as, she had purchased the suit properties from the first defendant by way of a sale deed dated 28.02.2000 for a valid and valuable consideration and enjoying the same and that as the plaintiff is not having any right, title or interest in respect of the suit properties as per the Will Ex.A1, it is stated that the plaintiff is not entitled to obtain the relief of partition as prayed for.

7. On a perusal of the written pleas put forth by the second defendant, it is seen that the second defendant has not disputed the Will dated 09.08.1965 executed by Muniappa Gounder marked as Ex.A1. In fact, she has averred in the written statement that the suit properties devolved upon Muniammal till her life time as per the abovesaid Will. Furthermore, she has also averred that, it is only the first defendant, who has been the absolute owner of the suit properties as per the abovesaid Will. Therefore, it is seen that even the second defendant has not disputed the genuineness and the validity of Ex.A1 Will executed by Muniappa Gounder and on the other hand, asserted that her vendor namely the first defendant had derived title to the suit properties only by way of the abovesaid Will and accordingly, it is seen that the second defendant has claimed title to the suit properties only based upon the abovesaid Will as well as the alleged sale deed dated 28.02.2000 said to have been executed in her favour by the first defendant.

8. Accordingly, the parties went for trial based on the abovesaid pleas and in such view of the matter, when both the parties had accepted the genuineness and validity of the Will dated 09.08.1965 executed by Muniappa Gounder and on a perusal of the terms of the abovesaid Will marked as Ex.A1, when it is noted that Muniappa Gounder had bequeathed the suit properties to his daughter Muniammal for her life time enjoyment and also directed that on her demise, the properties comprised in the Will would devolve upon the plaintiff and the first defendant equally, accordingly, it is seen that, as rightly put forth by the plaintiff, based upon Ex.A1 Will, he would be entitled to obtain half share in the suit properties.

9. During the course of arguments in the Second Appeal, the counsel appearing for the second defendant contended that the Will dated 09.08.1965 has not been established by the plaintiff in the manner known to law by examining the attestors of the same or by any other mode as contemplated under law and in such view of the matter, according to him, the plaintiff's suit based upon the said Will cannot be sustained and in this connection he relied upon the decision reported in 2012 (4) CTC 639

[Valliammal and another Vs. Sokkammal] Countering the abovesaid contentions put forth, the plaintiff's counsel argued that inasmuch as the genuineness and validity of the Will dated 09.08.1965 is not an issue between the parties and on the other hand, both the parties are found to claim title to the suit properties only based upon the abovesaid Will, accordingly, it is contended that the Will having been admitted by the second defendant in toto, there is no need on the part of the plaintiff to establish the genuineness and validity of the same as contemplated under law and in this connection, he would rely upon the decisions reported in

2017 (6) SCC 778 [Poonnamma Jagadamma and others Vs. Narayanan Nair and others]

2010 (5) SCC 770 [Balathandayutham and another Vs. Ezhilarasan]

2015 (3) Law Weekly 7 [Selvasubramaniam Vs. Subburathinam]

10. As rightly put forth by the plaintiff's counsel, when the genuineness and validity of Ex.A1 Will executed by Muniappa Gounder is not an issue between the parties and both have admitted the said Will and also both claim title to the suit properties only based upon the said Will, in such view of the matter, considering the principles of law outlined in the decisions relied upon by the plaintiff's counsel as abovenoted, in my considered opinion, there is no need on the part of the plaintiff to establish the genuineness and validity of the Ex.A1 Will by examining the attesor or any other person associated with the Will as contemplated under law. Therefore, the argument put forth by the counsel appearing for the second defendant that the plaintiff has not established the genuineness and validity of the Will in question by examining the attestors or other persons associated with the said Will as such cannot be countenanced in any manner and accordingly, the same is rejected.

11. Even the Courts below had accepted the genuineness and validity of the Ex.A1 Will and on a reading of the terms of the said Will, noted that on the demise of Muniammal, the properties comprised in the Will land devolve upon the plaintiff and first defendant equally and thereby held that the plaintiff would be entitled to obtain half share in the suit properties.

12.The trial court had dismissed the plaintiff's suit on the footing that the plaintiff had failed to seek the relief of declaration that the sale deed dated 28.02.2000 is not valid and binding upon him as provided under law. However, the abovesaid reasoning of the trial court is found to be erroneous. When as per Ex.A1 Will, on the demise of Muniammal, the daughter of the testator, both the plaintiff and the first defendant would be entitled to obtain the properties bequeathed thereunder in equal

moieties and despite the same, the first defendant asserting that she is the absolute owner of the suit properties, had chosen to alienate the same in favour of the second defendant by way of the sale deed dated 28.02.2000 and when the first defendant would not be entitled to convey the entire suit properties to the second defendant contrary to the terms of the abovesaid Will and furthermore, when the plaintiff is not a party to the abovesaid sale transaction and the case of the plaintiff is that suppressing his valid title and interest in respect of the suit properties, the first defendant had conveyed the suit properties in entirety to the second defendant by way of a sale deed dated 28.02.2000 and that by way of the abovesaid sale transaction, his title, right and interest in respect of the suit properties would not in any manner get affected and the impugned sale deed is not binding upon him and also alleged that the abovesaid sale deed is only a sham and nominal document, in such view of the matter, as rightly put forth by the plaintiff's counsel, when admittedly as per the terms of the Will Ex.A1, the first defendant would not be entitled to convey the whole of the suit properties in favour of the second defendant by way of the sale deed dated 28.02.2000 and furthermore, when the plaintiff is not a party to the abovesaid sale transaction and accordingly, the abovesaid sale deed would not be binding upon him in any manner. In such view of the matter, it is seen that there is no need on the part of the plaintiff to seek the declaration that the abovesaid sale deed is null and void and not binding upon him and the above position of law could also be gathered from the decisions relied upon by the plaintiff's counsel reported in 2017 (3) Law Weekly 340 [Dhanalakshmi Ammal Vs. S.Rajendran and others] 2010 (12) SCC 112 [Suhrid Singh Alias Sardool Singh Vs. Randhir Singh and others]

In all, it is found that the trial court totally has erred in non suiting the plaintiff merely on the footing that he has failed to seek the relief of declaration that the sale transaction dated 28.02.2000 is null and void and not binding upon him. When as per law, there is no such requirement on the part of the plaintiff, for seeking partition of his share in the suit properties, it is found that the first appellate court had rightly set aside the judgment and decree of the trial court and accordingly granted the reliefs in favour of the plaintiff as prayed for.

13. In the light of the above discussions, when as per the terms of the Will, on the demise of Muniammal, the properties comprised in the Will would devolve upon the plaintiff and the first defendant equally and accordingly, when it is noted that the parties had been enjoying the properties jointly and only as the first defendant, without any entitlement, had chosen to convey the whole of the suit properties in favour of the second

defendant by way of the sale deed dated 28.02.2000, it is seen that accordingly the plaintiff had the necessary cause of action to lay the suit for partition and in such view of the matter, it is seen that the contention put forth by the second defendant's counsel that the suit laid by the plaintiff is barred by limitation, as such, cannot be countenanced. The first appellate court is correct in decreeing the suit for partition as there is no need on the part of the plaintiff for seeking the declaration that the sale deed dated 28.02.2000 executed by the first defendant in favour of the second defendant is null and void and not binding upon him and accordingly the first appellate court, on a proper construction of the terms of the Will dated 09.08.1965 rightly held that the plaintiff is entitled to claim half share in the suit properties as prayed for. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the second defendant.

14. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Sub Court, Bavani.
2. The Principal District Munsif,
Principal District Munsif Court,
Bavani.

Copy to

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

+1cc to Mr. N.Manokaran, Advocate, S.R.No. 76906
+1cc to Mr. K.Sukumaran, Advocate, S.R.No. 76902

S.A.No. 402 of 2015

BR(CO)
GN(29/01/2019)