

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2018

PRONOUNCED ON : 09.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.557 of 2015

Jayalakshmi

...

Appellant

Vs.

1.Marimuthu

2.Sellammal

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.04.2009 passed in A.S.No.127 of 2006 on the file of the Subordinate Judge, Kallakurichi, concurring findings the Judgment and Decree dated 21.06.2006 passed in O.S.No.32 of 2002 on the file of the 1st Additional District Munsif, Kallakurichi.

For Appellant : Mr.R.Kumaravel

For Respondents : Mr.A.G.Rajan

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 28.04.2009 passed in A.S.No.127 of 2006 on the file of the Subordinate Court, Kallakurichi, confirming the Judgment and Decree dated 21.06.2006 passed in O.S.No.32 of 2002 on the file of the 1st

Additional District Munsif Court, Kallakurichi.

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

"Whether the judgment and decree of the Courts below in dismissing the plaintiff's suit are based on the proper appreciation of the pleadings, evidence and materials placed on record by the respective parties."

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 appellant/plaintiff has laid the suit for the reliefs of declaration and permanent injunction in respect of the suit properties on the footing that she had acquired title to the suit properties based on the settlement deed dated 04.02.2000 said to have been executed in her favour by her mother Muthammal and accordingly, alleging that inasmuch as the defendants, without any authority, attempted to interfere with her possession and enjoyment of the suit property, she had been necessitated to lay the suit for appropriate reliefs.

5.The abovesaid case of the plaintiff had been resisted by the

defendants/respondents, disputing the truth and validity of the settlement deed dated 04.02.2000 said to have been executed by Muthammal in favour of the plaintiff in respect of the suit properties and it is stated that the abovesaid settlement deed is a fabricated document and that Muthammal had no entitlement to settle the suit properties in favour of the plaintiff and it is stated that the suit properties originally belonged to Pichamuthu Mooper, who had two wives viz., Muthammal and Annam and it is further stated that Muthammal had no issues and through Annam, he had three children viz., Jayalakshmi (Plaintiff), Sellammal and Kamalakannan and it is further stated that after the demise of Pichamuthu Mooper, Muthammal had relinquished her right in respect of the suit properties belonging to him on receipt of certain amount and accordingly, the properties left behind by Pichamuthu Mooper had been enjoyed by his son Kamalakannan and Kamalakannan had executed the sale deed in respect of the suit properties in favour of the second defendant Sellammal on 28.12.1981 and accordingly, it is only the second defendant, who had been in the possession and enjoyment of the suit properties by obtaining patta, paying kist etc., and it is also stated that on 25.11.1980 both Kamalakannan and Muthammal had executed a mortgage deed in respect of the suit properties in favour of one Chinnammal and the said mortgage had been settled only by Kamalakannan and thereafter, sold the suit properties in favour of the second defendant as abovestated and therefore, the plaintiff is not

entitled to obtain the reliefs as prayed for.

6.As rightly determined by the first appellate Court, inasmuch as the defendants had disputed the truth and validity of the settlement deed dated 04.02.2000 said to have been executed in favour of the plaintiff by Muthammal in respect of the suit properties, the burden is heavy upon the plaintiff to establish that the settlor Muthammal had the entitlement to settle the suit properties in her favour by way of the abovesaid settlement deed marked as Ex.A1. Materials placed on record go to show that Pichamuthu Mooper had two wives viz., Muthammal and Annam. It is further seen that Muthammal had no issues and through Annam, he had three children viz., Jayalakshmi, Chellammal and Kamalakannan. Further, it is also seen that from Ex.A5 mortgage deed dated 25.11.1980, both Muthammal and Kamalakannan had executed the mortgage deed in respect of the suit properties in favour of Chinnammal and therefore, when it is seen from the evidence adduced by the respective parties that the suit properties originally belonged to Pichamuthu Mooper, accordingly, it is found that both Muthammal, his first wife and Kamalakannan, the son born to him through his second wife Annam, had jointly executed the mortgage deed Ex.A5 in favour of Chinnammal. Therefore, when it is found that Muthammal had no exclusive entitlement to the suit properties and on the other hand, the materials placed on

record go to show that the suit properties belonged to Pichamuthu Mooper and accordingly, his children born through his second wife also would be entitled to the same in the light of Section 16 of the Hindu Marriage Act as found by the first appellate Court, the case of the plaintiff that she had obtained title to the suit properties exclusively based upon the settlement deed date 04.02.2000 executed by Muthammal, as such, cannot be readily countenanced. Accordingly, it is seen that at the most Muthammal would be entitled to only a share in the suit properties as one of the legal heirs of Pichamuthu Mooper and not entitled to claim absolute title in respect of the suit properties. As abovenoted, Pichamuthu Mooper had three children through his second wife Annam. Therefore, at the most, Muthammal would be entitled to only $\frac{1}{4}$ share in the properties left behind by Pichamuthu Mooper and in such view of the matter, she would not be entitled to settle the entire suit properties in favour of the plaintiff by way of Ex.A1 settlement deed.

7. Similarly, the case of the second defendant in particular that Kamalakannan S/o.Pichamuthu had sold the suit properties in her favour by way of the sale deed dated 28.12.1981 marked as Ex.B1 also cannot be validly accepted as it is found that even Kamalakannan would not be entitled to convey the entire properties in favour of the second defendant by way of Ex.B1 and in such view of the matter, it is found that the second defendant also would not be entitled to claim absolute title to the

suit properties on the strength of Ex.B1 sale deed. With reference to the same, though the defendants would claim that Muthammal had relinquished her share in respect of the suit properties, however, when there is no material placed on record to safely conclude that Muthammal had relinquished her share in respect of the suit properties left behind by Pichamuthu Mooper, accordingly, it is found that the sale transaction effected by Kamalakannan in favour of the second respondent in respect of the entire suit properties without the consent and approval of the other sharers cannot be accepted legally and in such view of the matter, it is seen that, as rightly determined by the first appellate Court, even the defendants would not be entitled to claim absolute title to the suit properties based on Ex.B1 sale deed.

8. In the light of the abovesaid determination of the first appellate Court, it is found that the plaintiff, at the most, would be entitled to claim the share of Muthammal and her individual share in the suit properties as one of the legal heirs of Pichamuthu Mooper. In such view of the matter, the first appellate Court had rightly held that the remedy available to the plaintiff is only to lay a suit for partition and on the other hand, the plaintiff having come forward with the suit seeking title to the entire suit properties based on Ex.A1 settlement deed and accordingly, when in the light of the abovesaid discussions, the document of title projected by the plaintiff marked as Ex.A1 and similarly, the document of title projected by

the defendants marked as Ex.B1 lacks validity and legal enforcement as above discussed, the first appellate Court is found to have rightly dismissed the plaintiff's suit confirming the judgement and decree of the trial Court.

9.In the light of the above discussions, it is seen that the Courts below had assessed the pleadings, evidence and materials placed on record by the respective parties in the right perspective, more particularly, the first appellate Court and in such view of the matter, the substantial question of law formulated in the second appeal is accordingly, answered against the plaintiff.

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

सत्यमेव जयते

09.11.2018

Index : Yes / No

Internet : Yes / No

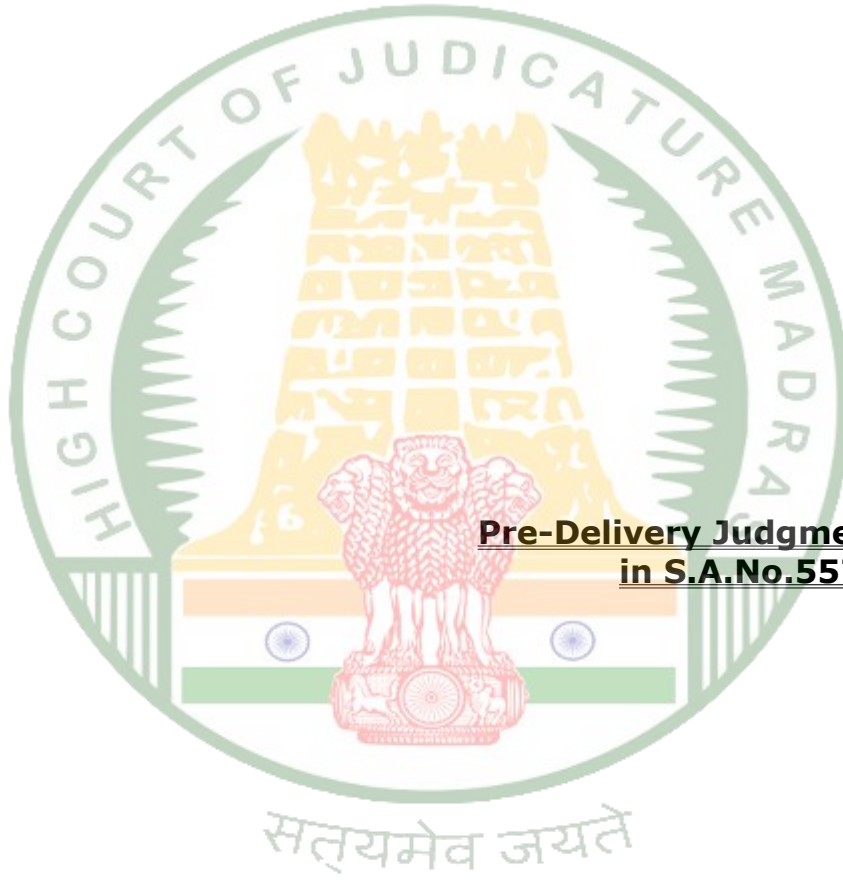
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To

- 1.The Subordinate Court, Kallakurichi.
- 2.The 1st Additional District Munsif, Kallakurichi.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.557 of 2015**

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