

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 12.07.2017

Judgment Pronounced on : 26.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.8 of 2013
and
C.M.P.No.9976 of 2018

1.Mani
2.Ramados
3.Sekar
4.Balu

... Appellants/Respondents
1 to 4/Plaintiffs

Vs.

1.Kumari ...1st Respondent/Appellant/3rd Defendant

2.The Junior Engineer,
(Operation and Maintenance)
Tamil Nadu Electricity Board,
Tindivanam.

3.The Assistant Engineer, (Town),
Tamil Nadu Electricity Board,
Tindivanam. ...2 & 3 Respondents/5 & 6 Respondents
/1 & 2 Defendants

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 21.02.2011 passed by the learned Additional Subordinate Judge, Tindivanam, in A.S.No.41 of 2009, reversing the Judgment and decree dated 18.09.2009 passed by the learned Principal District Munsif, Tindivanam, in O.S.No.445 of 2007.

For Appellants : Mr.R.Thiagarajan

For Respondents : Mr.N.Mala for R-1
Mr.V.Viswanathan for R2 and R3

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 21.02.2011 passed by the learned Additional Subordinate Judge, Tindivanam, in A.S.No.41 of 2009, reversing the Judgment and decree dated 18.09.2009 passed by the learned Principal District Munsif, Tindivanam, in O.S.No.445 of 2007.

2. Brief facts of the case is as follows:-

The suit property originally belonged to Ponnusamy Gounder, Thangam Ammal and their sons Raji Gounder, Arumuga Gounder and Vemba Gounder. The suit property was given to one Ranganayagi, who is the daughter of said Ponnusamy Gounder and Thangammal and sister of Raji Gounder, Arumuga Gounder and Vemba Gounder by means of settlement deed dated 26.12.1964. The said Ranganayagi was married to one Kuppa Gounder. But she has not lived with him. Hence, for the safety of Ranganayagi Ammal, the above said settlement deed was executed by her mother Thangam Ammal. The above said settlee has released in favour of her brothers. The above said three brothers maintained their sister Ranganayagi. The above said three brothers partitioned their property and other properties through O.S.No.799 of 1998. In the above said partition, each one allotted 1/3rd share. In the meanwhile, during August, 2007, the third defendant created a revenue records and attempted to give electricity connection. To that effect they have projected that Veerasamy Gounder is an adopted son of Kuppa Gounder. Hence, the plaintiffs objected to grant electricity connection to the third defendant and also sent notice. On receipt of the said notice, the defendants 1 and 2 have not taken any steps. On 25.10.2007, the men of the first defendant entered into the suit property to give electricity connection to the third defendant. Hence, the plaintiff came forward with the suit for bare injunction.

3.The case of the defendants is that it is not correct to state that Ranganaygi Ammal left her property to her brother Raju, Vemban and Arumugam as she was not having any legal heirs. As the said Ranganayagi Ammal released her right, the said brothers where in possession and enjoyment of the property and thereafter the suit for partition among the legal heirs and the suit was decreed is to be proved by the plaintiffs. The property was originally owned by Ranganayagi Ammal and after her son Veerasamy enjoyed the property and then his son Kuppan owned the property and the 4th defendant purchased the property from the said Kuppan. The patta was also stands in the name of the 4th defendant. On the basis of the sale deed and patta, Electricity connection was given in the name of the defendants. No cause of

action for the plaintiff to file the suit. The plaintiffs are not entitled to seek bare injunction to restrain the defendants 1 and 2 from giving electricity connection to the third defendant. Hence, the first and second defendants seeks for dismissal of the suit.

4.The 3rd defendant contended that the suit property originally belonged to Ranganayagi Ammal as per settlement deed dated 26.12.1964. The Ranganayagi Ammal leaved with her husband Kuppagounder and died in her matrimonial home only. It is not correct to say that Ranganayagi Ammal lived in her parents house. The father-in-law of the third defendant Veerasamy was adopted by Ranganayagi Ammal and her husband Kuppa Gounder. Ranganayagi Ammal was under the care and custody of said Veerasamy only. The suit property was owned and enjoyed by Veerasamy as the legal heirs of Kuppa Gounder. After the demise of Veerasamy, the 3rd defendant is enjoying the property. The property was absolutely belongs to third defendant. The plaintiffs have no title or interest in the suit property. The claim of the plaintiff is not correct. The suit is liable to be dismissed.

5.After contest, the trial Court decreed the suit as prayed for. Aggrieved upon that the third defendant preferred the first appeal before the first appellate Court. After contest, the first appellate Court allowed the appeal and setting aside the decree and judgment of the trial Court. Hence, the second appeal.

6.At the time of admission, this Court raised the following substantial question of law for consideration.

(1)Whether the lower appellate Court is right in reversing the decree of the trial Court without setting aside or reversing the finding of the trial Court that the first respondent/third defendant has not proved the adoption of Veerasamy?

(2)Whether the lower appellate Court has erroneously cast the burden of disproving the adoption alleged by the first respondent/third defendant?

7. Brief facts of the Civil Miscellaneous Petition:

This Civil Miscellaneous Petition has been filed to receive the Additional Documents as set out in the petition appended to this affidavit as Exhibits on behalf of the appellants in S.A.No.8 of 2013.

8.The petitioner filed this petition under Order 41 Rule 27 CPC and in support of his petition, he filed an affidavit and stated that their counsel sought for all the documents and records pertaining to the suit property for the purpose of conducting the second appeal. Then, after search, they have handed over the documents to the counsel at the lower Court. Due to oversight, they were not filed the same to the Court. Further, certain documents from the Government authorities were obtained by the petitioner after applying the same. The non filing of the above said documents neither wilful nor wanton. Hence, the petitioner came forward with this petition to receive the additional evidence.

9.The respondent objected this petition on the ground that the reason stated by the petitioners for non filing of the document in the Court's below or before this Court at the time of filing of the second appeal are untenable and against the provision of law laid down in Order 41 Rule 27 C.P.C. Further more, the petitioner has not stated any justifiable and reasonable reason for receipt of additional evidence in the second appellate stage that too after a lapse of more than four years from the date of filing of the second appeal. The petitioner seeks to file certain suit documents which is not permissible in law. Further, it is very clear that the motive behind the filing of additional documents at this belated stage is only to fill up the lacuna, which is impermissible as the same will cause prejudice to this respondent in the second appeal.

10.The point for consideration is that as to whether the petition is deserves to be allowed?

11.Perused the records and considered both side contentions. On perusal, it is clear that the petitioners have come forward with the petition under Order 41 Rule 27 C.P.C. to receive the petition mentioned documents as additional evidence. The only defence put forth by the respondent is that it is belated and delay on the part of the petitioner and only to fill up the lacuna, he has come forward with the petition. On the side of the petitioner, he has produced 14 xerox copies of documents, out of which, documents No.1 to 9 related to the year 1986-2007 and the documents No.10 to 14 are after suit. The above said documents related to the suit property. To prove their continuous possession, the petitioners have not put forth any original documents. Already, the petitioners have produced Ex.A1 to Ex.A3 documents before the trial Court Ex.A1 to Ex.A4.

12.The Division Bench of this Court in the ruling reported in 2012 (3) CTC 160 in VENKATASUBRAMANIYA CHETTIAR(DIED) AND TWO OTHERS Vs. PERUMAL CHETTIAR AND OTHERS, in which it is held that the additional documents are relevant for determination of issue arising between the parties then such additional evidence cannot be refused to be received. The Apex Court has also held in the ruling reported in 2010 (2) SCC 316 in SHYAM GOPAL BINDAL AND OTHERS Vs. LAND ACQUISITION OFFICER AND ANOTHER that additional evidence is admissible if consideration of the same was necessary by the Court for just decision of the case. As per the above said two consideration of additional evidence for the purpose of arriving a just decision is permissible. In this case, the issue applicable under Section 15(2) of the Hindu Succession Act is the point for consideration. Hence, in my considered opinion that additional evidence of xerox copies of 14 documents sought to be produced by the petitioner is not necessary to arrived at just conclusion. Hence, this petition does not deserves to be allowed and the same has to fail.

13.The learned counsel appearing for the appellants would submit that the first appellate Court reversed the findings of the trial Court on the ground that without prayer for seeking declaration, the suit for bare injunction is not maintainable. Further, the allegation with regard to community divorce as per that custom between Kuppa Gounder and Ranganayagi as well as the possession of the suit property is not proved by the plaintiffs. The above said grounds relied upon by the first appellate Court is not sufficient. The issue to be considered is whether on the death of Ranganayagi Ammal, the property was acquired by her by virtue of settlement deed dated 26.12.1964 executed by her mother will revert back to her brothers and sisters. The appellants contends that the trial Court correctly considered the issue and by applying the provisions of Section 15(2) of Hindu Succession Act granted the decree for partition. But, the first appellate Court reverse the same without any valid reason. The finding of the first appellate Court that the plaintiffs failed to prove the divorce between Ranganayagi Ammal and her husband Kuppa Gounder is not correct. The claim of the defendants that the third defendant's father-in-law Veerasamy was adopted by Kuppa Gounder and Ranganayagi Ammal is not proved. But the first appellate Court failed to consider the same properly. The conclusion of the first appellate Court that the suit for bare injunction is not maintainable and the same is not correct. The first appellate Court failed to interpret and applies Section 15(2) of the Hindu Succession Act properly. The learned counsel also pointed out that the suit property revert back to the plaintiffs and it was also divide between the plaintiffs in the earlier suit. Hence, the plaintiffs have come forward with the suit for bare injunction and there is no need

for them to seek declaration of title. The first appellate Court failed to consider these things and allowed the appeal. Hence, the same is sought to be set aside by entertaining the second appeal.

14. The learned counsel appearing for the respondents would submit that the first appellant Court came to the correct conclusion that when the defendant denied the title of the plaintiffs, the plaintiffs necessarily have to amend the plaint for declaration and without prayer for declaration mere asking for permanent injunction alone is not sufficient. Hence, the findings of the first appellate Court cannot be interfered with. Therefore, the appeal is sought to be dismissed.

15. I have heard the rival submissions and also perused the materials available on record.

16. On perusal, it is clear that the suit property originally belonged to Ponnusamy Gounder and Thangam ammal and their sons Raji Gounder, Arumuga Gounder and Vemba Gounder. The above said property was settled by the mother of the plaintiff, namely Thangam Ammal in favour of her daughter Ranganayagi on 26.12.1964. In the above settlement deed Ex.A4 itself, it has been specifically mentioned that for the past 15 years she was residing with her mother and for her livelihood, the suit property was settled in her favour. From the recitals of the settlement deed, it is clear that Ranganayagi was not living with her husband at the time of settlement. After the demise of Ranganayagi, the settlement property was divided between the plaintiffs. This is the specific case of the plaintiffs. On the other hand, the origin of the suit property was not disputed by the defendants. The defendants projected a new different version that the husband of Ranganayagi, namely, Kuppa Gounder already adopted one Veerasamy before the marriage of Ranganayagi. It was accepted by the Ranganayagi. Hence, the suit property does not belong to the Kuppa Gounder. The suit property was given to the Ranganayagi for her maintenance as well as safety and after her demise, her property reverted back to the plaintiffs. It was also proved through Exs.A1 and A-2. As per Section 15(2) of the Hindu Succession Act, it is contended that the property of female Hindu reverted back to the heirs of the father. Even though, the plaintiffs filed the suit for bare injunction, they have to prove their title to the suit property incidentally. Then, the burden shifted to the third defendant who claims rival title to the suit property. In such circumstances, mere Production of Ex.B2 sale deed alone is not sufficient to prove the defendants claim. As such, how he derived the title to the suit property and how his predecessor derived the title to the property is to be proved by the third defendant. Since the third defendant failed to prove Ex.B2 to

Ex.B5, the trial Court negatived the claim of the defendants and upheld the claim of the plaintiffs. However, the first appellate Court reversed the findings of the trial Court on the ground that without seeking for declaratory relief, the suit for bare injunction is not maintainable.

17.The 3rd defendant put forth his case on the ground that Kuppa Gounder adopted Veerasamy with the consent of Renganayagi, but D.W.2 in his evidence stated that before the marriage of Renganayagi, Veerasamy was adopted by Kuppa Gounder. On the side of the 3rd defendant no documents were produced for proving the adoption, but the first appellate Court relied on Ex.B4 and Ex.B5 to arrive at the conclusion that Veerasamy was adopted by Kuppa Gounder. At the time of marriage of Renganayagi, the suit property was not given to Renganayagi. The suit property was settled to Renganayagi only through Ex.A4 dated 26.12.1964 while she was living in her paternal home and not in the husband's house. To substantiate Ex.A4 settlement deed, Ex.A3 issued in the name of plaintiffs after the partition. Ex.A3 dated 04.11.2004. The 3rd defendant obtained patta on 10.08.2006 i.e., Ex.B1. How, Ex.B1 was issued without cancellation of Ex.A3, plaintiff was not examining the defendant. Therefore, mere production of Ex.B4 and Ex.B5 alone is not sufficient to prove the adoption. If the defendant has produced any documents executed prior to Ex.A4 with regard to adoption or any sale deed or any documents connected with Kuppa Gounder, the defence of the third defendant is acceptable, but, he has produced only Ex.B4 and Ex.B5 related to the year 1970. Hence, the same to be considered and sufficient to prove adoption. The suit property was settled in favour of Renganayagi through Ex.A4 while she was living with her parents. If really she was living with her husband in the year 1964, there is no need or necessity to execute Ex.A4. In any angle the plaintiffs are having better title than the 3rd defendant through Ex.A4 and Ex.A5.

18.In this case, the plaintiffs have proved their title to the suit property legally. In such circumstances, the prayer for declaration is not necessary. The first appellate Court assigned reason for allowing the appeal then the plaintiff failed to prove the factum of dissolution of marriage between Ranganayagi and Kuppa Gounder. It is unwarranted. Ranganayagi derived title to the suit property by way of settlement deed Ex.A4. In Ex.A4 itself the reason for the settlement and the status of the Ranganayagi is specifically narrated. In such circumstances, since the defendant is making rival claim against the true owner, they have to prove the title to the suit property. However, the first appellate Court without considering Section 15(2) of the Hindu Succession Act, misconstrued and wrongly shifted the burden on the plaintiffs.

Further the reason adduced by the first appellate Court to interfere with the findings of the Trial Court and to allow the first appeal is not sustainable. Trial Court finding well reasoned on proper appreciation of facts and evidence. Hence, the findings of the first appellate Court is liable to be set aside as the same unwarranted and not in accordance with law. The substantial question of law raised by the appellant is sustainable . Hence, this Court comes to the conclusion that the findings of the first appellate Court is unsustainable and the same is to be set aside and the appeal is to be entertained. The point is answered accordingly.

19. In the result, the second appeal is allowed. No costs. The Judgment and Decree dated 21.02.2011 in A.S.No.41 of 2009 passed by the learned Additional Subordinate Judge, Tindivanam is set aside and the judgment and decree dated 18.09.2009 in O.S.No.445 of 2008 passed by the learned Principal District Munsif, Tindivanam is restored and CMP.No.9976 of 2018 is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
Tindivanam.

2.The Principal District Munsif,
Tindivanam.

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

+2cc to Mr.R.Thiagarajan, Advocate Sr.50648
+1cc to M/S.N.Mala, Advocate Sr.50104

S.A.No.8 of 2013 and
C.M.P.No.9976 of 2017

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