

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2018

PRONOUNCED ON : 18.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.693 of 2004

Karuppanasamy

...

Appellant

Vs.

1. Saraswathy

2. Subbulakshmi

3. Bhulakshmi

4. Sivakami

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 09.10.2001 passed in A.S.No.40 of 2000 on the file of the Subordinate Court, Bhavani, confirming the Judgment and Decree dated 12.04.2000 passed in O.S.No.475 of 1996 on the file of the Additional District Munsif Court, Bhavani.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mrs.P.Saritha
Nos.1 & 2 for Mr.S.Krishnamoorthy

For Respondent : No appearance
Nos.3 & 4 set exparte
(vide Order dated 11.04.2018)

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 09.10.2001 passed in A.S.No.40 of 2000 on the file of the Subordinate Court, Bhavani, confirming the Judgment and Decree dated 12.04.2000 passed in O.S.No.475 of 1996 on the file of the Additional District Munsif Court, Bhavani.

2. The second appeal has been admitted and the following substantial questions of law were formulated for consideration:

" (i) Whether the Courts below are justified in holding that vested interest of the suit properties devolved on Nagasubramanian on the death of the testator overlooking the intention of the person creating the bequest as gathered from the words used in the Will Ex.A1?

(ii) Whether the Courts below have interpreted the recitals in the Will Ex.A1 in a proper perspective before arriving a finding regarding the time of vesting with the legatees?"

3. Considering the nature of the issue involved in the matter lying in a narrow compass, it is unnecessary to deal with the facts of the case in detail.

4. Suffice to state that the suit has been laid by the respondents 1 and 2 for partition and permanent injunction.

5. It is not in dispute that the suit property originally belonged to Sengoda Gounder and that, he had bequeathed the suit property by way of a Will dated 30.11.1964 marked as Ex.A1. On a perusal of Ex.A1, it is

found that by way of the same, the suit property has come to be bequeathed to Nagasubramaniam and the first defendant and further, it is also found that by way of the said Will, life enjoyment has been given to Nallammal to enjoy the property bequeathed till her life time and thereafter, the recitals of the Will postulate that the property bequeathed should be equally taken by Nagasubramaniam and the first defendant absolutely. It is found that the testator Sengoda Gounder had died in 1974 and it is further seen that Nagasubramaniam, one of the legatees had died on 05.04.1986 and it is also seen that Muthusamy Gounder, father of Nagasubramaniam died on 31.08.1995 and also it is found that the life estate holder Nallammal had died on 01.08.1995 and it is found that the legal heir of Nagasubramaniam, on his death, being his father Muthusamy Gounder, who also having died on 31.08.1995, it is seen that the respondents 1 & 2 (plaintiffs) as well as the respondents 3 & 4, who are the daughters of Muthusamy Gounder, accordingly, basing on the terms of the Will, the respondents 1 & 2 laid a claim of share in the suit property that they are entitled to obtain their respective shares in the suit property by way of the same and prayed for allotting the shares, to which, they are entitled to and levied the suit for appropriate reliefs.

6. The appellant did not contest the abovesaid main facts and all that, he would raise by way of the defence is that as per the terms of the Will, as the intention of Sengoda Gounder was to bequeath the suit

property absolutely only in favour of his male grandchildren and accordingly, bequeathed the same in favour of Nagasubramaniam and the first defendant, thus, according to the appellant, inasmuch as Nagasubramaniam had died on 05.04.1986 prior to the death of the life estate holder i.e. Nallammal, accordingly, it is his contention that he being the only male survivor as such entitled to take the suit property absolutely on the death of the life estate holder and therefore, he has raised the defence that the plaintiffs are not entitled to lay any claim of share in the suit property on the footing that they are the legal heirs of the deceased Nagasubramaniam.

7. It is thus found that the only issue involved in this matter is the interpretation of the Will Ex.A1, as to how the property bequeathed thereunder would devolve. On a perusal of the terms of Ex.A1 Will, it is found that the testator had bequeathed the suit property absolutely in favour of his male grandchildren i.e. Nagasubramaniam and the first defendant and accordingly, he has recited that the suit property should be taken by them, equally, absolutely, on the death of the life estate holder and accordingly, it is found that as per the terms of the Will, considering the provisions of law adumbrated under Section 119 of the Indian Succession Act r/w Section 19 of the Transfer of Property Act, it is found that though the legatees had not been given the right to receive the suit property immediately as per the terms of the Will and on the

other hand, it is found that their right to receive the property bequeathed has been postponed by giving a life estate enjoyment in favour of Nallammal, as per the abovesaid provisions of law, it is found that considering the nature of the recitals contained in the Will, the right of the legatees to receive the properties absolutely shall take effect or become vested on the legatees, on the testator's death and it is further seen that in case of the death of legatee before that time, the legal representatives would be entitled to acquire the interest and it is thus found that the legacy is said to be vested in interest on the legatees from the testator's death and accordingly, it is found that Sengoda Gounder having died in 1974, on his death, the interest bequeathed on his grandchildren under the said Will become vested and only postponed, till the life time of Nallammal and when as per the recitals of the Will, Nagasubramaniam and the first defendant are entitled to acquire the interest in the suit property absolutely in equal moieties, accordingly, it is found that as per the terms of the Will, on the death of Nagasubramaniam, his legal representatives would be entitled to acquire the interest of Nagasubramaniam in the suit property and when it is found that the respondents 1 & 2 i.e. the plaintiffs and the respondents 3 & 4, who are the other daughters of Muthusamy Gounder, accordingly, it is found that they are entitled to acquire their respective shares in the property, to which, Nagasubramaniam would be entitled to acquire as per the terms of the Will.

8. The contention has been put forth by the appellant's counsel that as per section 125 of the Indian Succession Act, the appellant being the sole male survivor, as per the intention of the testator, on the death of Nagasubramaniam, he is entitled to obtain the entire legacy bequeathed under Ex.A1 Will. In this Connection, the illustrations – ii appended Section 125 of the Indian Succession Act is relied upon. However, as rightly put forth, Section 125 of the Indian Succession Act, has no application to the facts of the present case. When the recitals of the Will Ex.A1 are seen and understood in the proper manner, it is found that the intention of the testator is to bequeath the suit property equally on his male grandchildren absolutely and accordingly, it is found that they had been directed to take the property bequeathed in equal moieties absolutely and enjoy the same on the death of Nallammal and in such view of the matter, when there is no recital contained in the Will that the property should be taken by the surviving male legatee on the death of Nagasubramaniam and the intention of the testator is also not to given the legacy in entirety to the surviving male legatee, on the other hand, his intention is only that the two grand male children, should take them absolutely in equal moieties, accordingly, on the death of the testator, the property being vested on both the legatees absolutely as per Section 119 of the Indian Succession Act r/w 19 of the Transfer of Property Act and though Nagasubramaniam had died before the right to receive the legacy had accrued, his legal representatives would be entitled to succeed

to the interest and accordingly, it is found that the respondents 1 to 4 being the legal representatives, as rightly determined by the Courts below, the respondents 1 & 2 are entitled to obtain their due shares as determined by them in the suit property.

9. In the light of the above discussions, the Courts below are justified in holding that the vested interest in the suit property devolved on the legal heirs of Nagasubramaniam, on his death and accordingly, they had determined the above point in favour of the respondents 1 & 2, considering the recitals contained in the Will in the proper perspective, both factually as well as legally as above discussed and accordingly, no interference is called for in the interpretation of the recitals of the Will Ex.A1 by the Courts below and thereby, upholding the reliefs sought for by the respondents 1 & 2 in the suit. The substantial questions of law formulated in this second appeal are, accordingly, answered in favour of the respondents 1 & 2 and against the appellant.

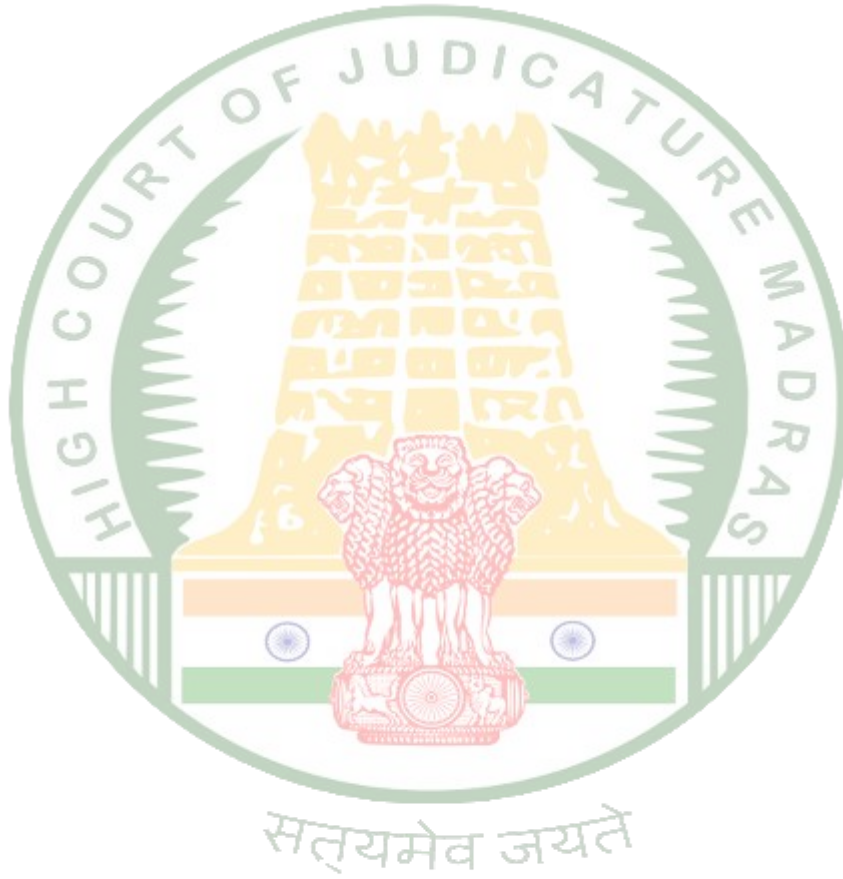
In fine, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

18.04.2018

To

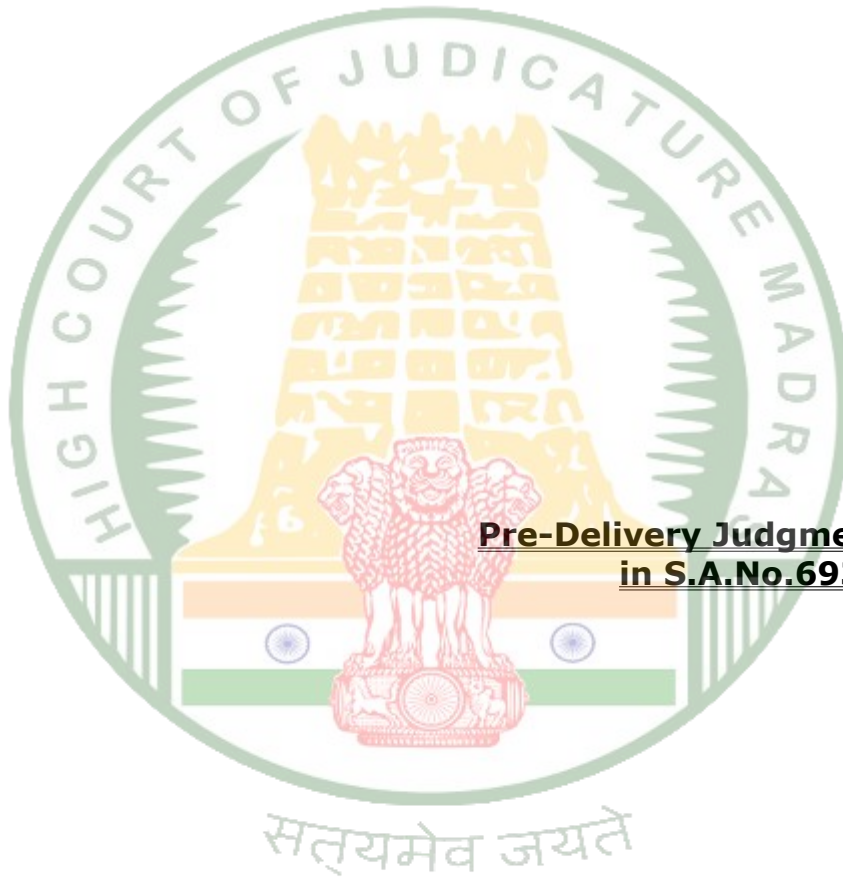
- 1.The Subordinate Court, Bhavani.
- 2.The Additional District Munsif Court, Bhavani.
- 3.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY

T.RAVINDRAN, J.

sms



**Pre-Delivery Judgment made
in S.A.No.693 of 2004**

WEB COPY

18.04.2018