

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

A.S.No.72 of 2013
and
M.P.No.1 of 2013

Kamalam ... Appellant/ Plaintiff

Vs

1.Vijaya
2.Chitra
3.P.Ramalingam
4.P.Karthikeyan
5.C.Anand ... Respondents/ Defendants

Appeal preferred under Section 96 r/w Order 41 Rules 1 and 2 C.P.C. against the judgment and decree dated 15.11.2012 made in O.S.No.136 of 2011 on the file of the Principal District Judge, Namakkal.

For Appellant ... Mr.V.Nicholas

For Respondents ... Mr.C.Jagadish

सत्यमेव जयते

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The plaintiff in the suit filed for partition and separate possession is the appellant. On contest, the suit was dismissed and hence the present appeal.

2.The suit property admittedly belonged to the mother of the appellant by name Kaliasammal. Kaliasammal had two children viz., the appellant and one Periasamy (since deceased). Respondents 1 and 2 are the legal representatives of the deceased Periasamy being wife and daughter. Respondents 3 to 5 are the subsequent purchasers. The suit property consists of 6.30 acres in Survey No.277. This survey number has been subdivided into 277/1 and 277/2. The deceased Kaliasammal executed a registered Will under Ex.B6 dated 17.05.2002. Thereafter, under Ex.B5, power of attorney was executed in favour of one Vijayalakshmi by both the appellant and her brother. Ex.B5 makes a reference to Ex.B6 Will, which also deals with only six cents of land in Survey No.277/2. Thus Ex.B5 acknowledges two factors. One is the execution of Ex.B6 to the knowledge of the appellant and the subject matter of Ex.B5 being 6.24 acres as against the subject matter of Ex.B6 as 0.06 cents. The appellant did not make a mention about Ex.B2 in the plaint. She filed a suit as if the entire property in Survey No.277 owned by the deceased mother Kaliasammal was not divided and she died intestate.

3.Before the Trial Court, the appellant examined P.Ws.1 to 3 and marked Exs.A1 to A7. On behalf of the defendants/respondents, D.Ws.1 to 5 have been examined and Exs.B1 to B9 were marked. Ex.B7 is the sale deed executed by defendants 4 and 5. Ex.B8 is the sale deed executed by the third defendant in favour of the fourth defendant. Ex.B9 is the patta issued in favour of the third defendant. Similarly, Ex.B4 is the sale deed in favour of the third defendant and Ex.B1 is the power of attorney executed in favour of one Vijayalakshmi.

4.Before the Trial Court, the following issues were framed:

(i)Whether property belongs to Kaliasammal?

(ii)Whether Kaliasammal executed Will of the properties in favour of grandson Sivakumar by Ex.B6?

5.The Trial Court has dismissed the suit by placing reliance upon Exs.B6 and B5. Thus a finding has been given that defendants 3 to 5 are the bonafide purchasers for valuable consideration. Challenging the same, the present appeal has been filed.

6.The issue to be decided is as to whether the judgment and decree rendered by the Court below relying upon Exs.B6 and B5 is liable to be reversed or not.

6.Learned counsel appearing for the appellant submitted that the Court below has not considered the evidence of P.Ws.1 to 3 coupled with Exs.A1 to A7. The Will has not been proved in the manner known to law. Therefore, the judgment and decree rendered by the Court below require interference.

7.We do not find any merit in this appeal. The Trial Court has clearly held that the suit is liable to be dismissed in view of Exs.B1, B5 and B7. Ex.B1 has also been signed by the appellant. Exs.B1 and B5 make reference to Ex.B6. Initially, both the documents viz., Exs.B1 and B5 are not in dispute. Thereafter, the other documents viz., Exs.B7 and B8 came into existence. Similarly, Ex.B4 was executed in favour of the third defendant on 20.01.2012. Therefore, it is the case where the appellant has suppressed the material fact and filed the suit as if the deceased Kalliammal died intestate. Documents have been proved to the satisfaction of the Court including Ex.B6. Further, the sale deeds have been executed or not is not put to challenge. It appears from the records that defendants 3 to 5 are the bonafide purchasers for valuable consideration. They are also in possession as evidenced by the documents.

8.In such view of the mater, we do not find any merit in this appeal suit, warranting interference. Accordingly, the appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge, Namakkal.

Copy to:

The Section Officer,

VR Section, High Court, Madras

+1cc to Mr.V.Nicholas , Advocate SR.No. 25047

A.S.No.72 of 2013

A.SK(17/06/2019)