

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2019

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.1810 of 2000

Pachaiyammal ...Appellant /Respondent/Plaintiff

Vs

1. Subramania Gounder ... 1st Respondent/Appellant No.1/
1st Defendant

2. Kuppu ... 2nd Respondent/Appellant No.2/
3rd Defendant

3. Lakshmi ... 3rd Respondents/2nd Respondent/
2nd Defendant

Prayer: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree made in A.S.No.130 of 1999 dated 29.06.2000 on the file of the Principal District Judge, Thiruvannamalai, reversing the judgment and decree made in O.S.No.991 of 1995 dated 15.03.1999 on the file of the Principal District Munsif, Thiruvannamalai.

For Appellant : Mr.V.S.Sekar

For R1 : M/s.Mythilisuresh

For M/s.Sarvabhauman Associates

For RR2 and 3 : Exparte

JUDGMENT

The plaintiff in O.S.No.991 of 1985, on the file of the Principal District Munsif Court, Thiruvannamalai is the appellant herein. The suit in O.S.No.991 of 1985 had been filed by the plaintiff Pachaiyammal, against three defendants Subramania Gounder, Kuppu and Lakshmi. The suit has been filed for a declaration that the plaintiff is entitled to absolute title in respect of one of the suit properties and for a further declaration for enjoyment of the other one of the suit properties and, for recovery of possession from the first defendant.

2. The suit property bearing Punja Survey No.6/3 measuring 1.73 acres and Punja Survey No.6/1 measuring 2.02 acres at Somaspadi village, Thiruvannamalai District, originally belonged to Chinnaasamy Gounder. The father in law of the plaintiff, Veema Gounder @ Rama Gounder had purchased the suit properties on 01.04.1943, from Chinnaasamy Gounder and his sons, in the name of his wife Pachaiyammal, which according to the plaintiff, is a benami transaction. Veema Gounder @ Rama Gounder had a son Kuppasamy Gounder and daughter Alamelu Ammal. The said Pachaiyammal is said to have died in the year 1957. Since, she died in the year 1957, it was stated that Kuppasamy Gounder had one half share and his father Veema Gounder @ Rama Gounder had the other half share. Veema Gounder @ Rama Gounder died in the year 1966, leaving behind his son and his daughter as his legal representatives.

3. Thereafter, Kuppasamy Gounder became entitled to $\frac{3}{4}$ share. Alamelu Ammal became entitled in to $\frac{1}{4}$ share. The plaintiff claims to have married Kuppasamy Gounder. They had two daughters and one son namely Lakshmi Ammal, Koppu and Vellaikaran. The son died and the plaintiff claimed his share also. However, it is stated that Alamelu Ammal had transacted the property to the detriment to the plaintiff and consequently, the suit had been filed for declaration of title as stated above.

4. This suit came up for consideration before the Principal District Munsif Court, Thiruvannamalai. By judgment and decree dated 15.03.1999, an alternate relief was granted to the plaintiff to enjoy one half share of the property during her life time and for recovery of possession with respect to the other half share.

5. Thereafter, A.S.No.130 of 1999 was filed by the defendants. This suit came up for consideration on 29.06.2000, before the Principal District Judge, Thiruvannamalai. The Principal District Judge, held that the plaintiff had failed to prove the possession and allowed the appeal suit by dismissing the O.S.No.991 of 1985. The plaintiff has now filed the Second Appeal. The appeal has not been admitted.

6. The learned Counsel for the appellant pleaded that the mother in law of the plaintiff died in the year 1957 and consequently, the property should have been divided among the legal representatives of the deceased Pachaiyammal, but that however the daughter had sold the property, without the consent of the contesting parties.

7. The learned I Appellate Judge had very clearly found on facts that the mother in law died in the year 1957. It was

stated that Kuppusamy Gounder had settled the property in favour of the plaintiff and defendants 2 and 3 on 30.12.1974 by Ex.A3. This is, according to the learned Principal District Judge was not a valid settlement deed. It was stated that Alamelu Ammal was the real owner of the suit property and Kuppusamy Gounder was not the real owner. The doubt has been interpreted only as a Will and not as a settlement deed. It was specifically found that Ex.A3 is not a true document. That being a finding on fact, it would be inappropriate for this court to interfere with the said finding of fact. No question of law arises for consideration.

8. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssi/dua

To

- 1.The Principal District Judge,
Thiruvannamalai.
- 2.The Principal District Munsif,
Thiruvannamalai.
- 3.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No. 8287

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CNR(CO)
GN(19/03/2019)