

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.08.2019
CORAM:
THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN
S.A.Nos.92 & 93 of 2000

S.A.No.92 of 2000

1. Muthupallavan
2. Saroja

... Appellants/ Appellants
Defendants 1 & 2

Vs.

1. Rathinammal (Deceased)
2. Mayavan
3. Mani
4. Mahalakshmi
5. M.Rajesh
6. Thenmozhi
7. Raja

... Respondents/Respondents/
Plaintiff

[Respondents 2 to 7 brought on record as legal representatives of the deceased sole respondent vide order of Court dated 16.03.2018 made in C.M.P.Nos.2002 to 2004 of 2018 in S.A.No.92 of 2000]

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree passed in A.S.No.250 of 1998, dated 13.04.1999, on the file of learned I Additional District Judge cum Chief Judicial Magistrate, Erode, confirming the Judgment and Decree passed in O.S.No.638 of 1996 dated 23.10.1998 on the file of Sub Court, Bhavani.

S.A.No.93 of 2000

1. Muthupallavan
2. Saroja

... Appellants/ Appellants
Defendants 1 & 2

Vs.

1. Rathinammal (Deceased)
2. Sivalingam
3. Muthusamy,
S/o.Periyathambi
4. Muthusamy,
S/o.Erusa Gounder @ Periyannan
5. Mayavan
6. Mani

WEB COPY

7. Mahalakshmi
8. M.Rajesh
9. Thenmozhi
10. Raja

... Respondents/Respondents/
Plaintiff 1 to 4

[Respondents 5 to 10 brought on record as legal representatives of the deceased R1 vide order of Court dated 16.03.2018 made in C.M.P.Nos.2005 to 2007 of 2018 in S.A.No.93 of 2000]

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 13.04.1999 and made in A.S.No.249 of 1998 on the file of learned First Additional District Judge cum Chief Judicial Magistrate, Erode, confirming the Judgment and Decree passed in O.S.No.354 of 1996, dated 23.10.1998, on the file of Sub Court, Bhavani .

For Appellants
in both appeals : Mr.D.Selvaraju

For Respondents
in both appeals : No appearance

C O M M O N J U D G M E N T

The appellants in S.A.No.93 of 2000 are the defendants in O.S.No.354 of 1996, which was filed by the respondents herein for declaration of their title to the suit property and for injunction. After the trial, the suit was decreed and the appeal filed by the defendants in A.S.No.249 of 1998 was dismissed and hence, the S.A.No.93 of 2000.

2 The first respondent herein filed a suit alleging that the schedule property is originally purchased by her grandfather in the name of her father Narayanasamy and her paternal uncle Kannusamy (Younger brother of Narayanasamy), when they are minors. During the minority of Narayanasamy and Kannusamy, their mother gifted the suit schedule property to her daughter, who is Rathinammal, and she is in possession and enjoyment of the same and after attaining the majority neither Narayanasamy nor the Kannusamy have challenged the Gift Deed executed by their mother in favour of their sister.

3 While so, the first defendant in the suit, who is the son of Narayanasamy, is challenging her title and trying to interfere with her possession. Hence, she filed a suit in O.S.No.638 of 1996 and since in the written statement, title of the plaintiff was challenged, it appears another separate suit in O.S.No.354 of 1996 was filed for declaration of her title. It

appears from the records more particularly the documentary evidence Ex.A.1, dated 04.05.1948 that there was a Gift Deed executed by the mother of Rathinammal, in her favour. The same was challenged by the said Narayanasamy and Kannusamy after attaining their majority. However, the Gift Deed was held to be valid and accordingly, the suits were decreed. Aggrieved against the judgment and decree passed in those suits, the defeated first defendant along with second defendant has preferred A.S.No.250 of 1998 and A.S.No.249 of 1998 before the First Additional District Court cum Chief Judicial Magistrate, Erode and the same was dismissed and hence, the Second Appeal. The above second appeals were admitted on the following substantial questions of law:

i) Whether the courts below are right in ignoring the Panchayat Muchilica (partition) and confer title on the plaintiff, while the plaintiff herself is a party of it?

ii) Whether the courts below are right in holding that the gift deed dated 04.05.1948 is in substance, while the plaintiff herself had not acted on it and ignored it by participating in the latter partition by Panchayat Mutchilica?

iii) Whether the courts below are right in upholding the gift deed dated 04.05.1948, while the property and it was belonging to the then minors i.e. father of the first defendant brother?

iv) Whether the courts below are right in holding that the partition by Panchayat Mutchilica is void, as it is a deed between parties who have not the existing right?

v) Whether the courts below are right in decreeing the entire suit property while the alleged gift deed is only for an extent of 3.86 acres?

vi) Whether the courts below are right in holding that the plaintiff had perfected the title by adverse possession also?

4 The learned counsel for the appellants contended that in view of the Panchayat Muchilika, Ex.B.1 coupled with Ex.B.2 and Ex.B.9, the trial Court ought to have held that the settlement deed was not acted upon and ought not to have decreed the suit. After going through Exs.B.1, B.2 and B.9, this Court is of the considered view that Ex.A.1 gift deed executed by the mother of the plaintiff holds good. However, it is seen that the

extent covered under Ex.A1 gift deed is only to the extent of 3.80 cents, while the total extent of suit property is 4.06 cents.

5 My attention was drawn to the discussion by the lower Appellate Court, wherein, the difference between the extent of land covered under Ex.A.1 gift deed and the total extent in the suit schedule of the property of which 20 cents was not covered under Ex.A.1 settlement deed was not properly dealt with. The fifth substantial question of law is to that effect. Taking into consideration that the extent of land covered under Ex.A.1 and the extent of suit property varies, the learned counsel for the appellants is directed to address the substantial question of law No.5.

6 The learned counsel for the appellants herein/defendants would contend that even as per the Ex.A.1/ Gift Deed, 20 cents of land was not covered under Ex.A1/Settlement Deed and even assuming that the plaintiff has title, it can be only on the 20 cents of land, which was not covered under A1 land to the extent of 3.80 cents and not to the total extent of Acre A 4.06 cents.

7 After going through the said document, taking note of the factual position as enlightened by the learned counsel appearing for the appellants, this Court feels force in the said contention. Though the respondent was served and there names are printed in the cause list, it appears that the learned counsel who earlier filed memo of appearance had withdrawn it and hence, the name of the respondent has been printed in the cause list.

8 After perusing the impugned judgment passed in O.S.Nos.638, 354 of 1996 and in A.S.Nos. 250, 249 of 1998 and also perusing Ex.A.1, this Court finds that the substantial question of law No. 5(five) is to be answered in affirmative in favour of the appellants. All other substantial questions of law does not arise for consideration and hence, the substantial question of law No.5 is answered in affirmative in favour of the appellants. Consequently, both the appeals are allowed only to the limited extent in respect of 20 cents, which are not covered under Ex.A1/Settlement Deed and the plaintiffs are entitled and hence, the judgment and decree passed by the both the Courts below shall stands modified only to the limited extent 3.80 cents and not to the extent of 4.06 cents. With this view, these Second Appeals are allowed.

9 In the result,

i) S.A.No.92 of 2000 is allowed in part and the judgment and decree granted in O.S.No.638 of 1996 as confirmed in A.S.No.250 of 1998 shall stand modified and the injunction shall be only in respect of the acre 3.86 cents. No costs.

ii) S.A.No.93 of 2000 is allowed in part, the judgment and decree granted in O.S.No.354 of 1996 declaring the title of the respondents herein/plaintiffs is hereby modified to a limited extent of acre 3.86 cents land as confirmed in A.S.No. 249 of 1998. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

dua

To

1.The First Additional District Judge cum
Chief Judicial Magistrate,
Erode.

2. The Sub Judge, Bhavani.

3.The Section Officer,
V.R. Section, High Court, Madras.

+1CC Mr.D.Selvaraju, Advocate, Sr.No.66648.

S.A.Nos.92 & 93 of 2000

NMI (CO)

CSRR: 12/02/2020

सत्यमेव जयते

WEB COPY