

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 31.01.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1272 of 2001
and CMP.NO.13311/2011

- 1.Selvarasu
- 2.Kothandapani
- 3.Ezhumalai
- 4.Vaikundan

.... Appellants/Plaintiffs

Vs

- 1.Govindammal
- 2.Balakrishnan @ Senguni @ Shanmugam
- 3.Minor Ravichandran
- 4.Minor Kamala Kanna
- 5.Perumal
- 6.Krishnan
- 7.Moorthy
- 8.Kennu Gounder
- 9.Ramasamy
- 10.Mayakrishnan
- 11.Venu
- 12.Veerasamy
- 13.Parvathy
- 14.Vennila
- 15.Prakash
- 16.Rajalakshmi

.... Respondents

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the II Additional District Judge, Pondicherry in A.S.No.107 of 1980 dated 27.10.1999 confirming the judgment and decree of the Principal District Munsif, Pondicherry in O.S.No.350 of 1978 dated 22.04.1980.

For Appellants 1 to 4 : Mrs.V.Srimathi

For RR1 to 4 : P.V.Jayakumari

R8, R5, R9, R12 : Died

For R6,R7,R10,R11,R13
and RR13-R16 : No appearance

JUDGEMENT

The plaintiffs in O.S.No.350 of 1978 on the file of the Principal District Munsif, Pondicherry, are the appellants herein.

2. O.S.No.350 of 1978 had been filed for declaration of exclusive title of five items of suit property. This suit and another suit filed by the defendants in O.S.No.379 of 1978, came up for consideration before the Principal District Munsif, Pondicherry. By common judgment dated 22.04.1980, O.S.No.350 of 1978 was dismissed and O.S.No.379 of 1978 was decreed. Thereafter, the matter reached the High Court and S.A.No.525 of 1987 and S.A.No.233 of 1988 were filed. By common judgment dated 31.03.1999, S.A.No.525 of 1987 filed against O.S.No.379 of 1978 was dismissed. However, it was made clear that the appellants can claim partition if their claim that they are the legitimate heirs of Gopala Counder was upheld. S.A.No.233 of 1988 was allowed and remanded back to the Lower Appellate Court on the following terms:

1.The legitimacy of the appellants herein as the legal heirs of Gopala Counder to be decided.

2.If the above issue is found in favour of the appellants reliefs in O.S.No.350 of 1978 have to be moulded accordingly granted only partial relief of declaration of title to undivided share and to the management of the property till the property is divided by metes and bounds.

3.The appellate court is directed to dispose of the appeal within three months after the date of receipt of a copy of this judgment along with the connected records.

3.A.S.No.107 of 1980 then came up for consideration before the learned II Additional District Court, Pondicherry. By judgment dated 27.10.1999, it was specifically found that the first respondent Govindammalle was the legally wedded wife of Gopala Counder. Challenging that finding in the judgment, the present Second Appeal had been filed by the plaintiffs. Since the second appeal had not yet been admitted and only notice was directed, learned counsel had entered appearance on behalf of the respondent 1-4.

4. O.S.No.350 of 1978 was filed by the plaintiffs in the Principal District Munsif Court, Pondicherry, for a declaration that they are the exclusive and absolute owners of the suit property and for permanent injunction

restraining the defendants from interfering with their possession. It was their case that the suit properties originally belonged to Kuppusamy Counder. He left behind two sons Dharmalinga Counder and Gopala Counder. It was claimed that first defendant Govindammalle was the concubine of the Gopala Counder. Previously, Gopala Counder had lived with Rasambal and Deivanayagi. It was stated that the defendants 2, 3 and 4 were born to the first defendant through Govindammalle. However, it was denied that they were entitled to a share in the joint Hindu family, since their legitimacy was questioned. It was specifically stated that there was no legal marriage between the first defendant Govindammalle and Gopala Counder. It was therefore stated that the defendants were not entitled for any right in the suit property. It was also claimed that they were also not in possession. However, the defendants claiming right over the suit property had sold two items of the ancestral properties to the defendants 5-9 on 21.11.1977 by two separate sale deeds. It is under these circumstances, that the plaintiffs had filed the suit seeking declaration of title and injunction.

5.The first defendant in her written statement claimed that she was the legitimate wife of Gopala Counder. It was stated that the plaintiffs have themselves accepted her legitimacy as their paternal uncle's wife. It was stated that the marriage of Indrani was also celebrated only with the help of the defendants 2-4 with Gopala Counder. It was stated that the plaintiffs were estopped from stating that she was not a legally married wife.

6.This suit was tried along with another suit O.S.No.379 of 1978 in which Govindammalle and her children were the plaintiffs.

7.By judgment dated 22.04.1980, O.S.No.350 of 1978 was dismissed and O.S.No.379 of 1978 was decreed.

8.As stated above, the matter reached the High Court in S.A.No.525 of 1987 and S.A.No.233 of 1988. By judgment dated 31.03.1999, S.A.No.525 of 1987 was dismissed. However, the appellants were given the liberty to claim partition if they were declared to be the legitimate heirs of Gopala Counder. To determine the legitimacy in S.A.No.233 of 1998 was remanded back. It was specifically directed as follows:

1.The legitimacy of the appellants herein as the legal heirs of Gopala Counder to be decided.

2.If the above issue is found in favour of the appellants reliefs in O.S.No.350 of 1978 have to be moulded accordingly granted only partial relief of declaration of title to undivided share and to the management of the property till the property is divided by metes and bounds.

3.The appellate court is directed

to dispose of the appeal within three months after the date of receipt of a copy of this judgment along with the connected records.

9.The matter was then taken up in A.S.No.107 of 1980 by the II Additional District Court, Pondicherry. On the issue of legitimacy of the Govindammalle as wife of Gopala Counder, it was specifically found that she married him in Thai 1952. It was also held that the marriage can also be proved by long cohabitation. It was stated that there was proof that Govindammalle was living with Gopala Counder as his wife and had given birth to the other defendants 2-4. Consequently, a specific finding was given that she was the legitimate wife of Gopala Counder. Even with respect to the birth of defendants 2-4, it was specifically found that Ex.B6, the Birth Certificate of Balakrishnan @ Senguni @ Shanmugam which had been registered under French Code, the details of the parents and also the name of the person who gave inform about the birth had been clearly given and the name of Gopala Counder was mentioned in it. Similarly, the other Exs.B7, B10 also proved the legitimacy of defendants 2-4.

8.It view of the specific finding by the First Appellate Court, I hold that it would not be proper to re-agitate an issue decided on fact. No question of law arises in the Second Appeal. Consequently, the relief sought in O.S.No.350 of 1978 is moulded and a partial relief of declaration of title to undivided share and to manage the property till the property is divided by metes and bounds alone is granted. As stated the defendants can file a suit for partition and the parties can workout the division by metes and bounds in that judicial proceedings.

9.With the above observations, I hold that since no substantial question of law arises, the Second Appeal is rejected, no costs. Connected Miscellaneous Petition is Closed.

सत्यमेव जयते Sd/-

Assistant Registrar(CS vi)

//True Copy//

Smv

Sub Assistant Registrar

To

- 1.The II Additional District Court, Pondicherry.
- 2.The Principal District Munsif, Pondicherry.
- 3.The Section Officer, VR Section,
Madras High Court.

+lcc to Mr.P.c.Hari Kumar , Advocate SR.No. 9059

S.A.No.1272 of 2001

A.SK(13/05/2019)