

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.01.2019

Judgment Pronounced on : 01.02.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.206 of 2008
and MP.No.1 of 2008

Thirthagiri ... Appellant / 6th Appellant

Vs

1.Chinnathambi Gounder

2.Siva

3.Elumalai

.. Respondents 1 to 3/ Respondents 1 to 3

4.Angammal

5.Parvathy

6.Uthirambal

7.Lakshmi

... Respondents 4 to 7/ Appellants 2 to 5

Prayer :- Second Appeal filed under Section 100 of CPC, to set aside the decree and judgment dated 03.10.2007 in A.S.No.57/1995 on the file of Principal Subordinate Court, Thiruvannamalai, confirming the decree and judgment dated 11.08.1995 in O.S.No.1570/1981 on the file of District Munsif, Thiruvannamalai.

For Appellant : Mr.R.Rajarajan

For Respondents : Mr.T.R.Rajaraman [for R1]

Mr.H.Md.Ismail for R2 to 5, 7 (No Appearance)

R6 - No Appearance

JUDGMENT

The suit in O.S.No.1570 of 1981 was laid before the District Munsif, Thiruvannamalai, for declaration of title over the suit property and for consequential injunction. Both the suit and first appeal came to be dismissed. Parties would be referred to by their rank before the trial Court. The appellant is a pendente lite purchaser from the plaintiff. Any reference to the plaintiff will refer to the appellant.

1.2. The suit property in the plaint is described as two schedule of properties viz., Item No.1 and Item No.2. The appeal is confined to item 1, shown to have an extent of

5.51 acres out of a larger extent measuring 7.41 acres in Survey No.57 of Thondamanur Village in Chengam Taluk, Thiruvannamalai District.

1.3. The plaintiff was a certain Mannankatti Ammal. During the pendency of the suit, she had sold the suit property to Thirthagiri, the present appellant. The suit came to be dismissed by the trial Court on 11.08.1995. Challenging the same, the plaintiff had preferred A.S.No.57 of 1995 on file of the Sub Court, Thiruvannamalai, and on 31.07.1996, this appeal came to be allowed. Challenging the same, the first defendant preferred S.A.No.1413 of 1998 before this Court and this Court Vide its judgment dated 20.04.2001, remanded the matter back to the first Appellate Court for considering certain aspects indicated therein. Post remand, the first Appellate Court dismissed the appeal on 03.10.2007. Aggrieved by the same, the pendente lite transferee of the plaintiff has preferred this second appeal.

4. The substantial part of the pleadings are without any controversy and they may be stated :

- A certain Kesava Gounder owned about 7.41 acres in Survey No.57 of Thondamanur Village in Chengam Taluk, Thiruvannamalai District. Sometime in 1958, he died. Kesava Gounder had a brother Venkatraman and a sister Chinnammal. The defendants in their written statement would allege that both Venkatraman and Chinnammal had pre-deceased Kesava Gounder.
- Venkatraman had four children of who the plaintiff Mannankatti Ammal was one. Chinnammal had two sons, Duraisamy and Navappan. Plaintiff had married Navappan. Turning to Duraisamy, the first defendant Chinthamani is his only son. Besides, Duraisamy had another son Kuppusamy and three daughters, of who one was married to the second defendant.
- The dispute is presently within the Chinnammal's branch, between Navappan's widow and Duraisamy's son and son-in-law. While in normal circumstances, when Kesava Gounder died, succession opened to his estate, and as he had no issues himself, his normal course his estate would devolve on the respective children of both Venkatraman and Chinnammal as Class II heirs under the Hindu Succession Act, 1956. However, the plaintiff claimed that she had orally purchased the entire 7.41 acres in S.No:57 from Kesava Gounder.

5. Plaintiff's case:

- As referred to in the last sentence of the previous

paragraph the plaintiff claim title to the entire 7.41 acres based on an oral sale. She has been enjoying the entire property and has been issued patta. While so, a certain Muniyan attempted to interfere with plaintiff's possession which forced the plaintiff to institute O.S.1398 of 1973 against Muniyan and this suit came to be decreed exparte. The copy of the judgement and the decree are available on record as A-4 and A-3 respectively.

- Subsequently, on 11-07-1974, the plaintiff had sold 2.0 acres to one Varalakshmi and later on 27-10-1976 she purchased 10 cents from the same Varalakshmi. And, Varalakshmi Ammal sold the remaining 1.90 acres to the first defendant's wife VEDIAMMAL. Subsequently, VEDIAMMAL attempted to interfere with plaintiff's title and possession of the remaining property and the plaintiff had filed O.S.1308 of 1978 for declaration of title and for injunction. This came to be decreed. The copy of the judgement is Ext.A-5.

Presently the defendant claim title and possession over the suit property and hence the suit is laid for declaration her title and possession.

6. Defendants' case:

The Oral sale which the plaintiff alleges to support her title for the entire 7.41 acres is denied. On Kesava Gounder's demise, this property devolved on all his collateral heirs, which included the children of Duraisamy Gounder and also the sisters of the plaintiff. Patta was actually granted in favour of all. Consequently, the plaintiff has only a fractional share in the suit property. So far as the suits O.S.1390 of 1976 and O.S.1308 of 1978 are concerned, these defendants are not parties to the those suits, and the decree passed therein would not bind them. The defendants are in continuous possession and enjoyment of the suit property.

7. As earlier indicated, the trial Court disbelieved the plaintiff's theory of oral sale and dismissed the suit. Challenging the same, the defendants preferred A.S.No.57/1995.

8. For appreciating the reasoning of the trial Court, it now requires to be stated that after sale of 1.90 acres by the plaintiff in favour of Varalakshmi Ammal and Varalakshmi Ammal's subsequent sale of the said property in favour first defendant's wife VEDIAMMAL, there arose a dispute of title between Mannankatti Ammal and VEDIAMMAL, which led to the filing of O.S.No.1308/78. In this suit, Mannankatti Ammal

had relied on her current assertion of oral sale from Kesava Gounder and this has been upheld in that suit. Secondly, inasmuch as Vediammal herself claims title from the purchaser of Mannankatti Ammal, she had no right to challenge Mannankatti Ammal's title.

9. In its judgment dated 31.7.1996 in A.S.No.57 of 95, the first Appellate Court relied heavily on Exts.A4 and A5 and allowed the appeal. Aggrieved by the same, the first defendant approached this Court in S.A.No.1413 of 1998, and this Court while remanding the matter back to the first Appellate Court, has directed the first Appellate Court to consider how Ext.A-5 impacts the plaintiff's cause of action and if it would operate as estoppel in the present case. The first Appellate Court in the second instance had held against the plaintiff and consequently, dismissed the suit. In the meantime, the plaintiff had sold the item 1 to the present appellant, she has come forward with the present appeal.

10. At the time of admission following substantial questions of law are framed:

- a) Whether the first Appellate Court is correct in holding that the suit property is enjoyed by both the plaintiff and the first defendant by way of construing an insignificant recital which was torn away from the context of the document Ext.A.1?
- b) Is not the Appellate Court grossly erred by holding that the suit O.S.No.1390 of 1973 is collusive on the basis of no evidence to support the allegation of the defendant?
- c) Whether the first Appellate Court is correct in analysing and considering the earlier finding of the predecessor and exceeding the scope of the remand ordered by the High Court by its order dated 20.4.2001 in S.A.No.1413 of 1998?

11.1 The learned counsel for the appellant/pendente lite transferee submitted, so far as Exts.A4 and A5 are concerned, the plaintiff has already established her title to the entire 7.41 acres based on the oral sale. This is recognised when the same came to be upheld by the Court in O.S.No.1390 of 73 and O.S.1308 of 1978. Necessarily, this binds the first defendant, who is after all the husband of the defendant in Ext.A5 suit in (O.S.No.1308/78).

11.2 It is not in dispute that Kesava Gounder owned 7.41 acres of land, of which plaint Item No.1 is a part, and it is also not in dispute that the plaintiff had sold the western of 1.90 acres thereof. Admittedly, Kesava Gounder

died issued less and going by the facts stated in the written statement, both Sennammal and Venkatraman, both of who are Kesava Gounder's siblings, had pre-deceased him. In this scenario, only those heirs who are qualified to succeed as collateral heirs of Kesava Gounder can succeed to his estate. Mannankatti Ammal is one of the four daughters of Venkatraman. So far as Chinnammal's heirs go, she had two sons viz., Duraisamy Gounder and Navappa Gounder. The first defendant claim under Duraisamy Gounder. But, when examined himself as D.W.1, he has deposed in his cross-examination that his father Duraisamy Gounder had pre-deceased Kesava Gounder. As per Section 8 of the Hindu Succession Act, if there exists no heirs in Class-I, then the properties of a male Hindu will devolve to those heirs in Class-II of the Schedule. If there be no heirs as per both Class-I & II available, then the property of the deceased male Hindu would go to his agnates. As per Section 9 of the Hindu Succession Act, heirs in Class-I, would exclude every entry in Class-II. Going by this provision, on Kesava Gounder's demise, those who qualify to succeed his estate are the four daughters of Venkatraman and Chinnammal's son Navappan. A predeceased nephew is excluded by those nephews or nieces who are alive when the succession opened. Since even according to the first defendant, his father Duraisamy Gounder had pre-deceased Kesava Gounder, he would be excluded by those in item 4 of Class-II. Therefore, there is no right available to the defendants to resist the title of the plaintiff.

12. Per contra, the learned counsel for the defendants/respondents would argue that the foundation for plaintiff's suit is her allegation that she has purchased Item No.1 of the property under a oral sale from Kesava Gounder. When it is not proved, then plaintiff's title cannot be declared. So far as Exts.A4 and A5 are concerned, the first defendant is not a party to those litigations and therefore, the decrees passed in them cannot bind the defendants herein. The fact that the first defendant is the husband of the defendant in Ext.A5 suit is of no consequence as their respective status in law vis-a-vis the right to property is entirely different, separate and independent, and at the end of the day, if oral sale goes, the plaintiff will have only a fractional share, and it needs to be worked out in a suit for partition.

13. Responding to the aforesaid contention, the counsel for the appellant would now argue that the alleged right to partition, if at all any, it inhere only among the heirs of Kesava Gounder, admittedly one of the sharer is her own husband Navappan. That aspect of the matter is internal to their branch and if the present defendants do not have any right over the suit property, they cannot resist the plaintiff's title.

14. This Court is not wholly impressed by the submissions of the counsel for the appellant. When Kesava gounder died, even according to the defendants his brother Venkatraman and his siter Chinnammal had died. This would imply his estate would devolve only on their respective children as Class II heirs. The order of succession under Sec.9 is that the heirs in the earlier entry excludes those in subsequent entries. Rule of succession among collaterals are based on proximity of their relationship to a deceased male Hindu. Accordingly, when Kesava gounder died, he had the children of his brother Venkatraman (of who the plaintiff is one), one son of his sister Chinnammal (the plaintiff's husband). As per Entry (IV) of Class two only brother's and sister's sons and daughters are heirs. They are preferred over the next distant heirs and necessarily they exclude the grand children of a brother or a sister. To state it differently, they are nephews and nieces of Kesava gounder, and are preferred over his grand nephews and grand nieces. Accordingly, the first defendant does not have any right in item 1 of the suit property. And, except his claim of fractional title to the suit property through succession to Kesava Gounder's estate, he does not project any independent source of title to him.

15. Turning to Ext.A-4 and A-5 judgments, they do not bind the defendants, since neither of them is a party to the those cases. It may be that the first defendant's wife VEDIAMMAL was a defendant in Ext.A-5 suit, but that is not adequate in law to bind her husband. Oral sale has to be proved independent of these judgments, but the evidence on record is inadequate to prove it. Most of the other records are revenue records, and no amount of such records are adequate to prove exclusive title to the property in the absence of other heirs who might have obtained a share but for the oral sale. It may be that the plaintiff might not have faced any obstruction to her claim of exclusive title from other three heirs, still in their absence plaintiff's right cannot be declared.

16. If the theory of oral sale is kept aside, turning to the title of the plaintiff, including the plaintiff (who claims as a daughter of Venkatraman) and her husband (who claims a share as a son of Chinnammal), there are totally five sharers to Kesava Gounder's estate. Plaintiff and her husband would jointly take 2/5 sharers in the item 1 property. But this issue is left open.

17. Turning to the reliefs, the court cannot declare the exclusive title of the plaintiff chiefly because other heirs of Venkatraman are not before the court to vouch plaintiff's allegations of oral sale. This will enure to the present appellant now, she being the purchaser of the suit property

from the plaintiff. However, it does not mean that she is not without any title either, as at any rate she would be entitled to a fractional share in the suit property. And the defendant who challenges her title is found to have no title in law to challenge it, or interfere with plaintiff's possession.

18. As a general rule, Court will not grant any injunction where the main relief of declaration is denied. As already stated appellant is not one without any title at all. And, with or without absolute title in her, even on the strength of fractional share is entitled to defend possession of the entire property from one without any title to the property. She represents the entire estate and is entitled to defend possession against whole world except the true owners, should there be any.

19. In conclusion, this appeal is partially allowed, the decree in A.S.No.57/1995 on the file of Principal Subordinate Court, Thiruvannamalai, confirming the decree and judgment dated 11.08.1996 in O.S.No.1570/1981 on the file of District Munsif, Thiruvannamalai, is hereby set aside, and defendants/respondents are hereby injuncted from interfering with plaintiff's (appellant's) peaceful possession of the suit property in any manner whatsoever. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

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

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