

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2019

Pronounced on : 14.08.2019

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.671 of 2008

1.Viruthambal

2.Thangavel Chetty

... Appellants/Defendants/
Defendants

Vs.

1.Pavunu (a) Pavunammal (Deceased)... Ist Respondent/Appellant/
First Plaintiff

2.Krishnammal ... 2nd Respondent/3rd Defendant/
2nd Plaintiff

3.Babu

4.Somasundaram

(RR3 and RR4 brought on record as legal
representatives of the deceased 1st Respondent
vide order of Court dated 26.02.2019 made in
C.M.P.No.9748 of 2018 in S.A.No.671/2008)

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of
Civil Procedure against the judgment and decree dated 02.01.2008
in A.S.No.51 of 2007 on the file of the Principal Sub-Court,
Thiruvannamalai, reversing the decree and judgment dated
15.06.2007 in O.S.No.64 of 2002 on the file of Additional
District Munsiff, Chengam.

For Appellants : Mr.R.Rajaram

For Respondents : Mr.V.Prakash Babu [R3]

R1 - Died

R2 & R4 - No Appearance

JUDGMENT

The plaintiffs, who lost the suit for partition before the trial
court, but were benefited by a reversal decree by the First
Appellate Court. This has brought the defendants before this
court with their second appeal.

2.1 The suit property is described as an agricultural piece of property having an extent of 66 cents. The admitted case on rival side is that the property originally belonged to a certain Chennammal. She had two daughters Unnamalai and Muthammal, and one son Govindachetty. While so, Govindachetty predeceased Muthammal, leaving a young widow, Alamelu Ammal. On 21.11.1931, Chennammal executed a Settlement Deed Ext.B1 in favour of Alamelu Ammal. The Settlement Deed conferred only a life estate on Alamelu Ammal. While so, under Ext.B2 Sale Deed dated 25.01.1971, Alamelu Ammal sold the suit property to a certain Andi and Venkatachalam. Their heirs subsequently sold the property to the 2nd defendant under Exts.B4 and Ext.B6.

2.2 Turning to Chennammal's daughter, her daughter Muthammal died issueless. Unnamalai had left behind three daughters of who the plaintiffs 1 and 2 are two of her daughters. The other daughter is arrayed as 1st defendant and she was married to the 2nd defendant, who, as earlier mentioned, has purchased the suit property under Exts.B4 and B6. Since, Alamelu Ammal had only a limited life estate in the suit property under Ext.B-1 settlement deed, any alienation made by her would co-terminate with her death. And the plaintiffs being the heirs of Unnamalai along with the first defendant, they are entitled to 2/3 share in the suit property and have laid the suit for the partition of their share.

3. The suit was resisted by the 2nd defendant on the ground that the estate in the hands of Alamelu Ammal was her absolute property, and the sale deed that followed validly vested the title in her transferees.

4. The trial court considered that Alamelu Ammal's right is enlarged into an absolute estate and upheld the validity of Ext.B-2 sale deed in favour of the 2nd defendant. This did not find any favour with the First Appellate Court.

5. This appeal was admitted on the following substantial questions of law:

1. Whether the interpretation given to Sec.14 of Hindu Succession Act and the construction of Ex.A1, settlement deed by the first appellate court is correct in law.

2. Whether the learned judge is correct in law in not framing any issue of adverse possession in the presence of pleadings and evidence.

The arguments:

6.1 The learned counsel for the appellants would argue:

While Chennammal had no legal obligation to maintain her minor

daughter-in-law, Alamelu Ammal, yet the fact remains that she had executed Ext.B1, dated 21-07-1931, essentially with the intention that Alamelu Ammal, who was a young widow of tender age, a victim of child-marriage then prevalent, and one who had not even attained puberty then, be maintained out of the suit property. She therefore, disclosed here intent/wish that Alameluammal's might be under the care of the latter's brother Thangavelu Chettiyar to protect her till Alameluammal attained the age of majority. Long thereafter, on 25.01.1971, Alameluammal executed Ext.B2 sale deed to certain Andi and Venkatachalam from whom the 2nd defendant had purchased a property under Exts.B4 and B6, both dated 20.05.1982 and 20.03.1984. Alamelu Ammal died on 26.05.2001.

6.2 The moral obligation which Chennammal had felt for Alamelu Ammal had enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act. While it may be true that Ext.B1, on the face of it, has granted only limited life estate, still, inasmuch as it was given for the purpose of Alamelu Ammal's maintenance, the right so conferred on her had enlarged into an absolute estate under Sec.14(1) of the Act. In other words, the document must be construed as one under Section 14(1) and not under 14(2) Of the Hindu Succession Act. He placed reliance on the following judgments: V.Tulasamma and Others vs. Sesha Reddy (Dead) by L.Rs., [(1977) 3 SCC 99], Laxmappa and Others vs. Balawa Kom Tirkappa Chavdi (SMT) [(1996) 5 SCC 458] and T.A.Lakshmi Narasamba vs. T.Sundaramma and Others [AIR 1981 AP 88] (FB)], and also a passage from Mulla Hindu Law to highlight that classical Hindu Law even respected the right of a concubine for maintenance.

7. Per contra, the learned counsel for the respondents would argue that the defendants in the written statement has not placed reliance on the enlargement of title under Section 14(1) of the Hindu Succession Act, but on the contrary have pleaded in paragraph 8 of their written statement, on an oral relinquishment by the plaintiffs of their interest in the suit property on 1st of Thai, 1945, that falls about 14.01.1945. This would mean that they already admitted the title of the plaintiff's mother Unnamalai and her sister Muthammal even in 1945. He added that under Ext.A6, dated 25.03.2004, the 2nd defendant's son has purchased the 2nd plaintiff's share in the property.

The defendants are bound by their pleadings on facts and cannot attempt to alter it with a new case.

Of Discussion & Decision:

8. The facts themselves are straight forward:

- A certain Chennammal had two daughters and a son. Her son

predeceased her, leaving behind him surviving his widow Alamelu ammal, a minor and was yet to attain puberty then. (An obvious victim of the pernicious child-marriage, but that's not the issue). It is in these circumstances, Chennammal had executed Ext.B-1, dated in 1931, where under she had granted the suit property to her widowed daughter-in-law Alamelu Ammal for life, and thereafter to her two daughters. Alamelu died in 1984, whereupon in terms of Ext.B-1, the suit property should come into the hands of Chennammal's two daughters Unnamalai and Muthammal. But Muthammal had died by then without an issue, and her share devolved on Unnamalai. And, Unnamalai herself died and the dispute is chiefly between her three daughters - the plaintiffs, and the first defendant.

- According to the plaintiffs, each of the three daughters of Unnamalai have 1/3 share in the suit property. The cause for the dispute arises in this way: Sometime in 1971, Alamelu, sold the suit property under Ext.B-2 sale deed to a stranger, whose heirs in turn sold it to second defendant, who is the husband of the first defendant. If this sale deed is valid, then, first defendant's husband would become entitled to the entire suit property, if not, she must rest contented with her 1/3 share. From the stand point of the defendants/appellants, the contest is chiefly for 2/3 share in the suit property.

9.1 The battle lines are drawn with the least complications: While the defendants/appellants insisted on an enlargement, or maturing of the felt moral obligation of a Hindu mother-in-law to maintain her widowed daughter-in-law into a legal duty, as to transform a limited life estate granted under Ext.B-1 into an absolute right of the widow under Sec.14(1) of the Hindu Succession Act, the plaintiffs have focused more on the fundamentals - the pleadings of the defendants.

9.2 Valiant are the efforts of the defendants, but they appear to have been wasted in a lost cause. Their case that moral obligation enlarging into a legal right requires serious consideration, but their pleadings do not support the case that they advance now. They have pleaded that sometime in 1945 both the daughters of Chennammal (Unnamalai and Muthammal) had orally relinquished their right in the suit property to Alameluammal, and they never chose to plead even alternatively anything founded on sec.14(1) of the Hindu succession Act. This would mean that in a suit laid in 2001, the defendants are seen to have acknowledged that under Ext.B-1, right over the suit property had vested in Muthammal and Unammalai, and that right to have its possession alone was deferred till after the demise of Alamelu in terms of Ext.B-1, and Muthammal and Unnamalai had

divested their vested right in the suit property under an oral relinquishment. In other words they have admitted the vested right of Muthammal and Unnamalai over the suit property. This is the case that the plaintiffs have come to litigate during trial, and this is the case which the defendants are bound to prove, and this precisely they did not prove.

9.3 Seen in that context, the present strategy of the defendants/appellants is essentially an attempt to camouflage their intent to abandon their pleading on facts with a legal plea. It must however be stated, every legal plea needs a factual basis in pleadings for supporting it. It is here the defendants fail.

10. In conclusion, this appeal is dismissed, and the judgment and decree dated 02.01.2008 in A.S.No.51 of 2007 on the file of the Principal Sub-Court, Thiruvannamalai, reversing the decree and judgment dated 15.06.2007 in O.S.No.64 of 2002 on the file of Additional District Munsiff, Chengam, stands confirmed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Thiruvannamalai.

2.The Additional District Munsiff,
Chengam.

3.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.V.Prakash Babu, Advocate Sr.70000

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srg 03/12/2020