



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 11.04.2019
PRONOUNCED ON : 27.04.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.406 of 2007

Inbanathan

...Appellant/1st Defendant

Vs.

1. Lurthammal

2. Muniammal

...Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.82 of 2003 on the file of the Sub-Court, Ranipet and dated 20.01.2005 in confirming the judgment and decree in O.S.No.10/2000 on the file of the District Munsif Court, Ranipet and dated 03.05.2002.

For Appellant : Mrs.V.Srimathi

For Respondents: No appearance. Set exparte vide order dated 11.04.2019.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 20.01.2005 passed in A.S.No.82 of 2003 on the file of the Subordinate Court, Ranipet, confirming the judgment and decree dated 03.05.2002 passed in O.S.No.10/2000 on the file of the District Munsif Court, Ranipet.

2. The second appeal has been admitted on the following substantial questions of law.

"1. When the plaintiffs, claim is wholly based on the Exhibit A.1, whether the courts below are right in allowing the plaintiffs to alter the plea and raise a claim wholly beyond the scope of the pleadings?

2. In the absence of any specific pleadings as regards the description of the properties and its ownership on the person through whom the plaintiffs claim, whether the courts below are right in decreeing the suit for partition?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass,



it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiffs against the defendants for partition.

6. The plaintiffs claim share in the suit property on the footing that the same belonged to their mother Danalakshmi Ammal and according to the plaintiffs, Danalakshmi Ammal had acquired the suit property from one Yusuf Sahib by way of the registered sale deed dated 19.06.1943 and further according to the plaintiffs, Danalakshmi Ammal died leaving behind the plaintiffs as her daughters and one Uthiranathan as her son and further according to the plaintiffs, Uthiranathan had died leaving behind the defendants as his legal representatives and inasmuch as, according to the plaintiffs, they are entitled to 2/3 share in the suit property and the defendants had not come forward to allot their due share in the suit property despite the demands and on the other hand, are attempting to create sham and nominal documents in respect of the suit property to defeat the rights of the plaintiffs in respect of the same, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

7. The defendants resisted the plaintiffs' suit. Though admitting that the suit properties had been acquired by Danalakshmi Ammal by way of the sale deed as projected in the plaint, according to the defendants, the first plaintiff got married prior to 1956 and therefore, she is not entitled to claim any share in the suit property. Further, it is the case of the defendants that the suit property had been inherited by Uthiranathan and on account of his long and continuous possession and enjoyment of the same, had prescribed title to the same by way of the adverse possession and therefore, the plaintiffs are not entitled to claim any share in the suit property. It is also pleaded by the defendants that the court fees paid by the plaintiffs is insufficient and on the abovesaid grounds, the defendants sought for the dismissal of the plaintiffs' suit.

8. Based on the materials placed on record, both oral and documentary, the courts below were pleased to accept the plaintiffs' case and granted the appropriate reliefs in favour of the plaintiffs. Impugning the same, the present second appeal has been preferred.

9. The plaintiffs have laid the suit for partition in respect of the suit property on the footing that the suit



property belonged to their mother Danalakshmi Ammal. According to the plaintiffs, Danalakshmi Ammal had acquired the suit property by way of the sale deed dated 19.06.1943. The abovesaid sale deed has been marked as Ex.A1. On a perusal of Ex.A1, as rightly determined by the courts below, it is seen that it is only Danalakshmi Ammal, who had acquired the title to the suit property by way of the same. Even the defendants have not, in specific, challenged the title of Danalakshmi Ammal in respect of the suit property on the basis of Ex.A1 sale deed. Accordingly, it is seen that the plaintiffs, being the daughters of Danalakshmi Ammal, and the defendants, being the legal representatives of Uthiranathan, the son of Danalakshmi Ammal, according to the plaintiffs, they are together entitled to 2/3 share in the suit property.

10. The defendants resisted the plaintiffs' suit on the footing that the first plaintiff got married prior to 1956 and therefore, she is not entitled to claim any share in the suit property. However, as found by the courts below, absolutely, there is no material worth acceptance placed on the part of the defendants to hold safely that the first plaintiff got married prior to 1956. In such view of the matter, in the absence of any material pointing to the abovesaid defence version, the courts below are fully justified in rejecting the abovesaid plea projected by the defendants for resisting the plaintiffs' claim of share in the suit property. No interference is called for with reference to the same in any manner.

11. The defendants would also project the plea that Uthiranathan, their predecessor in interest, had acquired title to the suit property by way of the adverse possession. It is their case that in the field register extract, the suit property has been shown in the name of Uthiranathan. However, as rightly found by the courts below, the mere entry in the revenue record, by itself, would not lead to the conclusion that Uthiranathan had acquired a valid title to the suit property. As regards the plea of valid title to the suit property on the part of Uthiranathan and as regards the claim of adverse title in respect of the suit property on the part of the Uthiranathan, as projected by the plaintiffs, absolutely there is no acceptable material placed by the defendants. Apart from Exs.B1 and B2, no other material has been placed in support of the abovesaid defence version. In such view of the matter, the courts below are found to be fully justified in rejecting the defence version that Uthiranathan had a valid title to the suit property or that he had acquired title to the suit property by way of the adverse possession. No valid ground is made out to interfere with the abovesaid determination of the courts below.



12. In the courts below, the plea has been taken by the defendants that the plaintiffs had not paid the proper court fees. It is also seen that during the course of trial, the argument had been put forth by the defendants that the suit property has not been properly valued. However, as regards the abovesaid contention projected by the defendants, they have not come forward, in specific, as to what is the actual value of the suit property. In the written statement, they have only taken the plea that the court fee paid by the plaintiffs is insufficient. If really the suit property is of a higher value, as sought to be made out by the defendants, the defendants would have come forward with the specific plea as regards the same in the written statement. Be that as it may, qua the abovesaid defence, the courts below had assessed the materials placed on record, in particular, by the defendants and found that the same would not, in any manner, advance the abovesaid defence version. The mere production of guideline value on the part of the defendants, by itself, would not be sufficient to determine that the plaintiffs had valued the property at a lower level and in such view of the matter, the courts below are found to have analysed the abovesaid defence put forth on the part of the defendants by giving the acceptable reasonings and conclusions and therefore, I do not find any valid reason to deviate from the same.

13. As regards the plea of valuation or the insufficiency of the court fee paid by the plaintiffs, no ground has been made out by the defendants in the present second appeal. No question of law has also been suggested by them in the second appeal with reference to the same. In such view of the matter, the argument put forth by the defendants' counsel with reference to the same, as such, cannot be countenanced. Be that as it may, when, as determined by the courts below, the defendants, in specific, have not questioned the valuation of the suit property on the part of the plaintiffs and also not placed any material to hold that the suit property is on the higher value than averred in the plaint, in all, it is found that the valuation aspect put forth by the defendants' counsel to non suit the plaintiffs or question the jurisdiction of the court concerned cannot be accepted for the reasons aforestated.

14. In the light of the abovesaid discussions, it is seen that the courts below had rightly analysed the materials placed on record in the proper perspective and held correctly that the plaintiffs are entitled to their due share in the suit property as the legal heirs of Danalakshmi Ammal to whom the suit property belonged to. No interference is warranted with



reference to the same. In such view of the matter, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiffs.

15. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

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1. Subordinate Court, Ranipet
 2. District Munsif Court, Ranipet.
 3. The Section Officer, V.R.Section, High Court, Madras
- +1cc to M/s.V.Raghavachari, Advocate sr.40852

S.A.No.406 of 2007

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nr 11/12/2019