

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.496 of 2007

Aridass @ Egambaram (Died)

1.Lakshmi Ammal
2.Karunakaran
3.Sivakumar
4.Sakkaravarthy
5.Tamilselvan

....Appellants/Defendants

Vs

1.Senthamarai
2.Sumathi

... Respondents/Plaintiffs

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree of the learned II Additional District Munsif Court at Pondicherry in O.S.No.779 of 1997 dated 09.02.2001 and the Principal Sub-Judge, Pondicherry dated 22.09.2006 in A.S.No.12 of 2005.

For Appellants : Ms.Gopika Nambiar
for M/s.Sai Bharath & Ilan

For Respondents : No appearance

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the courts below.

Brief facts leading to the filing of the second appeal:

2. The defendants 2 to 6 in the suit O.S.No.779 of 1997 on the file of II Additional District Munsif Court at Pondicherry are the Appellants herein. The respondents are the plaintiffs in the said suit. The suit was filed for declaration and injunction. According to the plaintiffs, they are the absolute owners of the suit schedule property by virtue of a registered will dated 31.08.1995 executed in their favour by their father, Jeyaraman. However, the said will has been disputed by the defendants in the suit.

According to them, the first defendant is the Maternal uncle of the plaintiffs and the second defendant is the wife of the first defendant. During the pendency of the suit, the first defendant died and defendants 3 to 6 were brought on record as the legal representatives of the deceased first defendant. According to the defendants, the plaintiffs are not legal heirs of the deceased Jayaraman who allegedly executed the will dated 31.08.1995 in favour of the plaintiffs.

3. Before the Trial Court, the plaintiffs have filed the following documents which were marked as Exhibits namely (a) Patta and the allotment order issued by the Director of Surveyor and Land Records, Pondicherry standing in the name of Jeyaraman dated 30.12.1983 (Ex.A1); (b) Registered Will executed by Jeyaraman in favour of the plaintiffs dated 31.08.1995 (Ex.A2); (c) Electricity Bill with payment receipts standing in the name of Jeyaraman dated 23.06.1997 (Ex.A3); (d) Water Bill with payment receipt dated 27.05.1997 standing in the name of Jeyaraman (Ex.A4); (e) Copy of the Advocate notice issued by the Plaintiffs to the first defendant dated 14.08.1997 (Ex.A5); (f) Reply notice sent by the first defendant to the plaintiffs counsel dated 03.09.1997 (Ex.A6); (g) Identity card of Jeyaraman issued by the Election Commission of India dated 12.12.1994 (Ex.A7); (h) I.D.card of Dhanalakshmi issued by the Election commission of India dated 12.12.1994 (Ex.A8); (i) I.D.card of Senthamarai issued by the Election Commission of India dated 12.12.1994 (Ex.A9); (j) I.D.card of Sumathi issued by the Election Commission of India dated 12.12.1994 (Ex.A10); I.D.Card of Ramachandran issued by the Election Commission of India dated 12.12.1994 (Ex.A11); Marriage invitation of Marriappan and Senthamarai dated 29.08.1986 (Ex.A12); Marriage invitation of Dhamodiran and Sumathi dated 15.09.1996 (Ex.A13) and I.D.Certificate dated 10.03.1999 issued by the Ministry for Agriculture, Government of Pondicherry (Ex.A14). The plaintiffs have examined two witnesses viz., Senthamarai, the first plaintiff who was examined as PW1 and Ramachandiran, the uncle of the plaintiffs who was examined as PW2. On the side of the defendants, only one document was filed namely an unregistered sale deed dated 21.05.1987 executed by Jeyaraman in favour of the second defendant, Lakshmiammal (Ex.B1) and three witnesses were examined namely Aridass @ Egambaram as DW1, Karunaharan as DW2 and Eganathan as DW3.

4. The Trial court by its judgement and decree dated 09.02.2001 decreed the suit in favour of the plaintiffs on the ground that they have established their title over the

suit schedule property by virtue of the registered will dated 31.08.1995 executed by Jeyaraman, the father of the plaintiffs in favour of the plaintiffs. The Trial Court has also considered the exhibits and only thereafter has come to the conclusion that the plaintiffs have acquired the property from their father and they are now the absolute owners. According to the Trial Court, admittedly, Ex.B1 is an unregistered sale deed allegedly executed by the plaintiffs' father Jeyaraman in favour of Lakshmiammal, the second defendant. The Trial court has agreed with the stand taken by the plaintiffs that the defendants are only permissive occupants of the suit schedule property. Before the Trial Court, excepting for producing an unregistered sale deed dated 21.05.1987 which has been disputed by the plaintiffs, the defendants have not produced any other document to establish their title over the suit schedule property. The will Ex.A2 dated 31.08.1995 in favour of the plaintiffs is a registered document. It is not in dispute that Jeyaraman died on 08.01.1997. The Trial Court while coming to the conclusion that the plaintiffs have established their title over the suit schedule property has observed that the defendants have failed to establish that they are the owners of the property.

5. Aggrieved by the Judgement and decree dated 09.02.2001 passed by the Trial Court in O.S.No.779 of 1997, the defendants preferred an appeal before the lower appellate court namely Principal Sub Court, Pondicherry in A.S.No.12 of 2005. The lower appellate court confirmed the findings of the Trial Court, eventhough the lower appellate court in its judgment and decree dated 22.09.2006 observed that since the plaintiffs have not examined the attesor of the will dated 31.08.1995 which was marked as Ex.A2, the will cannot be taken into consideration for any purpose, but however, rejected the contention of the defendants by observing that the plaintiff's being the legal heirs of the deceased Jeyaraman, are anyway entitled for the suit schedule property as legal heirs.

6. Aggrieved by the judgment and decree dated 22.09.2006 passed by the lower appellate court in A.S.No.12 of 2005, this second appeal has been filed by the defendants.

Discussion:

7. Heard Ms.Gopika Nambiar, learned counsel for the Appellants/defendants. Eventhough a learned counsel has entered appearance on behalf of the respondents/Plaintiffs, there is no representation on their side.

8. The learned counsel for the Appellants/defendants drew the attention of this Court to the judgment of the Hon'ble supreme Court in the case of Babloo Pasi vs. State of Jharkhand and Another reported in (2008) 13 SCC 133. In particular, she referred to paragraphs 27, 28 and 29 of the said judgment and submitted that the entry in the voter Identity card, though it is a public document, cannot be utilised for the purpose of proving the legal heirship of the deceased person. Therefore, according to her, the trial Court as well as the lower appellate court have erroneously accepted the Voter Identity cards which were marked as Ex.A7 to Ex.A12 and based on those documents, the Trial Court has erroneously held that the plaintiffs are the legal heirs of the deceased Jeyaraman.

Discussion:

9. Admittedly, the will Ex.A2 is a registered document executed in favour of the plaintiffs by Jeyaraman. The plaintiffs claimed that they are the legal heirs of Jeyaraman. The registered will was executed on 31.08.1995 which was marked as Ex.A2. It is the case of the plaintiffs that the defendants are permissive occupants and they have no right to occupy the suit schedule property. Excepting for production of an unregistered sale deed Ex.B1 in favour of the Lakshmiammal who was the second defendant, the defendants have not produced any other document to prove their title. The said unregistered sale deed Ex.B1 has also been disputed by the plaintiffs categorically.

10. Admittedly, Jeyaraman died on 08.01.1997. However, the alleged sale deed dated 21.05.1987 Ex.B1 is an unregistered sale deed. The defendants have also not adduced any evidence as to the steps taken by them for getting the sale deed dated 21.05.1987 (Ex.B1) registered. No explanation with valid supporting evidence has been given by the defendants as to why the sale deed dated 21.05.1987 (Ex.B1) was not registered. Only a valid registered sale deed will give proper conveyance of the suit schedule property in favour of Lakshmiammal, the second defendant. The Trial Court has rightly observed based on the evidence available on record that Ex.B1 has not been acted upon by the defendants. Further, Ex.B1 is itself a disputed document. This being the case, the Trial Court has rightly rejected the contention of the defendants. The plaintiffs have established their title as seen from the registered will Ex.A2 and the other documents namely Ex.A1 and Ex.A3 to Ex.A14. Even if the registered will Ex.A2 is ignored, as legal representatives of Jeyaraman, the plaintiffs become the absolute owners of the suit schedule property. Eventhough the defendants have

disputed that the plaintiffs are the legal representatives of the deceased Jeyaraman, they have not let in any documentary evidence to prove the same. Therefore, the Trial Court as well as the lower Appellate Court have rightly held that the plaintiffs are the legal representatives of the deceased Jeyaraman.

11. A document is a public document under Section 35 of the Indian Evidence Act and is admissible in evidence, if a party who produces the same satisfies the following conditions, namely, (a) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially enjoined by law. The plaintiffs have satisfied all the three conditions to establish that they are the legal representatives of the deceased Jeyaraman as a Voter Identity card is a public document admissible in evidence under Section 35 of the Indian Evidence Act. As seen from the evidence available on record, the plaintiffs are the legal heirs of the deceased Jeyaraman. No evidence has been produced by the defendants to disprove the same.

12. The judgment which was reported in (2008) 13 SCC 133, relied upon by the learned counsel for the Appellants referred to supra is not applicable for the case on hand. The Hon'ble Supreme Court has held that a Voters list is a public document in terms of the provisions of Section 35 of the Indian Evidence Act, 1872, but held that it cannot be held to be conclusive evidence for the purpose of proving the age of an accused in a criminal case without appreciating its probative value in terms of Section 35 of the Indian Evidence Act, 1872. However, that was a case involving criminal prosecution. In a criminal prosecution, the prosecution will have to establish its case beyond reasonable doubt. Whereas, civil cases are proved by lower standards of proof such as "preponderance of the evidence" (which essentially means that it is more likely than not that something occurred in a certain way). The difference in standards exists because civil liability is considered less blameworthy and because the punishments are less severe. In the case on hand, the plaintiffs have established their title by virtue of registered will Ex.A2 as well as they have proved that they are the legal representatives of the deceased Jeyaraman by virtue of the Voters Identity cards which were marked as Exhibits before the Trial Court. They have also produced patta standing in the name of the plaintiffs' father, Jeyaraman which was marked as Ex.A1.

13. Eventhough the lower appellate court has not accepted the will Ex.A2 based on the available evidence on the ground that the attestor to the will has not been examined, as legal representatives of the deceased Jeyaraman, the plaintiffs are anyway entitled to inherit the suit schedule property from their father. Therefore, they are the absolute owners of the suit schedule property. Both the Trial Court as well as the lower appellate court have rightly held that the plaintiffs are entitled for a declaratory relief and also entitled for the relief of recovery of possession of the suit schedule property from the defendants.

14. This Court on 05.06.2007 admitted this second appeal on the following substantial questions of law:

"1. Whether the Courts below have failed to consider that the plaintiffs have not discharged their burden of proving the legal heirship to deceased Jayaraman and in the absence of such a proof, the finding that they are the legal heirs is erroneous?

2. Whether the Courts below have erred in not advertng to the Will dated 31.8.1995, which is the basis of the claim of the plaintiffs?"

15. The plaintiffs have discharged their burden through their oral and documentary evidence and they have established that they are the absolute owners of the suit schedule property. Therefore, the substantial questions of law 1 and 2 formulated by this court on 05.06.2007 is answered against the Appellants.

Conclusion:

16. For the foregoing reasons, this Court does not find any perversity in the findings of the Trial Court as well as the lower appellate court and the judgement and decree dated 09.02.2001 passed in O.S.No.779 of 1997 on the file of the learned II Additional District Munsif, Pondicherry is hereby confirmed. There is no merit in this second appeal. Accordingly, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Munsif, Pondicherry.

2.The Principal Sub-Judge, Pondicherry.

3.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.Sai & Bharath, Advocate, S.R.No.98282

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BR(CO)
CB(22/07/2020)



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