



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1708 of 2003

Palaniammal

... Appellant/Plaintiff in Trial Court

Vs.

1.Dhanalakshmi (Died)

2.C.Velusamy

3.C.Krishnamoorthy

4.C.Saravanan

5.C.Chokkappan (Died)

(R2 to R5 brought on record as LRs of the deceased sole respondent vide order of Court dated 16.04.2019 made in CMP.Nos.4494 to 4496 of 2016 in S.A.No.1708 of 2003)

6.C.Amaravathi

7.C.Madhu

8.N.Kavitha

9.C.Raju

... Respondents/Defendant in Trial Court

(R6 to R9 brought on record as LRs of the deceased R5 viz., Chokkappan vide order of Court dated 16.04.2019 made in CMP.Nos.8417, 8422 and 8424 of 2019 in S.A.No.1708 of 2003)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 28.02.2003 passed in A.S.No.39 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgement and decree dated 21.02.2002 passed in O.S.No.263 of 1999 on the file of the District Munsif cum Judicial Magistrate, Paramathi.

For Appellant : Mr.N.Manokaran

Respondent No.1 : Died

For Respondent : Mr.P.Muthusamy
Nos.2 to 9



JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 28.02.2003 passed in A.S.No.39 of 2002 on the file of the Subordinate Court, Namakkal, confirming the judgement and decree dated 21.02.2002 passed in O.S.No.263 of 1999 on the file of the District Munsif cum Judicial Magistrate Court, Paramathi.

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

"Whether the lower appellate Court has failed to consider Ex.A2, settlement deed in proper perspective and whether the finding of the Courts below that the plaintiff is not entitled to claim any right, is sustainable in law."

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 plaintiff against the defendant for permanent injunction.

6.The defendant is the mother-in-law of the plaintiff. According to the plaintiff, in brief, the suit property was allotted to her husband Aanandhakumar by way of a partition deed dated 16.04.1986 along with the other properties and after marriage, she and her husband had been enjoying the suit property and other properties and it is her further case that her husband had executed a family settlement deed dated 14.07.1986 in respect of the suit property in her favour and by virtue of the same, she had been granted absolute interest to enjoy the suit property by her husband and her husband had died on 07.09.1988 and even thereafter, it is stated that the plaintiff is continuing to enjoy the suit property by virtue of the family settlement deed dated 14.07.1986 by obtaining patta, paying kist etc., and the defendant claims title to the suit property without any entitlement and disputing the entitlement of the plaintiff to the suit property, attempted to interfere with her possession and enjoyment and accordingly, it is stated that the plaintiff had been necessitated to lay the suit against the defendant for appropriate relief.



7.The defendant resisted the plaintiff's suit and though she had admitted the partition deed dated 16.04.1986 and the family settlement deed dated 14.07.1986, contended that even during the lifetime of her son Aanandhakumar, the plaintiff had deserted her husband following the dispute between them and also further contended that during the subsistence of marriage between the plaintiff and her husband, the plaintiff had contracted a second marriage with one Karuppan, son of Seiammal and also got conceived out of the wedlock and therefore, the plaintiff cannot claim to be the legal heir of Aanandhakumar and it is only the defendant, who is the legal heir of her son Aanandhakumar and assuming for the sake of arguments that the plaintiff is also a legal heir, the suit property belonging to both the plaintiff and the defendant as co-owners and therefore, the plaintiff is not entitled to seek the relief of permanent injunction against the defendant and it is only the defendant, who is in the possession and enjoyment of the suit property by paying kist etc., and therefore, sought for the dismissal of the plaintiff's suit.

8.Based on the materials placed on record, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the second appeal has been preferred.

9.The relationship between the parties is not in dispute. It is found that the defendant is the mother-in-law of the plaintiff. It is not in dispute that the suit property had been allotted to Aanandhakumar, the plaintiff's husband and the defendant's son, by virtue of the partition deed dated 16.04.1986. Furthermore, it is found that the execution of the family settlement deed dated 14.07.1986 is also not in dispute. It is found that the plaintiff's husband Aanandhakumar had died. Now, according to the plaintiff, by virtue of the family settlement deed dated 14.07.1986 marked as Ex.A2, she has been in the possession and enjoyment of the suit property and continue to remain in the possession and enjoyment of the suit property, even after the death of her husband and the defendant without entitlement or right, is attempting to disturb her possession and enjoyment.

10.The defendant resisted the plaintiff's suit contending that the plaintiff had deserted her husband even during his lifetime and married another person and also got conceived out of the said wedlock and therefore, she is not entitled to claim that she is the legal heir of her husband Aanandhakumar and according to the defendant, she is only the legal heir of Aanandhakumar and she is in the possession and enjoyment of the suit property.



WEB GATES

11.No doubt, the defendant has not placed any material either oral or documentary, to sustain the abovesaid case of enjoying the suit property as projected by her, however, in my considered opinion, the plaintiff's case is found to be not legally sustainable. As per the reading of the plaint averments, it is found that even prior to the institution of the suit, according to the plaintiff, the defendant had questioned her claim of title, possession and enjoyment of the suit property and on the other hand, put forth the rival claim of title, possession and enjoyment of the suit property. In such view of the matter, in my considered opinion, when a rival claim of title, possession and enjoyment of the suit property is put forth by the defendant, it is incumbent upon the plaintiff to seek the relief of declaration of title to the suit property as per law. When it is found that both the plaintiff and the defendant are claiming title to the suit property from one and the same person viz., Aanandhakumar being the husband of the plaintiff and being the defendant's son, as such, it is found that both are his legal heirs, particularly, when the defendant has failed to establish her defence that the plaintiff had contracted a second marriage during the lifetime of Aanandhakumar. In such view of the matter, as per the position of law enunciated by the Supreme Court, in the decision reported in AIR 2008 SCC 2033 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. And Ors.), the plaintiff should have sought for the relief of declaration of title to the suit property. The plaintiff having failed to seek the relief of declaration of title to the suit property as per law, on that score alone, in my considered opinion, the suit laid by the plaintiff is not legally sustainable.

12.Now, according to the plaintiff, she is in the possession and enjoyment of the suit property following the family settlement deed dated 14.07.1986. For sustaining her claim of valid possession and enjoyment of the suit property, only two documents are pressed into service on the part of the plaintiff viz., the alleged patta said to have been issued in her favour on 15.11.1999 marked as Ex.A4 and the kist receipt dated 06.05.1999 marked as Ex.A5. Though the plaintiff would claim that she along with her husband is in the possession and enjoyment of the suit property by virtue of the family settlement deed dated 14.07.1986, however, to sustain her said case, no proof has been placed on her part evidencing her claim of possession and enjoyment of the suit property since the family settlement deed dated 14.07.1986. On the other hand, the two documents viz., 15.11.1999 and 06.05.1999 marked as Exs.A4 & A5 alone have been pressed into service for showing her claim of possession and enjoyment. The suit has come to be laid by the plaintiff on 29.11.1999. It is thus found that just a few days prior to the institution of the suit, the plaintiff is found to have secured Exs.A4 & A5 one way or the other and come forward



with the suit, as if she is in the possession and enjoyment of the suit property from the date of the family settlement deed marked as Ex.A2 i.e. from 14.07.1986 onwards. If really the plaintiff had been in the possession and enjoyment of the suit property since Ex.A2 settlement deed, the materials pointing to the same would have been projected by the plaintiff one way or the other. On the other hand, other than Exs.A4 & A5, no other material has been projected by the plaintiff evidencing her claim of valid possession and enjoyment of the suit property.

13.The Courts below had analysed the family settlement deed marked as Ex.A2 and found that the various conditions are stipulated therein and it is found that as per the said settlement deed, the suit property should be enjoyed jointly by the plaintiff and her husband without any power of alienation etc., and further, the document recites that after their life time, the suit property should go to the issues born to the plaintiff through her husband and the document further recites that both the plaintiff and her husband are not entitled to encumber/alienate or mortgage the suit property without the concurrence and consent of the other and in such view of the matter, when the plaintiff has not been conferred any absolute right over the suit property by way of the abovesaid settlement deed and on the other hand, the right has been conferred circumscribed by various conditions as set out in the said deed, accordingly, it is found that the plaintiff is unable to place any material pointing to her exclusive claim of possession and enjoyment of the suit property right from the date of the abovesaid settlement deed. Particularly, when the absolute interest in respect of the suit property had been only granted in favour of the issues born to the plaintiff through Aanandhakumar, her husband and when it is found that no issue had been born to them and inasmuch as Aanandhakumar had also passed away, in such view of the matter, it is found that following the demise of Aanandhakumar, both the plaintiff, his wife as well as the defendant, his mother would be his legal heirs and entitled to succeed to the suit property and accordingly, when it is further seen that in the legal heir certificate marked as Ex.A3, both the plaintiff and the defendant are shown to be the legal heirs of the deceased Aanandhakumar, in such view of the matter, it is found that even the defendant is entitled to claim title to the suit property as putforth by the defendant. Therefore, the claim of the plaintiff that she has acquired absolute title to the suit property and been in the possession and enjoyment of the suit property exclusively by virtue of Ex.A2 settlement deed, as such, cannot be accepted. When it is further seen that other than Exs.A4 & A5, no other material has been placed on the part of the plaintiff disclosing her claim of possession and enjoyment and when it is seen that following the death of Aanandhakumar on 07.09.1988, the defendant also would be



entitled to claim right to the suit property as his legal heir and when there is no material on the part of the plaintiff to establish that Exs.A4 & A5 have come to be issued in her favour to the knowledge of the defendant, the co-owner by sending notice to her and inviting her objections etc., and when considering the various conditions set out in Ex.A2 settlement deed, the Courts below are found to be wholly justified in not accepting the claim of valid possession and enjoyment of the suit property on the part of the plaintiff and accordingly, also right in holding that without considering the various conditions set out in the settlement deed in Ex.A2 and also without sending notice to the defendant, the plaintiff is found to have acquired the patta and kist receipt in her name and furthermore, when the patta No.433 is not shown to be relating to the suit property by the plaintiff, in all, it is seen that the Courts below are fully justified in disbelieving the plaintiff's case and in my considered opinion, no interference is called for in any manner qua the same.

14.The Courts below had analysed and assessed the case put forth by the respective parties, in conjunction with the materials available on record and rightly disbelieved the case projected by the plaintiff as if she is having exclusive title, possession and enjoyment of the suit property and rightly determined that both the plaintiff and the defendant are co-owners in respect of the suit property and accordingly, justified in refusing the relief of permanent injunction sought for by the plaintiff against the defendant. In such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial question of law formulated in the second appeal is, accordingly, answered against the plaintiff and in favour of the defendant.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sms



To

1.The Subordinate Judge, Namakkal.

2.The District Munsif cum Judicial Magistrate, Paramathi.

Copy To : The Section Officer,
V.R. Section, High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate SR.No.44767

S.A.No.1708 of 2003

KK(CO)
GMY(24/09/2019)