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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2019

PRONOUNCED ON : 12.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.309 of 2006

1.Vijayalakshmi
2.Kalpana
3.Venkataraman

...1 to 3 Appellants/3 to 5 Appellant/LRs of 1st defendant

Vs.

1.Dhanapal Chettiar

..1st Respondent/2nd Defendant/LR of the Plaintiff

2.Jaya

..2nd Respondent/2nd Appellant/2nd Defendant

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 23.09.2005 passed in A.S.No.99 of 1997 on the file of the 1st Additional District Court, Dharmapuri @ Krishnagiri, confirming the judgement and decree dated 30.09.1997 passed in O.S.No.117 of 1986 on the file of the Subordinate Court, Krishnagiri.

For Appellants

: Mr.V.Raghavachari

For Respondent

: Mr.S.Vinoth Kumar

No.1

For Respondent

: No representation/

No.2

No appearance

set exparte vide order

dated 28.03.2019

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 23.09.2005 passed in A.S.No.99 of 1997 on the file of the 1st Additional District Court, Dharmapuri @ Krishnagiri, confirming the judgement and decree dated 30.09.1997 passed in O.S.No.117 of 1986 on the file of the Subordinate Court, Krishnagiri.

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

"a.Whether the courts below are right in decreeing the suit for declaratory, when admittedly the defendants are also the legal heirs of Narayana Chettiar, through whom the plaintiff is claiming a right to the



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suit property?

b. Whether the plaintiff's mother, Navaneethammal, is a legal heir on the date of death of Naryana Chettiar entitled to the property of Narayana Chettiar exclusively?

c. Whether the provisions of Hindu women rights to property Act and Hindu Succession Act, would confer and enlarge the right of Navaneethammal, even in the absence of actual proof of possession?

d. When the plaintiffs have failed to prove that the defendants were the licensee of Navaneethammal, whether the courts below are right in presuming such a relationship?

e. Whether the principles of estoppel has any application to an issue of title and should not the courts below ought to have known that the plaintiff should fail or succeed on the basis of the pleadings and evidence adduced before the Court and not on the weakness of the case of her adversary?

f. Whether there could be discrimination between the legal heirs of Narayana Chettiar falling within the same class?

g. Whether the suit is not barred by the law of limitation inasmuch as it had been instituted after 3 decades of the alleged rights in favour of the said Navaneethammal?

h. When Navaneethammal herself had not asserted any ownership to the suit property, whether it is open to her daughter to make an exclusive claim over the suit property?"

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.The suit has been laid by the plaintiff against the defendants for the reliefs of declaration and possession.

6.The plaintiff has sought for the relief of declaration that she is entitled to the suit property as the legatee under the Will dated 25.01.1977 executed by Navaneethammal, her mother or in the alternative has also sought the relief of declaration, she is the sole heir of the deceased Navaneethammal.

7.From the materials placed on record, it is found that the suit property originally belonged to Narayana Chettiar. It is found that Naraya Chettiar had three wives, his first wife is Backialakshmi, his second wife is Achammal and the third wife is Navaneethammal, the plaintiff's mother. The first defendant's mother Dhanalakshmi is the daughter of the first wife Backialakshmi. It is also seen that Amirtha is the daughter of the second wife Achammal. As abovenoted, the plaintiff is the daughter of the third wife Navaneethammal. It is also noted and not in dispute that Narayana Chettiar had married Navaneethammal only after the demise of the first and second wives. As abovenoted, the plaintiff claims title to the suit property contending that her mother had derived the suit property from Narayana Chettiar and been enjoying the same and had bequeathed the same in her favour by way of the Will dated 25.01.1977 and accordingly, it is stated that after the demise of her mother on 09.05.1984, it is only the plaintiff, who has acquired absolute title to the suit property. According to the plaintiff, the defendants were allowed to occupy the suit property by Navaneethammal considering the relationship between the parties and accordingly, inasmuch as the defendants are only in the permissive occupation of the suit property, they are not entitled to put forth any claim of title to the suit property, contrary to the same and on the other hand, inasmuch as the defendants asserted that the suit property also belongs to them one way or the other, according to the plaintiff, she has been necessitated to institute the suit against the defendants for appropriate reliefs.

8.The second defendant is the wife of the first defendant.

9.The defendants resisted the plaintiff's suit contending that the first defendant is also one of the legal heirs of Narayana Chettiar through his mother and that he is also entitled to right and share in the suit property and disputed the claim of the plaintiff that they are in the permissive occupation of the suit property under Navaneethammal and further, put forth the case that the suit property does not belong to Navaneethammal as the legal descendent of Naryana Chettiar and in such view of the matter, according to them, Navaneethammal is not entitled to bequeath the suit property



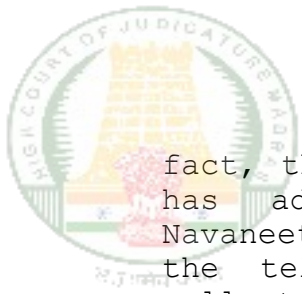
in favour of the plaintiff by way of a Will as put forth in the plaint and therefore, according to the defendants, the plaintiff is not entitled to seek and obtain the reliefs prayed for in the suit.

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10.As abovenoted, it is not in dispute that Navaneethammal is the third wife of Narayana Chettiar and that, the suit property originally belonged to Narayana Chettiar. From the materials placed on record, it is found that Narayana Chettiar had died during 1940, the same has been admitted by DW1, the first defendant. Furthermore, it is found that Navaneethammal had settled certain properties derived from her husband Narayana Chettiar by way of Ex.A1 settlement deed dated 04.12.1940 in favour of the first defendant's parents marked as Ex.A1 and the above settlement deed has not been disputed by the defendants as such. In fact, it is found that accepting the abovesaid settlement deed, the properties comprised in Ex.A1 settlement deed are also found to have been subsequently alienated by the defendants by way of a sale deed dated 12.06.1987, which document has come to be marked as Ex.A13 and the abovesaid fact has also been accepted by the first defendant examined as DW1. On a perusal of the recitals contained in Ex.A1 settlement deed, it is seen that even prior to the same, Narayana Chettiar had died. Therefore, it is evident that Narayana Chettiar had died during 1940 before the advent of the Hindu Succession Act, 1955.

11.At the time of the death of Narayana Chettiar during 1940, it is found that the Hindu Women's Rights to Property Act, 1937 was in force. As found by the Courts below, on the death of Narayana Chettiar, the third wife Navaneethammal being the only legal descendent as such, it is found that she had acquired the interest of the property left behind by Narayana Chettiar. No doubt under the abovesaid Act, she would have only derived the limited interest in the property left behind by Narayana Chettiar. It is the case of the plaintiff that the abovesaid limited right acquired by Navaneethammal in respect of the suit property had got blossomed in absolute right on the advent of the Hindu Succession Act 1955 by virtue of Section 14(1) of the abovesaid Act.

12.Before advertng to the abovesaid point, as could be seen from the materials placed on record, it is found that it is only Navaneethammal, who had been exercising absolute ownership over the property derived from her husband and accordingly, the materials placed on record go to show that the suit property had been leased out by Navaneethammal in favour of a private party for running a shop as well as in favour of telephone exchange and it is also seen that it is only Navaneethammal, who had been collecting the rent from the abovesaid tenants and the same has not been controverted by the first defendant during the course of his evidence. In



fact, the first defendant, during the course of his evidence, has admitted about the abovesaid tenancy created by Navaneethammal in favour of Santhana Gopal Chettiar as well as the telephone exchange and the factum of Navaneethammal collecting the rents on her own and in addition to that, DW1 has also admitted that when Navaneethammal had created the tenancy as above stated, neither he nor his mother or his sister had joined in the execution of the tenancy arrangement along with Navameethammal and furthermore, also admitted that after the demise of Navaneethammal, it is only the plaintiff, who has been collecting the rent from the tenants and the Courts below had also considered the materials placed in connection with the same in the right perspective.

13. In the light of the above factual matrix, when it is noted that it is only Navaneethammal, who had been exercising absolute ownership over the property acquired by her and left behind by Narayana Chettiar as per the Hindu Women's Rights to Property Act, 1937, accordingly, the Courts below had rightly determined that the suit property is only in the actual possession and enjoyment of Navaneethammal and in such view of the matter, the contentions put forth by the defendants that the possession of the suit property was not with Navaneethammal on the demise of Narayana Chettiar, as such, cannot be accepted and rightly rejected by the Courts below.

14. As could be seen from the materials placed on record and as also admitted by DW1, the first defendant, it is found that prior to occupation of the suit property, the defendants were only residing in a rented premises, as admitted by DW1, and it is noted that after the telephone exchange had vacated the suit property, the defendants had been permitted to occupy the suit property and the same has been clearly admitted by DW1. In addition to that, DW1 has also admitted that neither he nor his mother or his sister had paid any tax in respect of the suit property. However, they had been paying the electricity charges and clearly admitted that as he had been occupying the suit property on the permission granted, paying the electricity charges and also further admitted that Navaneethammal was previously occupying the property now in their occupation. In the light of the abovesaid admission of DW1, and also the fact that it is only Navaneethammal, who had been exercising absolute ownership over the suit property as the widow of Narayana Chettiar from 1940 onwards and accordingly, had also settled certain properties in favour of the first defendant's parents, which had not been controverted, as above pointed out, in all, it is found that the suit property had been in the physical / constructive possession of Navaneethammal one way or the other and accordingly, she had been exercising ownership over the same as the widow of Narayana Chettiar as provided under the Hindu Women's Rights to Property Act, 1937.



whether the limited estate derived by Navaneethammal in respect of the suit property on the demise of her husband Narayana Chettiar would blossom into absolute right on the advent of Hindu Succession Act, 1956. It is found that the Hindu Women estate derived by Navaneethammal on the demise of her husband during 1940, when the limited right has been conferred on Navaneethammal under the Hindu Women Rights to Property Act, 1937 and when pursuant to the same, as above pointed out, it is only Navaneethammal, who had been exercising ownership over the suit property and had also dealt with the properties derived by her, which fact has not been controverted or challenged, in all, as rightly determined by the Courts below, the limited right or Hindu Women estate derived by Navaneethammal on the demise of her husband would blossom or ripen into the absolute estate by virtue of Section 14(1) of the Hindu Succession Act, 1956 and in such view of the matter, it is found that the Courts below are fully justified in determining that the limited right or estate acquired by Navaneethammal had been converted into full right by virtue of Section 14(1) of the Hindu Succession Act, 1956, and in such view of the matter, it is found that the plaintiff being the legal heir of Navaneethammal would be entitled to succeed to her estate as per law and on that score entitled to maintain the suit against the defendants for sustaining the reliefs prayed for in the suit.

16.No doubt, the plaintiff has also claimed right to the suit property based on the Will executed in her favour by Navaneethammal on 25.01.1977 marked as Ex.A14. However, inasmuch as the abovesaid Will had not been probated as required by law, nothing the consequences thereof, it is found that the plaintiff has come forward with the suit seeking the alternative relief that she is the legal heir of Navaneethammal and on that basis, entitled to recover the possession of the suit property from the defendants, as the defendants are only occupying the suit property on the permission granted by Navaneethammal and not in on under any colour of right as such. That the plaintiff is the only daughter of Navaneethammal is not in dispute. Accordingly, it is found that the plaintiff is entitled to claim the right to the suit property as the legal descendent of Navaneethammal, considering the fact that the limited right acquired by Navaneethammal in respect of the suit property had blossomed into the absolute right or full right by virtue of Section 14 (1) of the Hindu Succession Act and accordingly, the Courts below are found to be fully justified in determining that it is only the plaintiff, who as the legal heir of Navaneethammal, is the lawful owner of the suit property and as the defendants are in the occupation of the suit property only on the oral permission and as they are not entitled to claim any right to the suit property in any manner and as the oral permission granted had been revoked, in all, it is found that the Courts below had rightly granted the appropriate reliefs of declaration and recovery of possession prayed for



by the plaintiff and considering the materials available on record and the assessment of the same by the Courts below in the right perspective both factual wise as well as legal wise, in all, it is found that the determination of the Courts below accepting the plaintiff's case as abovenoted do not warrant any interference in any manner.

17.The counsel for the appellants, in support of his contentions, placed reliance upon the decisions reported in (2000) 6 Supreme Court Cases 310 (Balwant Kaur and another Vs.Chanan Singh and others), 1970(1) Supreme Court Cases 658 (Fateh Bibi EtG Vs.Charan Dass), 2007 (5) BomCR 324 (Radhabai Balasaheb Shirke (since Vs. Keshav Ramchandra Jadhav), and 2005(5) BomCR 339 (Laxman Vs.Smt.Bendrabai). Similarly, the counsel for the respondents, in support of his contentions, placed reliance upon the decision reported in 2014-2-L.W.113 (K.M.Thangavel & others Vs.K.T.Udayakumar & another). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18.In the light of the abovesaid discussions, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

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

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sms

To

1.The 1st Additional District Court, Dharmapuri @ Krishnagiri.

2.The Subordinate Court, Krishnagiri.

3.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.36052

+1cc to Mr.S.Vinoth Kumar, Advocate SR.No.37889

S.A.No.309 of 2006

VSN II(CO)

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GMI (18/12/2019)