

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.697 of 2006
and M.P.No.1 of 2006
& M.P.No. 4 of 2008

RanganayagiAppellant/Appellant/Plaintiff
Vs.

Ramasamy (died)

1. Ruckmani
2. Saraswathy (died)
3. Dhanalakshmi
4. Rathinam @ Rajarathinam
5. R.Kamalam
6. L.Jayalakshmi
7. Savithri
8. R.Mohanraj
9. R.Nataraj
10. R.Janakiraj
11. Karthikeyan
12. V.Chinnasamy Naidu (died)
13. C.Azhagirisamy
14. C.Vijayakumar
15. C.Gunasekaran

(RR 12 to 15 brought on record
as legal heirs of the deceased
R2 and R12 vide order dated
27.07.2011 in M.P.Nos. 1 to 3
of 2008 in S.A.No.697 of 2006

...Respondents/Defendants 2 to 12
and Proposed Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 22.08.2005 passed in A.S.No.31 of 2004 on the file of the I Additional District Court, Coimbatore, confirming the judgment and decree dated 17.04.2003 passed in O.S.No.36 of 1990 on the file of the I Additional District Munsif Court, Coimbatore.

For Appellant : Mr.M.Mukunth for
M/s Sarvabhauman Associates

For Respondents

For R2 to R10

& R12 to R14 : Mr.P.M.Subramaniam
and Mr.C.Subramaniam

For R15 : Not ready in notice

JUDGMENT

This appeal has been filed as against the judgment and decree dated 22.08.2005 passed in A.S.No.31 of 2004 on the file of the I Additional District Court, Coimbatore, confirming the judgment and decree dated 17.04.2003 passed in O.S.No.36 of 1990 on the file of the I Additional District Munsif Court, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for partition and separate possession. The first defendant is the brother of the plaintiff and the second defendant is the wife of the first defendant. The plaintiff, the first defendant and one Kondasamy Naidu are the legal heirs of their deceased father Narasimhalu Naidu. The said Kondasamy Naidu died on 12.08.1956 and he was an unmarried man and bequeathed his share of the property in favour of the plaintiff through a registered Will. Thereafter, the plaintiff and the first defendant are in joint possession and enjoyment of the suit property in their respective shares. The plaintiff further submitted that the said Will acted upon and she is enjoying the property. In fact, the first defendant is managing the entire suit property and used to give annual income from the suit property to the plaintiff.

3.2. For the past six months from the date of filing of this suit, the plaintiff was denied her income from her share of the suit property. The first defendant acted upon the ill-advice of the second defendant, who is his wife and they are threatened the plaintiff that they are holding some alleged sale deed and other fraudulent deeds with ulterior motive to dispossess the plaintiff from the suit property. Hence, she filed the suit for partition by dividing the suit property into two equal share by metes and bounds by way of appointing a Commissioner and allot one separate share to her.

4. Resisting the same, the defendants filed written statement and stated that the plaintiff, first defendant and one Kondasamy Naidu are born to two wives of their father Narashima Naidu. The plaintiff and the deceased Kondasamy Naidu were born through the second wife and the first defendant was born through the first wife. The deceased Kondasamy Naidu died issueless on 12.08.1956. During his life time, he sold his half share to the second defendant for valuable consideration under the sale deed dated 09.08.1956, and right from the sale deed, the second defendant is in effective possession and enjoyment with all right, title and interest as absolute owner there of by paying kist after changing the patta in her name. Therefore, the said Kondasamy Naidu has no right at all to bequeath his share in favour of the plaintiff through alleged Will. The Will is also not a

genuine one and it is created at the instance of the plaintiff and registered at Tiruppur, while the said Kondasamy Naidu was not in sound mind and in disposing stage.

4.1. The defendants further submitted that in fact, the plaintiff sold her share in the family property to third parties and left the village and residing at Pannimadai Village for more than 12 years. The plaintiff had full knowledge about the purchase by the second defendant in respect of his half share of the said Kondasamy Naidu, and filed the present suit only to extract money from the defendants. Therefore they prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and 2 were examined and Ex.A.1 to Ex.A.10 were marked on the side of the plaintiff. On the side of the defendants D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.13 were marked. On considering the oral and documentary evidence adduced by the respective parties and the submission made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No.31 of 2004 before the learned I Additional District Judge, Coimbatore. The first appellate Court on perusal of materials placed on record and the submission made, dismissed the first appeal filed by the plaintiff and thereby confirming the judgement and decree of the trial Court, dismissing the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred this Second Appeal before this Court.

6. At the time of admission of this Second Appeal, on 05.07.2006, following substantial questions of law were formulated for consideration :-

"1. Whether the Courts below are correct in law in non-suiting the appellant especially when the respondents have themselves admitted the right of the appellant to the properties belonging to the family?

2. Are not the Courts below wrong in placing reliance upon Ex.B.12 sale deed dated 09.08.1956, the execution of which is shrouded with suspicion as regards the state of mind of the executor especially when this document has come into existence just three days prior to date of death of the vendor that is on 12.08.1956?

3. Whether the law under the provisions of the Hindu Succession Act, the appellant/plaintiff is not entitled to get a share in the suit property and is therefore not entitled to any decree.

4. Is not the Courts below wrong in not moulding the relief in view of the dictum laid down in the judgment reported

in 1990(2) LW 674?"

7. The learned counsel appearing for the appellant/plaintiff and the respondents/defendants are present and they are reiterated the averments set out in the plaint as well as the written statement.

8. Heard Mr.M.Mukunth, learned counsel appearing for the appellant and Mr.P.M.Subramaniam, learned counsel appearing for the respondents.

9. The plaintiff has been filed the suit for partition and separate possession of her half of the share in the suit property. The suit property originally owned by one Narasimhalu Naidu, who is none other than the father of the plaintiff, the first defendant and one Kondasamy Naidu, purchased under Ex.A.5. The said Kondasamy Naidu died unmarried and issueless on 12.08.1956. Before his demise, the said Kondasamy Naidu executed a sale deed on 09.08.1956, in favour of the second defendant. Though the plaintiff claimed share through Will dated 28.06.1956, which was executed by the said Kondasamy Naidu, the plaintiff did not trace any ground questioning the genuineness, legality and validity of the said sale deed. Whereas the plaintiff also claimed that herself, the first defendant and the said Kondasamy Naidu are the legal heirs of their deceased father and after his demise all of them are entitled to get 1/3rd share each in the suit property, which is completely contra and inconsistent with the claim made in the suit and her evidence.

10. Even it is assumed to be true that the claim under the law of inheritance and based on the Will executed by the said Kondasamy Naidu, the plaintiff failed to choose one among the same and both the Courts has held against her, she cannot be permitted to alternative claim under the law of inheritance. Further when the plaintiff came to the Court with specific claim that she is entitled to get equal share along with the male heirs, it is the duty of the plaintiff to prove the same with relevant fact. In fact, the plaintiff was examined herself as P.W.1 and one Kumarasamy Gounder was examined as P.W.2. Ex.A.8, the lease deed dated 17.06.1956, purported to be executed between the said Kondasamy Naidu and the husband of the plaintiff. In the said deed, in the eastern side the property belongs to Ramasamy Naidu is shown as one of the boundaries. After demise of their father viz., Narasimhalu Naidu in the year 1946, the suit property was divided into two equal share and the first defendant and the said Kondasamy Naidu are allotted eastern and western portion respectively. It is supported by the recital in Ex.A.1, Ex.A.2 and Ex.A.8. In those documents, the portion allotted to the first defendant is shown as one of the boundaries to the property covered under the above documents.

11. On the strength of the Will under Ex.A.1, the plaintiff claimed half share in the suit property specifically mentioned about the mortgage deed executed by Kondasamy Naidu in favour of one Kuppusamy Naidu and the mortgage deed produced herein as Ex.A.2 is in respect of the eastern half and Ramasamy Naidu's house portion is shown as one of the boundaries in the lease deed in Ex.A.8. Therefore, the first appellate Court rightly held that after the death of the said Narasimhalu Naidu, the suit property divided into two shares, in which western side portion was allotted to the said Kondasamy Naidu and he mortgaged the same in favour of the third party etc., when the death of their father is much prior to the enactment of Hindu Succession Act, the female heir, on the death of her father, did not entitle for any share and certainly, two sons became entitled to the properties leaving behind by their father in equal share. The said Kondasamy Naidu died unmarried and issueless and he sold his half share in favour of the brother's wife, viz., the second defendant herein and thereafter she is in possession and enjoyment of the suit property. In fact, all the revenue records are also mutated in her name and it is also evident from Ex.P.6.

12. The stand taken by the plaintiff questioning the genuineness, legality and validity of the sale deed, as if the same is forged one and executed in unsound and disposing state of mind, has also been negatived by the Courts below. When the Will said to have been executed on 28.06.1956, in sound and disposing state of mind by the said Kondasamy Naidu, the execution of sale deed on 09.08.1956 viz., within the period of about 1 1/2 months from the execution of the said Will cannot be said to be forged one and executed in unsound and not in disposing state of mind. In fact, there is no proper plea raised by the plaintiff questioning the genuineness, legality and validity of the said sale deed. All the points raised by the plaintiff have already been discussed by the Courts below in detail and answered properly. Accordingly, all the substantial questions of law are answered against the plaintiff and in favour of the defendants.

13. In fine, the second appeal stands dismissed by confirming the judgment and decree of the Courts below. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

rts

To

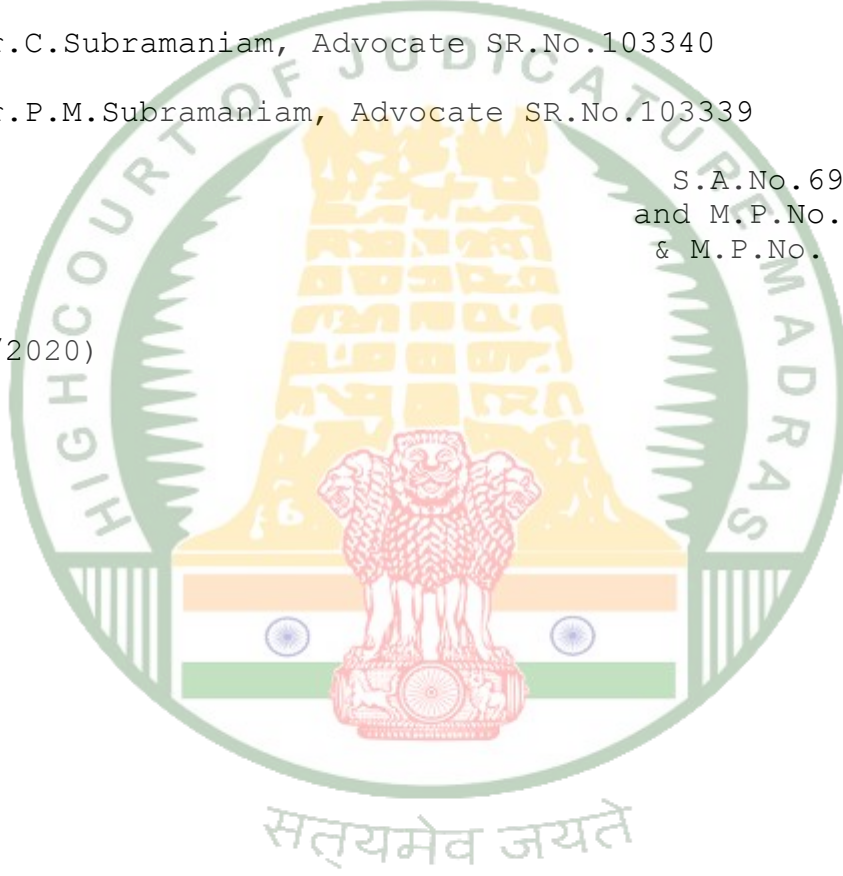
1. I Additional District Judge,
Coimbatore.
2. I Additional District Munsif,
Coimbatore.
3. The Section Officer,
V.R. Section
Madras High Court,
Chennai.

+1cc to Mr.C.Subramaniam, Advocate SR.No.103340

+1cc to Mr.P.M.Subramaniam, Advocate SR.No.103339

S.A.No.697 of 2006
and M.P.No.1 of 2006
& M.P.No. 4 of 2008

SAI (CO)
GMY (31/01/2020)



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