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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

S.A.No.56 of 2010

Selvi

... Appellant/Plaintiff

..Vs..

1.Ramasami

2.Kaliammal

3.Kesavan

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment of the learned Subordinate Judge, Dharmapuri dated 22.06.2009 in A.S.No.37 of 2007, upholding the decree and judgment of the learned District Munsif, Dharmapuri, in O.S.No.374 of 2004, dated 30.08.2007.

For Appellant : Mr.S.Saravanakumar

For Respondents: No Appearance

JUDGMENT

The appellant is the plaintiff in O.S.No.374 of 2004 on the file of the learned District Munsif, Dharmapuri. She filed the above suit for declaration of her title to the suit properties of Sivadi Village.

2. For the sake of convenience, the parties are called as per their ranking in the original suit.

3. The brief case of the appellant/plaintiff is as follows:

The suit properties originally belonged to one Govindan, who had three sons viz., Gopal, Krishnan and Ramasamy (1st defendant). There was an oral partition between the brothers 40 years back with regard to the properties, in which, the suit properties were allotted to the share of Gopal. The plaintiff is the daughter of Gopal and she was enjoying the first item of the suit properties through her relatives. She married one Kaliappan in the year 1994 and during the year 1996, the



defendants got some documents from her father and those documents are sham and nominal and could not confer on them any right or title over the suit properties. According to the plaintiff, she came to know about creation of certain fraudulent documents by the defendant only on 28.05.2004, when they filed a petition before the Revenue Officials for change of patta. It is further contended by him that the defendants are attempting to disturb plaintiff's peaceful possession and enjoyment over the suit properties. She therefore filed the suit for the relief stated above.

4. The suit was resisted by the defendants 1 to 3 on the following grounds:

(1) It is true that Gopal, Krishnan and Ramasamy (1st defendant) are the sons of one Govindan;

(2) It is false to contend that there was an oral partition between the three brothers 40 years back;

(3) The plaintiff is not the legal heir of the deceased Gopal;

(4) The deceased Gopal met with an accident and sustained injuries and in order to meet out the medical expenses, he sold the suit properties in favour of the defendants 2 and 3 on 05.12.2003 through two separate registered sale deeds;

(5) The plaintiff has filed the suit at the instigation of Krishnan and his sons. Therefore, the suit is liable to be dismissed.

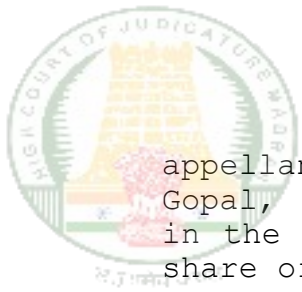
5. The trial Court framed necessary issues and after full contest dismissed the suit filed by the plaintiff. Aggrieved over the same, the plaintiff filed an Appeal in A.S.No.37 of 2007, before the Subordinate Judge, Dharmapuri. The learned Subordinate Judge, Dharmapuri, after analysing the evidence on record dismissed the appeal and upheld the decree and judgement dated 22.06.2009, passed by the learned District Munsif, Dharmapuri.

6. Now the second appeal is filed by the appellant/plaintiff on the following substantial question of law:

(i) Whether the lower Appellate Court was right in holding that the suit is not maintainable since the plaintiff did not seek for setting aside the alienations made by her father;

(ii) Whether the lower Appellate Court, on facts and circumstances should have granted the decree for partition and separate possession of the plaintiff's half share?

7. Both the parties to the suit admitted that the suit properties originally belonged to one Govindan. Gopal, Krishnan and the 1st defendant are the son's of the said Govindan. It is also contended that the 2nd and 3rd defendants are the wife and son of the 1st defendant respectively. The case of the



appellant/plaintiff is that there was an oral partition between Gopal, Krishnan and the first defendant 40 years back and that in the said partition, the suit properties were allotted to the share of the deceased Gopal.

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8. On the contrary, the defendants have contended that there was no partition between the brothers and that the plaintiff is not at all the legal heir of the deceased Gopal and she cannot claim the right or title over the suit property as legal heir of the deceased Gopal. The further contention of the defendants is that the deceased Gopal never married Saradha, the mother of the plaintiff and the plaintiff is only an illegitimate child. It is seen from records, the plaintiff's father had executed two sale deeds dated 05.12.2003 (Ex.B1 and Ex.B2) in favour of the 2nd and 3rd defendants in respect of the suit properties. The main contention of the plaintiff is that these two documents are sham and nominal and that her father never intended to sell the suit properties in favour of the defendants 2 and 3. It is seen from the evidence that the deceased Gopal sold his properties during his life time through the sale deeds Ex.B1 and Ex.B2. The plaintiff's specific case is that the suit properties were allotted to the share of her father in a partition. The suit properties and other properties originally belonged to the grandfather of the plaintiff. It is not the case of the plaintiff that the suit properties are ancestral properties of her father. The plaintiff claims right over the suit properties as a legal heir of her father. When the properties were sold by her father during his life time, it is for the plaintiff to plead and prove that the documents Ex.B1 and Ex.B2 were executed by means of fraud or coercion or undue influence. There is absolutely no pleading in this regard in the plaint and therefore the suit filed by the plaintiff has to fail. The mere allegation in the plaint that the plaintiff's father Gopal had no legal necessity to sell his properties without sufficient proof cannot be a ground to grant a decree in favour of the plaintiff.

9. Both the Courts below had concurrently held that Ex.B1 and Ex.B2 are genuine and not sham and nominal as alleged by the plaintiff. It is also relevant to note that the plaintiff did not seek for cancellation of the sale deeds Ex.B1 and Ex.B2 .

10. Both the Courts below had analysed the evidence on record in the right perspective and hence I do not see any reason to interfere with the findings recorded by both the Courts below. In fact there is no substantial question of law involved in this case.



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11. In the result, the appeal is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Dharmapuri.

2.The District Munsif,
Dharmapuri.

+1 CC to Mr.R. Prasadh, Advocate sr 45651.

S.A.No.56 of 2010

VD(CO)
SP(01/11/2019)