



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2019

PRONOUNCED ON : 26.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1155 of 2005

1.Sundaramurthy
2.Jagadesan
3.Thiruvengadam
4.Panchavarnam

...Appellants/Defendants

Vs.

Komala

...Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 08.04.2005 passed in A.S.No.1 of 2004 on the file of the Principal Subordinate Court, Krishnagiri, reversing the judgement and decree dated 21.01.2004 passed in O.S.No.22 of 1997 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.S.Parthasarathy
Senior Counsel
for Mr.C.Lakshmi Narayanan

Respondent : No representation/No appearance
set exparte vide order order
dated 03.04.2019

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 08.04.2005 passed in A.S.No.1 of 2004 on the file of the Principal Subordinate Court, Krishnagiri, reversing the judgement and decree dated 21.01.2004 passed in O.S.No.22 of 1997 on the file of the District Munsif Court, Krishnagiri.

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



WEB COPY

"1. Whether a settlor is not entitled to revoke the settlement deed Exhibit A1?

2. Whether the settlement deed under Exhibit A1 and the will under Exhibit A7 though both are dated 04.05.1994 are genuine?

3. Whether the Appellate Court is justified in granting decree regarding B schedule property especially when the counsel for the respondent under her instructions has submitted before the trial Court that the dispute is confined only to property under Schedule A of the suit property?

4. Whether the patta dated 26.06.1985 under Exhibit B2 should be rejected in view of subsequent documents under Exhibit A5 and A6 dated 14.01.1996 and 05.01.1995 which are dated subsequent to the documents Exhibit A1 and A7?

5. Whether the registration of Exhibit A1 and A7 on different days is not sufficient proof of the illegality of the said documents?

6. Whether under law the appellate Court ought to have rejected the claim of the respondent with regard to both the properties described in Schedule 'A' and Schedule 'B' in the plaint?"

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 declaration, permanent injunction or in the alternative, possession of the plaint 'B' schedule property.

6. Briefly stated, the plaintiff claims title to the plaint 'A' schedule properties based on the settlement deed dated



04.05.1994 executed in her favour by her maternal grandmother Ayammal and the plaintiff claims title to the plaint 'B' schedule property based on the Will dated 04.05.1994 executed by her maternal grandmother in her favour.

WEB COPY

7.The first defendant is the son of Ayammal and the defendants 2 to 4 are the sons of the first defendant.

8.Though the defendants would claim that the suit properties are the ancestral properties and that, Ayammal is not entitled to execute the settlement deed and the Will, in respect of the same, however, there is no material on the part of the defendants to establish that the suit properties are their ancestral properties as such. In this connection, the first defendant examined as DW1, during the course of cross examination, on being confronted as to how he claims that the suit properties are the ancestral properties, he would only give an evasive reply that the suit properties would have been derived by his father by way of partition. Therefore, it is evident that the first defendant is not sure as to how the suit properties are his ancestral properties and accordingly, unable to place any material pointing to the same. To establish that the suit properties are enjoyed by his father and his forefathers, absolutely, there is no proof on the part of the first defendant or the defendants as the case may be. Therefore, it is seen that only with a view to stifle the case of the plaintiff one way or the other, it is found that the defendants have projected a claim that the suit properties are the ancestral properties and that, Ayammal had no entitlement to execute the settlement deed and the Will in respect of the same.

9.On the other hand, as could be seen from the available materials placed on record, both oral and documentary, it is found that the suit properties had been acquired by Ayammal through her mother and accordingly, it is evident that Ayammal had the entitlement to execute the settlement deed and the Will in respect of the same in favour of the plaintiff.

10.As could be seen from the available materials on record, Ayammal had three daughters and one son and the first defendant is her son and the plaintiff is her grand daughter. Now, according to the plaintiff, Ayammal had executed the settlement deed dated 04.05.1994 in respect of the plaint 'A' schedule properties in her favour and the said document had come to be marked as Ex.A1. According to the plaintiff, she had accepted the same and following the same, it is stated that she had obtained patta in respect of the plaint 'A' schedule properties and paying kist in respect of the same, which documents had come to be marked as Exs.A2, 4 to 6. In this connection, the first defendant examined as DW1, during the course of cross



examination, has admitted that following the settlement deed executed in favour of the plaintiff, chitta and adangal entries had been changed in the name of the plaintiff in respect of the said properties and in such view of the matter, it is evident that inasmuch as the properties settled by way of Ex.A1 deed had been taken possession of by the plaintiff and following the same, she had been enjoying the said properties as the full owner thereof. The patta had come to be effected in respect of the said properties in favour of the plaintiff and following the same, it is seen that the plaintiff has also been paying the kist in respect of the said properties. Therefore, the claim of the defendants that Ex.A1 settlement deed had not been given effect to or that the plaintiff had not accepted the same and not enjoyed the properties on her own, as such, cannot be believed and accepted.

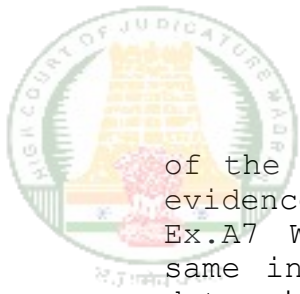
11.The plaintiff has also examined the attesor and the scribe of the settlement deed as PWs2 & 3 and they have also tendered evidence with reference to the same in an acceptable and reliable manner. The fact that Ayammal had executed the settlement deed in favour of the plaintiff could also be gathered from the document marked as Ex.B1. According to the defendants, after the execution of Ex.A1 settlement deed by Ayammal, she had cancelled the same by way of Ex.B1 deed. It is thus found that on the basis of Ex.B1 cancellation deed, it is made clear that it is only Ayammal, who had executed Ex.A1 settlement deed in respect of the plaint 'A' schedule properties in favour of the plaintiff. When Ex.A1 settlement deed is found to have been accepted by the plaintiff and the same had been acted upon and when further it is seen that following the settlement deed, the plaintiff had been enjoying the plaint 'A' schedule properties by obtaining patta, paying kist etc., and when furthermore, Ayammal had not reserved any right or revocation to cancel the same as per law and on the other hand, when by way of Ex.A1 settlement deed, she had absolutely transferred the right in respect of the plaint 'A' schedule properties in favour of the plaintiff in praesenti and also the plaintiff is in the possession and enjoyment of the same, in such view of the matter, following Ex.A1 settlement deed, Ayammal ceased to have any right over the said properties and therefore, the case of the defendants that Ayammal had cancelled the settlement deed by way of Ex.B1 deed cannot at all be accepted in any manner and in such view of the matter, the first appellate Court had rightly rejected Ex.B1 deed of cancellation and accepted the settlement deed Ex.A1.

12.In fact, during the course of the arguments, the counsel for the defendants did not put forth any serious contention in respect of the plaint 'A' schedule properties other than stating that the deed of settlement had been subsequently cancelled one



way or the other. When as abovenoted, Ayammal had no entitlement to the plaint 'A' schedule properties, after Ex.A1, the deed of cancellation said to have been executed by her, would not have any legal force and accordingly, no interference is called for in the determination of the first appellate Court in rejecting Ex.B1 cancellation deed.

13.As regards the plaint 'B' schedule property, according to the plaintiff, Ayammal had executed a registered Will in her favour on 04.05.1994, which document has come to be marked as Ex.A7. On a perusal of Ex.A7, it is found that Ayammal had bequeathed the plaint 'B' schedule property in favour of the plaintiff and following the death of Ayammal on 09.10.1995, it is found that Ex.A7 had come into force and by virtue of the same, it is found that it is only the plaintiff, who had title to the plaint 'B' schedule property. To establish the truth and validity of Ex.A7 Will, the plaintiff has examined the attesor and the scribe of the Will as PWs 2 & 3 and they have clearly deposed about the execution of Ex.A7 Will by Ayammal in a fit state of mind and health and also deposed that they had witnessed the execution of Ex.A7 Will by Ayammal and about their attestation of the document in the presence of Ayammal. Despite the cross examination, nothing has been culled out from them to discredit their evidence. No doubt there are discrepancies in their testimony as regards the date of the registration of Ex.A7 Will. As far as this case is concerned, it is found that both the settlement deed Ex.A1 as well as the Will Ex.A7 have been executed by Ayammal on the same date. Accordingly, it is found that PWs 2 & 3 while tendering the evidence with reference to the abovesaid documents, they being the attesor and the scribe of both the documents, in such view of the matter, there had arisen certain discrepancies in their evidence as regards the fact as to when the abovesaid documents had come to be registered. However, in my considered opinion and as determined by the first appellate Court, when as far as the execution of Ex.A7 Will by Ayammal in a sound state of health, when the same had been clearly deposed by the attesor PW2 and the scribe PW3 without any ambiguity and the contradiction had appeared only qua the date of the registration of the Will and the settlement deed and not in other aspects, in such view of the matter, when the plaintiff as per law has to establish only the due execution of the Will by the testator concerned and when the same had been established by the plaintiff, through the evidence of PWs2 & 3, in such view of the matter, the mere inconsistency appearing in the evidence of PWs 2 & 3 as regards the date of the registration of Ex.A1 settlement deed and Ex.A7 Will would not affect their testimony in other aspects and when the registration of the Will is not strictly essential for sustaining its validity as per law and the Will could be validly enforced even without the registration of the same, in such view



of the matter, the abovesaid inconsistency or discrepancy in the evidence of PWs 2 & 3 as regards the date of the registration of Ex.A7 Will would not undermine their evidence as regards the same in other aspects and therefore, the same had been rightly determined by the first appellate Court in the correct perspective and correctly upheld the truth and validity of Ex.A7 Will.

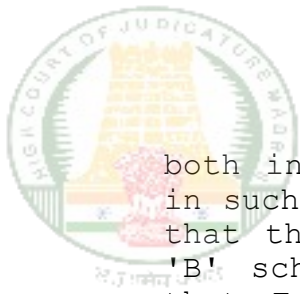
14.The argument has been put forth by the defendants' counsel that the plaintiff's counsel had given up the case of the plaintiff as regards the plaint 'B' schedule property before the trial Court during the course of the arguments and therefore, according to him, when the case of the plaintiff as regards the plaint 'B' schedule property had been not pressed or given up, as such, thereafter the plaintiff would not be entitled to claim any title to the plaint 'B' schedule property and the abovesaid position of law has not been considered by the first appellate Court in the right perspective and therefore, contended that on that score alone, the judgment and decree of the first appellate Court as regards the plaint 'B' schedule property is liable to be reversed and in this connection, relied upon the decisions reported in (1982) 2 Supreme Court Cases 463 (State of Maharashtra Vs. Ramdas Shrinivas Nayak and another) and (2011) 12 Supreme Court Cases 658 (Vimaleswar Nagappa Shet Vs. Noor Ahmed Shariff and others). However, the abovesaid contention does not merit acceptance. On a reading of the judgment and decree of the trial Court, it is found that during the course of arguments, the plaintiff's counsel had not given up the case as regards the plaint 'B' schedule property. On the other hand, the doubt had been expressed as to whether the documents projected would be sufficient for holding the plaint 'B' schedule property as Ayammal's separate property and accordingly, the argument had been placed that the claim in respect of the plaint 'B' schedule property may not be pressed. If really, the plaintiff's counsel had given up the case of the plaintiff as regards the plaint 'B' schedule property, necessary endorsement would have been obtained from him and the plaintiff as regards the same by the trial Court. On the other hand, the argument has been further made by the plaintiff's counsel as regards the entitlement of the plaintiff to the plaint 'B' schedule property also and therefore, the trial Court had also endeavoured to consider the same and determined the issues as concluded by it. Inasmuch as the plaintiff has not given up her case as regards the plaint 'B' schedule property during the course of trial, it is found that challenging the judgment and decree of the trial Court, the plaintiff has preferred the first appeal both against the plaint 'A' schedule properties as well as the plaint 'B' schedule property. Therefore, the contention of the defendants' counsel that the plaintiff has given up the case as regards the plaint 'B' schedule property during the



course of arguments, particularly, the plaintiff's counsel had given up the case as regards the plaint 'B' schedule property in the course of arguments simplicitor, in my considered opinion, cannot be countenanced when the materials do not point to the same and when no such consent of giving up the claim of title to the plaint 'B' schedule property had been obtained by the courts concerned either from the plaintiff or from the plaintiff's counsel as per law, and therefore, the argument that the plaintiff's counsel had given up the case in respect of the plaint 'B' schedule property during the course of arguments before the trial Court do not merit acceptance.

15. Inasmuch as the plaintiff is entitled to the plaint schedule properties, following Exs.A1 and A7, it is found that when the plaintiff had endeavoured to convey a portion of the same to one Mariappan by way of Ex.A8 sale transaction on 20.06.2002, it is seen that the first defendant has attested the said document and the factum of the attestation of Ex.A8 sale deed has been admitted by the first defendant during the course of his evidence. In fact, Ex.A8 has come to be marked only during the course of cross examination of the first defendant as DW1. No doubt, the first defendant would claim that he had attested Ex.A8 sale deed following the panchayat effected between him and the plaintiff at one point of time. However with reference to the abovesaid claim of panchayat said to have been effected between him and the plaintiff, there is no acceptable and reliable materials forthcoming on his part. If really, any Panchayat had been convened with reference to the plaint schedule properties between him and the plaintiff and the same had fructified one way or the other, necessary documents pointing to the same would have been placed by the defendants for consideration. On the other hand, inasmuch as the plaintiff had obtained the entitlement and title to the suit properties by way of Exs.A1 & 7 documents, accordingly, accepting the same, the first defendant had chosen to attest Ex.A8 sale deed, when the plaintiff had conveyed a portion of the properties belonging to her to one Mariappan and the above piece of evidence also amply strengthen the case of the plaintiff as determined by the first appellate Court.

16. In the light of the abovesaid discussions, it is found that Ayammal is not entitled to revoke the settlement deed Ex.A1, after the execution of Ex.A1 settlement deed in favour of the plaintiff in respect of the plaint 'A' schedule properties, particularly, when the plaintiff has established that Ex.A1 settlement deed had been accepted and acted upon. When the plaintiff's counsel is not found to have given up the case as regards the plaint 'B' schedule property during the course of arguments as put forth by the defendants' counsel and on the other hand, had been pressing the claim of the plaintiff's title



both in respect of the plaint 'A' and 'B' schedule properties, in such view of the matter, the claim of the defendants' counsel that the plaintiff had given up her case as regards the plaint 'B' schedule property does not merit acceptance. The factum that Ex.A1 settlement deed and Ex.A7 Will are registered on different dates by itself would not lead to the conclusion that they are not genuine documents. The first appellate Court had rightly assessed the materials placed on record in the matter, both factual wise as well as legal wise and correctly determined that both Ex.A1 settlement deed and Ex.A7 Will are true and valid documents and based on the same, it is only the plaintiff, who has title to the plaint 'A' and 'B' schedule properties. The substantial questions of law formulated in the second appeal are, accordingly, answered against the defendants and in favour of the plaintiff.

In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sms

To

- 1.The Principal Subordinate Court, Krishnagiri.
- 2.The District Munsif Court, Krishnagiri.
- 3.The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to M/s.C.Lakshmi Narayanan Advocate sr40561

S.A.No.1155 of 2005

ln(co)
aa30/10/2019