

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2019

PRONOUNCED ON : 31.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 732 and 751 of 2019

S.A. No. 732 of 2019

1. S.Ranjitham
2. S.Arumugam
3. Alamelu Mangai
4. N.Padma devi
5. S.Ramkumar ... Appellants/Appellants/Plaintiff

Vs.

N.Kumaresan ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.07.2018 and made in A.S.No.154 of 2007 on the file of II Additional District & Sessions Judge at Tiruppur confirming the decree and judgment dated 31.07.2007 made in O.S. No.22 of 2000 on the file of the Sub Court, Tiruppur.

S.A. No. 751 of 2019
and
CMP No.14399 of 2019

1. N.paramasivam @ Parameswaran
2. N.Sivanesan
3. S.Ranjitham
4. S.Arumugam
5. Alamelu Mangai
6. N.Padma devi
7. S.Ramkumar ... Appellants/Appellants/Defendant

Vs.

1. N.Kumaresan ...Respondent/Respondent/Plaintiff
2. V.K.Palaniammal ...Respondent/Respondent/Defendant
3. D.Annapoorani ...Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.07.2018 and made in A.S.No.155 of 2007 on the file of II Additional District & Sessions Judge at Tiruppur confirming the decree and judgment dated 31.07.2007 made in O.S. No.726 of 1999 on the file of the Sub Court, Tiruppur.

In both Appeals:

For Appellants : Mr.S.Balasubramanian

JUDGMENT

Second appeal Nos. 732 & 751 of 2019 are directed against the judgment and decree dated 31.07.2018, passed in A.S.Nos.154 & 155 of 2007, on the file of the II Additional District & Sessions Court, Tiruppur confirming the judgment and decree dated 31.07.2007, passed in O.S. Nos.22 of 2000 & 726 of 1999 on the file of the Subordinate Court, Tiruppur.

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

3. O.S. No.726 of 1999 has been laid for partition and O.S. No.22 of 2000 has been laid for the relief of possession.

4. Inasmuch as the subject matter in both the suits are more or less one and the same and the parties in both suits are also the same, in the sense that the plaintiff in O.S.No.726 of 1999 is cited as the defendant in O.S. No.22 of 2000 and the plaintiff in O.S. No.22 of 2000 has been cited as the second defendant in O.S. No.726 of 1999.

5. The relationship between the parties is not in dispute. Both parties claim title to the suit property only through their father Nataraj Chettiar. Now, according to the plaintiff Kumaresan, the suit properties are the joint family properties of Natarajan, acquired with the aid of the ancestral nucleus and accordingly, he, as one of the legal heirs of Nataraj Chettiar, is entitled to his lawful share in the suit properties and as the defendants had refused to accede to his claim of share in the suit properties, it is put forth that he had been necessitated to lay the suit for partition.

6. Per contra, the plaintiff in O.S. No.22 of 2000, who is the main contestant of O.S. No.726 of 1999 would put forth that the first item of the suit properties in O.S. No.726 of 1999 is the self acquired property of Nataraj Chettiar and not the ancestral joint family property as alleged by the plaintiff

Kumaresan and accordingly, put forth the case that the Nataraj Chettiar had bequeathed the said property in his favour by way of a Will dated 11.06.1980 and on the strength of the abovesaid Will, had laid the claim of absolute title to the said property and accordingly, sought for the recovery of possession of the same from the plaintiff Kumaresan in O.S. No.22 of 2000.

7. Based on the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff Kumaresan's case and dismissed the case of Shanmugam and accordingly, granted the relief of partition in O.S. No.726 of 1999 and dismissed the suit in O.S.No.22 of 2000.

8. As abovenoted, the relationship between the parties is not in dispute and both parties claim title through Nataraj Chettiar. As could be seen from the materials available on record, it is found that the family of Nataraj Chettiar possessed vast extent of properties, both in Chettipalayam village as well as Velampalayam village, totally amounting to 22.07 acres with Well facilities and furthermore, it is also found that Nataraj Chettiar had acquired and also alienated the abovesaid various properties and acquired income out of the same and accordingly, considering the vast extent of agricultural land and the income derived therefrom and also the income derived by Nataraj Chettiar from the alienation of the ancestral properties and that apart, when it is seen that the Charcoal business engaged by Nataraj Chettiar was also started through the capital advanced to Nataraj Chettiar by his father Kumban Chettiar, in such view of the matter, when the Courts below had rightly assessed and analysed the materials on record and determined that the ancestral nucleus put forth and admitted to be available in the family of Nataraj Chettiar being vast with all facilities of irrigation and only through the agricultural sources, the other properties are also been acquired and the ancestral nucleus had also been sold and the income derived there from had also been utilised for the family benefits as well as for the Charcoal business, in such view of the matter and in particular, when the contesting party Shanmugam has failed to establish that Nataraj Chettiar had any independent income of his own and accordingly, when it is seen that the plaintiff Kumaresan has also been in the possession and enjoyment of the suit properties, including the first item of the suit properties right from his birth and in such view of the matter, when it is further seen that the Charcoal business had been done even during the days of Kumban Chettiar, father of Nataraj Chettiar and the family is also found to be in possession of various other properties with Well facilities and when the fact remains that only through the income received from the agricultural lands, Kumban Chettiar had brought up his children and commenced business and accordingly, in the sale

deeds standing in the name of Nataraj Chettiar and the alienations effected by him do not disclose that he had been engaged in the independent business and on the other hand, his occupation has been only stated as agricultural and furthermore, when there is no proof at all on the part of the plaintiff Shanmugam that Nataraj Chettiar had independent income out of his Charcoal business, in all, it is found that the Courts below are found to be justified in determining that the suit properties involved in both the suits are only the ancestral joint family properties belonging to the parties concerned and in such view of the matter, rightly held that plaintiff Kumaresan is entitled to seek his lawful share in the suit properties.

9. As abovementioned, when Shanmugam has projected the Will said to have been executed by his father Nataraj Chettiar in his favour, however, as above pointed out, as the suit properties are only the joint family properties of Nataraj Chettiar, he would not be entitled to bequeath the entire suit properties i.e., the first item of the suit properties in favour of the plaintiff Shanmugam. Furthermore, when the witnesses examined by the plaintiff Shanmugam to establish the truth and validity of the Will dated 11.06.1980, marked as Ex.B1 as DWs 2 and 3 and considering the evidence tendered by them, as rightly found by the Courts below, their evidence do not inspire confidence and found to be totally unreliable, artificial and contradictory to each other and in such view of the matter, the Courts below are found to be wholly justified in rejecting their evidence and in such view of the matter, the alleged Will projected by the plaintiff Shanmugam having not been established to be a true and valid instrument said to have been executed by Nataraj Chettiar, in such view of the matter, the Will being excluded from consideration, it is found that when the parties altogether had traced their title only through Nataraj Chettiar and accordingly, when the suit properties involved in the matter are found to be only the ancestral joint family properties of Nataraj Chettiar, resultantly, the Courts below are right in upholding the partition suit laid by the plaintiff Kumaresan and dismissing the suit laid by Shanmugam and the reasonings and conclusions of the Courts below, with reference to the same, being founded on the proper appreciation of the materials on record, both factual wise as well as legal wise and not calling for any interference and also not suffering from any perversity or irrationality, in such view of the matter, the second appeals are found to be not entitled for acceptance.

10. In support of his contentions, the appellants' counsel placed reliance upon the decisions reported in 2001 (3) CTC 577 (Gowri Ammal and another Vs. Vaithilingam (decd.) and others) and 2005 (4) CTC 457 (P.R. Kannaiyan (died) and others Vs.

Ramasamy Mandiri S/o. Govinda Mandiri and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

11. For the reasons aforesated, no substantial question of law is involved in the second appeals. Resultantly, both second appeals are dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District & Sessions Court,
Tiruppur.
2. The Subordinate Court,
Tiruppur.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+2cc to Mr.S.Balasubramanian, Advocate Sr.65352

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S.A. Nos. 732 & 751 of 2019
and
CMP No.14399 of 2019

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