

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
S.A.Nos.148 and 149 of 2012
and M.P.Nos.1 of 2012, 1 & 1 of 2014 and 2 of 2014

S.A.No.148 of 2012

1.K.Selvarani

2.Valarmathi

..

Appellants

versus

K.Suseela

..

Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 22.06.2011 made in A.S.No.71 of 2009 on the file of the learned Subordinate Judge, Namakkal, confirming the judgment and decree, dated 27.07.2009 made in O.S.No.141 of 2005 on the file of the learned Principal District Munsif, Namakkal.

For Appellants : Mr.C.Jagadish

For Respondents: Mr.T.Dhanyakumar

S.A.No.149 of 2012

Valarmathi

..

Appellant

versus

1.Abuthiran

2.Sengodan

3.K.Suseela

सत्यमेव जयते

Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 22.06.2011 made in A.S.No.72 of 2009 on the file of the learned Subordinate Judge, Namakkal, confirming the judgment and decree, dated 27.07.2009 made in O.S.No.321 of 2005 on the file of the learned Principal District Munsif, Namakkal.

For Appellant : Mr.C.Jagadish

For Respondents: Mr.T.Dhanyakumar for R1 & R3

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C O M M O N J U D G M E N T

These Second Appeals are filed against the common judgment and decree, dated 22.06.2011 made in A.S.Nos.71 and 72 of 2009 on the file of the learned Subordinate Judge,

Namakkal, confirming the common judgment and decree, dated 27.07.2009 made in O.S.Nos.141 and 321 of 2005 on the file of the learned Principal District Munsif, Namakkal.

2. Since both the suits were disposed of in a common judgment, this Court is also inclined to dispose of these appeals in a common judgment. In so far as these appeals are concerned, they are not yet admitted.

3. The brief facts leading to these appeals are as follows:

The suit in O.S.No.141 of 2005 has been filed for partition and the suit in O.S.No.321 of 2005 has been filed for permanent injunction. The plaintiff in O.S.No.141 of 2005 is the daughter of one Sellammal. The first defendant is her sister. The second defendant is the subsequent purchaser for the portion of the property from the father of the plaintiff. The suit has been filed claiming 1/3rd share in the property left by her mother Sellammal. On 08.08.1983, the suit property comprising 3.36 acres was originally purchased by one Sellammal, the mother of the plaintiff. After the purchase, she has sold 1.12 acres in favour of the plaintiff's husband on 25.02.1991 and the remaining 2.24 acres were retained by the said Sellammal. In the meanwhile, she died intestate on 12.09.2004 leaving behind her husband and 2 daughters, namely, the plaintiff and first defendant. Therefore, the plaintiff is entitled to 1/3rd share in the property left by her mother Sellammal. The second defendant and the father of the plaintiff have transferred the property in favour of defendants 1 and 2 and hence, she filed the above said suits.

4. It is the defence of the first defendant that after the death of Sellammal, her husband became the absolute owner of the property. The said Kuzhandhaivel sold half of the suit property in favour of the first defendant for a sum of Rs.1,80,000/- and the remaining half was sold to the second defendant on 15.07.2004. Hence, it is the contention of the defendants that, the plaintiffs have no right to claim the share in the property. The second defendant has also filed a written statement in the same line. The plaintiff in O.S.No.321 of 2005 has been filed the suit for permanent injunction on the ground she has purchased the property and hence, the defendants have no right in the property.

5. The trial Court framed 7 issues and joint trial was conducted and both the suits filed by the plaintiffs were dismissed. As against the common judgment and decree in O.S.Nos.141 and 321 of 2005, the appellants herein have filed A.S.Nos.71 and 72 of 2009 on the file of the learned Subordinate Judge, Namakkal. The First Appellate Court heard both the appeals together and by a common judgment dated 22.06.2011, dismissed both the appeals, thereby confirming

the common judgment and decrees of the trial court. Challenging the common judgment and decree in A.S.Nos.71 and 72 of 2009, the appellants have come up with S.A.Nos.148 and 149 of 2012.

6. The learned counsel appearing for the appellants submitted that the property was originally owned by Sellammal, she has left the Will in favour of her husband Kuzhandhaivel. After her death, Kuzhandhaivel became the absolute owner and he has sold the property to both the defendants in O.S.No.141 of 2005 and hence, the plaintiffs have no right in the property.

7. Per contra, the learned counsel appearing for the respondents would submit that the alleged Will propounded by the first defendant in O.S.No.141 of 2005 is a fabricated document and not been proved in a manner known to law. Hence, the learned counsel submitted that the judgment of the trial Court and the First Appellate Court does not require any interference.

8. I have perused the entire materials available on record. The Second Appeals are not admitted.

9. It is not in dispute that the suit in O.S.No.141 of 2005 has been filed for partition dividing into 3 equal shares and allotted 1 share to the plaintiff. It is also not in dispute that the subject matter of the suit for partition is originally owned by the mother of the plaintiff, namely, Sellammal. She died intestate on 12.09.2004. At the time of her death, she left her husband and two daughters, as sole surviving legal heirs, which was also not in dispute. Therefore, she filed a suit for claiming 1/3 share in the property left by her mother. The main defence is that the plaintiff has no right in the property. The Will dated 20.05.2001 propounded by the first defendant is an unregistered Will. The unregistered will propounded by the first defendant has not been proved in the manner known to law. No attesting witnesses were examined by the first defendant to prove the Will. Unless any of the attesting witnesses is examined to prove the Will, the Will cannot be admitted and there is a clear bar in law.

10. It is to be noted despite the fact that the Will has not been proved in the manner known to law, the said Will was sent for expert opinion. The Expert in their report found that the Will is a fabricated one. Ofcourse, the Expert has not been examined before the Court, at any event the Will propounded by the first defendant cannot be looked into for any other purpose, since it has not been established and proved as per law. Therefore, the preliminary decree in favour of the plaintiffs cannot be found fault with.

11. Similarly, the second defendant is the purchaser of one of the portion of the property from the father of the plaintiff and the first defendant who had no title to entire property at any point of time. In view of the same, the trial Court found that the purchaser cannot be claim any injunction against the co-owner, same not require any interference. On perusal of the entire materials, there is no substantial question of law in favour of the appellants in these appeals.

12. In the result, these Second Appeals are dismissed and the common judgment and decree passed by the trial court and confirmed by the lower appellate court is hereby confirmed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sri
To

- 1.The Subordinate Judge,
Namakkal.
- 2.The Principal District Munsif,
Namakkal.

Copy to

The section officer,
VR Section,High court
Madras

+1cc to Mr.T.Dhanyakumar , Advocate SR.No. 11566

S.A.Nos.148 and 149 of 2012
and M.P.Nos.1 of 2012,
1 & 1 of 2014 and 2 of 2014

vba (CO)
A.SK(07/05/2019)

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