

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.08.2019

DATED: 27.08.2019

CORAM :
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
S.A. No. 84 of 2015
And
M.P.No. 1 of 2015

Aarayee ... Appellant/Appellant/8th Defendant

Vs.

1. Ravi

2. Sivakumar

3. Vasanthi

4. Moorthi

5. Rajamani

6. Deviga ... Respondents 1 to 6/Respondents
1 to 6/Plaintiffs 1 to 6

7. Perumal

8. Veeraiyah

9. Sellammal

10. Raji

11. Ganesan

12. Shanmugam Respondents/ 7 to 12/Respondents
7 to 12/Defendants 1 to 6

Palaniammal (died) ... Respondents /Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 29.11.2013 made in A.S.No. 61 of 2011 on the file of the Subordinate Court at Namakkal confirming the Judgment and the decree dated

25.08.2011 made in O.S.No. 709 of 2006 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr. T.Dhanyakumar

For RR 1 to 3, RR 5 & 6 : Mr. E.Duraivaiyapuri
for M.Manokaran

JUDGMENT

The eighth defendant in O.S.No. 709 of 2006 is the appellant herein. The suit properties are situated at Muttanchetti Village, Namakkal District. The first item of suit property belonged to Raman, son of Thatan. The second item of suit property belonged to his wife Sellayee.

2. It is claimed by the plaintiffs that Raman and Sellayee had four daughters, namely, 1) Mookayee, 2) Chinnapillai, 3) Nallammal and 4) Aarayee. The legal representatives of Chinnapillai are the plaintiffs. They claimed 1/4th undivided share in the suit property. The legal representative of Mookayee are the first and third defendants. The legal representatives of Nallammal, are the fourth to sixth defendants. Aarayee, the other daughter is the eighth defendant. The plaintiffs claimed 1/4th undivided share in the suit property as the legal representatives of Chinnapillai, one of the four daughters of Raman and Sellayee.

3. The suit was contested only by the eighth defendant Aarayee. According to her, she was the sole daughter of Raman and Sellayee. She claimed to be the only legal heir. She denied the claim of both the plaintiffs and of the other defendants for any share in the suit properties in their capacity as legal heirs of Raman and Sellayee. She specifically claimed that Mookayee, Chinnapillai and Nallammal were not her sisters. She claimed to enjoy the suit property. She therefore stated that the suit should be dismissed.

4. On the basis of the said pleadings, the learned Trial Court, namely, Principal District Munsif Court, Namakkal, framed the following issues for trial:-

"1. Whether it is true that Mookayee, Chinnapillai, Nallammal and Aarayee are the legal heirs of Raman, Sellayee couple?;

2. Whether it is true that 8th defendant alone the LR of Raman, Sellayee Couple?;

3. Whether the plaintiffs are entitled

for preliminary decree in respect of partition?; and

4. To what other relief the plaintiffs are entitled to?"

5. During trial, the first plaintiff Ravi was examined as PW-1. One Chozan, aged about 87 years and who was a resident of the village and whose lands were adjacent to the suit properties was examined as PW-2. He very categorically stated that Raman and Sellayee had four daughters, namely, 1) Mookayee, 2) Chinnapillai, 3) Nallammal and 4) Aarayee. The plaintiffs also filed the patta in the name of Raman, the Chitta and the Settlement Register as Exs. A-1, A-2 and A-3. On the side of the defendant, the eighth defendant Aarayee examined herself as DW-1. She also filed patta in the name of Raman, the patta in her name and in her daughter's name and the tax receipts as Exs. B-1 to B-4. On the basis of the oral and documentary evidence, the learned Principal District Munsif, Namakkal, answered Issue No.-I in favour of the plaintiff holding that Raman and Sellayee had four daughters and answered Issue No.2 against the eighth defendant rejecting her claim that she was the only legal heir of Raman and Sellayee. The evidence of PW-2 was relied on by the trial Court. He was an elderly person, aged 87 years, resident of the village and consequently, knew about the family. He very categorically stated that Raman and Sellayee had four daughters. It was specifically observed that the eighth defendant failed to establish the fact asserted by her that she was the only daughter of Raman and Sellayee. Consequently, a preliminary decree was passed granting 1/4th share in the suit properties to the plaintiffs.

6. Challenging that Judgment, the eighth defendant filed A.S.No. 61 of 2011 in the Sub Court, Namakkal. The same points were agitated before the First Appellate Court. The learned Sub Judge, once again independently reappraised the evidence and found that PW-2 Chozan was a reliable witness and again determined as a fact that Raman and Sellayee had four daughters and that the appellant was not the only daughter of Raman and Sellayee. Consequently, a concurrent finding on fact had been returned by the First Appellate Court also confirming that the plaintiffs were entitled to an undivided 1/4th share in the suit properties.

7. The Second Appeal had been admitted on the following substantial questions of law:-

"1. In the absence of any documentary proof like birth certificate, death certificate etc.,

whether the Courts below were right in holding that Chinnapillai, Mookkayee and Nallammal were the daughters of Raman, solely based on the oral testimony of PW-2?

2. Whether the Courts below were right in holding that the burden is upon the appellant to disprove that Chinnapillai, Mookkayee and Nallammal are not the daughters of Raman?".

8. With respect to the first substantial question of law, I hold that, the evidence of PW-2 is very convincing and it would be highly impossible to always expect documentary evidence like birth certificate or death certificate to prove birth of children in a village. As a matter of fact, both the Courts below had returned a concurrent finding that Raman and Sellayee had four daughters and without any additional information or additional evidence, it would be highly impossible for this court to return a finding on fact different from what had been concluded by both the Courts below. Consequently, with respect to the first substantial question of law, I hold that the Courts below were correct in relying on the oral testimony of PW-2.

9. With respect to the second substantial question of law, I hold that the case of the appellant/eighth defendant was wholly misconceived and if at all, she were to claim that she was the only daughter and legal heir of Raman and Sellayee, the burden was on her to prove that fact. I hold that both the Courts were correct in holding that she had not discharged that burden.

10. In view of the above reasoning, I find no ground to interfere with the well considered Judgments of both the trial Court and the First Appellate Court and consequently, the Second Appeal is dismissed, however, without costs. Connected Miscellaneous Petition is closed.

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sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

1. Subordinate Court,
Namakkal.
2. Principal District Munsif Court,
Namakkal.
3. VR Section, High Court,
Madras.

+lcc to Mr.T.Dhanyakumar, Advocate Sr.73806

S.A. No. 84 of 2015
And
M.P.No. 1 of 2015

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