

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2019

PRONOUNCED ON: 29.08.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.333 of 2016

and

C.M.P.No.6128 of 2016

&

C.M.P.No.22940 of 2018

&

C.M.P.No.13436 of 2019

1. Porchezhian

2. Gajendran

3. Rani

...1st Appellant/Plaintiff

Vs.

1. K.Poongothai

...Appellants 2 & 3/
Defendants 3 &

2. C.Kumar

...Respondents 1 & 2/
Defendants 1 & 2

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 17.11.2015 passed by the XVII Additional Judge, City Civil Court, Chennai in A.S.No.163 of 2014 reversing the judgment and decree dated 31.01.2014 passed by the VIII Assistant Judge, City Civil Court, Chennai, passed in O.S.No.4356 of 2012.

For Appellants : Mr.K. Gnana Sambandam

For Respondents : Mr.A.Thiagarajan, SC
for M/s. D.Senthil Kumar

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J U D G M E N T

The Second Appeal is directed against the judgment and decree dated 17.11.2015 passed in A.S.No.163 of 2014 on the file of the XVII Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 31.01.2014 passed in O.S.No.4356 of 2012 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

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

3. The Second Appeal has been admitted on the following substantial questions of law:

i. Whether the Lower Appellate Court is right in reversing the judgment of the trial court, when admittedly both the parties claim that the suit property was originally owned by one Vijayarangan and in the absence of any challenge to the settlement deed made in faovur of the said Vijayarangan and that the plaintiff has purchased the property from the legal heirs of the said Vijayarangan?

ii. Whether in the absence of not probating the Will of 1995, the respondents can claim any title to the suit property?

4. 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.

5. Suffice to state that the suit has been laid by the plaintiff for declaring that the settlement deed dated 12.07.2004 executed by the second defendant in favour of the first defendant is null and void and for the grant of permanent injunction restraining the defendants, their men or agents from interfering with his possession and enjoyment of the suit property.

6. Briefly stated according to the plaintiff, the suit property belonged to one Vijayarangan the father of the defendants 3 and 4 by way of a settlement deed dated 03.04.1937 and Vijayarangan and his wife Radhammal had died leaving behind the defendants 3 and 4 as their legal heirs and accordingly the defendants 3 and 4 inherited the estate of Vijayarangan and executed the release deeds amongst themselves for the enjoyment of the suit property and further according to the plaintiff, he had purchased the suit property from the defendants 3 and 4 by way of a sale deed dated 30.08.2011 and when he endeavored to put up the construction in the suit property, according to him, the defendants interfered with his possession and enjoyment on the footing that the second defendant had executed a settlement deed dated 12.07.2004 in favour of the first defendant in respect of the suit property and hence according to the plaintiff, he has been necessitated to institute the suit against the defendants for appropriate reliefs.

7. The defendants 1 and 2 mainly contested the plaintiff's suit and according to them, Vijayarangan the original owner of the suit property, married one Kannammal. Both Vijayarangan and Kannammal had died without any issues and the second defendant's father Chinna Thambi is the brother of Vijayarangan and accordingly he is entitled to the suit property as class II legal heir of Vijayarangan and accordingly, it is stated that after the demise of Vijayarangan and his wife, it is only the second defendant's father Chinna Thambi, who had been in the possession and enjoyment of the suit property and it is further stated that one Karunakaran, Advocate approached the defendants and assured that he would make arrangements for selling the suit property to prospective purchasers for a good price and believing his words, the defendants had handed over all the documents pertaining to the suit property and the plaintiff with the help of the abovesaid Advocate and in collusion with the defendants 3 and 4 had created the fraudulent documents namely the release deeds and the sale deed in respect of the suit property and further according to the defendants 1 and 2, the defendants 3 and 4 are not the legal heirs of Vijayarangan and further stated that second defendant's father Chinna thambi had executed the registered Will in favour of the second defendant in respect of the suit property and in that connection, the second defendant had filed O.P.No.151/2018 before the High Court with reference to the same and the said case is pending and it is only the second defendant, who is the legal heir of Chinna Thambi and therefore he is entitled to settle the suit property in favour of the first defendant and accordingly prayed for the dismissal of the plaintiff's suit. The defendants 3 and 4 had filed the written statement supporting case of the plaintiff.

8. Based on the materials placed on record by the respective parties and the submissions made, the trial court was pleased to grant the reliefs in favour of the plaintiff as prayed for. The first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to dismiss the plaintiff's suit. Impugning the same, the plaintiff and the defendants 3 and 4 have come forward with the present Second Appeal.

9. It is not in dispute between the parties that Vijayarangan is the original owner of the suit property by virtue of the settlement deed dated 03.04.1937 marked as Ex.A1. From the recitals contained in Ex.A1 settlement deed, it is found that the suit property originally belonged to the deceased Muniappan and Murugesan and Mari are the children of the deceased Muniappan and after the demise of Muniyappan, Murugesan and Mari had partitioned the suit property and other properties belonging to their father on 30.03.1936 and thereafter both of them had jointly executed the settlement deed dated 03.04.1937

in favour of Vijayarangan in respect of the suit property and accordingly it is found that Vijayarangan had acquired title to the suit property. As above stated, the parties are not in issue that the original owner of the suit property is Vijayarangan.

10. Now according to the plaintiff, Vijayarangan's wife is Radhammal and the defendants 3 and 4 are the legal heirs of Vijayarangan and Radhammal and accordingly contended that after the demise of Vijayarangan and Radhammal, it is only the defendants 3 and 4 who had inherited the estate of Vijayarangan and accordingly it is the case of the plaintiff that he had purchased the suit property from the defendants 3 and 4 by way of a sale deed dated 30.08.2011 and therefore according to the plaintiff, it is only he who has a valid title to the suit property, and on the other hand, inasmuch as the defendants 1 and 2 attempted to interfere with his possession and enjoyment of the suit property claiming that they have title to the suit property and in this connection, projected the settlement deed dated 12.07.2004 said to have been executed by the second defendant in favour of the first defendant and hence according to the plaintiff, he has been necessitated to institute the suit against the defendants for appropriate reliefs.

11. The contesting defendants namely the defendants 1 and 2 had disputed the claim of the plaintiff that Radhammal is the wife of Vijayarangan and that the defendants 3 and 4 are the children of Vijayarangan and Radhammal. In such view of the matter, at the foremost, the plaintiff has to establish that Radhammal is the wife of Vijayarangan and that the defendants 3 and 4 are the children of Vijayarangan and Radhammal and further according to the contesting defendants, Vijayarangan's wife is one Kannammal and further according to them both Vijayarangan and Kannammal died issueless and accordingly it is put forth that the second defendant's father Chinna thambi who is the brother of the deceased Vijayarangan he is entitled to succeed to the estate of Vijayarangan as class II legal heir of the deceased Vijayarangan and furthermore also put forth that Chinna thambi had executed the registered Will in favour of the second defendant qua the suit property and on that basis the defendants 1 and 2 claim title to the suit property as well as on the basis of the settlement deed executed by the second defendant in favour of the first defendant dated 12.07.2004.

12. Despite the abovesaid defence projected by the contesting defendants, the plaintiff has miserably failed to establish that Radhammal is the legally wedded wife of Vijayarangan and that the defendants 3 and 4 are born to Vijayarangan and Radhammal. In this connection, the plaintiff examined as P.W1 has admitted that only his Advocate knew as to

how the defendants 3 and 4 had acquired title to the suit property and also state that he does not know for what reason he had impleaded the defendants 3 and 4 as parties to the suit. Furthermore the plaintiff has also admitted that he has not filed the legal heirship certificate of Vijayarangan and accordingly when in particular, the contesting defendants had seriously objected/impugned the case of the plaintiff that Radhammal is not the wife of the deceased Vijayarangan and that the defendants 3 and 4 are not the children of Vijayarangan other than marking the death certificates of Vijayarangan and Radhammal, there is no other valid material on the part of the plaintiff to hold that Radhammal is the legally wedded wife of Vijayarangan and that the defendants 3 and 4 are the children of Vijayarangan and Radhammal. If that be so, as rightly put forth by the defendants' counsel, the legal heir certificate pointing to the abovesaid case of the plaintiff would have been projected by the plaintiff. Furthermore, the third defendant examined as D.W.2 has also admitted that he has not filed any document to evidence that he is the legal heir of the deceased Vijayarangan and also would plead ignorance to whom he had alienated the suit property and also pleaded ignorance about the description of the suit property. When the defendants have come forward with the case that only Kannammal is the legally wedded wife of Vijayarangan and they have also marked the death certificate of Vijayarangan and Kannammal as well as the 16th day ceremony invitation cards of Vijayarangan and Kannammal and the plaintiff having come forward with the suit seeking the reliefs prayed for on the footing that the defendants 3 and 4 are the legal heirs of Vijayarangan and when as above pointed out and determined by the first appellate court, the plaintiff has miserably failed to establish the abovesaid case projected by him, in such view of the matter, it cannot be presumed without any material that Radhammal is the legally wedded wife of Vijayarangan and that the defendants 3 and 4 are the children born to Vijayarangan through Radhammal. In the light of the abovesaid position, the first appellate court is justified in determining that the plaintiff has miserably failed to establish the claim of title of the defendants 3 and 4 in respect of the suit property through Vijayarangan and in such view of the matter, the claim of the plaintiff that he had purchased the suit property from the defendants 3 and 4 by way of a sale deed dated 30.08.2011, as such, cannot be believed and accepted.

13. When the defendants 3 and 4 are not shown to be the legal heirs of Vijayarangan in such view of the matter, the case projected by the plaintiff that the defendants 3 and 4 had executed release deeds amongst themselves with reference to the suit property marked as Exs.A4 and A5 by themselves would not in any manner advance the plaintiff's case.

14. The plaintiff has also miserably failed to establish that Radhammal or as the case may be the defendants 3 and 4 had enjoyed the suit property as the lawful owners thereof and in such view of the matter, the case projected by the plaintiff that he has acquired the valid claim of title to the suit property, as such, cannot be believed and accepted in any manner.

15. According to the defendants, one Advocate namely Karunakaran had approached them for selling the suit property to prospective purchasers for a good price and believing his version, they had entrusted the documents to him and accordingly putforth the case that the plaintiff had created fabricated documents and come forward with the case in collusion with the abovesaid Advocate and the defendants 3 and 4. The abovesaid Advocate had been examined as P.W.2. P.W.2 in his course of his evidence has admitted that the defendants 3 and 4 had not entrusted any document to him to evidence that they are the legal heirs of Vijayarangan and according to him, he had determined their parentage based on the other documents given to him by the defendants 3 and 4 and therefore the claim of the plaintiff that he had obtained a proper legal opinion before purchasing the suit property from the defendants 3 and 4 cannot at all be believed and the evidence of P.W.2 as above pointed out does not help him in any manner to hold that the defendants 3 and 4 had a valid claim of title to the suit property as the legal heirs of the deceased Vijayarangan.

16. The plaintiff had mainly contended that the second defendant's claim of title to the suit property based on the Will said to have been executed by his father not have been probated in any manner and hence according to the plaintiff, the second defendant is not entitled to settle the suit property in favour of the first defendant. The first defendant is the wife of the second defendant. According to the defendants 1 and 2 the proceedings in connection with the abovesaid Will is pending in the High Court. Be that as it may, as rightly putforth by the defendants' counsel, when it is not in dispute that the second defendant's father Chinnathambi is the brother of the deceased Vijayarangan and in such view of the matter, when the plaintiff has failed to establish that the defendants 3 and 4 are the legal heirs of the deceased Vijayarangan and on the other hand, when the materials projected by the defendants 1 and 2 go to show that the Vijayarangan and his wife Kannammal had died issueless, in such view of the matter, accordingly the second defendant's father Chinnathambi, as the class II legal heir of Vijayarangan, is found to be entitled to inherit the suit property belonging to his brother Vijayarangan and even assuming for the sake of arguments that the Will projected by the defendants 1 and 2 has not been probated, in any event, as the class II legal heir of the deceased Vijayarangan, it is found

that the second defendant's father would be entitled to the suit property and the second defendant as the legal heir of his father is found and justified to claim title to the suit property and in such view of the matter and as abovenoted, when the plaintiff has miserably failed to establish his claim of title to the suit property in any manner and also failed to establish that the defendants 3 and 4 have a valid claim of title to the suit property and in such view of the matter, the plaintiff is not entitled to seek any challenge to the settlement deed said to have been executed by the second defendant in favour of the first defendant dated 12.07.2004 qua the suit property. As abovenoted, the plaintiff has failed to establish his possession and enjoyment of the suit property as well as his alleged vendors' possession and enjoyment of the suit property at any point of time and there is no material at all on the part of the plaintiff evidencing his claim of possession and enjoyment of the suit property.

17. In the light of the abovesaid discussions, it is found that the first appellate court had rightly assessed and analysed the materials placed on record and accordingly the reasonings and conclusions of the first appellate court for non-suiting the plaintiff not suffering from any perversity or irrationality, in such view of the matter, they do not warrant any interference and accordingly the Second appeal is found to be devoid of merits.

18. In support of his contentions, the defendants' counsel placed reliance upon the decisions reported in

i. 2014 (4) CTC 471 [Union of India and others Vs. Vasavi Co-op Housing Society Ltd and others]

ii. 2007 (1) LW 126 [Anil Rishi Vs. Gurbaksh Singh]

iii. 95 LW. P.No. 708 [P.Thangavelu and R.Dhanalakshmi ammal and other]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

C.M.P.No.22940 of 2018

&

C.M.P.No.13436 of 2019

19. Both the plaintiff and the defendants have preferred the applications for the reception of additional evidence contending that the additional evidence projected by them would buttress their version respectively. However, both of them have failed to putforth as to why they had not endeavored to produce the

additional evidence before the Courts below and when the additional evidence sought to be projected by them respectively are found to be within their knowledge and also capable of production before the Courts below and when they not placed any acceptable cause for not placing the said documents before the Courts below for consideration, in such view of the matter, both the abovesaid petitions, not satisfying the ingredients of Order 41 Rule 27 and furthermore, when the available materials placed on record are found to be sufficient for adjudicating the issues involved in the matter, in such view, I am unable to accept the reasonings projected by both the parties for the reception of additional evidence and accordingly the abovesaid petitions are found to be devoid of merits and both the petitions are dismissed.

20. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants. In conclusion, the second appeal fails and is accordingly dismissed with costs. C.M.P.No.22940 of 2018 and C.M.P.No.13436 of 2019 are dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS II)

True Copy
Sub-Assistant Registrar

To

1. The XVII Additional Judge,
City Civil Court,
Chennai.

2. The VIII Assistant Judge,
City Civil Court,
Chennai.

+1 cc to Mr.K.S.Ganasambandan Advocate sr 74891

Pre-delivery judgment made in
S.A.No.333 of 2016
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