

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.703 of 2014

1. Banumathi
2. Anitha
3. M.Manivannan ... Appellants/Plaintiff 5 to 7

1. M.Selvi
2. M.Kanagavalli
3. M. Meganathan
4. M.Gunachithra @ Gayathri ...Plaintiffs 1 to 4
5. Kannammal
6. M. Mahendiran
7. Minor M.Rajesh
Rep.by his father & Natural Guardian
Mr.M.Mahendiran
8. Powrnami
9. Manimegalai
10. Brindha ...Defendants 1 to 6/
Respondents 5 to 10

PRAYER: Appeal under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree made in O.S.No.107 of 2011 on the file of II Additional District and Sessions Judge, Thiruvallur at Poonamallee dated 30.07.2013.

For Appellants : Mr.V.S.Siva Sundaram

For Respondents : No appearance [R1, R2 & R4]
Mr.P.S.Chandra Gupthan[R3]
Mr.Mukundan [RR5 to 10]

J U D G M E N T

The appeal suit is filed challenging the judgment and decree dated 30.07.2013 passed in O.S.No.107 of 2011 on the file of II Additional District and Sessions Judge, Thiruvallur at Poonamallee. The appeal suit is preferred against item no. 1 of the suit property with reference to all that piece and parcel of the land admeasuring to an extent of 0.13 cents (5670 square feet) comprised in Survey No.3/2B at Gengu Reddy Kuppam, Thirunindravur Village, Poonamallee Taluk, Tiruvallur District.

2. Thus, the first appeal is to be considered with reference to item No.1 of the suit schedule property. With reference to item No.2, it is brought to the notice of this Court by the learned counsel appearing on behalf of the respondents 5 to 10 that the property is a Government poromboke land and therefore the parties cannot have any right in respect of the Government poromboke land. As far as the Government poromboke land is concerned, who are in occupation, are to be considered as encroachers and it is for the Government to deal with the property in accordance with the provisions of the Tamil Nadu land and Encroachment Act, 1905.

3. The suit was instituted by the appellants/plaintiffs for partition claiming preliminary decree for 4/9 share in the suit properties and for the cost of the suit.

4. The appellants/plaintiffs submitted that item No.1 was purchased by Mr. Munivel and he had created a sale deed in the name of his wife smt.Kannammal. All the appellants/plaintiffs and respondents/defendants are in joint possession and enjoyment of the suit schedule property item No.1. It is contended that item No.1 to the suit schedule property was purchased by Mr.Munivel from his savings and efforts. However, the purchase was made in the name of his wife Smt. Kannammal, who is the 5th respondent herein. As far as item No.2 of the suit schedule property is concerned, it is Government poromboke land and therefore, this Court need not deal with the property as the appeal suit restricted only with reference to item No.1 of the suit schedule property.

5. The learned counsel appearing on behalf of the appellants/plaintiffs mainly contended that the property in item No.1 was purchased from and out of the income derived from their father and therefore, the appellants/plaintiffs are entitled for their respective shares as per Successions Act. In view of the fact that they were living jointly in the suit schedule property item No.1 and was in enjoyment for continuous period till the death of their father, therefore, they are entitled for a share in the property. At the outset, it is contended that the property was purchased in the name of their mother from and out of the income earned by their father.

6. The learned counsel appearing on behalf of the respondents 5 to 10 denied the said contention by stating that it was not purchased from and out of the income of the father.

In fact the mother Smt.Kannammal was doing business of milk vending in the locality, earned money and purchased the property in suit schedule property item no.1. The learned counsel for the respondents 5 to 10 reiterated that the 5th respondent/1st defendant purchased the property from and out of her own income earned and therefore, no contribution from the saving of her husband.

7. It is contended that the 5th respondent/1st defendant was looked after by her son namely 6th respondent/2nd defendant Mr.Mahendiran and even now they are taking care of the mother. Thus, the 5th respondent/1st defendant mother settled the properties in favour of her grand son, who is the 7th respondent/3rd defendant grand-son. Thus the appellant have no right in respect of the property in item No. 1 of the suit schedule property.

8. The Trial Court has framed the following issues:

(i) Whether the settlement deed dated 14.05.2008 is declared to be null and void;

(ii) Whether the plaintiffs are entitled to 4/9 share in the suit properties;

(iii) Whether the suit is well within the period of limitation?; and

(iv) To what relief?

9. The 3rd appellant/7th plaintiff Mr.Manivannan was examined as P.W.1 and 1st appellant/5th plaintiff Tmt.Banumathi was examined as P.W.2 and Ex.A1 to A17 were marked on the side of the appellants/plaintiffs. The 5th respondent/1st defendant Tmt.Kannammal was examined as D.W.1, Ex.B1 was marked through her.

10. With reference to issues 1 to 4, the appellants/plaintiffs have filed the suit against the respondents/defendants claiming 4/9 share in item No.1 under intestate Succession as the appellants/plaintiffs are claiming to be the class I heirs of one Mr.Munivel. It is an admitted fact that the 3rd appellant/7th plaintiff and the 6th respondent/2nd defendant and one Malaiappan are the sons of the late Munivel. The 5th respondent/1st defendant Tmt.Kannammal is the widow of the deceased Mr.Munivel and respondents 8 to 10/defendants 4 to 6 and the appellants 1 and 2/plaintiffs 5

and 6 are the daughters of the deceased Munivel. One of the sons of Mr.Munivel, Thiru.T.Malaiappan was died on 12.6.2004. The 1st respondent/1st plaintiff is the widow of Mr.T.Malaiappan and the daughter-in-law of the 5th respondent/ 1st defendant. The 3rd respondent/3rd plaintiff Mr.Meganathan is the son of the 1st respondent/1st plaintiff and the 2nd respondent/2nd plaintiff Kanagavalli and 4th respondent/4th plaintiff Gayathiri are the daughters of the 1st respondent/1st plaintiff. The respondents 1 to 4/plaintiffs 1 to 4 being the heirs of the deceased Malaiappan, who is admittedly the legal heir of the late Mr.Munivel are having 1/9 share. The 1st appellant/5th plaintiff and 2nd appellant/6th plaintiff being the daughters of Mr.Munivel and 3rd appellant/7th plaintiff being son of Munivel are entitled to 1/9 share each. On that basis, the plaintiffs are claiming 4/9 share.

11. Tmt.Kannammal is the widow of the deceased Mr.Munivel and in whose name the 'A' schedule property has been purchased under document No.347/1982 dated 07.02.1982. The appellants/plaintiffs are claiming title to the 'A' schedule property as if the said 'A' schedule property is also joint family property of the deceased Munivel and he had actually purchased 'A' schedule property in the name of his wife Kannammal as binami.

12. The Trial Court made a finding that the Binami Prohibition Act, 1988 completely cuts the case of the appellants/plaintiffs regarding their claim of 4/9 share in 'A' schedule property as their claim of declaration that 'A' schedule property was purchased by the deceased Munivel in the name of his wife Kannammal and the 5th respondent/1st defendant Kannammal is only a name lender cannot be pleaded and no amount of evidence could be recorded and no argument could be harped upon by the appellants/plaintiffs in view of the decision of the Madurai Bench of Hon'ble High Court of Madras in the case of K.V.Ramasamy Vs. K.V.Raghavan [reported in 2009 (4) CTC 440]. All the immovable property standing in the name of female member is the self acquired property of the said female member and the female member in whose name the property is standing need not plead and prove that it is her own self acquired property. The view has been asserted in the judgment in the case of Kandasamy & Anr. Vs. Adi Narayanan & Ors. [reported in 1996 (1) MLJ 320].

13. Relied on the above principles, the Trial Court made a finding that the case of the appellants/plaintiffs cannot be accepted. The appellants/plaintiffs are claiming that 'A' schedule property was being treated as joint family property by

the propositus Munivel and the same was continuously treated as the Joint Family property of the appellants/plaintiffs and the respondents/defendants and the testamentary disposition of the 'A' schedule property by the 5th respondent/1st defendant in favour of the 7th respondent/3rd defendant on 14.05.2008 as null and void are against law and therefore no amount of proves need to be required from the respondents 5 to 8/defendants 1 to 4 to struck down the pleadings and the prayer as per the above decision.

14. The Trial Court further found that the plaintiffs have not filed the due Court fee for the prayer of declaration under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The plaintiffs have agreed that 'A' schedule/item No.1 of the suit property is an house site in S.No.3/2B Gengureddykuppam, Thirunindravur, Poonamallee Taluk, Tiruvallur District to an extent of 13 cents equivalent to 5670 sq.fts. The value as per the plaintiff for 1 sq.ft. is Rs.300/- and the total value of item No1 of the suit property is Rs.17,01,000/-. The Trial Court based on the fact that it was not a joint family property arrived at a conclusion that the plaintiffs have not proved that they are in joint possession of item No.1 of the suit properties along with the item No.2 of the suit properties as the plaintiffs have prayed a declaration for item No.1 of the suit property under Section 25(d) of the TNCF and S.F. Act, 1955, the notional valuations and the payment of Rs.100 to the declaratory relief for item No.1 of the suit property is erroneous.

15. As the appellants/plaintiffs have been prohibited in pleading against the Binami Prohibition Act, 1988 in respect of item No.1 of the suit properties and the same has been purchased under document No.347/1992 dated 07.02.1992, and the same is still standing in the name of the 5th respondent/1st defendant as the 5th respondent/1st defendant and the beneficiary of the 5th respondent/1st defendant namely the 7th respondent/3rd defendant need not plead and prove that the said item No.1 of the suit properties are the self acquired property of 5th respondent/1st defendant as per the decision extracted above and the pleadings and the prayer of declaration is manifestly against law.

16. The gift deed executed by 5th respondent/1st defendant in favour of 7th respondent/3rd defendant Mr.Rajesh son of 6th respondent/2nd defendant on 14.05.2008 cannot be questioned or assailed by means of the declaratory relief to the effect that the settlement deed dated 14.05.2008 is null and void. Thus the issue No.1 is answered against the plaintiffs.

17. As far as the second issue is concerned, the Trial Court dealt with item No.2 of the suit property, which is a Government poromoboke land and no appeal has been filed against that item No.2 of the schedule property.

18. In view of the fact that the appeal suit is not directed against that portion of limitation, the Trial Court found that the Court fees has not been paid properly with reference to Section 25 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The Trial Court, in this regard, found that as the appellants/plaintiffs have prayed a declaration for item No.1 of the suit properties under Section 25(d) of TNCF and S.F. Act, 1955, the notional valuation and the payment of Rs.100 to the declaratory relief for item No.1 of the suit property is erroneous.

19. The learned counsel for the appellants/defendants mainly contended that the property in item No.1 suit schedule property itself was purchased from and out of the income earned by the father. However, these facts cannot be relevant as the property itself was purchased in the name of Smt.Kannammal. Once the property was purchased in the name of Smt.Kannammal, then she is at liberty to settle the property in favour of her grand-son and there is no infirmity as such in respect of the settlement executed in favour of the 7th respondent/3rd defendant Mr.Rajesh son of the second defendant.

20. The contention of the appellants/plaintiffs is that they were living jointly in a family and the marriage of the daughters were performed and solemnized in their presence in the house situated at item No.1 of the suit schedule property. The same cannot be a valid ground for share of the property stood in the name of mother Smt.Kannammal and the said property was settled in favour of the 7th respondent/rd defendant who is the son of the second respondent.

21. Once the property was purchased in the name of the wife, then she alone is to be construed as a owner, held title for the property and in respect of the property the title holder has right to settle the same as per her own wish, the same cannot be as per the wish of the legal heirs. Merely because, the other son and daughters were living together in a joint family will not be a ground. The mother Smt.Kannammal is the sole owner of the property holding absolute title and accordingly settled the property in favour of her grand-son who is the 7th respondent/3rd

defendant. As the transaction cannot be interfered with as the property itself stood in the name of Mother Smt.Kannammal. Merely raising a ground that the father contributed money for the purchase will not preclude the owner of the property to deal with the property as per her wish and therefore, the findings of the Trial Court in this regard are in consonance with the legal principles of law and there is no perversity or infirmity.

22. As far as item No.2 of the suit schedule property is concerned, which is the Government poramboke land and no appeal has been filed and therefore, this Court need not deal with the property in the appeal suit. It is for the Government authorities to initiate action in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905.

23. In view of the facts and circumstances, the appellants/plaintiffs have not established any acceptable ground for the purpose of interfering with the findings of the Trial Court both regarding the facts as well as in the matter of dealing with the legal principles. Accordingly, appeal suit is devoid of merits. Thus the judgment and decree dated 30.07.2013 passed in O.S.No.107 of 2011 on the file of II Additional District and Sessions Judge, Thiruvallur at Poonamallee is confirmed and consequently, A.S.No.703 of 2011 stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District and Sessions Judge,
Thiruvallur at Poonamallee.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.S.Sivasundaram, Advocate Sr.104380
+1cc to M/s.Menon Karthik Mukundan, Advocate Sr.104410

AS.No.703 of 2014

spd[co]
srg 27/08/2020