

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 407 of 2014

1.Pounambal  
2.Savithri @ Mangalambigai  
3.Sivashanmugam ..Appellants/Respondents/Defendants

Vs.

Kannamal ..Respondent/Appellant/Plaintiff

Prayer: Memorandum of Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree dated 28.03.2011 passed by the Hon'ble II Additional District Judge, Pondicherry in A.S.No.9 of 2009 reversing the judgment and decree dated 20.12.2007 passed by the Principal Sub Judge, Puducherry in O.S.No.199 of 2003.

For Appellants : M/s.S.Srinath

For Respondent : M/s.K.S.Karthik Raja

J U D G M E N T

The defendants in O.S.No. 199 of 2003 aggrieved by the modification of the decree for partition granted by the lower Appellate Court has come up with this second appeal.

2. According to the plaintiff, the suit properties originally belonged to one Marimuthu @ Aanai Gounder who died in 1988 leaving behind the plaintiff and the defendants as his legal heirs. The plaintiff would further contend that she is entitled to  $\frac{1}{4}$  share in Items 1, 2 and 4 of the suit properties. As regards Item No.3, it is the contention of the plaintiff is that her mother, Pounambal settled her  $\frac{1}{5}$ <sup>th</sup> share to the plaintiff and therefore she is entitled to a larger share namely,  $\frac{2}{4}$  share in the 3<sup>rd</sup> item of the property and her mother Pounambal is not entitled to a share in the Item. 3 of the property.

3. The defendants resisted the suit contending that the plaintiff has not included all the properties belonging to

Marimuthu @ Aanai Gounder. They had filed a counter claim seeking inclusion of 2 items of properties and seeking partition of those two items also. The claim of the plaintiff to a larger share in Item 3 was also disputed by the defendants. The Trial Court, on a consideration of the evidence on record concluded that the plaintiff has not proved that she is entitled to larger share in Item. 3 of the suit property. It has also found, Item 2 in the counter claim belonged to the father-in-law of the plaintiff and not Marimuthu, hence, the same is not liable for partition.

4. In so far as the Item No.1 of the counter claim properties, the Trial Court granted a decree rejecting the contention of the plaintiff that it was bequeathed to her by her maternal grandmother Lakshmiammal. The Trial Court found that there is no evidence to support the claim of the plaintiff that Lakshmiammal had bequeathed the property to the plaintiff. The defendants did not file an appeal against the decree of the Trial Court. The plaintiff however, filed an appeal in A.S.No. 9 of 2009 challenging only the decree granted in respect of Item 1 of the counter claim properties.

5. The lower Appellate Court on a erroneous consideration of Ex.A3 concluded that Ex.A3 dated 21.03.1964 is a settlement executed by Lakshmiammal in favour of the plaintiff / appellant. On the strength of above conclusion and relying upon certain revenue documents, which were produced at the appellate stage, the lower Appellate Court found that Item 1 of the counter claim properties belonged to the plaintiff absolutely and hence, the judgment and decree granted by the Trial Court with regard to item 1 of the counter claim properties is liable to be set aside. The lower Appellate Court accordingly partly allowed the appeal, setting aside the decree for partition granted in respect of Item 1 of the counter claim properties. Aggrieved, the defendants have come up on appeal. The following questions of law were framed at the time of admission:-

"i) Whether the Trial Court was right in deciding the title of the first item of counter claim property without framing an issue ?

ii) Whether the lower Appellate Court is right in receiving additional documents in the appeal without any pleading ?

iii) Whether lower Appellate Court is right in dismissing the suit with regard to the first item of counter claim properties based on the subsequent and later documents ?

iv) Whether the plaintiff being a co-owner enjoying the first item of counter claim property and enjoyment of possession by the plaintiff will be considered as a absolute owner of the property ?

" (sic)

6. I have heard Mr.S.Srinath, learned counsel appearing for the appellants and Mr.S.Karthik Raja, learned counsel appearing for the respondent.

7. Mr. S.Srinath, learned counsel appearing for the appellants would contend that the lower Appellate Court committed a serious error in holding that the plaintiff has got title of the Item 1 of the counter claim properties. Inviting my attention to the recitals in Ex.A3, Mr.S.Srinath would submit that Ex.A3 is a settlement deed executed by Pounambal in favour of the plaintiff with reference to Item 3 of the suit properties. The Trial Court has disbelieved the document and held that the plaintiff is not entitled to a larger share in Item 3, pursuant to the said document. Therefore, according to him, the lower Appellate Court was not right in reversing the judgement of the Trial Court based on Ex.A3 and the revenue documents that were filed before the lower Appellate Court. No doubt, the plaintiff had filed certain documents before the lower Appellate Court mainly, revenue documents which have emanated in the recent past. According to the learned counsel, it is a settled law that revenue documents cannot be used as evidence of title. Therefore, according to Mr.S.Srinath, the lower Appellate Court was not right in dismissing the suit in respect of the Item 1 of the counter claim properties.

8. Contending contra, Mr.S.Karthikeyan, learned counsel appearing for the respondent would submit that the case of the plaintiff is that insofar as Item 1 of the counter claim property, as the heir of the grandmother, she has been in continuous possession of the property through out and therefore she had perfected title. The revenue records would show her continuous possession to the exclusion of their portions to co-sharers. Therefore, according to him, even though the reliance placed by the lower Appellate Court on Ex.A3, is erroneous the conclusions of the lower Appellate Court based on other evidence are justified. I have considered rival submissions.

9. A perusal of Ex.A3 shows that it is executed by Pounambal and not by Lakshmiammal as claimed by the plaintiff. Even in the plaint as well as in the reply to the counter claim it is not the case of the plaintiff that Item 1 of the counter claim properties was covered by Ex.A3. The lower Appellate Court has construed Ex.A3, as a document executed by Lakshmiammal and relating to Item 1 of the counter claim properties. Mr. S.Karthikeyan, learned counsel appearing for the respondent is forced to concede that the reliance placed by the lower Appellate Court on Ex.A3 is misconceived. He would however, attempt to wriggle out of the situation by relying upon the revenue documents produced before the Appellate Court as

Exs. A8 to A12.

10. No doubt, Exs. A8 is of the year 1973 and it is a Patta granted in the name of the plaintiff. Ex.A9 is a kist receipt of the year 1988. However, the grant of Patta by the revenue authorities would not confer absolute title on the plaintiff. It is not known under what circumstances the Patta was granted. The said document having been received in the Appellate Court the defendants / appellants have been denied of an opportunity to lead contra evidence.

11. Be that as it may, I do not think that those documents would confer title on the plaintiff. The Trial Court had considered the evidence on record and concluded that the counter claim property also formed part of the estate of the Marimuthu @ Aanai Gounder. The lower Appellate Court, came to an erroneous conclusion based on a wrong assumption that Ex.A3 has been executed by Lakshmiammal and it relates to the Item 1 of the counter claim properties. Unfortunately, the plaintiff who has pleaded ouster in the written statement filed by her to the counter claim she had failed to prove the same.

12. It is seen from the judgment of the Trial Court that an issue was framed to the effect whether the counter claim properties are the joint family properties as Issue No.3. Therefore, the first question of law framed does not arise, since the Trial Court had framed an issue relating to the counter claim properties. The second question of law relates to the receipt of additional evidence by the lower Appellate Court, the lower Appellate Court had received revenue documents which are recent documents as additional evidence under Order 42 Rule 27 of the Code of Civil Procedure. The lower Appellate Court has also found that these documents would enable it to render judgment in the appeal and the plaintiff / appellant had made out sufficient cause for receipt of the documents at the appellate stage. I do not find any illegality in the order of the Court below in receiving the documents as additional evidence. Hence, the second question of law is answered as against the appellants. However, on the questions of law and 3 and 4, in view of the discussion supra to the effect that the plaintiff has not proved the independent title set up by her to the first item of counter claim properties, those two questions have to be necessarily answered in favour of the appellants.

13. Once it is concluded that the plaintiff has not proved independent title to the 1<sup>st</sup> item of counter claim properties and she has not produced any document to show the title of the Lakshmiammal over the said property, I am of the considered opinion that the judgment of the lower Appellate Court has to be set aside and that of the Trial Court restored.

Hence this appeal is allowed the judgment and decree of lower Appellate Court set aside and that of the Trial Court is restored. Considering the relationship of the parties, there will be no order as to costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

Kkn

To:-

1. II Additional District Judge, Pondicherry

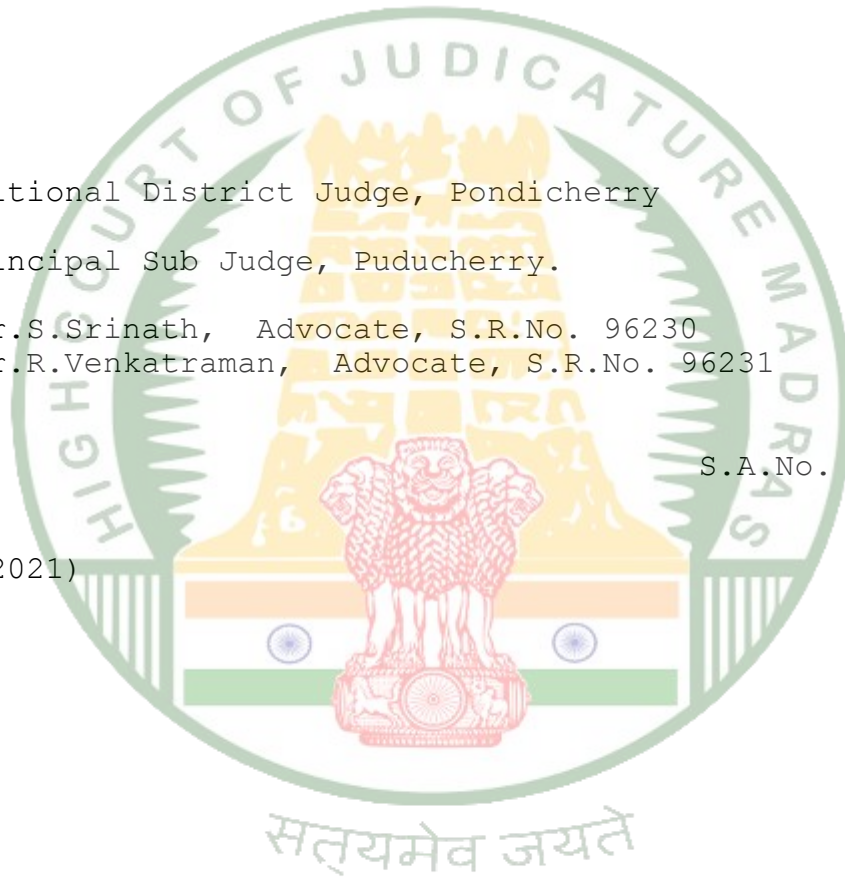
2. The Principal Sub Judge, Puducherry.

+1cc to Mr.S.Srinath, Advocate, S.R.No. 96230

+1cc to Mr.R.Venkatraman, Advocate, S.R.No. 96231

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PPA (CO)  
GN(04/01/2021)



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