

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.594 of 2014

N.R.Seethapathy ... Appellant/Respondent/Petitioner/ Defendant

Vs.

M.Geethanjali ...Respondent/Appellant/Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgement and decree dated 06.12.2013 passed in A.S.No.12 of 2013 by the II Additional Sub Judge, Coimbatore reversing the order and decreetal order dated 27.08.2012 passed in I.A.No.162 of 2012 in O.S.NO.898 of 2011 by the I Additional District Munsif, Coimbatore.

For Petitioner : Mr.R.Srinivas
for M/s.S.Sithirai Anandam

For Respondent : Mr.L.Mouli

JUDGMENT

This Second Appeal has been filed by the defendant against the judgment and decree passed by the Second Additional Sub Judge, Coimbatore in A.S.No.12 of 2013 dated 06.12.2013 reversing the judgement and decree passed in O.S.No.898 of 2011 on the file of the First Additional District Munsif, Coimbatore, dated 27.08.2012.

2. The respondent herein had filed a suit in O.S.No.898 of 2011 on the file of the First Additional District Munsif, Coimbatore to restrain the appellant herein from in any way alienating or encumbering the suit property. The appellant herein had filed an application in I.A.No.162 of 2012 in O.S.No.898 of 2011 under Order 7 Rule 11 CPC to reject the plaint, on the ground that the plaint does not disclose cause of action. The learned First Additional District Munsif, Coimbatore by the order dated 27.08.2012 had allowed the said I.A.No.162 of 2012 and consequently rejected the plaint. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.12 of 2013 on the file of the Second Additional Sub Judge, Coimbatore. The learned Second Additional Sub-Judge,

Coimbatore by the judgment dated 06.12.2013 had allowed the said appeal and set aside the judgment and decree passed by the First Additional District Munsif, Coimbatore in O.S.No.898 of 2011. Feeling aggrieved the defendant has filed the present second appeal.

3. The averments made in the plaint are in brief is as follows:

The suit property originally belonged to one Karuppanna Nadar who is the great grandfather of the plaintiff and grand father of the defendant. The said Karuppanna Nadar had only one son namely K.Rangasamy Nadar who is the father of the defendant. The said Karuppanna Nadar and his son K.Rangasamy Nadar partitioned the joint family properties under a registered partition deed dated 10.12.1953 and in the said partition, the suit property and other properties fell into the share of the said Karuppanna Nadar. In respect of the properties which were obtained by him in the partition, on 11.12.1953, the said Karuppanna Nadar had executed a settlement deed in favour of his grand children viz., 1.N.R.Seethapathy, 2. N.R.Muruganathan 3. N.R.Sankaranarayanan who are all the sons of K.Rangasamy. In the said settlement deed, he had imposed a condition that the aforesaid grandsons can enjoy the property till their life time without alienating the same and after their life time, the said properties should go to their male issues of settlees not having male issues, their female issues can get the properties. In the said settlement deed, 'A' Schedule Property was given to the defendant herein, 'B' Schedule Property was given to N.R.Muruganathan and 'C' Schedule Property was given to N.R.Sankaranarayanan. The defendant had no issues and hence he can enjoy the property till his life time but he cannot alienate the same. After the demise of the defendant, the suit property will revert back to the settlor. Since the original settlor already died, the said property devolved on other two grand sons namely N.R.Muruganathan and N.R.Sankaranarayanan and their legal heirs. Since the plaintiff is one of the daughters of N.R.Muruganathan she is entitled to 1/9th share in the suit property. The plaintiff came to know that the defendant is trying to convey the property to third parties. Hence, she sent a telegraphic notice to the defendant on 14.05.2011 and the said notice has been received by the defendant. Subsequently, the plaintiff has sent a detailed legal notice on 18.05.2011 and even thereafter the defendant is making attempts to encumber the suit property. Hence, the plaintiff was constrained to file the above suit for the relief of permanent injunction to restrain the defendant from alienating or encumbering the suit property.

4. After receipt of the summons, the defendant entered appearance and filed an application in I.A.No.162 of 2012 under Order 7 Rule 11 CPC to reject the plaint. According to the

defendant, the plaint does not disclose cause of action for filing the suit. His case is that during his life time, the plaintiff cannot claim any right over the suit property. Further, he has stated that he has adopted a daughter by name Poongothai, 53 years ago and she is living with him and she is taking care of him and he educated her and performed her marriage as early as in 1979 and therefore the plaint has to be rejected.

5. The plaintiff has opposed the said application by filing counter. In the counter she has reiterated the contentions which were raised in the plaint.

6. The learned First Additional District Munsif, Coimbatore after considering the plaint averments and the documents filed along with the plaint and rival submissions, had allowed the I.A.No.162 of 2012 and consequently rejected the plaint. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.12 of 2013 on the file of the Second Additional Sub-Judge, Coimbatore. The learned Second Additional Sub Judge, Coimbatore had allowed the said appeal and set aside the judgment and decree passed by the First Additional District Munsif, Coimbatore in O.S.No.898 of 2011. Feeling aggrieved, the defendant has filed the present Second Appeal.

7. This Court at the time of admitting the Second Appeal has formulated the following substantial questions of law.

"1. Has the lower Appellate Court committed an error apparent on the face of record in the construction of settlement deed dated 11.12.1953 (Ex.P.1) in holding that in the event of absence of male and female issue to the appellant/defendant herein, the suit property shall be reverted back to settlor Karapuanna Nadar?

2. has the lower Appellate Court committed an error apparent on the face of record in holding that the suit is maintainable totally overlooking the fact that the alleged claim of the plaintiff over the suit property is nothing but SPES SUCCESSIONS?

3. Whether the lower Appellate Court has committed an error on the fact of the record holding that the plaintiff is entitled to 1/9th share in the suit property which is contrary to the provision of Section 8 of the Hindu Succession Act?"

8. Heard, Mr.R.Srinivas for M/s.S.Sithirai Anandam, learned counsel for the Appellant/Defendant and Mr.L.Mouli, learned

counsel for the Respondent/Plaintiff.

9. Question Nos.1 to 3:

The learned counsel for the appellant has submitted that the First Appellate Court has erred in misreading and misconstruing the settlement deed dated 11.12.1953. He further submitted that the First Appellate Court ought to have seen that even assuming that the alleged reversion of suit property to the settlor Karuppanna Nadar, the suit property in the hands of Karuppanna Nadar is an individual property and after his death, suit property would be inherited by his only son Rangasamy Nadar and since he also died, his sons namely N.R.Seethapathy, N.R.Muruganathan and N.R.Sankaranarayanan would be inherited the said property and as such, during the life time of the plaintiff's father namely N.R.Muruganathan, the plaintiff cannot claim any right over the suit property. He further submitted that for filing suit, the plaintiff should have subsisting interest in the suit property, but in this case, merely on the basis of chance of succession, she has filed the suit and the same is not maintainable. He further submitted that since the defendant is alive, the plaintiff cannot maintain the suit and taking into consideration of the aforesaid facts, the trial Court has rightly rejected the plaint, but the First Appellate Court has erroneously reversed the findings of the trial Court and allowed the First Appeal and hence, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the First Appellate Court and restore the judgment and decree passed by the trial Court.

10. Per contra, the learned counsel for the respondent/plaintiff has submitted that even in the present appeal, the appellant has stated his age is 83 years and hence he may not have any chance to have any child. He further submitted that in the settlement deed executed by Karuppanna Nadar dated 11.12.1953, only a life interest was given to the defendant and after his death, the male legal heirs have to succeed to the property and in the absence of any male issue, his female issue will get the property. He further submitted that since the defendant is not having any issue either male or female, in view of the conditions imposed in the settlement deed dated 11.12.1953, the defendant is not entitled to dispose of the suit property. He further submitted that in the event of death of the defendant, since he is not having any issues, his properties would revert back to the legal heirs of Karuppanna Nadar and in such a case, the plaintiff also will get 1/9th share in the suit property. He further submitted that the defendant attempted to dispose of the suit property and hence the plaintiff had issued telegraphic notice and also a detailed lawyer's notice and though the defendant had received those notices, he hurriedly made attempts to alienate the suit

property and hence the plaintiff was constrained to file the suit for permanent injunction to restrain him from alienating the suit property. He further submitted that the trial Court failed to consider the fact that the defendant is not having any chance of giving birth to the child and he is trying to violate the conditions imposed in the settlement deed dated 11.12.1952, however, the First Appellate Court has rightly appreciated the aforesaid facts and set aside the judgment and decree passed by the trial Court and therefore he prayed to dismiss the Second Appeal.

11. A perusal of the settlement deed dated 11.12.1952 would show that the said Karuppanna Nadar had settled his properties on his three grandsons namely N.R.Seethapathi, N.R.Muruganathan and N.R.Sankaranarayanan. Through the said document, he gave 'A' Schedule property to the defendant herein, 'B' Schedule property to N.R.Muruganathan and 'C' Schedule property to N.R.Sankaranarayanan. He also stated in the said document that the aforesaid grandsons can enjoy their respective properties without encumbering or alienating the same and after their life time, their properties should go to their male heirs and in the absence of male heirs, the property should go to their female heirs.

12. Admittedly, the plaintiff is not the daughter of the defendant. She is the daughter of the defendant's brother namely N.R.Muruganathan. Further all the aforesaid grandsons of Karuppanna Nadar namely N.R.Seethapathy, N.R.Muruganathan and N.R.Sankaranarayanan are still alive. Even assuming that the defendant would die without any issues, his property, should go to legal heirs of Karuppanna Nadar. In this case, Karuppanna Nadar's son namely Rangasamy Nadar already died and hence in the case of death of the defendant, the other two grandsons viz., N.R.Muruganathan and N.R.Sankaranarayanan would be inherited the property. Only after the death of plaintiff's father namely N.R.Muruganathan, the plaintiff can claim any right if any. In this case, admittedly all the three grand sons of Karuppanna Nadar are alive and during their life time, the plaintiff cannot claim any right over the properties, especially, during the life time of the defendant, she cannot claim any right over the defendant's property.

13. As rightly contended by the learned counsel for the appellant/defendant, for filing suit, the plaintiff should have subsisting interest in the suit property. But the plaintiff is not having any subsisting interest in the suit property. In this case, the defendant is alive. Under the said circumstances, the plaintiff cannot file a suit by saying that in the event of his death she will get right. So merely based on the chance of succession, she cannot file a suit. Therefore, this court is of

the view that the plaintiff is not having any cause of action for filing the suit. The trial Court after taking into consideration of the aforesaid facts has rightly rejected the plaint, but the First Appellate Court has erroneously allowed the appeal and hence this Court is of the view that this Second Appeal has to be allowed. Accordingly the substantial questions of law are answered in favour of the appellant/defendant.

14. In the result, the Second Appeal is allowed. No costs. The judgment and decree passed by the first Appellate Court in A.S.No.12 of 2013 are set aside. The judgment and decree passed by the trial Court in O.S.No.898 of 2011 are restored.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

dh

To

1. The II Additional Sub Judge, Coimbatore.

2. The I Additional District Munsif, Coimbatore.

Copy To

The Section Officer, VR Section, High Court, Madras

+1cc to Mr.S.Sithirai Anandam, Advocate SR.No.21581

+1cc to Mr.L.Mouli, Advocate SR.No.21230

सत्यमेव जयते

S.A.No.594 of 2014

NRKJ(CO)

GMV(20/06/2019)

WEB COPY