

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 86 of 2014

and

M.P.No. 1 of 2014

1.R.Rukmanibai
2.Thulasi Singh
3.Gopal Singh
4.Santhi
5.Bhuvaneswari
6.Geethabai
7.Minor Deepaksingh
8.Minor Janabooja

(Minor 7,8 rep. By their next friend 6th appellant)

...Appellants/Appellants/Defendants
11 to 13, 15, 16, 18 and 19

Vs.

Ravi @ Ramasamy ...Respondent/Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 20.10.2005 made in A.S.No.16 of 2002 passed by the Additional District Judge, Vridhachalam, confirming the judgment and decree passed by the District Munsif Judge, Vridhachalam dated 26.06.2002 made in O.S.No.799 of 1985.

For Appellants : Mr. V.Bhiman
for M/s.Sampath Kumar and Associates

For Respondent : Mr.J.Antony Jesus

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J U D G M E N T

The defendants 11 to 13 and 15 to 19 have come up with this second appeal having suffered by a decree for declaration of title and recovery of possession and for mense profits.

2. The plaintiff sought for declaration contending that the suit properties originally belonged to his grand father,

Ramasamy Pillai, who purchased the same out of the income from the property that devolved on him under the Will of Muthusamy Pillai dated 09.04.1919. The said Ramasamy Pillai had executed a Will dated 11.08.1948 bequeathing the properties to his grand children through his son Kalyanasundaram Pillai. As per the Will, the said Kalyanasundaram Pillai was given only life estate without power of alienation. The plaintiff, being the only male heir of Kalyanasundaram Pillai is entitled to succeed to the properties on the death of Kalyanasundaram Pillai. While so, the father namely, Kalyanasundaram Pillai, who died on 05.04.1976 had made several alienations in respect of the suit properties in favour of the defendants. Immediately after the said alienations, the mother of Kalyanasundaram Pillai, Arunthava Atchi filed a suit in O.S.No. 66 of 1951 against Mahadev Singh and Kalyanasundaram Pillai seeking a declaration that the sales would be valid only till the life time of Kalyanasundaram Pillai. In the said suit, Kalyanasundaram Pillai and Mahadev Singh claimed that the properties were ancestral properties of Ramasamy Pillai and therefore Kalyanasundaram Pillai had $\frac{1}{2}$ share in the suit properties and therefore the Will will be valid only in respect of the $\frac{1}{2}$ share of Ramasamy Pillai. In the said suit, the parties entered into a compromise in and by which, it was agreed that the sales will be valid only till the life time of Kalyanasundaram Pillai. The Will dated 11.08.1948 was upheld by the Court. Subsequently, as regards other sale deeds executed by Kalyanasundaram Pillai, Arunthava Atchi filed O.S.No.389 of 1950 claiming that sale deeds executed by Kalyanasundaram would be valid only till his life time. The said suit was decreed as prayed for. Now, therefore, after the death of Kalyanasundaram Pillai, the plaintiff, being the only male heir is entitled to all the properties.

3. The suit was resisted by the defendants contending that the suit itself is barred by limitation. The suit was filed after the plaintiff had computed the age of 21. A minor, who seeks to challenge the alienation of the father, according to the defendants, must have filed the suit within 3 years of attaining the majority. According to the defendants, the plaintiff was born on 03.05.1964 and the suit filed on 11.05.1985 having been filed after completion of 21 years is barred by limitation. It is also contended that the Will dated 09.04.1919 was not produced to show that the properties were bequeathed to Ramasamy Pillai by one Muthusamy Pillai. It is also claimed that the Will dated 11.08.1948 would not be valid with reference to $\frac{1}{2}$ share of Kalyanasundaram Pillai, since the properties were ancestral properties of Ramasamy Pillai.

4. The Courts below, upon a consideration of the evidence on record concluded that the suit having been filed within 21 years from the date of birth of the plaintiff is not barred by limitation. The Courts below also concluded that the sales by Kalyanasundaram Pillai, who is a life estate holder would be valid only till his life time. The compromise decree in O.S.No.156/1950 and the decree in O.S.No.66 of 1951 would seal the issue in favour of the plaintiff. In O.S.No. 66 of 1951, the defendants had raised the very same issue relating to the character of the property and contended that the Will executed by Ramasamy Pillai is not valid to the extent of $\frac{1}{2}$ share of Kalyanasundaram. The said contention was rejected by the Court and the Will dated 11.08.1948 was upheld. In O.S.No.156 of 1950, a compromise was entered between the parties in and by which the purchaser namely, Mahadev Singh agreed that the sale to him by Kalyanasundaram Pillai would be valid only till the life of Kalyanasundaram Pillai. In the light of the above judicial pronouncements, the Trial Court concluded that the plaintiff is entitled to declaration of title as well as recovery of possession as the property would revert back to him on the death of Kalyanasundaram Pillai. The Trial Court, however, took note of certain admissions in the cross-examination of the plaintiff as P.W.1 and decreed the suit in respect of Item Nos. 1 to 11 alone while dismissing in respect of Items 12 to 17. Aggrieved by the decree, the defendants 11 to 13 and 15 to 19 filed an appeal in A.S.No. 16 of 2002 and the plaintiff filed an appeal in A.S.No. 7 of 2004 as against the dismissal of the suit in respect of Items 12 to 17.

5. In the appeal in A.S.No.16 of 2002, the Appellate Court, agreed with the conclusions of the Trial Court and confirmed the decree. In A.S.No. 7 of 2004, the lower Appellate Court found that the plaintiff had not sold all the suit items and granted the decree in respect of the Items 12 to 14, 16 and 17 also. The suit in respect of Item 15 was dismissed, on the basis of a concession made by the plaintiff / appellant in the lower Appellate Court. Aggrieved, the defendants 11 to 13 and 15 to 19 are on appeal challenging the judgment in A.S.No. 16 of 2002. Notice of motion was ordered on 03.04.2014 and upon service Mr.Antony Jesus, appears for the first respondent.

6. I have heard Mr.V.Bhiman, learned counsel appearing for the appellants and Mr.Antony Jesus for the respondent.

7. Mr.V.Bhiman, learned counsel appearing for the appellants would submit that if the date of birth of the plaintiff is taken as 03.05.1964 from Ex.X1, the suit having been filed beyond 21 years of the birth is barred by limitation. Of course, the Trial Court has also concluded that the suit should have been filed within 3 years of the plaintiff attaining majority. I do not think, the said approach is correct. The suit by a remainderman or a revisioner is governed by Article 65(a) of the Limitation Act which reads as follows:-

Description of Suit	Period of Limitation	Time from which period begins to run
"a) Where the suit is by a remainderman, a revisioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, revisioner or devisee, as the case may be, falls into possession;"	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

8. A perusal of the Article 65(a) would show that the starting point of limitation for a suit by a remainderman or a reversioner is the date on which the possession of the defendant becomes adverse to him. It is a settled law that a /sale by a life estate holder is valid till his life time. Therefore, the possession of purchaser from the life estate holder will not become adverse to that of a reversioner during the life time of the life estate holder. In the case on hand, the death certificate of Kalyanasundaram Pillai has been produced and marked as Ex.A11, which shows the date of death as 05.04.1976. A period of 12 years is available for the plaintiff from 05.04.1976. The suit has been filed on 04.05.1985 within the said 12 years period therefore, it cannot be said that the suit is barred by limitation. The next contention of Mr.V.Bhiman is that the Will dated 09.04.1919 has not been produced and it is

not shown that Ramasamy Pillai was the absolute owner of the properties in order to enable him to execute the Will dated 11.08.1948. The pleadings in this regards are very clear. The plaintiffs have come to Court with the specific case that Ramasamy Pillai purchased the suit properties from and out of the income earned by him from the properties that were bequeathed to him under a Will dated 09.04.1919. There is a specific averment in the plaint to the effect that the properties of Ramasamy Pillai are his self-acquisition. The Will dated 11.08.1948 has been upheld by the Court in the earlier proceedings in O.S.No. 156 of 1950 and O.S.No.66 of 1951. In both the suits, it has been found that Kalyanasundaram Pillai had only a life estate. Therefore, the non-production of the Will dated 09.04.1919 will not effect the case of the plaintiff. The defendants are in an unenviable position to concede the title of Ramasamy Pillai because they had also purchased from Kalyanasundaram Pillai, who derived title from Ramasamy Pillai under Will dated 11.08.1948. The Will dated 11.08.1948 having been upheld in the earlier proceedings, I do not think the Courts below were wrong in concluding that the sales made by Kalyanasundaram Pillai would be valid only till his life time and on his death, the plaintiff would become the absolute owner and therefore, he is entitled to decree for declaration and recovery of possession. In fact, the appeal filed by the plaintiff in A.S.No. 7 of 2004 has been allowed by the lower Appellate Court and the purchasers of suit Items No.12,13,14,16 and 17 have not come by way of second appeal. It is the purchasers of 1 to 11 namely, defendants 11 to 13 nd 15 to 19, who are before this Court by way of this second appeal. In view of the above, both the points raised by the learned counsel appearing for the appellant do not merit acceptance. Hence, I do not see any question of law much less a substantial question of law in order to enable to this Court to entertain this appeal. This second appeal is dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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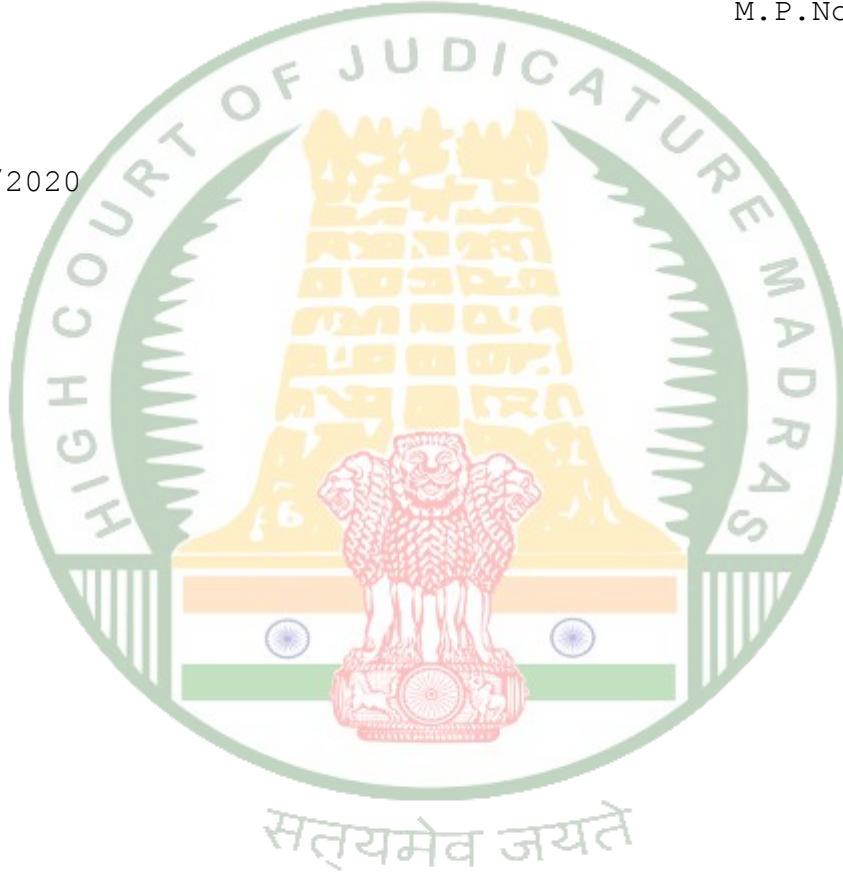
1.The Additional Distruct Judge,
Vridhachalam.

2.The Principal District Munsif,
Vridhachalam.

+2cc to M/s.Sampath Kumar and Associates Advocate Sr.84293
+1cc to Mr.J.Antony Jesus, Advocate Sr.84046

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