

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1188 of 2019
and
C.M.P.No.25934 of 2019

1.Ramalingam
2.Palanisamy
3.Velliangiri
4.Dhanuskodi
5.Rajeswari

... Appellants/Appellants/
Defendants

Vs

Annakodi ... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 20.02.2018 made in A.S.No.16 of 2017 on the file of the III Additional District and Sessions Court, Gobichettipalayam in confirming the judgment and decree dated 26.4.2017 made in O.S.No.141 of 2015 on the file of the Subordinate Court, Sathyamangalam.

For Appellants : Mr.Parthasarathy S.

For Respondent : Mr.M.Roshan Atiq

JUDGMENT

The unsuccessful defendants are the appellants in this appeal. The respondent herein as plaintiff filed a suit in O.S.No.141 of 2015 against the defendants seeking partition and separate possession of the suit properties.

2. According to the plaintiff, she and the defendants are the only legal-heirs of her parents Nagappa Gounder and Ponnayal. Her father purchased an extent of 3.60 $\frac{3}{4}$ acres in Survey No.65A of Kembanaiyakken Palayam Village under a sale deed, dated 02.02.1966, out of 7.21 $\frac{1}{2}$ acres of the land. The remaining land was purchased by one P.Kolanthu on 05.02.1968. Subsequently, in a partition deed, the plaintiff's father was allotted an extent of 3.50 $\frac{3}{4}$ acres in the said land.

3. It is further stated that the plaintiff's father purchased individually another extent of 2.40 ½ in the same survey numbers, vide sale deed, dated 04.07.1970 and another extent 4.81 acres in the same survey numbers along with his wife under sale deed, dated 28.06.1973, however he became the absolute owner of the 4.81 acres in view of the sale executed by her mother in the year 1976, thereby he became the absolute owner of 10.72 ¼ acres in Survey No.65A. The plaintiff would further state that under various sale deeds, he sold portion of the property and the remaining extent is the suit property.

4. It is the case of the plaintiff that her father died intestate on 28.08.1984 and hence, she is entitled for 1/6th share in the suit property. She would claim that she issued a notice dated 11.03.2015, calling upon the defendants to partition the suit property, but the respondents issued a reply dated 24.04.2015, containing false averments by disputing the very status of the plaintiff and hence, the suit.

5. The suit was contested by the defendants on the ground that the plaintiff is not a legal heir of their parents, R.Nagappa Gounder and Ponnayal and hence, she is not entitled to have a share in the suit properties. The plaintiff is not shown as one of the legal-heirs in the certificate issued by the Tahsildar of Sathiyamangalam. The plaintiff is no way connected to the family of the defendants.

6. Before the Trial Court, on behalf of the plaintiff, two witnesses were examined and Exs.A1 to A30 were marked. On the side of the defendants, D.W1 was examined and Exs.B1 and B2 were marked. On the basis of the evidence adduced by the parties, the Trial Court passed a preliminary decree by granting 1/6th share in favour of the plaintiff and the same is confirmed by the Appellate Court in A.S.No.16 of 2017.

7. The learned counsel for the appellants Mr.S.Parthasarathy would submit that the plaintiff has not proved that she is one of the legal heirs of their parents Nagappa Gounder and Ponnaiyal. The legal heir certificate (Ex.B1) produced on behalf of the defendants would establish that the plaintiff is not a legal heir of their parents and unless the legal heir certificate is set aside in the manner known to law, the plaintiff cannot seek partition in the suit properties.

8. Per contra, Mr.M.Roshan Atiq, learned counsel for the respondent would submit that the plaintiff has proved that she

is one of the legal heirs of their parents, through P.W.1 and P.W.2. He would add that the 1st defendant himself admits during cross examination that legal heir certificate (Ex.B1) was issued only based on the information given by him. This aspect was considered and rejected by the Courts below on proper appreciation of evidence and it is further held that the plaintiff is one of the legal heirs of the parents of the defendants and the factual findings need not be interfered in this Second Appeal.

9. In the case on hand, it is not in dispute that the suit property was owned by Nagappa Gounder, father of the defendants and plaintiff. It is not disputed that he died intestate on 28.08.1984. The defendants would contest the case on the sole ground that the plaintiff is not a legal heir of their parents. P.W.2 is none other than plaintiff's cousin sister and she supported the case of the plaintiff. Exs.A1 to A6 are the birth certificates of the plaintiff and the defendants. Among them Ex.A3 is the birth certificate of the plaintiff.

10. A perusal of the evidence, oral and documentary produced by the plaintiff would establish that the plaintiff is one of the legal heirs of their parents. It is to be further seen that D.W.1 himself admits that the legal heir certificate (Ex.B1) was furnished to him based on the information given by him. Since Ex.B1 was issued without giving notice to the plaintiff, this Court cannot place much reliance on the document Ex.B1. Both the Courts below on proper appreciation of evidence held that the plaintiff is one of the legal heirs of Nagappa Gounder and Ponnaiyal. Hence, the factual findings of the Courts below do not warrant interference of this Court.

11. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ms
To

1.The III Additional District and
Sessions Court, Gobichettipalayam.

2.The Subordinate Court,
Sathyamangalam.

Copy to:
The Section Officer,
Vernacular Records,
High Court, Madras-104.

+1cc to M/s.S.Parthasarathy, Advocate SR.100600
+1cc to M/s.M.Roshan Atiq, Advocate SR.101008.

S.A.No.1188 of 2019

BP (CO)
CB (08/09/2020)



WEB COPY