

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09/12/2019
Delivered on	10/12/2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1168 of 2019

Smt.Chandra ... Appellant/Plaintiff

Versus

1.Manoharan
2.Suseela
3.Sakthi
4.Raja
5.Rajagopal
6.Madheswaran
7.Ganesan
8.Devaraj
9.Raja
10.Madhan Raj
11.Ramesh
12.Padma

13.The Tahsildar,
Palacode Taluk,
Palacode, Dharmapuri District.

14.The State of Tamil Nadu,
Rep. by the District Collector,
Dharmapuri.

... Respondents/Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 15.03.2019 passed in A.S.No.16 of 2017, on the file of the learned Subordinate Judge, Palacode (formerly A.S.No.10 of 2014) at District Court, Dharmapuri, confirming the judgment and decree dated 28.11.2013 in O.S.No.177 of 2011, on the file of learned District Munsif, Palacode.

For Appellant : Mr.R.Selvakumar

JUDGMENT

The unsuccessful plaintiff is the appellant. The suit in O.S.No.177 of 2011 was filed seeking partition and separate possession of the suit property and for permanent injunction.

2. The case of the plaintiff is that the suit property was originally owned by her grandfather Periya Vathalan @ Munican @ Muniyan and he had two wives Govindammal and Nagammal. Her grandfather had a son viz., Raman through his first wife Govindammal; and through second wife Nagammal had four sons viz., Muniyappan, Munisami, Rajagopal and Kannan. The plaintiff, first defendant, fourth defendant and one Selvam are the children of the said Muniyappan.

3. The plaintiff would claim that about 30 years ago, in a oral partition, the suit property was allotted to her father Muniyappan and his brother Rajagopal / fifth defendant. The other properties of her grandfather were allotted to Raman, Munisamy and Kannan. The Government has also issued a patta in favour of her grandfather, father-Muniyappan and the fifth respondent under Updating Registry Scheme, dated 25.08.1985. The plaintiff's father-Muniyappan had died in the year 2008. According to the plaintiff, she is entitled to 1/8 share in the suit property. While so, the fourth defendant with a view to defeat the right of the plaintiff gave a Power of Attorney in favour of the tenth defendant and on the basis of Power of Attorney, he sold the property to the defendants 11 and 12, vide sale deed dated 06.10.2008 and hence, the sale is void. It is further stated that the plaintiff is in possession and enjoyment of the property and the respondents are interfering with her right and hence, the suit.

4. The case of the defendants is that the second wife-Nagammal was originally married to one Narasimman and through him, she gave birth to Muniyappan. The plaintiff, first defendant, fourth defendant and one Selvam were the children of Muniyappan. The defendants have categorically stated that Periya Vathalan @ Munican @ Muniyan married one Govindammal as his first wife and through her, one son Raman was born to them. After the demise of Narasimman, the said Nagammal, married to Periya Vathalan @ Munican @ Muniyan as a second wife and out of their marriage, Kannan, Rajagopal and Munisamy were born to them. Hence, the plaintiff, defendants 1 and 4 are not entitled for a share in the suit property.

5. To fortify the case of the plaintiff, she examined herself as P.W.1 and examined one Mr.Kannan as P.W.2. P.W.2 in his evidence has categorically deposed that the plaintiff's

father Muniyappan was born to Nagammal through her first husband Narasimman. P.W.2-Kannan, Rajagopal, Muninisami were born to his mother Nagammal through Periya Vathalan @ Muncan @ Muniyan. The defendants examined Tahsildar as D.W.2 and he produced Ex.C1-chitta, Ex.C2- 'A' Register in respect of Survey No.194/1. That apart, Ex.B1 computer chitta was produced. In Exs.B1, C1 and C2, the father's name of the plaintiff was mentioned as Muniyappan, S/o. Narasimman.

6. Both the Courts below, on the basis of the oral evidence of P.W.2 and the documentary evidence of Exs.B1, C1 and C2, came to the conclusion that the plaintiff's father Muniyappan was born to his mother Nagammal through her first husband Narasimman and declined to allot any share to the plaintiff. Assailing the decision, the present appeal.

7. Mr.A.Selvakumar, learned counsel for the appellant would urge that in Ex.A4 agreement, dated 15.03.1990, the plaintiff's father Muniyappan was referred as son born to Periya Vathalan @ Muncan @ Muniyan and hence, the plaintiff is one of the legal-heirs of Periya Vathalan @ Muncan @ Muniyan and she is entitled for partition.

8. This Court is not able to agree with the submission of the learned counsel for the appellant for the reason that the Courts below rejected Ex.A4, by observing that in Ex.A4 the said Muniyappan has been only referred as a first son, born to Periya Vathalan's second wife and not born through Periya Vathalan. In view of the concurrent finding on fact that the appellant's father Muniyappan is not the legal-heir of Periya Vathalan @ Muncan @ Muniyan and Nagammal, I find no question of law arises for consideration in this appeal. Hence, the factual findings of the Courts below on proper appreciation of evidence do not warrant interference of this Court.

9. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

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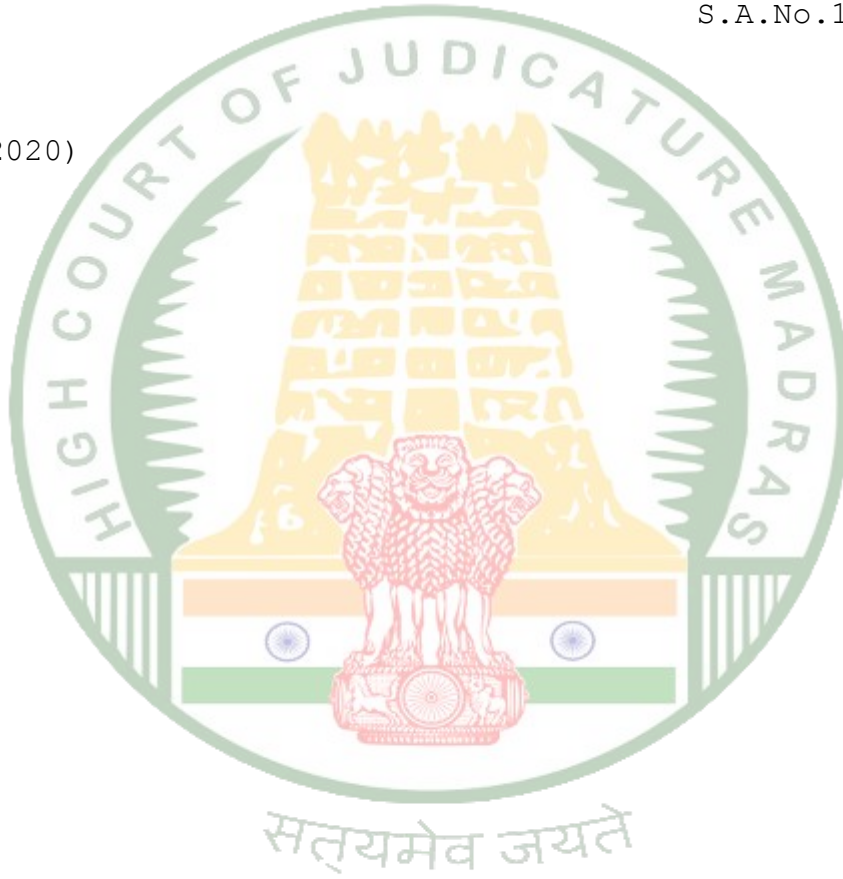
1.The Subordinate Judge,
Palacode.

2.The District Munsif,
Palacode.

+1 CC to Mr.R.Selvakumar, Advocate sr 102844.

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BR(CO)
SP(08/09/2020)



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