

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1250 of 2019

1.Balan
2.Vasanth
3.Giri
4.Geetha
5.Rukkammal
6.Rajkumar

... Appellants/Plaintiffs

Vs

1.Jagan Mohan
2.Madan Mohan
3.Indira Banu
4.Sathya Ganga
5.Rajakumari
6.Saralakumari
7.Mala Shankar
8.S.Maha Lakshmi

... Respondents/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.06.2019 made in A.S.No.30 of 2017 on the file of the I Additional District and Sessions Judge, Vellore District, confirming the judgment and decree dated 20.12.2012 made in O.S.No.371 of 1998 on the file of the learned Principal District Munsif Judge, Vellore District.

For Appellants : Mr.S.Balajanaki

JUDGMENT

The unsuccessful plaintiffs in O.S.No.371 of 1998 are the appellants in this appeal. The suit was filed for partition seeking half share in the suit property.

2. The case of the plaintiffs is that the suit scheduled property is the absolute property of one Ammani Ammal, who settled the property in favour of her only son Munisamy Mudaliar by a registered deed of settlement dated 16.2.1945. The said Munisamy Mudaliar settled the property in favour of his two daughters viz., Kannammal and Bagiyammal, by a registered

settlement deed dated 20.02.1945. Thereby, they became co-owners of the property and they were in joint possession and enjoyment of the same. The plaintiffs would further state that one Kannan Naicker claimed right over the property and created a registered sale deed dated 17.04.1958. It is the case of the plaintiffs that the sale is not valid and they are the legal heirs of the said Bagiyammal and entitled to half share of the suit property.

3.The suit was resisted by the defendants by filing a written statement contending that the said Bagiyammal, who is the mother of the first plaintiff and the grand mother of plaintiffs 2 to 6 had already sold the property by a registered sale deed dated 17.04.1958 in favour of one Kannan Naicker. The purchaser took possession of the half share of the property of Bagiyammal. The said Kannan Naicker had filed a suit for partition and separate possession in O.S.No.246 of 1964. During the pendency of the suit, he sold the property to Saradammal by a registered sale deed dated 01.12.2008. The mother of the defendants 1 to 7 Kannammal filed a suit in O.S.No.124/1982 before the Sub Court, Vellore for partition and separate possession of her half share. Thereafter, the suit was transferred to the District Munsif Court, Vellore and the same was re-numbered as O.S.No.304 of 1996. The said suit was decreed on 29.11.1985 and a final decree was passed on 14.07.1997 and based on the decree, she had taken possession of her share on 06.04.2004 in E.P.No.418 of 2000. The sum and substance of the written statement is that the mother of the first plaintiff and the grand mother of plaintiffs 2 to 6 viz., Bagiyammal sold her share and hence, the plaintiffs are not entitled for the share in the suit property.

4.On the basis of the pleadings, the trial Court framed necessary issues. On the side of the plaintiffs P.W.1 was examined and Ex.A1 to A5 were marked and on the side of the defendants two witnesses D.Ws.1 and 2 were examined and Ex.B1 to B23 were marked. The trial Court, upon consideration of both oral and documentary evidence held that the plaintiffs are not entitled for the relief sought for in the suit and dismissed the same. On appeal, the finding was confirmed by the Appellate Court. Challenging the findings of the Courts below, the present appeal is filed.

5.Ms.S.Balajanaki, learned counsel for the appellants would submit that the Courts below failed to appreciate that Kannan Naicker is not the brother of Kannammal and Bagiyammal and their relationship was not properly considered by the Courts below. The Courts below have erroneously relied on the decree passed in O.S.No.246 of 1964. It is further contended that Ex.B1 was not proved in accordance with law.

6. In the case on hand, it is not disputed that the original plaintiffs Egambaram and two others trace their title over the property through their mother Bagiyammal. After the death of Egambaram and Parthasarathy their legal heirs pursued the suit. According to the plaintiffs, in pursuance of the settlement deed dated 20.2.1945, Bagiyammal became joint owner of the suit property and thereby they are entitled half share in the suit properties.

7. It is seen from the records that Bagiyammal's sister Kannammal filed a suit in O.S.No.304 of 1996 for partition and separate possession of her share in the suit property. The suit was decreed and she had taken delivery of her share on 06.04.2004 in E.P.No.418 of 2000. To prove the same, the defendants produced Ex.B5 to B8. It is further seen that the Kannan @ Kannan Naicker, who purchased the share of Bagiyammal, in turn sold a portion of the suit property to one Saradammal in the year 1974. After the death of Kannan Naicker his legal heirs executed a general power of attorney dated 06.03.2002 in favour of Selvam @ Selvaraj, under Ex.B12. The power agent sold the remaining property to the 10th defendant Mahalakshmi, under Ex.B11 sale deed dated 14.2.2005. After the demise of Saradammal on 11.01.2008, her legal heirs sold the property to the 10th defendant Mahalakshmi, under Ex.B14 sale deed dated 01.12.2008. Ex.B16 to B22 tax receipts were produced to show that the purchasers namely Kannan Naicker and Saradammal had been in possession of the property. Ex.B23 is the property tax receipt stands in the name of Saradammal for the period 1999 to 2007. The Courts below, on independent analysis of entire evidence came to the conclusion that the plaintiffs are not entitled for half share in the suit property. I find no valid reason to interfere with the concurrent findings on facts.

8. In fine, the Second Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The I Additional District and Sessions Judge,
Vellore District.

2.The Principal District Munsif,
Vellore District.

+1cc to Mr.S.Balajanaki, Advocate SR.No.106371

S.A.No.1250 of 2019

SJ(CO)
GMY(19/08/2020)