



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.09.2019

PRONOUNCED ON: 24.10.2019

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.737 of 2005

and

C.M.P.(MD).Nos.292 and 1864 and of 2019

R.Saroja ... Appellant/Appellant/2nd plaintiff

Vs.

Santhi @ Amirthavani ... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 23.06.2005, passed in A.S.No.3 of 2003 by the I-Additional Subordinate Judge, Madurai, confirming the judgment and decree, dated 27.09.2002, passed in O.S.No.925 of 1993 by the Principal District Munsif, Madurai Town.

For petitioner in
C.M.P.(MD).No.1864/2019 ... Mr.K.S.Sreenivasan

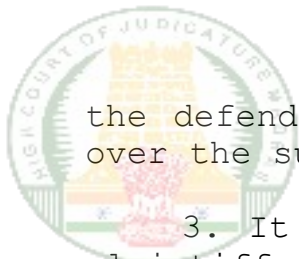
For petitioner in
C.M.P.(MD).No.292/2019 ... Mr.R.J.Karthick

For respondent in the
second appeal and
respondent in both
the petitions ... Mr.S.A.Ajmalkhan
for Mr.K.Sulthan Allowdhin

JUDGMENT

This second appeal has been filed by the appellant/2nd plaintiff against the reversal finding of the first appellate Court.

2. The appellant/2nd plaintiff along with her husband/first plaintiff had filed a suit in O.S.No.925 of 1993 for the relief of permanent injunction restraining the defendant and her men or agents or parents from in any way interfering with the plaintiffs peaceful possession and enjoyment of the suit property and for declaration that the registered will dated 10.03.1989 executed by the 1st plaintiff in favour of the 2nd plaintiff will bind the defendant also and consequently for a permanent injunction decree restraining



the defendant, her men, agents and parents from claiming any right over the suit property in any manner whatsoever.

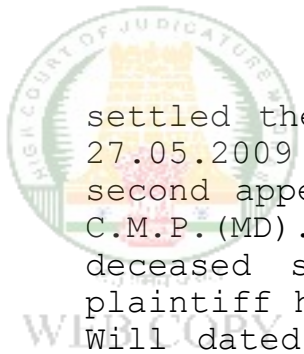
3. It is the case of the appellant/2nd plaintiff and the first plaintiff that they are husband and wife, and they adopted the defendant, who is the brother's daughter of the 2nd plaintiff on 31.08.1984 and the adoption deed was registered. After adoption, the defendant continued to stay with her natural parents and she did not return to the house of the plaintiffs. The first plaintiff got the suit property through a registered settlement deed dated 05.11.1964 executed by his paternal grandmother by name Meenammal. On 27.04.1996 the first plaintiff died leaving behind him a registered Will dated 10.03.1989 in respect of the suit property, by which the first plaintiff settled the entire suit property in favour of the 2nd plaintiff. However, the defendant/adopted daughter, denying the execution of the Will dated 10.03.1989, interfered with the peaceful possession and enjoyment of the plaintiffs and therefore, they filed the suit.

4. It is the case of the defendant/adopted daughter that it is false to say that the defendant did not live with the plaintiffs and that in the school records, the name of the first plaintiff alone is shown as father and as the defendant has become adopted daughter of the plaintiffs and the suit property is the ancestral property, the 2nd plaintiff cannot seek for permanent injunction against the co-owner and the Will dated 10.03.1989 is a forged one.

5. After trial, the trial Court has granted the relief of permanent injunction restraining the defendant and her men or agents or parents from interfering with the peaceful possession and enjoyment of the suit property, thereby decreed the suit in part. However, the Court below dismissed the suit in respect of relief of declaration and other reliefs holding that the 2nd plaintiff has not proved the Will dated 10.03.1989 executed by the 1st plaintiff in accordance with law.

6. For the disallowed portion, the appellant/2nd plaintiff filed an appeal suit in A.S.No.3 of 2003. The first appellate Court, after re-appreciating the oral and documentary evidence, has dismissed the judgment and decree passed by the Court below granting the relief of permanent injunction and confirmed the judgment and decree passed by the Court below rejecting the other relief, thereby dismissed the suit in entirety. Aggrieved by the said judgment, the appellant/2nd plaintiff has filed this second appeal.

7. During the pendency of this second appeal, the sole appellant/2nd plaintiff died, leaving behind the defendant/adopted daughter as her legal heir and hence, this second appeal has become abated. While so, one Chokkalingam S/o.Arunachalam has filed C.M.P. (MD).No.292 of 2019 stating that he is the brother of the deceased sole appellant/2nd plaintiff and the appellant/2nd plaintiff had



settled the suit property in his favour by executing a Will dated 27.05.2009 and therefore, he may be impleaded as 2nd appellant in the second appeal. One A.Rajasekaran S/o.S.Arunachalam Pillai has filed C.M.P.(MD).No.1864 of 2019 stating that he is the own brother of the deceased sole appellant/2nd plaintiff and that the appellant/2nd plaintiff had settled the suit property in his favour by executing a Will dated 10.02.2010, whereby she has cancelled her earlier Will dated 27.05.2009 also and therefore, he may be impleaded as 2nd appellant in the second appeal.

8. Admittedly, the adoption deed has not been cancelled by the plaintiffs. Both the Courts below have categorically held that the defendant is the sole legal heir of the deceased sole appellant/2nd plaintiff and that the Will dated 10.03.1989, based on which the appellant/2nd plaintiff claimed entire right over the suit property, has not been proved by the appellant/2nd plaintiff as per law. There is also no partition effected between the appellant/2nd plaintiff and the defendant. It is seen that both the Wills stated to have been executed based on the Will dated 10.03.1989. When the appellant/2nd plaintiff has not proved her title over the entire suit property based on Will dated 10.03.1989, it is not known as to how she executed the Wills dated 27.05.2009 and 10.02.2010. Further, it is seen that only after cancelling the Will dated 27.05.2009, the Will dated 10.02.2010 has been executed by the appellant/2nd plaintiff. When that be so, it is not known as to how the petitioner in C.M.P. (MD).No.292 of 2019 could maintain his claim.

9. The learned counsel appearing for the proposed appellants, by relying on the decision of the Hon'ble Supreme Court in **Mahanth Satyanand Vs. Shyam Lal Chauhan and others**, reported in **2018 (3) L.W. 207** submitted that under Order 22 Rule 5 C.P.C. this Court may refer the matter to the Court below for deciding the issue as to who is the legal representatives of the deceased and based on the report to be submitted by the Court below, this Court must decide who is the legal representative. This Court is of the view that the above decision is not applicable to this case as in this case, the sole legal representative of the deceased sole appellant is already on record as defendant and both the Courts below, based on the adoption deed and other documents, have rightly held that the defendant is the adoptive daughter of the appellant/2nd plaintiff and the first plaintiff.

10. As the legal heir of the appellant/2nd plaintiff is already on record as sole defendant and the right of the defendant over the suit property has already been upheld by both the Courts below, the petitioners cannot be impleaded as legal representatives of the deceased sole appellant/2nd plaintiff in this second appeal only based on the Wills stated to have been executed by the deceased sole appellant/2nd plaintiff.



11. In the result, this second appeal is dismissed as abated and C.M.P. (MD) .Nos.292 and 1864 of 2019 are dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The I-Additional Subordinate Judge,
Madurai.
- 2.The Principal District Munsif,
Madurai Town.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+2CC TO MR.K.S.SREENIVASAN, Advocate Sr. No.94371 & 94460
+1CC TO MR.R.J.KARTHICK, Advocate Sr. No.94790
+1CC TO MR.K.SULTHAN ALLOWTHIN, Advocate Sr. No. 94441

Judgment made in
S.A. (MD) No.737 of 2005
and
C.M.P. (MD) .Nos.292 and 1864 of 2019
24.10.2019

NS (CO)
TR(13.11.2019) 4P 8C