

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020

Pronounced on: 08.12.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal Nos.867 & 868 of 1995
and C.M.P.No.25412 of 2019

S.A.No.867 of 1995

Krishnaveni Ammal

.. Appellant

/versus/

1.Kuppuswamy Naidu (Deceased)

2.Manikandan
S/o.Kuppusamy Naidu

3.Sarasu
D/o.Kuppusamy Naidu

4.Valarmathi
W/o.Ramachandran

5.Manomani
W/o.Kuppusamy Naidu

6.Satheesh
S/o.Kuppusamy Naidu

7.Ramakrishnan
S/o.Kuppusamy Naidu

(RR2 to 7 brought on record as Lrs of the
deceased sole respondent vide order dated
11.06.2019 made in C.M.P.Nos.8595 to
8597/2017 in S.A.No.867 of 1995)

..Respondents

S.A.No.868 of 1995

Krishnaveni Ammal

.. Appellant

/versus/

1.Banumathi (Died)

2.Chandra Ammal

3.Kuppusamy Naidu (Deceased)

4.Balarama Naidu (Died)

5.Alamelu Ammal

6.Mari Gounder (Died)

7.Rajanga Naidu

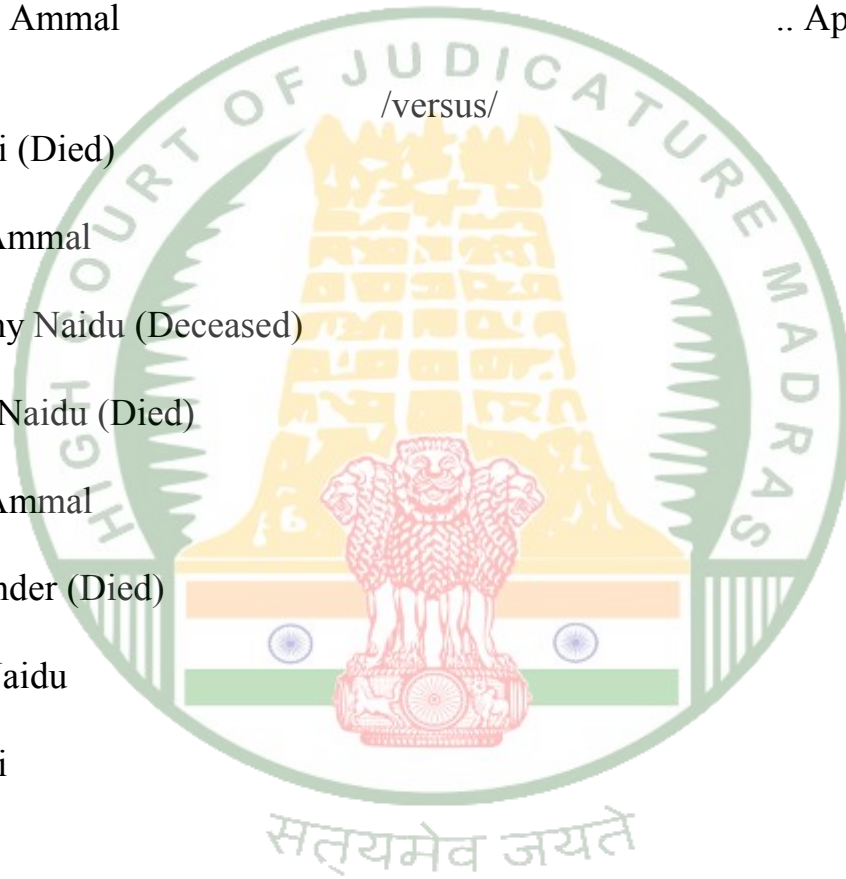
8.Annamalai

9Anjalai

10.Malar

11.Elumalai

12.Alamelu



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(RR9 to 12 brought on record as Lrs of the
deceased 6th respondent vide order dated
18.07.2007 made in C.M.P.Nos.974 to 976/2007)

13.Kumar

14.Umamaheswari

15.Vijaya

(RR13 to 15 brought on record as Lrs of the
deceased R1 vide order dated 28.09.2011
made in C.M.P.Nos.945 & 946/2011 in S.A.No.868/1995)

16.Manikandan
S/o.Kuppusamy Naidu

17.Sarasu
D/o.Kuppusamy Naidu

18.Valarmathi
W/o.Ramachandran

19.Manomani
W/o.Kuppusamy Naidu

20.Satheesh
S/o.Kuppusamy Naidu

21.Ramakrishnan
S/o.Kuppusamy Naidu

RR16 to 21 brought on record as Lrs of the
deceased R3respondent vide order dated
29.11.2018 made in C.M.P.Nos.8598 to

8599/2017 in S.A.No.868 of 1995)

22.Kumari

W/o.Arumugam

23.Saigeetha

W/o.M.Raja

RR22 & 23 brought on record as Lrs of the
deceased 4th respondent vide order dated
17.10.2019 made in C.M.P.No.8600/2017
in S.A.No.868 of 1995)

..Respondents

Common Prayer : Second Appeals have been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.01.1995 made in A.S.No.87 & 95 of 1993 on the file of the Subordinate Judge's Court, Villupuram reversing the Judgment and Decree dated 07.04.1993 made in O.S.No.614 & 980 of 1986 on the file of the District Munsif court, Thirukoilur.

For Appellant : Mr.Mukunth for
M/s.SARvabhauman Associates (Both appeals)

For Respondents : Mr.D.Rajasekaran for R2 to R7 in S.A.No.867/95
and R16 to R21 in S.A.No.868/95

: Mrs.Aiyswarya for R9 to R12 in S.A.No.868/95

: Mrs.T.R.Gayathiri for R13, 22 & 23 in S.A.868/95

: Mr.R.Rajarajan for R14 & R15 in S.A.No.868/95

: No appearance for R2, 5, 7 & 8 in S.A.No.868/95

COMMON JUDGMENT

(The case has been heard through Video Conference)

These two Second Appeals are arising from common judgment passed by the Sub Court, Villupuram in A.S.Nos.87 and 95 of 1993 dated 25.01.1995. The first appellate Court reversed the finding of the trial Court in its common judgment dated 07.04.1993 passed in O.S.Nos.614 and 980 of 1986.

2. The brief facts necessary for deciding these Second Appeals are as below:

O.S.No.614 of 1986:

This suit was filed by Krishnaveni Ammal for the relief of declaration and recovery of possession and for mense profit in respect of three properties in i) S.No.11/1 measuring 1 acre out of 3.82 cents with 1/3rd in the well and 1/2 share in the motor shed in R.S.No.19/5. ii) R.S.No.128/1, 0.20 1/2 cents out of 0.62 cents with 1/3rd share in the well and iii) in R.S.No.172/2, 20 1/2 cents out of 49 cents.

3. According to Krishnaveni Ammal, Balarama Naidu and the defendant Kuppusamy Naidu are brothers. She is the wife of Balarama Naidu. The

suit schedule property is the family property inherited by her father-in-law Ayyil Naidu. The division of status between brothers took place even before the plaintiff's marriage with Balarama Naidu. The suit schedule property came to the share of Balarama Naidu and he was in possession and enjoyment. The marriage took place on 07.07.1977. Even before the marriage, Balarama Naidu promised her to gift the suit property as pre-nuptial gift. Hence, after the marriage, Balarama Naidu executed a settlement deed in respect of the suit schedule property in favour of his wife Krishnaveni Ammal on 27.12.1977. From then she became the absolute owner of the property and in possession. Patta has been transferred in her name. The settlement and mutation of revenue records was done with the knowledge and consent of the defendant Kuppusamy Naidu. To deepen the well in S.No.19/5, in which, the plaintiff Krishnaveni Ammal and the defendant Kuppusamy Naidu have 2/3rd share jointly, they both raised loan by mortgaging jointly the 2nd item of the suit schedule property in favour of one Mari Kounder on 27.09.1983 for Rs.2,500/-. Thus the possession and title of the plaintiff accepted by the defendant by conduct. While so, the defendant Kuppusamy Naidu attempt to trespass into item Nos.1 and 3 of the suit schedule property. Taking advantage of the fact that Balarama Naidu the plaintiff's husband not leading a proper life and also

developed intimacy with one Malar of Vadakurumbur village and deserted the plaintiff Krishnaveni Ammal and her daughter, the defendant Kuppusamy Naidu denying the status of the plaintiff as legally wedded wife of Balarama Naidu, trespassed the suit property and hence the suit for declaration and recovery of possession.

4. The said suit was defended by Kuppusamy Naidu stating that the suit property is the ancestral property held by his father Ayyil Naidu, who died intestate in the year 1963 leaving behind his two sons and two daughters. There is no division of status between the heirs of Ayyil Naidu. The allegations that the property of Ayyil Naidu was divided between his sons Balarama Naidu and Kuppusamy Naidu is incorrect. It is not permissible to divide the joint family property between two sons alone, when there are other heirs. The settlement deed dated 21.12.1977 alleged to have been executed by Balarama Naidu in favour of the plaintiff Krishnaveni Ammal is false and not legally enforceable. Being the senior member of the family without his knowledge and consent of the other sharers, the joint family property could not be alienated.

O.S.No.980 of 1986:

5. This suit is filed by Banumathi and Chandrammal both daughters of Ayyil Naidu against Kuppusamy Naidu and Balarama Naidu, who are the sons of Ayyil Naidu as first and second defendants. The other defendants in the suit are Krishnaveni Ammal (plaintiff in O.S.No.614 of 1986) Alamelu Ammal W/o.Ayyil Naidu, Mari Kounder, Rajanga Naidu and Annamalai. This suit is filed for partition of the properties left intestate by Ayyil Naidu. Totally 9 items of property shown in the suit schedule out of which, the three properties which is subject matter of O.S.No.614 of 1986 also included.

6. In this partition suit, the daughters of Ayyil Naidu contended that their father Ayyil Naidu died intestate in the year 1963, living behind his two sons and two daughters. The sons alone can not be unilaterally alienate the joint family property. The settlement deed alleged to have been executed by Balarama Naidu in favour of Krishnaveni Ammal is void. The daughters of Ayyil Naidu are class 1 heirs and entitled for the 1/3rd share of Ayyil Naidu to be jointly inherited. Therefore, sought for partition of property by metes and bounds, good and bad soil.

7. In this suit Krishnaveni Ammal contested the case alleging that to counter blast her suit for declaration O.S.No.614 of 1986, the Kuppusamy Naidu has set up his own sisters to file a partition suit knowing well that Balarama Naidu married her at Sri Lakshmi Narayana Perumal temple at Sembatta Malaiyanur village and started living as husband and wife. The settlement of 3 properties which are the subject matter of O.S.No.614 of 1986 was executed as promise made by Balarama Naidu at the time of marriage. It was executed as anti nuptial gift, it was duly executed and acted upon. The subsequent suit in O.S.No.980 of 1986 filed by the daughters of Ayyil Naidu on the advise of Kuppusamy Naidu is to give trouble and usurp her property taking advantage of the fact that her husband Balarama Naidu has deserted her and she is in helpless condition.

8. Taking note of the fact that, the property, parties and pleadings are intrinsically connected in both the suits, the suits were tried together and rendered common judgment. The trial Court taking note of the fact that the Krishnaveni Ammal and Kuppusamy Naidu who are parties in O.S.No.614 of 1986, as plaintiff and defendant had jointly executed a mortgage deed in respect of property mentioned in the settlement deed in favour Krishnaveni Ammal. DW-3 Mari

Kounder to whom the property was mortgaged has deposed about the content of the mortgage deed Ex.B-15. Since the other sharers have permitted Balarama Naidu and Kuppusamy Naidu to enjoy the property, held the settlement deed is a valid document. Excluding the three items of property mentioned in the settlement deed which is the subject matter of O.S.No.614 of 1986, trial Court decreed the partition suit of the plaintiff in O.S.No.980 of 1986. In sum and substance the trial Court held that the partition between the brothers dated 07.07.1977 valid and out of 9 items of properties listed in the partition suit, excluding the three items settled in favour of Krishnaveni ammal, rest of the 6 items were subjected to division among the legal heirs of Ayyil Naidu.

9. Aggrieved by the said common judgment and decree, Kuppusamy Naidu preferred appeal A.S.No.87 of 1993 against the judgment passed in O.S.No.614 of 1986. Banumathy and Chandrammal the plaintiffs in O.S.No.980 of 1986 preferred appeal A.S.No.95 of 1993 for the disallowed portion. The lower appellate Court formulated the points for determination as to whether the settlement deed dated 27.12.1977 is true and valid.

10. The lower appellate Court after re appreciating the evidence held that the settlement deed marked as Ex.B-2 dated 27.12.1977, when the factum of marriage between Krishnaveni Ammal and Balarama Naidu itself is not proved then the plea of Krishnaveni Ammal that property was gifted to her as pre nuptial gift in fulfilment of promise before the marriage between Krishnaveni Ammal and Balarama Naidu falls without proof. The claim of partition between the family members of the Balarama Naidu and the suit properties in O.S.No.614 of 1986 was allotted to Balarama Naidu who in turn settled to Krishnaveni Ammal are without any basis. The first appellate Court dismissed the appeal observing that when there is no evidence to show the joint family property left by Ayyil Naidu was divided among the family members, the settlement deed dated 27.12.1977 alleged to have executed by Balarama Naidu in respect of joint family property cannot be a valid settlement. Even it is to be held valid, the said settlement will not bind the other sharers particularly the daughters of Ayyil Naidu/the plaintiffs in O.S.No.980 of 1986. The lower appellate Court allowed the appeals by holding that the plaintiffs in O.S.No.980 of 1986, who are the daughters of Ayyil Naidu, are entitled 2/15 shares in all the 9 items of property including the property which are alleged to have been settled in favour of Krishnaveni Ammal and being the subject matter of

O.S.No.614 of 1986.

11. As a result of the first appellate Court judgment the suit filed by Krishnaveni Ammal for declaration and recovery of possession was dismissed. The suit filed by Banumathi and Chandra Ammal for partition was allowed and preliminary decree passed. The Second Appeals are filed by Krishnaveni Ammal challenging the common judgment passed by the lower appellate Court.

12. This Court on considering the materials framed the following issues:

1) Whether the lower appellate Court is right in law in holding that marriage of the appellant is not proved overlooking the well settled principle of law that admitted facts need not be proved and that when there is no issue between the parties in that aspect?

2) When the execution of the settlement deed was admitted by the respondents in the plaint in O.S.No.980

of 1986 District Munsif Court, Thirukoilur, in Exhibit A-2 notice and PW.1, whether the lower appellate Court is right in law in holding Exhibit B-2 settlement deed is not proved to be a genuine question that too by discarding the evidence of attestors D.Ws.2 and 3?

3) When Division in status had taken place as evidence by Exhibits, A-3 and Ex.B-2 and as spoken to the independent witnesses D.Ws.2 and 3, whether the lower appellate Court is right in law in holding Exhibits B-2 settlement deed executed by the husband of the appellant in favour of the appellant is invalid?

13. The settlement deed marked as Ex.B-2 is pleaded as a anti nuptial gift given by Balarama Naidu while marrying Krishnaveni Ammal and she had been enjoying it absolutely. To prove her enjoyment, she relies upon Ex.B-12 mortgage deed executed by her and Kuppusamy Naidu jointly.

14. The basic fact in this case is whether the property of Ayyil Naidu, who died in the year 1963 intestate can be alienated by one of his son, when there is no proof for partition among them and when the other sharers deny any such partition. It is the burden of Krishnaveni Ammal the plaintiff in O.S.No.614 of 1986 who has sought for declaration of title to prove that Balarama Naidu had right over the property which he has settled in her favour. When there is no evidence of partition among the sharers, the trial Court after holding that the daughters and wife of Ayyil Naidu are also entitled for a share in the property of Ayyil Naidu ought not to have exempted the 3 items, which is the subject matter of settlement deed, unilaterally executed by Balarama Naidu in favour of Krishnaveni Ammal. Obviously it is a void document and cannot be enforced even if any one of the share holders have recognised her as legally wedded wife of Balarama Naidu. The execution of settlement deed Ex.B-2 is contrary to the interest of other co-sharers. The execution of mortgage deed by Krishnaveni Ammal and Kuppusamy will not divest the right of other lawful shares. That cannot be put against the other co-sharers. Particularly, the daughters of Ayyil Naidu cannot be deprived of the right in their father's property, who died in the year 1963 intestate. When the donor had no absolute right to alienate, the donee cannot have a better

title. The revenue records are not proof of title. Even for possession, the documents relied by the plaintiff show only joint possession and not exclusive possession. For these reasons the case of the plaintiff in O.S.No.614 of 1986 has to fail and the case of the plaintiff in O.S.No.980 of 1986 has to be upheld. The substantial question of law framed is answered against the appellant.

15. As a result, both the *Second Appeals are dismissed.*

Consequently, connected miscellaneous petition is also closed. No costs.

08.12.2020

Index :Yes/No.
Speaking order/non speaking order
rpl

To:

1.The Principal District Court, Chengalpattu.

2.The Subordinate Judge, Thiruvallur.

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Dr.G.Jayachandran,J.

rpl



Pre-delivery common judgment made in
S.A.Nos.867 and 868 of 1995
and C.M.P.No.25412 of 2019

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08.12.2020