

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1688 of 1997

Ramakka

W/o.Ramaiah

...Appellant/Plaintiff

Vs.

1. Muniappa @ Muniraju

2. Muniamma

3. Venkatalakshmiamma

4. Krishnappa

5. N.Sampangi

6. Rangappa

7. Sarojamma

8. N.Venkatappa

9. Venkatalakshamma

10. Srinivasan

11. Rajanna

12. Moogiappa

13. Bhavani

...Respondents/Defendants 1 to 4 and 6 to 14

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 27.02.1996 made in A.S.No.152 of 1994 on the file of the III Additional District Court, Dharmapuri at Krishnagiri, confirming the judgment and decree dated 22.10.1991 made in O.S.No.128 of 1984 on the file of the Subordinate Court, Krishnagiri.

For Appellant : Mr.D.Shivakumaran

For Respondents

For R1 to 4,5,7

9 to 13

: No appearance

For R6 & R8

: Mr.V.Raghavachari

JUDGMENT

This second appeal has been preferred as against the judgment and decree dated 27.02.1996 made in A.S.No.152 of 1994 on the file of the III Additional District Court, Dharmapuri at Krishnagiri, confirming the judgment and decree dated 22.10.1991 made in O.S.No.128 of 1984 on the file of the Subordinate Court, Krishnagiri.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for partition. The plaintiff is the daughter of one Lakshmaiya. He also had one son viz., Muni Venkatappa and he died in the year 1964. The plaintiff's father also died in the year 1965, after death of his son. The first defendant is the grand son of the said Lakshmaiya through his deceased son viz., Muni Venkatappa. The second defendant is the wife of the said Muni Venkatappa and the third defendant is the daughter of the said Muni Venkatappa. The suit A schedule property is an ancestral property as such after the death of her father i.e., grandfather of the first defendant, the plaintiff is entitled for 2/8th share and the first defendant is entitled for 4/8 share and the second and third defendants are entitled to have 1/8 share in the A schedule property. In fact, the plaintiff and the defendants 1 to 3 were in possession and enjoyment of the suit property till the year 1980.

3.2. Thereafter, the plaintiff came to knowledge that half portion of the A schedule property was settled to the first defendant by her father in the year 1965. It is invalid document, since the suit A schedule property is an ancestral one and enjoyed by all the family members without any partition. In fact, the first defendant filed partition suit in O.S.No.144 of 1980, in which he categorically admitted the above said fact and the said suit was also dismissed. Therefore, the plaintiff is one of the joint owner of the suit A schedule property. When the first defendant was fell in ill, with the support of the second defendant, the fourth defendant executed sale deed dated 07.01.1980 in his favour. Though the first defendant is not the owner of the property, by fraud the said sale deed was executed. Therefore, the said sale deed is not binding upon the plaintiff insofar as the suit A schedule property. While being so, on the strength of the said sale deed, the fourth and fifth defendants trespassed into the suit property and they are in possession and enjoyment of the suit property. Further the plaintiff is entitled to have the share of 2/8 in the suit A schedule property and also she is entitled for means profit for her share. Hence the suit.

4. The first defendant filed written statement stating that the first defendant and defendants 2 & 3 are entitled to the suit A schedule property, after the death of the said Muni Venkatappa thereby the first defendant is entitled to have 4/8 share, the plaintiff is entitled to have 2/8 share and the defendants 2 and 3 are entitled to have 1/8 share in the A suit schedule properties and also supporting the case of the plaintiff.

5. The third defendant filed separate written statement and stated that she is entitled for 1/8 th share in the suit schedule property and also supporting the case of the plaintiff.

6. The sixth defendant filed separate written statement and the same is adopted by the fifth defendant and stated that sixth defendant purchased the suit A schedule property. The fifth defendant is the lessee of the fourth defendant and as such, he is not a necessary party to the suit. In fact, the gift deed was executed 20 years back and as such it cannot be said as in valid. Therefore, the suit itself barred by limitation since the gift deed executed and acted upon and thereafter the first defendant executed sale deed in favour of the sixth defendant. That apart, he is also entitled to the suit property by way of adverse possession. Therefore, he prayed for dismissal of the suit.

7. The seventh defendant filed separate written statement and stated that he purchased 4th item of the suit A schedule property from the defendants 1,2 & 4 for the valid sale consideration by a registered sale deed dated 28.01.1983. From the date of the sale, he is in possession and enjoyment of the fourth item of the suit A schedule property. Therefore, the plaintiff has no share in the suit property and prayed for dismissal of the suit.

8. The eighth defendant and ninth defendant filed separate written statement and stated that said Lakshmaiya settled the entire property by way of settlement deed in favour of the first defendant on 15.09.1965. Therefore, the suit A schedule property has not derived by the plaintiff or the defendants 2 and 3 by inheritance. On the strength of the gift deed, the first and second defendant executed the sale deed in favour of the fourth defendant by a registered sale deed dated 07.01.1980. The recital of the sale deed clearly shows about the gift deed dated 15.09.1965. The said deed was executed after attaining majority of the first defendant. In fact, on the strength of the gift deed, the guardian of the first defendant filed suit in O.S.No.104 of 1968. Further to disprove the sale deed, by suppressing the gift deed dated 15.09.1965 and they filed another suit in O.S.No.144 of 1980 and the same was also dismissed as not maintainable. Therefore, the plaintiff is not at all entitled for her share as claimed by her.

9. The ninth defendant filed separate written statement and stated that he purchased the seven item of the suit A schedule property from the fourth defendant by a registered sale deed dated 06.07.1983. Even from the date of the said sale, he is in possession and enjoyment of the item No.7 of the suit A schedule property. Further by a registered sale deed dated 05.12.1983, he purchased the land ad measuring 1.07 acres comprised in survey No.626, from the fourth defendant for the valid sale consideration of Rs.6,955/-, which shown as seventh item of the suit A schedule property. In the said property, he is in possession and enjoyment from the date of sale. Likewise the item No.11 of the suit schedule property ad measuring about 22 cents in survey No. 627 also, he purchased

from the first defendant by registered sale deed dated 06.07.1983. Further he also purchased another item of the property comprised in survey No.626 ad measuring 50 cents from the fourth defendant. Therefore he prayed for dismissal of the suit.

10. On the side of the plaintiff, she examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.3. On the side of the defendants, they examined D.W.1 to D.W.7 and were marked Ex.B.1 to Ex.B.21. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No.152 of 1994 and the same was also dismissed by the first appellate Court by confirming the judgment and decree of the trial Court. Aggrieved by the same, the plaintiff preferred this present second appeal.

11. At the time of admission of this second appeal, the following substantial questions of law were formulated for consideration:-

"A. Whether the Courts below had erred in holding that the acceptance of the settlement/gift in favour of the 1st defendant, then a minor, under Ex.B.18, by a person other than his natural guardian, is valid in law?

B. Whether the Courts below are right in holding that a settlement/gift in respect of ancestral joint family properties, without the consent of the other members of the joint family, is valid in law?

C. Whether the Courts below are correct in holding that the plaintiff/Appellant had failed to discharge the burden of proving that the suit properties are ancestral, joint family properties without reference to the overwhelming documentary evidence which reveal the nature of the suit properties as such?

D. Whether the Court below are right in upholding the validity of Ex.B.1 Sale deed, particularly when the 1st defendant was clearly incapacitated by virtue of his minority at the time of execution thereof?"

12. Heard Mr.D.Shivakumar, learned counsel appearing for the appellant/plaintiff and Mr.V.Raghavachari, learned counsel appearing for the respondents 6 & 8/defendants 7 & 9.

13. The suit is filed for partition. The plaintiff and one Muni Venkatappa are sister and brother. Even before the death of their father, the said Muni Venkatappa died in the year 1964. The first defendant is the son of the said Muni Venkatappa and the second defendant is the wife of the said Muni Venkatappa and the third defendant is their daughter. The plaintiff and the defendants 1 to 3 were lived in a joint family. According to the plaintiff, the suit A schedule property is an ancestral property and it is transferred from their ancestral. The plaintiff failed to prove the fact that the suit A schedule property is a ancestral one. When the plaintiff has claimed her 2/8th share in the suit A schedule property, as the suit A schedule property is an ancestral one, she has to prove his case. Therefore, the Courts below held that the plaintiff failed to prove that the suit A schedule property is an ancestral one.

14. That apart Ex.B.8 is a settlement deed executed in favour of the first defendant. It is categorically proved that on the strength of the said settlement deed, they executed various sale deed and immediately after the sale deed they were put in possession and enjoyment of the suit A schedule property. The settlement deed was executed on 15.09.1965. Even thereafter, there were two suits challenging the said settlement deed as well as the partition deed and both the suits were dismissed. After the period of 20 years, the present suit has been filed for partition and therefore the present suit is barred by limitation.

15. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts before for upholding the case of the plaintiff. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the defendants and as against the plaintiff.

16. In fine, the second appeal stands dismissed by confirming the judgment and decree of the Courts below. There is no order as to costs.

Sd/-

Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

rts

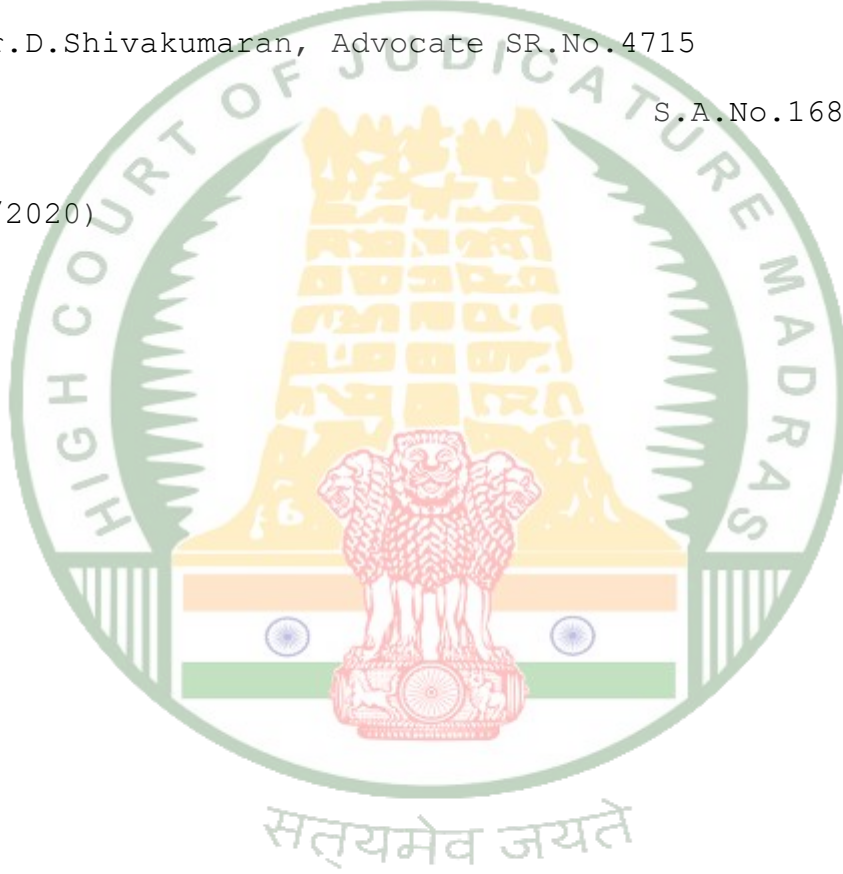
To

1. The III Additional District Judge,
Dharmapuri at Krishnagiri
2. The Subordinate Judge,
Krishnagiri.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.D.Shivakumaran, Advocate SR.No.4715

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RSV(CO)
GMY(27/08/2020)



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