

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.592 of 2010

and

M.P.No.1 of 2010

Maya Ammal(died)
L.Ranganathan

.... Appellants/Petitioners

vs.

1.Pushppa Ammal
2.Neela
3.Eswaran
4.Kesavan
5.Gowri

.... Respondents/Defendants

Appeal filed under Section 96 of the Civil Procedure Code, against the decree and judgment made in O.S.No.68/2004 dated 20.11.2009 on the file of District Judge, Tiruvannamalai.

For Appellant : Mr.P.V.Sanjeev

For Respondents : Mr.T.R.Rajaraman

[For R1, R2 & R4]

No appearance

[For R3]

J U D G M E N T

The appeal suit is filed against the judgment and decree dated 20.11.2009 in O.S.No.68 of 2004.

2. The plaintiff is the appellant in the appeal suit. The plaint in brief, states that the appellant plaintiff is the widow of Perumal Bagavathar and her marriage took place on 12.09.1960 at Arani, according to their rights and customs.

Perumal Bagavathar died on 15.03.1998, leaving the plaintiff as his only legal heir and died intestate. The suit property is the terraced house owned by Perumal Bagavathar. It is his ancestral property. His parents properties and to allot $\frac{1}{2}$ share to the 2nd defendant. The plaintiff filed a maintenance case against her husband in Sub-Court, Vellore in O.S.No.130 of 1966 and it has been decreed in her favour for the grant of Rs.50/- per month as maintenance. Subsequently, the plaintiff filed O.S.No.633/1990 in District Munsif Court, Arani and awarded a sum of Rs.250/- per month for maintenance. She filed an appeal before the Sub-Court, Arani in A.S.No.42 of 1994 and the Sub-Court enhanced the maintenance to Rs.400/- per month. Against the order of the Subordinate Judge, the plaintiff filed an appeal to the High Court, Chennai in S.A.No.1343/1997 and during the pendency of the said appeal, Perumal Bagavathar died and she could not prosecute further in respect of her claim for enhanced maintenance. The appellant plaintiff is in joint and constructive possession of the plaint schedule properties. The first defendant is keeping the jewels described in "C" schedule after the death of Perumal Bagavathar. The said jewels are left by Perumal Bagavathar at the time of his death. Thus, the plaintiff is entitled to $\frac{1}{2}$ share in the "C" schedule properties. Thus, the appellant plaintiff was constrained to institute the suit.

3. The first plaintiff Maya Ammal died on 08.04.2006. While Maya Ammal was in a sound and disposing state of mind, she had duly and voluntarily executed a registered will dated 23.03.1999, bequeathing her properties in favour of the 2nd plaintiff, who was her younger brother. That was the last will of Maya Ammal on her death, the 2nd plaintiff became entitled to the estate of deceased Maya Ammal. The 2nd plaintiff was recognized as the Legal Heir of the deceased Maya Ammal in I.A.No.59/2006 by order dated 27.06.2008. Thus, the 2nd plaintiff is entitled to the suit reliefs.

4. The respondents / defendants in their written statement contended that the suit properties, after the death of Parthasarathy Bagavathar were inherited by his heirs namely his son, Perumal Bagavathar and his wife Andal Ammal as per Hindu Succession Act and enjoying the same. Perumal Bagavathar married the first defendant as per Hindu Customs and Right about 35 years ago and both were living as husband and wife. The 2nd defendant was born to them. Perumal Bagavathar and his mother Andal Ammal, when they were alive, they executed a registered will dated 23.09.1986, bequeathing the suit properties in favour of the 2nd defendant granting life estate to the first defendant and thereafter, they had died. The said will was their last will. Therefore, it is false to state that both of them had died intestate. As per the will executed by them, the "A" schedule

property is being enjoyed by the first defendant and therefore, entitled to collect the rent and out of the rent collected, the first defendant is maintaining the house and paying tax. After her death, the 2nd defendant would inherit the property as per the recitals contained in the above said will. The plaintiff is aware of the above said will. However, deliberately suppressed the same in the plaint and therefore, the suit is not maintainable. The plaintiff did not attend the death ceremony of his parents and it is only the 2nd defendant, who had performed the last rites of Perumal Bagavathar. It is needless to state that the 1st defendant was having illicit intimacy with Perumal Bagavathar. The 1st defendant is the legally wedded wife of Perumal Bagavathar and out of the said wedlock, only the 2nd defendant was born. The plaintiff did not object Perumal Bagavathar, marrying the 1st defendant.

5. The "B" schedule properties were alienated by Andal Ammal and Perumal Bagavathar and they were not in the possession of the 1st defendant. It is stated that the 1st defendant is not in possession of the "C" schedule properties. Therefore, the suit is liable to be dismissed. An additional written statement was filed by the defendants 1 and 2, which was adopted by the defendants 3 to 5 states that the plaintiff Maya Ammal was not the only legal heir of the deceased Perumal Bagavathar. The 1st plaintiff executed a registered will dated 23.03.1999, bequeathing her properties in favour of the 2nd plaintiff. The said will is fabricated by the 2nd plaintiff. Maya Ammal did not execute the said will and some other person impersonated as Maya and get the will registered. Maya Ammal did not whisper anything about the execution of the will. Thus, the will dated 23.03.1999 is a forged one and on that basis, the 2nd plaintiff cannot claim any relief in the suit. There was no cause of action for the suit. Thus, the suit is liable to be dismissed.

6. The trial Court framed the following issues:

(1) Whether the plaintiff is entitled to obtain partition and separate possession of $\frac{1}{2}$ share in the suit properties as claimed in the plaint?

(2) Whether the plaintiff is entitled to obtain mense profits from the suit properties as claimed in the plaint?

(3) Whether the plaintiff is entitled to obtain the relief of permanent injunction against the defendants 3 to 5 in respect of the payment of rents to the defendants 1 and 2 as claimed in the plaint?

(4) Whether the first defendant is the legally wedded wife of Perumal Bagavathar?

(5) Whether the 2nd defendant is the legitimate daughter of Perumal Bagavathar?

(6) Whether the first defendant is entitled to enjoy the "A" Schedule property as Life Estate Holder and the 2nd defendant is the vested remainder of the "A" schedule properties as per the will dated 23.09.1986?

(7) Whether the sum of Rs.600/- alone is received as rent from the "A" schedule properties?

(8) Whether the "B" schedule properties were alienated by Perumal Bagavathar and his mother?

(9) Whether the plaintiff is no the co-owner of the 2nd defendant?

(10) Whether Perumal Bagavathar did not leave behind the "C" schedule jewels?

(11) To what relief the plaintiff is entitled to?

7. Additional issue was framed on 22.12.2008 by the trial Court as to Whether the will dated 23.03.1999 is true, valid and binding on the defendant.

8. In order to establish the case of the plaintiff's case, PWs 1 to 4 were examined. Exs.A1 to A8 were marked. In support of the defendants' case, DW1 to DW3 were examined. Ex.B1 to 49 were marked.

9. With reference to issue Nos.4 & 5, the trial Court made a finding that the defendants have examined no independent witness to prove the alleged marriage between Perumal Bagavathar and the first defendant. The fact remains that the Perumal Bagavathar and the first defendant had been staying together for a considerable length of time and accordingly, it could be seen that they were seen and treated as husband and wife in the society. As per Ex.D7, Voter's Card, the 1st defendant has been described as wife of Perumal Bagavathar and the 2nd defendant is described as the daughter of Perumal Bagavathar. As Per Ex.B10, Voter's list, the first defendant has been described as the wife of Perumal Bagavathar and the 2nd defendant has been described as the daughter of Perumal Bagavathar and the first defendant and they are stated to be residing in the house bearing Door No.208, Sathiyamoorthy Road, Arani Town.

10. The evidence of DW2 with regard to the marriage between her and Perumal Bagavathar is not shown to be unacceptable by the plaintiff during her cross-examination. Apart from putting the suggestion that no marriage had taken place between them, no other cross-examination has been made with reference to the same.

11. Considering these evidences, the trial Court arrived a conclusion that the marriage between Perumal Bagavathar and the 1st defendant is a void marriage and the 1st defendant is the illegitimate wife of Perumal Bagavathar and further, held that as per the provisions of the Hindu Marriage Act, the 2nd

defendant born to Perumal Bagavathar and the 1st defendant out of the void marriage is the legitimate daughter of Perumal Bagavathar. Accordingly, issues 4 & 5 are answered.

12. The trial Court though found that Perumal Bagavathar and the 1st defendant were living together, identified that the second marriage of the 1st defendant with Perumal Bagavathar was not legally valid. The marriage was even if solemnized during the subsistence of the 1st marriage and this apart, the 1st wife was receiving maintenance pursuant to the orders of the Court. Thus, the marriage between Perumal Bagavathar and 1st defendant was held as void marriage. However, the 2nd defendant, who is the daughter of Perumal Bagavathar and the 1st defendant is the illegitimate daughter of Perumal Bagavathar and in this regard, this Court is of an opinion that there is no perversity or otherwise in deciding the issues.

13. As far as issue No.6 is concerned, the trial Court elaborately considered the documents and evidences, found that ancestral property is being enjoyed by the defendants 1 and 2 as full owners of the same on the basis of the will Ex.B1. According to the defendants Perumal Bagavathar had died on 16.03.1998 and his death certificate was marked as Ex.B2. It is stated that Andal Ammal died in the year 1994. Considering these evidences, the Court arrived a conclusion that it could be seen that the defendants had proved the due execution and attestation and registration of the will Ex.B1 by Andal Ammal and Perumal Bagavathar. Accordingly, the trial Court concluded that the will dated 23.09.1986 is true, valid and binding on the plaintiff. The 1st defendant had been conferred life estate and the 2nd defendant vested remainder over the "A" schedule property under the will dated 23.09.1986 and accordingly, issue No.6 was also answered by the trial Court.

14. Issue No.7 was left unanswered and Issue No.8 was discussed and the finding was arrived that no material has been placed by the plaintiff to show that the "B" schedule properties are still available in the family. On the other hand to show that the "B" schedule properties had been alienated by Perumal Bagavathar even during his life-time, the defendants have produced Ex.B11, the registration copy of the sale deed dated 17.09.1993, wherein, the "B" schedule properties had been alienated to one Mr.Prakash by Perumal Bagavathar and therefore, the said properties are not available in the family. The plaintiff has not seriously disputed Ex.B11. Under those circumstances, the trial Court arrived a conclusion that the "B" schedule property had been alienated by Perumal Bagavathar even during his life time and the said properties are not available in the family and it is evident that no relief has been granted to the plaintiff in respect of "B" schedule property.

15. As far as Issue No.10 is concerned, the trial Court found that no material is forthcoming on the side of the plaintiff. With reference to the same, the conclusion would be that the "C" schedule properties are imaginary one and not in existence at all. The trial Court held that Perumal Bagavathar had not leave behind the "C" schedule properties as claimed in the plaint. The trial Court mainly concluded the said issue on the ground that the plaintiff could not show any material in respect of "C" schedule properties. In the absence of any such evidences, "C" schedule properties cannot be subjected to partition as claimed in the plaint. Thus, the Issue No.10 was answered. Accordingly, Issue Nos.1 to 3 and 9 are concerned, the trial Court arrived at a conclusion that the plaintiff is not entitled to obtain the relief of permanent injunction against the defendants 3 to 5 in respect of the rent paid by them to the defendants 1 and 2 in respect of the "A" schedule property.

16. At the outset, it was found that Maya Ammal is not entitled to claim any share in the suit properties. It has not been expected as to how Maya Ammal would be competent to execute the will in favour of the 2nd plaintiff in respect of the suit properties. Thus, as contended by the defendants, the will dated 23.03.1999, also suffers on the ground of incompetency of Maya Ammal to execute the said will as she had no interest, right or title over the plaint schedule properties. Accordingly, the trial Court formed an opinion that the will dated 23.03.1999 urged to have been executed by Maya Ammal is not a valid one and the right for execution of such will had not been established by the parties before the trial Court.

17. The cogent findings of the trial Court reveals that the plaintiff had not established their right in respect of the suit schedule properties as well as the genuinity of the will dated 23.03.1999 executed by Maya Ammal and under those circumstances, the trial Court rejected the relief of partition as prayed for in the suit.

18. This Court is of the considered opinion that the plaintiff, who instituted the suit for partition and permanent injunction. At the first instance, must establish his case, more specifically, the right as well as the entitlement. In the absence of establishing a legal right regarding the claim for partition, the trial Court is right in dismissing the suit. The parties approaching the Court at the first instance, are expected to establish their case for grant of relief and thereafter, the defendants are bound to rebut the claim. This being the basic legal principles to be adopted, the trial Court rightly proceeded with the trial by adjudicating the documents

as well as the evidences placed by the parties and arrived a conclusion that the plaintiff had not established even a semblance of legal right, so as to consider the relief of partition and permanent injunction as the plaintiff had not established that the will dated 23.03.1999 was executed by Maya Ammal and the right of Maya Ammal also had not been established.

19. Under these circumstances, this Court do not find any infirmity or perversity in respect of the findings arrived by the trial Court based on the documents and evidences. Accordingly, the judgment and decree dated 20.11.2009 in O.S.No.68 of 2004 is confirmed and A.S.No.592 of 2010 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The District Judge,
Tiruvannamalai.

Copy to

The Section Officer,
VR Section, High Court,
Chennai-104.

+1cc to Mr.T.R.Rajaraman, Advocate Sr.3685

A.S.No.592 of 2010

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