



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Date of Verdict : 21.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.2039 of 2000

- 1.S.V.Aiytha Gounder (deceased)
- 2.Alamelu
- 3.Venkatachalam
- 4.Chandra Sekaran ...Plaintiff/ Respondents/Appellants

(Note: Appellants 2 to 4 brought on record as legalheirs of the deceased sole appellant vide order of Court dated 09.01.2018 made in CMP No.155 to 157 of 2018 in SA.No.2039 of 2000 (MDIJ)).

Vs.

- 1.S.V.Ramachandran (died)
- 2.Kannammal
- 3.Kamalamal
- 4.Vemban
- 5.Vetrivel
- 6.Singaravel
- 7.Shanthi
- 8.Mahalakshmi ... Defendants/ Appellant s/Respondents

(Note: Respondents 3 to 8 brought on record as legalheirs of the deceased R1 viz., Ramachandran-died vide order dated 24.01.2019 made in CMP No.5501 to 5503 of 2018 in SA.No.2039 of 2000 (CVKJ)).

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 29.08.2000 made in AS.No.6 of 1998 on the file of District Court, Salem, reversing the judgment and decree dated 27.11.1997 made in O.S.No.1650 of 1996 on the file of District Munsif Court, Salem.

For Appellants : Mr.T.R.Rajaraman

For Respondents : Mr.S.Kalyanaraman for R2

R1 - Died

Mr.G.S.Sivakumar for RR3&8

RR4 to 6&7: No Appearance



J U D G M E N T

This second appeal is preferred as against the judgement and decree dated 29.08.2000 made in A.S.No.6 of 1998 on the file of District Court, Salem, reversing the judgement and decree dated 27.11.1997 made in O.S.No.1650 of 1996 on the file of District Munsif Court, Salem.

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 and the first defendant are brothers born to Vellian @ Vemba Padayachi. They all lived as joint family and purchased properties in the name of Vemba Padayachi, who was being karta of the family. Some of the properties purchased in the name of their mother, Arayammal. There was a dispute between the plaintiffs and the first defendant with regard to division of their property. A panchayat was held and they agreed to divide into three shares. One-third was allotted to plaintiff and another one-third share was allotted to first defendant and third share was allotted to their father. In respect of their father's share, he had only enjoyable right during his life time and he had no other right to alienate the same. After the life time of their father, his share has to be divided into two equal parts between the plaintiff and the first defendant and to that extent also Muchalika dated 31.05.1972, executed before the Panchayat. All the parties were signed in the said document. The panchayatars also attested the said Muchalika. Thereafter, the release deed was executed to that extent from daughters and grand children of the Vemba Padayachi and the release deed stood in the name of their mother. In respect of some other property stands in the name of their sister's husband, Perumal Padayachi purchased for their family as joint family property and he also executed settlement deed in favour of their father instead of release deed. As per the said panchayat Muchalika, the B schedule property was allotted to the plaintiff and C schedule property was allotted to the first defendant. The A schedule property was allotted to their father Vemba Padayachi. While pending suit, the first defendant got second marriage and gave birth to one son and daughter. The second defendant is the first wife of the first defendant. They influenced the father of the plaintiff namely Vemba Padayachi and induced him to execute a settlement deed in favour of the second defendant dated 22.05.1978. In view of the panchayat Muchalika dated 31.05.1972, the settlement deed in favour of the second defendant is void under law. Their father was allotted only life estate in respect of the A schedule property and he had no absolute right to execute any of



the deed to convene the title. Therefore, the plaintiff caused notice to the defendants dated 05.07.1989 call upon them to divide the properties into two equal shares. Hence the suit.

4. Resisting the same, the defendants filed a written statement and submitted that the plaintiff and the first defendant are brothers were born to one Vemba Padayachi. Except this, all the averments are denied by them. They also denied the fact that there was a panchayat for division of their joint family properties. Their father refused to give any share to his sons especially to the plaintiff. Since the plaintiff was leading a wavered life and he never heed words of his father. There was a family arrangement deed on 15.11.1972 and the same was executed and accordingly, A schedule property was allotted to their father with absolute right to encumber or alienate the same or deal with the same as he likes. Therefore, on 31.05.1972, there was no panchayat held between the family members of the plaintiffs as averred by him and said document itself is forged and fabricated one. It was created only for the purpose of making false claim that too after death of their father Vemba Padayachi. The recital of the deed dated 15.11.1972, between the family members categorically shows about the right of their father in respect of the property is absolute one. Therefore, their father Vemba Padayachi has absolute right over the A schedule property and he rightly executed the property in favour of the defendant dated 29.12.1978. Thereafter, the second defendant is in possession and enjoyment of the suit property. Therefore, the plaintiff is not having any right over the suit property and prayed for dismissal of the suit.

5. In support of the plaintiff's case, PW.1 to PW.6 were examined and thirteen documents were marked as Ex.A1 to Ex.A13. On the side of the defendants, DW.1 and DW.2 were examined and Ex.B1 to Ex.B5 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court allowed the suit in favour of the plaintiff. Aggrieved by the judgment and decree of the trial Court, the defendants preferred an appeal suit in A.S.No.06 of 1998 and the first Appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff filed this second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed by this Court:

"(i) When the defendants have not proved Ex.B2 in accordance with law, is the learned District Judge right in dismissing the suit?



(ii) When the plaintiff has proved the panchayat Muchalika by the panchayat, is the learned District Judge correct in dismissing the suit?."

7. Heard Mr.T.R.Rajaraman, learned counsel appearing for the plaintiffs and Mr.S.Kalyanaraman, learned counsel appearing for the second respondent.

8. The plaintiff and the first defendant are brothers. They were born to Vemba Padayachi. Their family properties are jointly enjoyed by the family members by the partition between them before the panchayat. A schedule property was allotted to their father only with enjoying right during his life time. The B schedule property was allotted to plaintiff and the C schedule property was allotted the first defendant. The first defendant married the second defendant as second wife. Since they lived with the said Vemba Padayachi, they influenced him and executed a deed in favour of the second defendant in respect of the A schedule property. When the said Vemba Padayachi had no title over the property to alienate the same, the settlement deed is executed in favour of the second defendant is void. Therefore, claimed half share in the A schedule property. Whereas, the defendants submitted that there was no panchayat Muchalika between the family members and the said panchayat Muchalika dated 31.05.1972, was concocted one and the father never signed in the said panchayat Muchalika. Therefore, they had family arrangements to divide the property and accordingly they executed family arrangement deed dated 15.11.1972 and the A schedule property was allotted to their father with absolute right to execute the alienate right. Accordingly, their father has title over the property and executed settlement deed in favour of the second defendant. The family arrangement deed was marked as Ex.A2 in which A schedule property was allotted in favour of the Vemba Padayachi namely the plaintiff and the first defendant. The recital as follows:

"அடியில் கண்ட ஏ சொத்துக்களை, எங்களில் 1 லக்ஷமிட்டவர் சர்வ சுதந்திரமாய் தானாதி, வினிய, விக் கிரயங்களுக்கு யோக்கியமாய் ஆண்டு அனுபவித்துக் கொள்ள வேண்டியது"

9. It categorically shows that the property which was allotted in favour of their father Vemba Padayachi has absolute right over the property. The family arrangement deed is a registered one, though it was executed on 15.11.1972, subsequently it was registered on 27.11.1972. It was also acted upon. The said Vemba Padayachi signed in English in the settlement deed executed in favour of the second defendant and as such, it cannot be said that the first and second defendants cheated his father and obtained his signature without his consent. The specific case of the plaintiff is that by the panchayat Muchalika dated 31.05.1972 there was arrangement



between the family members in which the A schedule property was allotted in favour of his father with enjoying right during his life time. Thereafter, the said property has to be divided into two shares for plaintiff and the first defendant.

WEB COPY

10. On perusal of Ex.A2, the family arrangement registered deed dated 15.11.1972, there is absolutely no mentioning about the panchayat Muchalika held between them on 31.05.1972. The said Muchalika was also not produced before the trial Court by the plaintiff. Therefore, the plaintiff failed to prove that there was a panchayat held between them on 31.05.1972 and executed panchayat Muchalika. That apart, the second defendant got married with the first defendant. She is none other than the grand daughter of the Vemba Padayachi born through his daughter. After marriage, the first and second defendants gave birth to a male and a female children. Only thereafter, the said Vemba Padayachi executed a settlement deed in favour of the second defendant that too on condition that she should maintain him till his life time. Admittedly the defendants are in possession and enjoyment of the A schedule property even after the family arrangement deed dated 15.11.1972. Therefore, the defendants also prescribed title by adverse possession.

11. Therefore, the first Appellate Court rightly reversed the findings of the trial Court and dismissed the suit filed by the plaintiffs.

12. 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 below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal. Be that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiffs.

13. In fine, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

Pns



To:-

1.The District Judge,
Salem.

2.The District Munsif Court,
Salem.

3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.T.R.Rajaraman , Advocate SR.No. 15409

+1cc to Mr.S.Kalyanaraman , Advocate SR.No. 14961

in S.A.No.2039 of 2000

A.SK(07/09/2020)