

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020

Date of Verdict : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1539 of 2002
and C.M.P.No.13240 of 2002

- 1.T.Murugaiyan
- 2.T.Ravi
- 3.D.Loganayaki
- 4.A.Anusuya
- 5.K.Santhakumari
- 6.S.Jamuna
- 7.Minor Saranya
- 8.Minor S.Vidya

(Minors 7 and 8 are rep. by mother
and guardian Smt.S.Jamun)

(cause title accepted vide as per
order of court dated 05.09.2002
made in CMP.No.12296 of 2002)

....Appellants

Vs.

- 1.Shamugha Mudaliar(died)
- 2.Suryamurthi Mudaliar
- 3.Maheswari
- 4.Gopalakrishnan
- 5.M.Dhandapani(died)

(R1 - died, RR2 & 3 are recorded as
LR's of the deceased R1. R5 died -
R4 are recorded as LR of the deceased
R5 vide order of court dated
20.09.2019 made in

SA.No.1539 of 2002 as per memo
dated 20.08.2019 in VSR.No.24529
of 2019)

....Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.09.2000, in A.S.No.37 of 1993 on the file of the Additional Subordinate Court, Tindivanam, reversing the decree and judgment dated 20.07.1992 in O.S.No.500 of 1985 on the file of the Principal District Munsif, Tindivanam.

For Appellants : Ms.A.L.Ganthimathi
For Mr.E.Kotteeswaran
For Respondents
For R2 to R4 : Mr.S.V.Jayaraman,
Senior Counsel
for Ms.Usha Raman
R1 & R5 : died

JUDGMENT

This second appeal is directed as against the judgment and decree dated 21.09.2000, in A.S.No.37 of 1993 on the file of the Additional Subordinate Court, Tindivanam, reversing the decree and judgment dated 20.07.1992 in O.S.No.500 of 1985 on the file of the Principal District Munsif, Tindivanam.

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

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

3.1 The suit is filed for declaration and recovery of possession. The suit property originally belonged to Boomilinga Mudaliar and his wife Kamalakshi Ammal. They executed settlement deed in favour of Malayazhi Mudaliar, who is the father of the first plaintiff by the registered settlement deed dated 15.10.1935. After his life time, the property has to be enjoyed by their sons, first plaintiff herein and his brother, since at the time of execution of settlement deed, the plaintiff and his brother were minors. After the lifetime of the first plaintiff and his brother, the property has to be taken absolutely by the children born to them. The second and third plaintiffs are the son and daughter of the first plaintiff. As far as the brother of the first plaintiff is concerned, his whereabouts was not known for the past 10 years. While pending the suit, he returned back as such he was also impleaded as the fifth plaintiff. The son of the fifth plaintiff is the fourth plaintiff. As per the settlement deed, the life estate was given to the parents of the first and fifth plaintiffs with the vested remainder to the children of the first plaintiff and the fifth plaintiff. The above settlement deed was duly acted upon and the parents of the first and fifth plaintiffs were in possession and enjoyment of the suit property. After their demise, the first and fifth plaintiffs took possession of the suit property and enjoyed usufructs of the trees. Thereafter they also put up house, which is described as item No.1 in the suit schedule properties. The second item are the trees situated thereon.

3.2 Further stated that the defendants 1 and 2 are husband and wife. The first defendant is the sister of the first and fifth plaintiffs. The second defendant was employed at Karaikal and he sought for permission to reside in the first item of the suit properties. The plaintiffs considered their request and permitted to reside in the suit house and also directed to look after the trees and the income thereon. Accordingly, the defendants were paying income to the plaintiffs till 1981. Thereafter, they failed to pay any money and as such the first plaintiff verified and found that the defendants with the ulterior motive, fraudulently without the knowledge of the plaintiffs had got mutation of their names in revenue records, house tax assessment in respect of the suit property. Thereafter, the first plaintiff applied for transfer and after enquiry, it was transferred in the name of the first plaintiff. Thereafter, the plaintiffs caused notice call upon the defendants to surrender the possession of the suit property on 18.03.1985 and also claiming profits at the rate of Rs.250/- per annum. On receipt of the same, the defendants issued reply notice denying the said allegations and also denying the title of the plaintiffs. Hence, the suit.

4. Resisting the same, the defendants filed written statement stating that the entire allegations and averments made in the plaint are denied as false and frivolous. The suit property originally belonged to one, Vinayaga Mudaliar. He bequeathed the same in favour of his only daughter Alamelu Ammal, namely the mother of the first defendant under a Will dated 11.12.1894. She was in possession and enjoyment of the suit property in pursuant to the Will, and she orally bequeathed the suit property to the first defendant and died in the year 1943. Therefore, the first defendant has been in open, exclusive and continuous possession of the suit property, thereby prescribed title by adverse possession also. The Will dated 11.12.1894 is true, genuine and has come into force. It was executed by the said Vinayaga Mudaliar voluntarily and in a sound disposing state of mind. Therefore, the plaintiffs are estopped to deny the Will and the dispositions under the same and the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 to P.W.3 were examined and thirty documents were marked as Ex.A.1 to Ex.A.30. On the side of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.45 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 dismissed the suit. Aggrieved over the judgment and decree of

the trial Court, the plaintiffs preferred an appeal suit in A.S.No.37 of 1993 before the Additional Subordinate Court, Tindivanam. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgment and decree passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

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

a) Whether the execution of Ex.A.1 settlement deed can be accepted as true and valid without examining any attesting witness, especially when the execution is specifically denied by the defendants?

b) Whether the lower appellate court is justified in holding that the settlors under Ex.A.1 had title to the suit property, overlooking that no document or oral evidence adduced by plaintiffs to prove as to how the settlors got title to the suit properties?

7. The learned counsel appearing for the defendants and the plaintiffs are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard M/s.A.L.Ganthimathi, learned counsel appearing for the defendants and Mr.S.V.Jayaraman, Senior Counsel appearing for the plaintiff.

9. The first and fifth plaintiffs are brothers. The second and third plaintiffs are the sons of the first plaintiff and the fourth plaintiff is the son of the fifth plaintiff. The first defendant is none other than the own sister of the first and fifth plaintiffs. The second defendant is the husband of the first defendant. According to the plaintiffs, the suit property originally belonged to the grand father of the first plaintiff, namely Boomilinga Mudaliar and his wife, Kamalakshi Ammal. They executed registered settlement deed dated 15.10.1935 in favour of their father and their father was given only life estate and after his life time, the first and fifth plaintiffs have life estate over the suit property till their life time. After the life time of the first and fifth plaintiffs, their sons have absolute right over the suit property, namely plaintiffs 2 to 4. The registered settlement deed was marked as Ex.A.1. The transfer of patta in favour of the first plaintiff was marked as Ex.A.4. The patta issued in favour of the first plaintiff was marked as Ex.A.5. The revenue

receipts were marked on behalf of the plaintiffs. To prove the settlement deed, the plaintiffs marked Ex.A.29 Register of Sub Registrar and proved the signature of the said Boomilinga Mudaliar and Kamalakshi Ammal.

10. While being so, the first plaintiff constructed house in the suit property and permitted the defendants to reside there. They were also directed to pay the income out of the trees situated in the suit schedule property. They stopped from paying income derived from the trees situated in the suit property and as such the plaintiffs verified the revenue records and found that the revenue records were mutated in their name. Immediately he filed appeal, and thereafter all the revenue records were transferred in the name of the first plaintiff. Whereas the defendants claimed the suit property that the settlement deed dated 15.10.1935 is not at all valid one and they never settled the property in favour of the plaintiffs. Originally, the property belonged to one Vinayaga Mudaliar. He bequeathed the same in favour of his only daughter Alamelu Ammal, who is none other than the mother of the second defendant herein by the Will dated 11.12.1894. Thereafter, the said Alamelu Ammal was in possession and enjoyment of the suit property. She orally bequeathed the suit property in favour of the second defendant in the year 1943. From the year 1943, the defendants are in possession and enjoyment of the suit property.

11. Though, specifically claimed the suit property by Will, the defendants failed to produce the same before the trial court. The photocopy of the said Will was marked as Ex.B.2. Except the said document, no documents were produced to prove that the suit property was orally bequeathed in favour of the second defendant. Even then, the trial court concluded that the plaintiffs did not prove the ownership of the property of their grandfather and grandmother, namely Boomilinga Mudaliar and Kamalakshmi Ammal. Therefore, dismissed the suit filed by the plaintiffs. Admittedly, the settlement deed was registered one in the year 1935. Though no witness was examined, it is more than 30 years old document as such it has become valid. Whereas the defendants though claimed that the suit property was orally bequeathed in favour of the second defendant by his mother, they failed to prove the same.

12. Further whether the second defendant has any other brother or sister, about the same, no document was produced by them before the trial court. Therefore, the oral settlement or sale does not confer any title in favour of the defendants. Further, even assuming that the second defendant's mother was bequeathed the Will by her father, a photocopy only was marked

as Ex.B.2 and it was not registered one. Though it was of the year 1895, it is an unregistered document and as such it is not valid. Considering the above evidences, the first appellate court rightly reversed the findings of the trial court and decreed the suit in favour of the plaintiffs. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the first appellate court as such the first appellate court analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in the second appeal. Be that as it may, all the substantial questions of law formulated by this Court at the time of admission of this second appeal, are accordingly answered in favour of the plaintiffs and as against the defendants.

13. Accordingly, the Second Appeal is dismissed, and the judgment and decree dated 21.09.2000 passed in A.S.No.37 of 1993 on the file of the Additional Subordinate Court, Tindivanam, are hereby confirmed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional Subordinate Court,
Tindivanam
2. The Principal District Munsif,
Tindivanam.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 cc to M/s.Usha Raman Advocate sr18097

+1 cc to Mr.E.Kotteeswaran Advocate sr17601

S.A.No.1539 of 2002

aa04/09/2020