

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.8 of 2001

1. Arokiyanathan (Deceased)
2. Chinnappan (Deceased)
3. Anthonysamy ...Appellants/Appellants/Defendants

Vs.

1. Anthony Joseph
2. Periyannayaga Padayatchi
3. Bagyammal ... 1 to 3 Respondents/1 to 3 Respondents/ Plaintiffs

4. Mahimaiddoss
5. Baskar
6. Susairaj
7. Jayamary
8. Francis

(Respondents 4 to 6 brought on record as legal heirs of the deceased first appellant and Respondents 7 & 8 brought on record as legal heirs of the deceased second appellant vide order of the Court dated 05.12.2018 made in C.M.P.Nos. 18673 to 18676 of 2017 in S.A.No. 8/2001)

... 4 to 8 Respondents/
LR of the 1 & 2 Appellants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 27.07.2000 made in A.S.No.41 of 1998 on the file of the Subordinate Court, Vridhachalam, confirming the judgment and decree dated 26.03.1997 made in O.S.No.456 of 1996 on the file of the Principal District Munsif Court, Virudhachalam.

For Appellants : Mr.P.Dineshkumar
For M/s. Sarvabhauman Associates

For Respondents
For R1 to R3 : M/s.STP.Kuilmozhi,

R4, R6 & R8 : Set ex-parte
For R5 & R7 : No appearance.

JUDGMENT

This second appeal has been filed as against the judgment and decree dated 27.07.2000 made in A.S.No.41 of 1998 on the file of the Subordinate Court, Vridhachalam, confirming the judgment and decree dated 26.03.1997 made in O.S.No.456 of 1996 on the file of the Principal District Munsif Court, Virudhachalam.

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

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

3.1. The suit is filed for declaration and injunction with alternative prayer for recovery of possession. The second plaintiff, first and second defendant and one Anthoni Joesph are brothers and one sister Adaikalamery were born to Rathinapadayatchi and Sesali ammal. Their daughter viz., Adaikalamery married in a grand manner with all seethana articles. The suit property is a self acquired property of their mother. The suit property was settled in favour of her grandson born through her son Periyamayaga Padayachi by settlement deed dated 29.05.1974. Since the settlee was a minor at the time of execution of settlement deed, his father Periyamayaga Padayachi was a guardian. On the same day ie., on 29.05.1974, other properties were settled in favour of her other minor grandsons born through the first and second defendants by separate settlement deed.

3.2. By settlement deed dated 16.06.1979, the suit schedule item 6 to 11 properties were settled to other son of Periyamayaga Padayachi viz., Arokiasamy and minor Anthoni Joesph ie., first plaintiff herein by a registered settlement deed. After the settlement deed all are in possession and enjoyment of the same and revenue records are also mutated in their names and they paid dues regularly. While being so, after the death of their mother viz., Sesali ammal and full knowledge about the settlement deed, the defendants are attempted to trespass into the suit properties and also disturbed their possession and enjoyment. Hence the suit.

4. Resisting the same, the defendants filed written statement and stated that entire suit claim is false. There is no self acquired property by their mother and the suit property never settled in favour of the first plaintiff or his brother.

Their mother had no title over the property as such she could not have executed any settlement deed as claimed by the plaintiffs. The entire suit properties belongs to the defendants 1 & 2 and the release deed dated 18.06.1956 executed by the second plaintiff in favour of them. Therefore the plaintiffs had no right over the suit properties. After the release deed, all the revenue records mutated in their names and they paid all the revenue dues in respect of their property. For the past 20 years, they paid kist in respect of the suit property and enjoyed the same. Therefore, he prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.22. On the side of the defendants, they examined D.W.1 & D.W.5 and were marked Ex.B.1 to Ex.B.29. 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 allowed the suit in favour of the plaintiffs. Aggrieved by the same, the defendants filed appeal suit in A.S.No.41 of 1998 and the first appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Aggrieved by the same, the defendants preferred this present second appeal.

6. At the time of admission of this second appeal on 08.01.2001 the following substantial questions of law were formulated for consideration:-

"1. Whether the Courts below are correct in law in holding Ex.B.1 Release deed has not been proved overlooking the presumption under Section 90 of the Evidence Act?

2. Whether the Courts below are correct in law in holding the suit properties are the properties of Sesali Ammal in the fact of Ex.B.1 and Ex.B.20, which clearly prove that Sesali Ammal was only a name lender and not the actual owner of the suit properties?"

7. Heard Mr.P.Dineshkumar, learned counsel appearing for the appellants/defendants and Mr.K.Kuilmozhi, learned counsel appearing for the respondents/plaintiffs.

8. The entire suit properties were purchased in the name of Sesali Ammal ie., the mother of the second plaintiff and defendants 1 & 2. The husband of the Sesali Ammal died in the year 1975 and the said Sesali Ammal died in the year 1976. The sale deed which were marked as Ex.A.3 to Ex.A.10 are all stand

in the name of the said Sesali Ammal. Though the defendants had taken specific plea that only from the income of their father i.e., Rathinapadayatchi, the suit properties were purchased in the name of her mother viz., Sesali Ammal, they did not produce any piece of evidence to disprove the case of the plaintiffs. Therefore it is proved from the sale deeds, which were marked as Ex.A.3 to Ex.A.10 that, all the properties were purchased by the said Sesali Ammal and it construed as her self earned properties. According to the defendants, the second plaintiff executed release deed dated 18.06.1956 in favour of the defendants, which was marked as Ex.B.1. But the same is categorically denied by the second plaintiff by stating that instead of his signature his thump impression was there. Further, the second defendant categorically admitted that he does not know about the release deed executed by the second plaintiff.

9. On perusal of settlement deed executed by Sesali ammal to the respective parties, they are in possession and enjoyment of their respective shares. When Ex.B.1 is not proved by the defendants and except this document, the defendants have not filed any other document to disprove the claim of the plaintiffs. Therefore, the Courts below rightly concluded that the plaintiffs are entitled for the relief of declaration and injunction and decreed the suit.

10. Hence, this Court does not find any valid reason to interfere with the findings rendered by the Courts below for upholding the case of the defendants. 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 decreed the suit filed by the plaintiffs. Accordingly, 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 in this Second Appeal, are answered in favour of the plaintiffs and as against the defendants.

11. 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 (CS-I)

//True Copy//

Sub Assistant Registrar

Rts

To

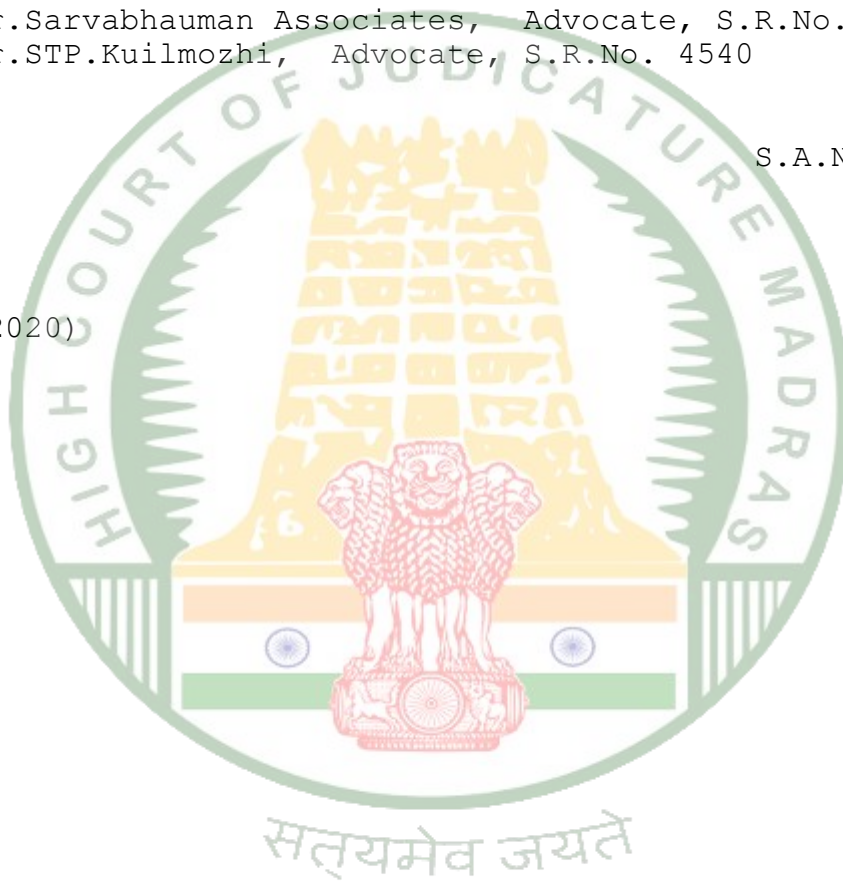
1. The Subordinate Judge,
Vridhachalam.
2. The Principal District Munsif,
Virudhachalam.
3. The Section Officer,
V.R.Section, Madras High Court,
Chennai.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.4505

+1cc to Mr.STP.Kuilmozhi, Advocate, S.R.No. 4540

S.A.No.8 of 2001

SSP(CO)
GN(14/12/2020)



WEB COPY