

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.12.2019

Date of Verdict : 03.01.2020

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.Nos. 2289 & 2290 of 2004

1.Jayaraman
2.Damodharan
3.Muniammal
4.Perumal
5.Iyyappan
6.Shanthi
7.Selvi

(Appellants 3 to 7 were impleaded as Legal heirs of the deceased 2nd appellant / 2nd defendant in O.S.No. 503/1997 in vide order dated 22.11.2018 made in CMP.Nos. 4517/2016 in S.A.No.2289 & 2290 of 2004)

..Appellants in
both the appeals

Vs.

Vidhyasagarar

...Respondent in
both the appels

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the common judgment and decree passed in A.S.No. 19 & 20 of 2004 dated 29.07.2004 on the file of the Additional District and Sessions Judge (Fast Track Court – III), Thindivanam confirmed the judgment and decree passed in O.S.Nos. 365 of 1997 and 503 of 1997 dated 11.10.2002 on the file of the District Munsif Court, Gingee.

For Appellants
in both appeals : Mr.A.K.Kumaraswamy for
Mr.S.Kaithamalaikumaran,
Senior Counsel.

For Respondent
in both the appeals : Mr.P.B.Balaji

COMMON JUDGMENT

These second appeals are preferred as against the common judgment and decree passed in A.S.No. 19 & 20 of 2004 dated 29.07.2004 on the file of the Additional District and Sessions Judge (Fast Track Court – III), Thindivanam confirmed the judgment and decree passed in O.S.Nos. 365 of 1997 and 503 of 1997 dated 11.10.2002 on the file of the District Munsif Court, Gingee.

2. The Appellants in both the appeals preferred appeals in A.S.Nos.70 & 71 of 2002 on the file of the Additional District & Sessions Judge, Tindivanam as against the judgment and decree passed in O.S.Nos. 365 of 1997 and 503 of 1997 on the file of the District Munsif Court, Gingee. In O.S.No.365 of 1997, the appellants are plaintiffs and the respondent is the defendant. In O.S.No.503 of 1997, the respondent is the plaintiff and appellants are the defendants. In both the suits, the learned District Munsif, Gingee passed common judgment and decree there by dismissing the suit filed by the appellants and allowed the suit

filed by the respondent. As against the common judgment and decree passed in O.S.No.365 of 1997 and O.S.No.503 of 1997, the appellants preferred an appeal suits in A.S.Nos. 70 & 71 of 2002 before the first Appellate Court. The first Appellate Court dismissed both the appeals by the common judgment and decree dated 29.07.2004.

3. The case of the plaintiffs in O.S.No.365 of 1997 in brief is that one Rangasamy Gounder, who is the father of the plaintiff and one Venkatachala Gounder are brothers. The said suit property along with other properties were joint family properties of them. After their death, the plaintiffs and their brother Ramachandra Gounder were in possession and enjoyment of the suit schedule property. The brother of his father had no issues and one Senthamarai Ammal was his wife. According to their family arrangements, land measuring 2.24 cents out of 3.04 acres comprised in Survey No.160/5, the extent of land measuring 0.76 cents comprised in Survey No.160/4 and the land at measuring 0.50 cents out of 3.33 acres comprised in Survey No.161/1 were allotted to the said Senthamarai Ammal. She was given only the enjoyment right over the said property. Having been she was settled the entire property in favour of her younger brother one Gopala Gounder in the year 1961, he filed a suit against the first plaintiff in O.S.No.215 of 1978 and the same was dismissed as against which

he preferred an appeal suit in A.S.No.84 of 1980 and the same was also dismissed. Both the Courts below found that the settlement deed executed by Senthamarai Ammal in favour of the said Gopala Gounder is not valid and he had no right over the property. Thereafter, she died issue less and the properties devolved on the plaintiffs and their brother. The second plaintiff sold his share to the wife of the first plaintiff and the another brother Ramachandra Gounder also sold his share to some other person. Thus, the first plaintiff became absolute owner of the suit schedule property. Accepting the same, the second plaintiff has sought for relief in this suit that the Gopala Gounder's son is claiming false title to have purchased the suit properties from Senthamarai Ammal in the year 1981. Therefore, the purchase of the suit property by the defendant is not valid one, since it is under the possession and enjoyment of the first plaintiff. Hence, the plaintiffs filed a suit for declaration and permanent injunction as against the defendant.

4. The case of the plaintiff in O.S.No.503 of 1997 in brief is that one Venkatachala Gounder and Rangasamy Gounder are brothers. One Senthamarai Ammal is the wife of the Venkatachala Gounder. The defendants and one Ramachandran are sons of Rangasamy Gounder. The first defendant married the sister of the plaintiff. Senthamarai Ammal is the sister of the plaintiff's father

Gopala Gounder. The suit property and other properties were joint family properties and after death of the Rangasamy Gounder and Venkatachala Gounder. Since the Venkatachala Gounder had no issues, his property also became the absolute properties of Senthamarai Ammal. The Rangasamy Gounder, since had no right over the property. The plaintiff purchased the property on 01.04.1991 by the registered sale deed from the said Senthamarai Ammal. She died in the year 1996 and she was in possession and enjoyment for long time and as such she has attained adverse possession. When the father of the plaintiff filed suit in view of the settlement in favour of the Senthamarai Ammal, the defendants took a stand that after death of her husband she lived with the defendants and the suit properties were entrusted towards to her life time interest. The said suit was dismissed and appeal also dismissed. She executed a registered sale deed dated 01.04.1991 and also a registered Will dated 05.04.1988 in favour of the plaintiff. The property at measuring 12 acres is the joint family property of Rangasamy Gounder and Venkatachala Gounder. The Northern portion at measuring 0.41 acres out of 0.84 acres comprised in SF.No.160/1, the property out of 3.04 acres comprised in Survey No.160/5, the property ad measuring 0.50 acres out of 3.33 acres comprised in S.F.No.161/1 and also along with other properties were partitioned between the family members. Thereafter, the said Senthamarai Ammal sold out her share to the

plaintiff. Therefore, the defendants have no right over the suit property. Hence, the plaintiff filed a suit for permanent injunction as against the defendants.

5. The case of the defendants in O.S.No.365 of 1997 is that nothing but the plaint averments in the O.S.No.503 of 1997. The case of the defendants in O.S.No.503 of 1997 is nothing but the plaint averments made in O.S.No.365 of 1997. In both the suits, common Trial conducted and on behalf of the plaintiffs in O.S.No. 365 of 1997 and defendants in O.S.No.503 of 1997 and the plaintiffs were examined as P.W.1 and P.W.2. Exs.A1 to A5 were marked on the side of the defendant in O.S.No.365 of 1997 and plaintiff in O.S.No.503 of 1997 examined D.W.1 and D.W.2 and were marked exhibits B1 to B26. Based on the materials placed on record both the oral and documentary evidence by the respective parties and the submissions made. The Trial Court dismissed the suit in O.S.No.365 of 1997 and allowed the suit in O.S.No. 503 of 1997. Aggrieved by the same, the plaintiffs in O.S.No.365 of 1997 and the defendants in O.S.No.503 of 1997 preferred an appeal suits in A.S.Nos.70 of 2002 and 71 of 2002 respectively. The first Appellate Court dismissed both the appeals by the common judgment and decree. Aggrieved by the same, the plaintiffs in O.S.No.365 of 1997 and the defendants in O.S.No.503 of 1997 preferred these appeals.

6. At the time of admission, the following substantial question of law were formulated for consideration in both the appeals:-

"Whether the judgment in O.S.No.215 of 1978, which is in operation against Senthamarai Ammal, the vendor of the defendant in O.S.No.365 of 1997 holding that Senthamarai Ammal has no saleable interest in the property conveyed by her, would operate on the principles of res-judicata in the present suit also, though the present defendant may not be a party to that suit, but on the principle that he traces his claim under Senthamarai Ammal?"

7. Heard Mr.A.K.Kumaraswamy for Mr.S.Kaithamalaikumaran, learned counsel appearing for the appellants and Mr.P.B.Balaji, learned counsel appearing for the respondent in both the appeals.

8. The suit properties are the joint family property and enjoyed by one Rangasamy Gounder and Venkatachala Gounder. The plaintiffs in O.S.No.365 of 1997 and one Ramachandra were sons of Rangasamy Gounder. The said Venkatachala Gounder had no issues and his wife is Senthamarai Ammal. He died even before the Hindu Succession Act, 1955 came into effect. After demise of Rangasamy Gounder and Venkatachala Gounder, the suit properties were under the enjoyment of the sons, the plaintiffs and his brother Ramachandran.

The suit property was allotted to Senthamarai Ammal for her life enjoyment. After her death, the plaintiffs and Ramachandran are entitled for the same.

9. According to the defendant, before the demise of Venkatachala Gounder and Rangasamy Gounder, there was a partition and the suit properties along with other properties were allotted to the share of Venkatachala Gounder. After his death, as a legal heir, the said Senthamarai Ammal became the absolute owner of those properties. Therefore, the purchase of the suit property from the said Senthamarai Ammal was valid one. In fact, father of the defendant had already filed O.S.No.215 of 1978 as against the first plaintiff and the settlement deed executed by the Senthamarai Ammal. The said suit was dismissed and it was marked as Ex.A1. Father of the defendant contended that there was partition of the suit Item 1 of the property and other properties between Venkatachala Gounder and Rangasamy Gounder and Ramachandran. Though the settlement deed executed in favour of the father of the defendant is not valid, the right of the Senthamarai Ammal in the joint family property cannot be denied. Therefore, he has proved that Senthamarai Ammal had right in the first item of the joint family property. After disposal of the suit in O.S.No.215 of 1978, she received legal notice for partition and the reply sent by the plaintiff marked as Ex.A5 in which stated that the first item of the suit property along

with other properties handed over to the Senthamarai Ammal. Thereafter, in the month of December 1996, she died and on her death the plaintiff and his brother claimed the right over the first item of the suit property as reversioner. Venkatachala Gounder died even before the Hindu Succession Act came into force and as such the joint family property of Rangasamy Gounder and Venkatachala Gounder where the first item of the suit property along with some other properties were allotted to Senthamarai Ammal along with her life enjoyment since she died in the year 1996 after the Hindu Succession Act 1996 when a women given right still it becomes the absolute property of that women. She was given life interest and she was in possession of the first item of the suit schedule property. Therefore, even before her death, under section 14(1) of the Hindu Succession Act, she has become a absolute owner of the first item of the suit schedule property. Thereafter, she sold the suit property to the defendant on 01.04.1991 and the sale deed marked as Ex.B1 shows the absolute right over the property. Therefore, the plaintiffs are not entitled over the suit property on the basis of reversioners. Though the said Senthamarai Ammal executed Will in favour of the defendant which was marked as Ex.B2 it became invalid, since she executed sale deed in favour of the defendant on 01.04.1991.

10. The plaintiff contended that Ex.B1 that there is no piece of evidence to show that she executed a sale deed in favour of the defendant under Section 68 of the Indian Evidence Act. At least one of the attestors of the document should be examined to prove the said document that the execution of the sale deed Ex.B1 never denied by the plaintiff and no such averments in the plaint. Therefore, the provision under Section 68 of the Evidence Act would not apply to the case on hand to prove the Ex.B1.

11. Therefore, the sale deed executed by Senthamarai Ammal in favour of the defendant becomes valid. In respect of the second item of the suit schedule property belongs to the defendants' ancestors and Exs. B19, B20, B21 and B23 have been marked. The extract of the Chitta and Adangal for the property comprised in Survey No.160/4 belongs to Gopala Gounder, son of Narayana Gounder. The Patta stands in the name of the father of the defendants. The other revenue receipt stands in his name and marked as Exs.B15 to B18. These documents are evidencing that the suit schedule second item has devolved, according to succession as legal heir, since the said property belongs to the family of the defendant. Therefore, the possession and enjoyment of the suit schedule property by the defendants have been proved by the documents marked by the defendants. It is also proved that the suit

properties never been in possession and enjoyment of the plaintiffs.

12. In the light of the above discussions, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below. Therefore, this Court is of the considered opinion that no substantial question of law is involved in these second appeals. Be that as it may. The substantial questions of law formulated in these second appeals answered in favour of the defendant in O.S.No.365 of 1997 and the plaintiff in O.S.No.503 of 1997.

13. Accordingly, by confirming the judgment and decree of the Courts below, both the second appeals are dismissed with costs.

03.01.2020

kkn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking

To:-

1.The Additional District and Sessions Judge,
(Fast Track Court No.II), Tindivanam.

2. The District Munsif, Gingee.

S.A.Nos. 2689 & 2690 of 2004

G.K.ILANTHIRAIYAN, J.

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Pre delivery Judgment
in S.A.Nos. 2689 & 2690 of 2004

03.01.2020