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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2020
DATE OF VERDICT : 28.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NOS.1060 & 1061 OF 2005

1.Poongothai

2.Kavitha

3.Pandiyan

...Appellants in both the appeals

Vs.

1.Elayammal

...1st Respondent in both the appeals

2.Muthammal

...2nd Respondent in S.A.No.1060 of 2005

2.Alagarsamy

...2nd Respondent in S.A.No.1061 of 2005

Prayer in S.A.No. 1060 of 2005 : Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree as made in A.S.No. 205 of 2002 dated 29.09.2003 on the file of the Principal District Judge, Namakkal, reversing the judgment and decree made in O.S.No. 43 of 1989 dated 12.09.1997 on the file of the Additional District Munsif, Namakkal.

Prayer in S.A.No. 1061 of 2005 : Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree as made in A.S.No. 204 of 2002 dated 29.09.2003 on the file of the Principal District Judge, Namakkal, reversing the judgment and decree made in O.S.No. 858 of 1984 dated 12.09.1997 on the file of the Additional District Munsif, Namakkal.

For Appellants in both
the appeals

: Mr.S.Vediappan

For Respondents in both
the appeals

: Mr.K.Raman Raj for R2
: R1- Died

C O M M O N J U D G M E N T

This second appeal has been filed as against the judgment and decree dated 29.09.2003 passed in A.S.No.205 of 2002 on the file of the Principal District Judge, Namakkal reversing the judgment and decree dated 12.09.1997 passed in O.S.No.43 of 1989.



2. S.A.No. 1061 of 2005 filed as against the judgment and decree dated 29.09.2003 passed in A.S.No. 204 of 2002 on the file of the Principal District Judge, Namakkal reversing the judgment and decree dated 12.09.1997 passed in O.S.No.858 of 1984 on the file of the Additional District Munsif, Namakkal.

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

4. The plaintiffs in O.S.No.858 of 1984 are the defendants in O.S.No.43 of 1989. The defendants in O.S.No. 858 of 1984 are the plaintiffs in O.S.No.43 of 1989. The common averments made by the plaintiffs in O.S.No.858 of 1984 and the averments made in the written statement filed by the defendants in O.S.No.43 of 1989 are that the suit properties belonged to the husband of the first plaintiff and the first defendant in O.S.No.858 of 1984. The second defendant in O.S.No. 858 of 1984 is the mother-in-law of the first plaintiff. The suit property is the ancestral one. The husband of the plaintiff alone is the only legal heir of the first defendant and as such the first defendant and the first plaintiff's husband are entitled to get share in the suit properties. The husband of the first plaintiff died on 06.06.1984 intestate leaving behind the plaintiffs and the second defendant as his legal heirs. Therefore, the plaintiffs and the second defendant are entitled to have $\frac{1}{2}$ share in the suit properties. The plaintiffs are in possession and enjoyment of the Item 2 of the suit schedule property. There is no partition in metes and bounds between the plaintiffs and the defendants 1 and 2. However, the defendants 1 and 2 with an intention to deprive the plaintiffs all the right in the suit property are trying to sell the suit property in favour of the 2nd respondent in S.A.No.1061 of 2005. Therefore, the plaintiffs caused legal notice dated 10.06.1984. Even receipt of the said notice, the defendants 1 and 2 executed the sale deed in so far as the first item of the suit property is concerned in favour of the third defendant. Therefore, the said sale is not at all binding on the plaintiffs. The first plaintiff is the legally wedded wife of late Thangaraj and the plaintiffs 2 and 3 are their children. In the suit in O.S.No.43 of 1989, the second plaintiff claimed that she is the legally wedded wife of late Thangaraj is totally false and if at all the 1st plaintiff in O.S.No.43/1989 has any right in the suit property, she cannot claim against the plaintiffs in O.S.No.858 of 1984 who are the co-owners of the suit property. Therefore, the plaintiffs in O.S.No.858 of 1984 and the defendants in O.S.No. 43 of 1989 prayed to decree the suit in O.S.No.858 of 1984 and dismiss the suit for the relief of declaration and injunction in O.S.No.43 of 1989.



5. Resisting the same, the defendants filed the written statement in O.S.No.858 of 1954 and the averments made in the plaint in O.S.No.43 of 1989 is as follows:

The said Thangaraj never got married with the first plaintiff and also denied the averment that the first plaintiff is not a legally wedded wife and the plaintiffs 2 to 4 are the children born through the said Thangaraj. The said Thangaraj got married with one Muthammal, who is the second plaintiff in O.S.No.43 of 1989. The suit property is not the joint Hindu family property. The said Thangaraj died leaving behind his wife Muthammal and his mother as his legal heirs. Therefore, the plaintiffs have no right over the suit properties and the 3rd defendant alone in possession and enjoyment of the first item of the suit property. In respect of the Items 2 and 3 in O.S.No.858 of 1984 which are the Item Nos. 1 and 2 in O.S.No.43 of 1989 belonged to grandmother of Thangaraj by name, Muthayammal who was in possession and enjoyment of sale till her life time. Thereafter, her two sons Koneri Gounder and Palani Gounder inherited the same. The said Koneri Gounder died without any legal representatives and his only brother Palani Gounder, who is the father of said Thangaraj inherited his right in the suit property. Therefore, prayed for dismissal of the suit in O.S.No.858 of 1984 and prayed for allowing the suit in O.S.No.43 of 1999.

6. On the side of the plaintiffs in O.S.No.858 of 1984, P.W.1 to P.W.4 were examined and Exs.A1 to A9 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs. B1 to B7 were marked. On perusal of the documents available on record and the submissions made by the learned counsel, the Trial Court allowed the suit in favour of the plaintiffs. In so far as the suit in O.S.No.43 of 1989, the plaintiffs examined P.W.1 and P.W.2 and marked Exs.A1 to A5. On the side of the plaintiffs, D.W.1 to D.W.4 were examined and Exs.A1 to A9 were marked. On the side of the defendants, they examined D.W.1 to D.W.3 and marked Exs.B1 to B7 and the Trial Court dismissed the suit. Therefore, the defendants in O.S.No.858 of 1984 and the plaintiffs in O.S.No.43 of 1989 have preferred an appeal in A.S.Nos.204 & 205 of 2002 respectively. The First Appellate Court passed common judgment and decree in both the appeal suits and allowed the appeal suits and set aside the judgment and decrees passed by the Trial Court in O.S.No.858 of 1984 and allowed the suit in O.S.No.43 of 1989. Aggrieved by the same, the plaintiffs in O.S.No.858 of 1984 and the defendants in O.S.No.43 of 1989 filed these second appeals.

7. At the time of admission, the following substantial questions of law were framed in both the appeals:-

"1. Whether the lower Appellate Court is right, in disbelieving the marriage, between the first appellant



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and the deceased Thangaraju, in spite of the appellants producing oral and documentary evidence, to prove the same in Ex.A1 and P.W.2 and 3 (in O.S.No. 858 of 1984, connected to S.A.No. 1061 of 2005), which was not questioned by the respondents, nor had adduced any evidence to disprove the same?

2. Whether the lower Appellate Court is right, in holding that the suit Item No. 1 is a joint family property, when the appellants had filed documentary evidence, to show that the same was devolved upon Palanimuthu Gounder, through family partition?"

8. The Trial Court similarly tried both the suits and delivered separate judgments on the same day. The point for consideration is that:-

i) Whether the first plaintiff is the legally wedded wife of Late Thangaraj and the other plaintiffs are born through the first plaintiff.

ii) Whether the first plaintiff alone did not plea about her date of marriage, place and manner of marriage between herself and late Thangaraj. She deposed that her marriage is dealt with late Thangaraj in the temple and the receipt for the marriage held in the year 1979 was marked as Ex.A1. The birth certificates of the plaintiffs 2 to 4 which were marked as Exs.A2 to A5. The birth certificates of the plaintiffs 2 to 4 mentioning, the first plaintiff as mother and Thangaraj as father. These birth certificates were obtained after the direction issued by the learned Magistrate and produced much later than the suit. Though the defendants contended that those documents contravene one and by which, order from Magistrate and thereafter, the birth certificate were issued. The defendants informed through the order passed by the learned Magistrate that the plaintiffs were born to the late Thangaraj through the first plaintiff. Therefore, the first plaintiff is rightly declared as legally wedded wife and the plaintiffs 2 to 4 were born to the late Thangaraj and the first plaintiff. The mother of Late Thangaraj deposed as D.W.1. The second defendant has stated that his son late Thangaraj got married with Muthammal, who is third defendant 27 years before and failed to mention the place and date of marriage. Further, no witness of marriage was examined and no documentary evidence were produced to prove the marriage between the late Thangaraj and the third defendant. The third defendant was examined as D.W.3 and though she has stated that she got married with late Thangaraj and also produced the family card, which were marked as Ex. D6, which did not contain any particulars that late Thangaraj is the husband of the third defendant. Therefore, the Trial Court has rightly concluded that the first plaintiff is the legally wedded wife of late Thangaraj and the plaintiffs 2 to 4 were born to them. There are three items in the suit property in which the first



and second item of the suit property were already sold out in favour of the third defendant by the defendants 1 and 2. The said sale deed was marked as Ex. B4. The said properties were allotted in favour of the first defendant through a partition deed between the first defendant and Mari Muthu Gounder in the year 1969, which was marked as Ex.A8. Thereafter, the defendants 1 and 2 sold out the first item of the suit property in favour of the third defendant and the sale deed was marked as Ex.A9. The properties under the partition dated 27.10.1969 were acquired by the two sale deeds which were marked as Exs.B1 and B2. It reveals that the first item of the suit property is purchased by Kounthapaiyan @ Marimuthu from one Radhakrishnan Chettiar, as one of the purchasers under Ex.B2. Koneri Gounder died intestate leaving behind his brother Palani Muthu Gounder, the first defendant and he became the absolute owner of the same. Therefore, the first item of the suit property is self-acquired by both of them namely, first defendant and his brother. Therefore, it cannot be held to be belonging to joint family that too consisting only the first defendant and his son late Thangaraj. Therefore, the plaintiffs are not entitled to have any share in the first item of the suit schedule property.

9. In so far as the other items 2 and 3 are concerned, the property exclusively belonged to the mother-in-law of the first plaintiff in O.S.No. 43 of 1999 namely, the mother of the first defendant in O.S.No. 858 of 1984 which were marked as Exs.A1 and A2 in O.S.No. 43 of 1989. Ex.A1 dated 09.08.1924, mortgage deed was executed by Muthayammal. In fact, from the evidence of P.W.1 also it is proved that the Items 2 and 3 belonged to the mother of the first defendant, since the first item of the property was already sold out in favour of the third defendant by the defendants 1 and 2. Therefore, the plaintiffs are not entitled for any share over the first item of the suit schedule property.

10. In so far as the Item 2 and 3 of the suit properties are concerned, the plaintiffs are entitled to have their share since her father-in-law and mother-in-law who are the first and second defendants had died and the plaintiffs are only the legal representatives of the first and second defendants. Therefore, the entire property devolved to the plaintiffs as legal heirs of the defendants 1 and 2 in O.S.No. 858 of 1984.

11. In so far as the suit in O.S.No. 43 of 1989 is concerned, the first plaintiff in O.S.No. 858 of 1984 already contested as the first defendant, being the legally wedded wife of late Thangaraj, the plaintiffs in O.S.No. 43 of 1989 is not entitled for any relief of declaration and injunction in so far as the suit properties are concerned. Therefore, the averments of the first Appellate Court are against the evidence on record



and perverse in so far as the Item 2 and 3 of the suit properties are concerned. Accordingly, the substantial questions of law formulated in both the appeals are answered in favour of the plaintiffs in O.S.No. 858 of 1984, in so far as the Item 2 and 3 of the suit properties are concerned and against the defendants. The substantial questions of law formulated in second appeal in so far as the suit in O.S.No.43 of 1989 are answered accordingly in favour of the defendants and against the plaintiffs. In fine, the S.A.No.1060 of 2005 is allowed, setting aside the judgment and decree passed in A.S.No.205 of 2002 on the file of the Principal District Court, Namakkal and consequently, restoring the judgment and decree in O.S.No.858 of 1984. The suit filed by the plaintiffs in O.S.No.43 of 1989 stands dismissed.

12. The second appeal in S.A.No. 1061 of 2005 is partly allowed, setting aside the judgment and decree passed in A.S.No.204 of 2002 on the file of the Principal District Court, Namakkal, in so far as the third item of the suit properties are concerned and the plaintiffs in O.S.No.858 of 1984 are entitled to entire share of the Item 2 and 3 of the suit schedule properties, since the defendants 1 and 2 had already died and the plaintiffs in O.S.No.858 of 1984 are their only legal representatives. In respect of the first item of the suit schedule property, it was already sold out in favour of the third defendant and as such the suit dismissed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

kkn

To:-

1.The Principal District Judge,
Namakkal.

2.The Additional District Munsif,
Namakkal.

+2ccs to Mr.R.Karthikeyan, Advocate Sr.No.17699 & 17700

+1cc to Mr.K.Ramanraj, Advocate Sr.No.17672

S.A.Nos.1060 & 1061 of 2005

BR(CO)
RVM(16/03/2022)