

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.534 of 2020
and CMP No.11505 of 2020

P. Narayanasamy .. Appellant/Plaintiff

Vs.

P. Govindan (deceased)

1. Sub Registrar
Marakkanam, Sub Registrar Office,
Villupuram District.

2. G.Kaliamma

3. V.Parimala ... Respondents/Defendants

RR2 & 3 are recorded as LR's of the deceased
viz., P.Govindan and cause title accepted vide
order of Court dated 07.09.2020 made in
CMP No.9269/20 in SA SR No.52839/20 (RSMJ)

PRAYER: Second Appeal filed under Section 100 of the Code of
Civil Procedure, to set aside the Judgment and decree passed in
A.S.No.5 of 2016 by the II Additional District Judge at
Tindivanam dated 10.02.2020 by confirming the judgment and
decree in OS.No.30 of 2010 on the file of the Additional
Subordinate Judge at Tindivanam dated 29.02.2016.

For Appellant : Mr. A.Balasingh Ramanujam

For Respondents: Mr. P. Dinesh Kumar, for caveator

J U D G M E N T

This matter is taken up for hearing through Video-
Conferencing.

The plaintiff in OS No.30 of 2010 whose suit for declaration
of his title and permanent injunction was dismissed by the Trial
Court upon the affirmation of the said judgment and decree by
the Appellate Court has come up with this Second Appeal.

2. The suit was laid by the plaintiff contending that the suit properties belonged to two brothers viz., Ponna Pillai and Munusamaypillai. The plaintiff and the first defendant are the sons of Ponna Pillai. The second defendant is the wife of Munusamy Pillai. According to the plaintiff, there was a partition in the family in which suit items 1 to 9 were allotted to Ponna Pillai viz., the father of the plaintiff and the first defendant. It is the further claim that Ponna Pillai settled the property on the plaintiff under a Deed of settlement dated 23.04.2001. It is the further claim of the plaintiff that suit item 10 was in possession of the second defendant Muniyammal and she sold the property to the plaintiff on 13.11.2009.

3. As regards suit items 11 and 12, it was contended by the plaintiff that it belonged to his mother and she in turn executed a Settlement Deed on 27.11.2009 in favour of the plaintiff. Therefore, according to the plaintiff, he is entitled to the suit properties under the three documents viz., the Settlement Deed dated 23.04.2001 executed by Ponna Pillai, Sale Deed dated 13.11.2009 executed by the second defendant Muniyammal and the Settlement Deed dated 27.11.2009 executed by the plaintiff's mother and wife of Ponna Pillai.

4. The suit was resisted by the first defendant contending that the claim in the plaint that the properties were purchased by Ponna Pillai and Munusamy Pillai is incorrect. The properties belonged to the family ancestrally and there was no partition between Ponna Pillai and Munusamy Pillai. It is the further contention of the first defendant that since Munusamy Pillai had no issues, he had executed a Will bequeathing the properties for life in favour of the second defendant Muniyammal and after the death of Muniyammal the share of the Munusamy pillai was to devolve absolutely on the plaintiff and the first defendant. The said Will was produced as Ex.B6.

5. At trial, the plaintiff examined himself as P.W.1 and examined three other witnesses. P.W.3 Chinnakannu pillai did not make himself available for cross-examination. Exhibits A1 to A5 were marked. On the side of the defendants, the first defendant Govindan was examined as D.W.1 and two other witnesses viz., Dakshinamoorthi and Vinayagam were examined as D.Ws 2 & 3. Exhibits B1 to B7 were marked.

6. The learned Trial Judge upon a consideration of the evidence on record concluded that the plaintiff has miserably failed to prove that a partition took place between Ponna Pillai and Munusamy Pillai. The claim that the suit item No.10, belonged to the second defendant absolutely was also rejected for lack of evidence. Similar was the fate of the claim regarding items 11 and 12 of the suit properties which according

to the plaintiff belonged to his mother Alamelu Ammal. The original case of the plaintiff that all the properties belonged to the brothers Ponna Pillai and Munusamy Pillai was accepted, but the Trial Court held that the properties were ancestral in the hands of Ponna Pillai and Munusamy Pillai based on evidence offered by the Sale Deed under which the brothers purchased the properties.

7. The Courts also took note of the fact that the Sale Deed covered un-divided share of the properties of the other two brothers of Ponna Pillai and Munusamy Pillai. The Will of Munusamy Pillai was also accepted by the Court. Since the Will restricts the right of enjoyment of Muniammal to her lifetime alone, it was found that Muniammal had no right to alienate the properties belonging to Munusamy Pillai. On the said findings, the learned Trial Judge dismissed the suit. Aggrieved the plaintiff preferred an appeal in AS No.5 of 2016. The Lower Appellate Court concurred with the findings of the Trial Court and dismissed the Appeal. Hence the Second Appeal.

8. I have heard Mr.Bala Singh Ramanujam, learned counsel appearing for the appellant.

9. Mr.Bala Singh Ramanujam, would vehemently contend that the Courts below were not right in dismissing the suit in its entirety. According to him, the suit must succeed had at least with reference to the items 11 and 12 which are Gramanatham lands, the patta for which stood in the name of the plaintiff's mother and therefore, she had every right to settle the properties in his favour. The learned counsel would also contend that the Courts below were not right in disbelieving the partition.

10.I have considered the submissions of the learned counsel for the appellant.

11. I am unable to countenance any of the submissions of the learned counsel appearing for the appellant. The plaintiff came to court with a specific case that the suit properties namely item 1 to 9 were allotted to Ponna Pillai at a partition that took place between him and his brother Munusamy Pillai and he failed to prove the partition. The plaintiff's claim that the plaintiff's mother was absolutely entitled to items 11 and 12 is belied by the very recitals in the settlement deed executed by the mother in favour of the plaintiff. The said document recites that the property belonged to Ponna Pillai and it devolved on her by succession. The Courts below were therefore right in concluding that the recitals in the settlement deed itself would belie the claim of absolute right of Alameluammal, of items 11 and 12 of the suit properties.

12. As regards item 10, once the will of Munusamy Pillai is accepted then Muniammal, his wife, will only have a life estate and alienation by her it can be valid only till her life time. During the pendency of the proceedings before the Trial Court itself Muniammal had died. Therefore, the sale by Muniammal in favour of the plaintiff of the entirety of the property cannot be held to be valid. The Courts below have analysed the evidence on record and have come to factual conclusions with valid reasons in support of their conclusion.

13. I do not find that those findings can be said to be perverse. Despite its best efforts, the learned counsel for the appellant is unable to make out any question of law much less a substantial question of law arising for consideration in this Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

jv

To

1. The II Additional District Judge
Tindivanam.
2. The Additional Subordinate Judge
Tindivanam.

Copy to:

The Section Officer,
V.R.Section, High Court of Madras.

+1cc to Mr.A.Balasingh Ramanujam, Advocate, S.R.No.34256
+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No.34335

SA. No.534 of 2020
and CMP No.11505 of 2020

SR(CO)
CB(30/04/2021)