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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA.NO.586 OF 2020

AND

CMP NO.12329 OF 2020

1. Suresh
2. Sunil
3. Hemavathi
4. Gurusiddamma

.. Appellants/Respondents/
Defendants

Vs.

Sivamma

.. Respondent/Appellant/
Plaintiff

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.36 of 2019 dated 06.08.2020 on the file of the Principal Subordinate Court at Hosur in reversing the well-considered Judgment and decree passed in O.S.No.134 of 2012 dated 21.03.2019 on the file of the Additional District Munsif Court at Denkanikottai by allowing the present Second Appeal.

For Appellants : Mr.R.Jayaprakash

J U D G M E N T

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

The defendants in OS No. 134 of 2012, who were able to convince the Trial Court to dismiss the plaintiffs' suit for declaration and injunction, upon its reversal by the Appellate Court in AS No.36 of 2019, have come up with this Second Appeal.

2. The suit was laid by the plaintiff contending that the suit properties were assigned in favour of her husband Mahadevaiah, who had executed a Settlement Deed on 19.03.2008



settling the suit properties on her. Upon the execution of the Settlement Deed the Revenue records were also mutated in her name. The claim of the plaintiff was resisted on the ground that the suit properties were not self-acquired properties of Mahadevaiah, but they belonged to the family of Mahadevaiah and his father Lingappa was in possession of the said properties. It was also contended that there was no partition between the brothers of Mahadevaiah and therefore, Mahadevaiah had no right to execute the Gift Deed dated 19.03.2008.

3. The Trial Court on a consideration of the evidence on record concluded that the Revenue Records demonstrated that the suit properties were actually in possession of Lingappa, i.e., father of Mahadevaiah and they being ancestral properties and there being no partition, Mahadevaiah had no right to settle those properties in favour of the plaintiff. On the above said conclusion, the learned Trial Judge dismissed the suit. Aggrieved the plaintiff, preferred an Appeal in AS No.36 of 2019.

4. In the Appellate Court, the plaintiff gave up her claim with reference to suit item 1 and confined her case only with reference to an extent of 83 ares, in Survey No.115/1B described as item 2 of the suit schedule.

5. The learned Appellate Judge upon a reconsideration of the evidence particularly the oral evidence of D.W.s 1 and 2 concluded that the suit properties were assigned to Mahadevaiah in the year 1974 under Ex.A1. The Appellate Court concluded that once it is found that the properties belonged to the Government and they have been assigned in favour of Mahadevaiah in the year 1974, the claim that they are ancestral properties cannot be accepted. Therefore, Mahadevaiah had absolute disposing power over the suit property and hence the plaintiff would be entitled to the property.

6. Taking note of the fact that the plaintiff has given up her claim in respect of item I, the Appellate Court decreed the suit in respect of item 2 only. Aggrieved the defendants are on Second Appeal.

7. I have heard Mr.R.Jayaprakash, learned counsel appearing for the appellants.

8. Mr.R.Jayaprakash, learned counsel appearing for the appellants would vehemently contend that once the plaintiff has chosen to give up a right in respect of item 1 and the source of title being the same for both the items of properties, the Appellate Court was not right in decreeing the suit in respect of item 2. He would also further contend that in the absence of



any proof of partition between Mahadevaiah and his brothers, Mahadevaiah had no right to settle his share in the properties or any specific property in favour of the plaintiff.

9. I have considered the submissions of the learned counsel for the appellants.

10. The status of the plaintiff as the second wife of Mahadevaiah is not in dispute. The defendants are the children of first wife of Mahadevaiah. The execution of the Settlement Deed Ex.A2 is not denied. The defendants would plead that Mahadevaiah was not competent to execute the said Settlement Deed. The properties were admittedly Poramboke Lands and the Government was the paramount title holder. Under Ex.A1, the Government have assigned the lands to Mahadevaiah. Therefore, he becomes the absolute owner of the property. The defendants cannot be heard to contend that the properties were assigned to Mahadevaiah, considering the possession of his father or his family. Once the properties are assigned to Mahadevaiah, he takes absolute title to the exclusion of the others. Therefore, it cannot be said that Mahadevaiah was not competent to execute the settlement. The mere fact that the plaintiff has not chosen to prosecute the suit in respect of both items of the properties will not disentitle her from making the claim under the Settlement Deed Ex.A2.

11. In the light of the above, I do not find any question of law much less substantial question of law in order to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Subordinate Judge,
Hosur.
2. The Additional District Munsif,
Denkanikottai.



Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

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+1cc to Mr.R.Jayaprakash, Advocate, in Sr.No.36369

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BR(CO)
CS/16/07/2021