

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NOS.1289 & 1292 OF 2019

AND

C.M.P.NOS.27901, 27905, 27923 & 27925 OF 2019

1.K.Sathiyar
2.K.Sridharan

... Appellants in S.A.Nos.1289
& 1292 of 2019

Vs

1. Rajalakshmi ... Respondent in S.A.Nos.1289 and
1st Respondent in 1292 of 2019

2. The Tazhildar
Taluk Office
Chidambaram

3. The Revenue Divisional Officer
Revenue Division Office
Chidambaram

4. The District Collector
District Collector Office
Cuddalore

...Respondents 2-4 in
S.A.No.1292 of 2019

Common Prayer :

Second Appeals filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 15.04.2019 on the file of the Sub Court, Chidambaram in A.S.No.54 of 2016 and A.S.No.55 of 2016 confirming the judgment dated 18.02.2016 in O.S.No.16 of 2010 and O.S.No.100 of 2013 on the file of Additional District Munsif Court, Chidambaram with cost throughout

For Appellants : Mr.A.Mohamed Ismail in both
S.A.Nos.1289 & 1292 of 2019

COMMON JUDGMENT

The unsuccessful plaintiffs in O.S.No.16 of 2010 and the defendants 1 and 2 in O.S.No.100 of 2013 are the appellants herein. The first suit was instituted for declaration of title and for permanent injunction, while the prayer in the second suit was declaration of title over the property and for permanent injunction.

2. The case of the appellants is that their grand mother namely, Kodiyidai Nayagi Ammal was the absolute owner of the suit property and she had no issues. She executed a registered Will on 23.03.1991 bequeathing all her properties by dividing into seven schedules in favour of seven group of persons. Among them, the appellants were allotted the suit schedule property after the demise of the testatrix the legatees including the plaintiffs took possession of their respective schedule of properties. In the year 2001, the plaintiffs leased out the property to the 1st defendant. But, she did not pay the lease amount, hence the plaintiffs filed the petition under tenancy laws to recover the past arrears. It is further alleged that the first defendant is making attempts to create fraudulent deeds to alienate the properties.

3. The first respondent, as plaintiff in O.S.No.100 of 2013, has contended that the original owner Kodiyidai Nayagi Ammal is her maternal aunt. The first respondent's mother Rubasoundari Ammal had two sisters namely, Ranjithammal and Kodiyidai Nayagi Ammal. The said Ranjithammal had two sons and two daughters. The 1st respondent's mother Robuasoundari was the younger sister and she had two sons by name Ranganathan and Ramasamy, two daughters, viz., the 1st respondent herein and one Anjayal. The said Kodiyidai Nayagi Ammal out of love and affection, executed three registered Settlement Deeds on 13.02.1976 in favour of Valarmathy, Rajalakshmi/respondent herein and Anjayal. All the settlement deeds were registered, accepted and acted upon. The 1st respondent's sister Anjayal died after few years from the date of settlement as spinster. After her demise the family of Rubasoundary is in possession and enjoyment of the property settled in favour of Anjayal.

4. It is further stated that, on 21.09.1983 the 1st respondent herein was allotted two items as per the settlement deed and partition deed, as per which, the first respondent became the absolute owner of the suit property and the Will is a fabricated one.

5. On the basis of the pleadings, the trial Court framed necessary issues. The parties had let in oral and documentary evidence in support of their respective contentions. The

appellants were treated as plaintiffs and on their side, witnesses PW1 to PW4 were examined and exhibits ExA.1 to A.10 were marked. On the side of the 1st defendant/1st respondent herein, DW1 was examined as witnesses and exhibits Ex.B.1 to Ex.B.8 were marked.

6. The trial Court by a common judgment dismissed the suit in O.S.No.16 of 2010 and Decreed the suit in O.S.No.100 of 2013. Aggrieved over the same, the appellants herein filed A.S.No.54 and 55 of 2016 before the Subordinate Judge, Chidambaram. The First Appellate Court dismissed both the appeal suits vide its judgment and decree dated 15.4.2019. Assailing the same, the present second appeals have been filed.

7. Mr. A. Mohamed Ismail learned counsel for the appellants would urge that both the Courts below proceeded on erroneous footing and without appreciating the pleadings and evidence in proper perspective, came to a wrong conclusion. It is the submission of the learned counsel that the settlement deed Ex.B1 stood canceled under Ex.A6- Canceled gift settlement deed and execution of Ex.A.1 Will dated 23.09.1991 was proved. Hence, the findings are liable to be set aside.

8. In the matter on hand, It is not in dispute that the suit property belongs to one Kodiyidai Nayagi Ammal and she had two sisters namely Rajithammal and Robuasoundari. The appellants are the grand children born to Ranjithammal through Gunasekaran. The first respondent Rajalakshmi is the daughter of the Robuasoundari. The said Kodiyidai Nayagi Ammal had settled her properties under Ex.B.1-settlement deed in favour of her sister's daughter Anjayal on 13.02.1976. It is seen from the records that the said Anjayal died issueless before her marriage and accordingly, the first respondent, after the death of Anjayal, her property was put in hotchpot and thereafter, under in Ex.B.3 partition deed dated 21.09.1983, in the family partition, the suit property was allotted in favour of the first respondent herein.

9. According to the appellants, the settlement deed Ex.B.1 dated 13.02.1976 was subsequently canceled by the settlor under Ex.A6 dated 02.09.1987 and hence the first respondent cannot claim title over the property. The trial Court and the appellate Court after analyzing the entire evidence came to the conclusion that the settlement deed dated 13.02.1976 was acted upon and the settlor namely Kodiyidai Nayagi Ammal was the witness to the partition deed Ex.B.3 dated 21.9.1983. It was also found that the settlor did not retain the power to cancel the settlement deed dated 13.02.1976 and hence cancellation of the settlement deed Ex.A.6 is not valid. Since the Courts below on proper appreciation of evidence, have rendered the findings on facts,

this Court does not find any substantial questions of law to entertain these appeals. The learned counsel for the appellants is unable to show that the concurrent findings rendered by the courts below are perverse.

10. In such a view of the matter, both appeals fail and are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

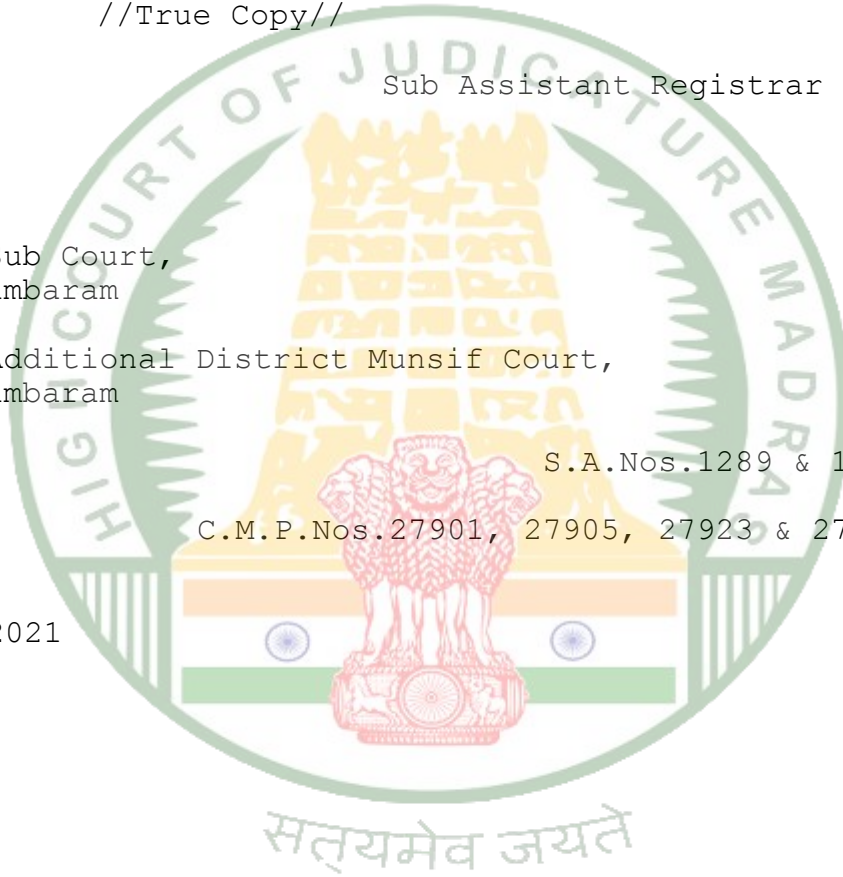
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To

1. The Sub Court,
Chidambaram
2. The Additional District Munsif Court,
Chidambaram

S.A.Nos.1289 & 1292 of 2019
and
C.M.P.Nos.27901, 27905, 27923 & 27925 of 2019

AD(CO)
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