

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1224 of 2019 and  
CMP No.26640 of 2019

1. Nedunchezhiyan
2. Jayaraman
3. Amudha

...Appellants/Defendants

Vs.

1. Rani
2. Mookayi Ammal
3. Ganesan

...1<sup>st</sup> Respondent/Plaintiff

.. 2<sup>nd</sup> & 3<sup>rd</sup> Respondents/Defendants 2 & 5

Prayer: The Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 21.08.2019 in A.S.No.16 of 2019 on the file of the Subordinate Court, Kallakurichi, thereby reversing the judgment and decree dated 03.08.2009 in O.S.No.1 of 2006 on the file of the Principal District Munsif Court, Kallakurichi.

For Appellant : Mr.T.Sai Krishnan

For Respondents : Mr.S.Soundhar

JUDGMENT

The defendants 1, 3 and 4 in O.S.No.1 of 2006 on the file of the learned District Munsif, Kallakurichi, are the appellants. The suit was laid by the plaintiff/1<sup>st</sup> respondent herein contending that she purchased a suit property from the father of the 3<sup>rd</sup> defendant namely Perumalsamy under a Sale Deed, dated 05.09.2005. Claiming that the defendants attempted to interfere with her possession, the plaintiff sought for declaration of her title and injunction.

2. The suit was resisted by the defendants contending that the suit property was a joint family property belonging to the 3<sup>rd</sup> defendant and his father Perumalsamy and at a partition that took place some time during the year 1990, the suit property was allotted to the 3<sup>rd</sup> defendant. It is claimed that

the defendants 1 and 2 purchased the property from the 3<sup>rd</sup> defendant under two sale deeds, dated 26.09.2005. Though it was claimed that the suit property was assigned by the Government to Perumalsamy in the year 1965, the plaintiff did not produce the deed of assignment or an order of assignment before the trial Court. The vendor of the plaintiff Perumalsamy was examined as P.W.2.

3. Considering the evidence on record, the trial Court concluded that PW2 Perumalsamy and the 3<sup>rd</sup> defendant had jointly sold certain properties and therefore the properties are ancestral properties. On the said conclusion, the trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.16 of 2009.

4. Pending appeal, the plaintiff filed applications in I.A.No.10 of 2019 and I.A.No.251 of 2016, seeking to produce additional documents. Both the applications were allowed by the lower appellate Court and the documents were marked as Exs.A5 to A7. Ex.A7 is the order of assignment, dated 30.09.1965 in the name of Perumalsamy.

5. Considering the additional evidence produced, the lower appellate Court concluded that the suit property having been assigned by the Government to Perumalsamy, cannot be considered as a property of the joint family. Therefore, once Perumalsamy had alienated the property on 05.09.2005, the alienation by the son of Perumalsamy namely the 3<sup>rd</sup> defendant cannot confer any right over the right on the defendants land 2. On the said conclusion, the lower appellate Court allowed the appeal and decreed the suit as prayed for. Aggrieved, the defendants 1, 3 and 4 have come up with this second appeal.

6. Notice of motion was ordered on 11.12.2019. Mr.S.Soundhar has entered appearance for respondents.

7. I have heard Mr.T.Saikrishnan, learned counsel appearing for the appellants and Mr.S.Soundhar, learned counsel appearing for respondents.

8. Mr.T.Saikrishnan, learned counsel appearing for the appellants would vehemently contend that the lower appellate Court was not right in receiving the documents as additional evidence without affording an opportunity to the parties to lead evidence on the documents. He would also contend that the trial Court had found that the properties were treated as joint family properties in as much as the 3<sup>rd</sup> defendant had also joined execution of sale deed with the 1<sup>st</sup> defendant in respect of other properties that were assigned to his father Perumalsamy.

9. I am unable to countenance both the submissions of the learned counsel for the appellants. No doubt true, when documents are sought to be admitted as additional evidence in the appeal, the appellate Court has to give an opportunity to the parties to lead evidence on those documents. However, when there is no dispute regarding the nature of the documents and the documents are public documents, as in this case, an order of

assignment made by the Government, A Register and Adangal extract, I do not think the appellate Court can be faulted for receiving the documents without oral evidence. It is not the case of the defendants that Perumalsamy got the properties through some other source of title, apart from Ex.A7 namely the order of assignment made by the Government. Once the fact that the properties were assigned to Perumalsamy by the Government is admitted, the plaintiff cannot be non suited merely because, he produced the order of assignment at the later stage. The receipt of the order of assignment by the appellate Court under order XLI Rule 27 of C.P.C., cannot be faulted because of absence of oral evidence.

10. As regards the other claim, it is common knowledge that sons join fathers in execution of Sale Deed by way of abundant caution at the instance of the purchaser/s. Merely because a son joins the execution of Sale Deed by the father, there cannot be a presumption that the properties are ancestral properties or joint family properties in which the son acquires a right by birth. A property which is assigned to an individual by the Government cannot and will not partake the character of ancestral property.

11. Therefore, I do not see any perversity in the findings of the appellate Court with reference to title of Perumalsamy. I do not think that there is any question of law, much less substantial question of law which would enable me to entertain the second appeal. The appeal therefore fails and it is dismissed accordingly without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

vum

To:

1. The Subordinate Court,  
Kallakurichi.
2. The Principal District Munsif,  
Kallakurichi
3. The Section Officer,  
V.R. Section,  
Madras High Court,  
Chennai.

+lcc to Mr.T.Sai Krishnan, Advocate SR.No.25661

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CA (CO)  
GMY (27/04/2021)



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