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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.987 of 2009

and

M.P.No.1 of 2009

Kasiammal ...Plaintiff/Appellant/Appellant

Vs.

1.Raman

2.Murugambal

...Defendants/Respondents/Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.30 of 2005 dated 25.07.2006 on the file of the learned Additional Subordinate Judge, Tiruvannamalai, confirming the Judgment and Decree in O.S.No.226 of 2002 dated 19.01.2005 on the file of the learned Additional District Munsif, Tiruvannamalai.

For Appellant : Mr.R. Karthikeyan

For Respondents : Mr.Bharath Gowtham
for Mr.T.R. Rajaraman

JUDGMENT

The above Second Appeal has been filed by the plaintiff challenging the Judgment and Decree in A.S.No.30 of 2005 of the learned Additional Subordinate Judge, Tiruvannamalai, in and by which the learned Judge has confirmed the Judgment and Decree of the learned Additional District Munsif, Tiruvannamalai in O.S.No.226 of 2002. This appeal arises out of a suit for bare injunction filed by the plaintiff against the defendants who are her brother-in-law (Late husband's brother) and the wife of the 1st defendant. The dispute is with reference to an extent of 1.13 cents comprised in Dry.S.No.92/5 situate at Kottakul Village, Chengam, T.S. District.

2.The case of the plaintiff is that the property which has been assessed as excess land was assigned to her husband Anbalagan by an Assignment Order dated 07.02.1974 issued by the Authorised Officer. As per the terms of the assessment, the plaintiff's husband Anbalagan was to pay costs of the land in 19



installments. She would submit that her husband had paid 19 installments and the last such installment was on 08.08.1995. According to the plaintiff, her husband died in the year 1979 and thereafter, she has been in occupation and enjoyment of the suit property. Being an illiterate woman, she was taking assistance of her brother-in-law for paying the Kist. It is her specific case that she had been given the said money to her brother-in-law, the 1st defendant and the said money was being used by him for paying the kist receipt. It appears that clandestinely the patta has been changed in the name of the 1st defendant. Thereafter, on the objection of the plaintiff, the same was re-transferred in the name of her late husband. The plaintiff would submit that the defendants attempted to forcibly take possession of the suit property from the plaintiff and she had managed to prevent the same. Once again in the first week of March 1997, an attempt was made to trespass into the property. Therefore, the suit.

3.The defendants had filed a Written Statement inter alia contending that though the plaintiff was married to one Anbalagan she was relationship with one Govindasamy through whom she begot four children. It is the case of the defendants that the assessment of the property was obtained in the name of Anbalagan only on account of the fact that he was the elder male member of the family. Anbalagan and the 1st defendant were living together as a joint family. The payments were only made by the 1st defendant and it is only the defendants who are in uninterrupted possession of the suit property from the year 1979 since the plaintiff was living with Govindasamy in his house.

4.In their Additional Written Statement, the defendants further elaborately stated how the plaintiff had deserted her husband immediately after he had suffered from acute tuberculosis and also on account of the fact that he did not have vision in his right eye when he was young boy due to small box. In fact, the plaintiff is none other than the daughter of the maternal uncle of Anbalagan and the 1st defendant. The defendants would submit that the plaintiff did not live with Anbalagan even for one day. In fact, the said Anbalagan did not take any steps to bring back the plaintiff since they came to know that the plaintiff was already in a relationship with Govindasamy. They would also claim a customary practice to state that by deserting Anbalagan and living with Govindasamy, the plaintiff is presumed to have divorced by Anbalagan. The defendants would further contend that Anbalagan had paid only five installments and the remaining 17 installments were paid by his mother and therefore, the plaintiff is not entitled to the relief as prayed for.

5.In the reply statement, the plaintiff sought to undo the averments that she was living with one Govindasamy even during



the life time of Anbalagan. She would submit that after his demise, the marriage has been taken place.

6.The trial Court had framed three issues and additional issues. The additional issues framed by the trial Court is "Whether the plaintiff had married Govindasamy after the death of Anbalagan and it was true that the marriage was only after the death of Anbalagan?."

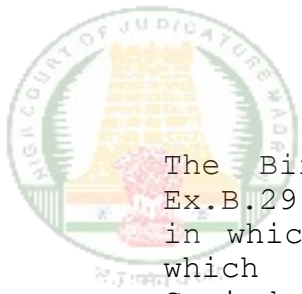
7.The trial Court on considering the evidence on record had returned a finding that even during the life time of Anbalagan, the plaintiff was living with Govindasamy and through him she had two sons and two daughters. The learned Judge had relied upon Ex.B.29, Ex.B.30 and also the evidence of the plaintiff in cross examination to come to the above conclusion. As regards the issue "Whether the plaintiff was in possession and enjoyment of the suit property?, the learned Judge had categorically held that it was only the defendants who are in possession and enjoyment of the property and ultimately, dismissed the suit. Challenging the said Judgment and Decree, the plaintiff had filed A.S.No.30 of 2005 on the file of the learned Additional Subordinate Judge, Thiruvannamalai. The Appellate Court confirmed the findings of the trial Court and dismissed the said suit. Challenging the same, the plaintiff has filed the instant Second Appeal.

8.When the matter came up for admission notice was issued to the respondents/defendants. The defendants had also entered appearance through counsel and had made their submission.

9.The learned counsel appearing for the appellant/plaintiff would submit that admittedly, the plaintiff was the wife of Anbalagan and the property stood in his name. The remaining installments had been paid only from out of the money that had been given by the plaintiff to the 1st defendant. He would submit that she was in possession and enjoyment of the property. The plaintiff's marriage to Govindasamy is after the death of Anbalagan. The learned counsel appearing on behalf of the respondents would submit that this allegation is futile. The learned counsel for the respondents has relied upon a Judgment of the Hon'ble Supreme Court in M. Govindaraju v. K.Munisami Gounder (D) and others [(1996) 5 Supreme Court Cases 467].

10.Heard the learned counsels appearing on either side and perused the papers.

11.The Courts below in a very great detail considered the evidence regarding the fact that the appellant had deserted her husband Anbalagan immediately after marriage and was living with one Govindasamy through whom she had begotten four children.



The Birth Certificate of her children has been marked as Ex.B.29. The Voters Card has been filed as Ex.A.9 and Ex.A.30 in which the age of the plaintiff's children had been provided which would clinchingly prove that she was living with Govindasamy even during the life time of her husband. The trial Court has considered the customary practice of the community to which the plaintiff and her husband belonged to and as per their customary practice, the status of husband and wife has been severed. Further, the Courts below have considered the overwhelming evidence let in on the side of the respondents to show their continuous possession of the suit property and that the payments of the installments have been made only by the respondents to come to the conclusion that the plaintiff had not made out a case. Therefore, this Court sitting in Second Appeal cannot re-appreciate the evidence which has been appreciated in a great detail by both the Courts below. The appellant has not made out any question of law much less the Substantial Questions of Law warranting interference by this Court.

This Second Appeal is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1. The Additional District Munsif,
Tiruvannamalai.
2. The Additional Subordinate Judge,
Tiruvannamalai.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras-104.

S.A.No.987 of 2009
and
M.P.No.1 of 2009

VG-II (CO)
SU(25/11/2021)