



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	16.07.2021
PRONOUNCED ON	16.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.NO.173 OF 2013

(Through Video Conferencing)

Raja

LR of Mr.Chinnathambi(Deceased)

... Appellant/2nd Defendant

Vs.

1.Selvam

2.Vennila

3.Meena

4.Lalitha

5.Selvaraj

... Respondents/Plaintiffs

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the Decree and Judgment dated 17.04.2007 made in A.S.No.4 of 2006, on the file of the Subordinate Court at Krishnagiri, which confirmed the Decree and Judgment dated 27.09.2004, made in O.S.No.368 of 1989 on the file of the District Munsif Court, at Krishnagiri.

For Appellant : Mr.R.Narayanan
for Mr.M.V.Krishnan

For R1 to R5 : Mrs.V.Srimathi



WEB COPY

property in the instant case was in exclusive possession and enjoyment of the third defendant and his children through Ellammal after her death?

4. The first to third respondents were the first to third plaintiffs before the District Munsif Court, Krishnagiri (hereinafter referred to as Trial Court) in O.S.No.368 of 1989. Their father Ponnusamy (since deceased) was the fourth plaintiff in the said suit.

5. The fourth respondent herein was the first defendant while the appellant was the second defendant. Their father Chinnathambi (since deceased) was the third defendant in the said suit.

6. The appellant and the respondents herein are the children of late Ellammal. The first to third plaintiffs (first to third respondents) are the children born to late Ellammal and the fourth plaintiff Ponnusamy. The first and the second defendants are also the children of late Ellammal sired by the third defendant Chinnathambi (since deceased).

7. The plaintiffs (the first to third respondents with their father) had filed O.S.No.368 of 1989 to partition the suit schedule property purchased in the year 1977 in the name of late Ellammal when she was living with the defendants. The Trial Court had decreed the suit vide Judgment and Decree dated 27.09.2004.

8. Aggrieved by the Judgment and Decree dated 27.09.2004 of the Trial Court, the second defendant (appellant) and filed A.S.No.4 of 2006 before the Principal Subordinate Court, Krishnagiri (hereinafter referred to as Appellate Court).

9. The Appellate Court dismissed A.S.No.4 of 2006 by the impugned Judgment and Decree dated 16.04.2007. Thus, the second defendant (appellant) has filed this Second Appeal against the impugned Judgment and Decree dated 16.04.2007 passed by the Appellate Court.

10. The case of the plaintiffs before the Trial Court in O.S.No.368 of 1989 was that the suit schedule property was



purchased in the year 1977 vide Ex.A1 dated 10.08.1977 by late Ellammal and therefore they were also entitled to a share in the same being her legal heirs.

WEB COPY

11. It was the defence of the first to third defendants before the Trial Court that the property in question was purchased in the year 1977 by their father Chinnathambi (since deceased), the third defendant long after the estrangement between their mother Ellammal and her husband Ponnusamy, the fourth appellant in the year 1971 and after their mother Ellammal started living with their father Chinnathambi (since deceased), the third defendant.

12. It was further case of the first to third defendants that since their father Chinnathambi purchased the property in the name of their mother late Ellammal after her estrangement from Ponnusamy, the fifth respondent eldest son Selvaraj of their father Chinnathambi and his first wife Pottiammal murdered their mother Ellammal on 03.08.1981 out of jealousy and frustration.

13. It was further submitted the suit schedule property was purchased by their father Chinnathambi out of his income while serving in the Army while the case of the plaintiffs before the Trial Court was that the suit schedule property was purchased out of the sale of certain property vide Ex.A2 by their mother along with their maternal grandmother and the proceeds were used to purchase the suit schedule property.

14. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the respondents. I have also perused the impugned Judgment and Decree of the First Appellate Court and the Judgment and Decree of the Trial Court and the evidences on record.

15. The record indicates that the said son of the said Pottiammal and the third defendant Chinnathambi (since deceased) murdered the said late Ellammal. There are no disputes that the third defendant Chinnathambi (since deceased) was married to Pottiammal while the fourth plaintiff Ponnusamy (since deceased) was married to said late Ellammal. There are no records to indicate that the said late Ellammal and fourth plaintiff Ponnusamy (since deceased) were divorced and their marriage was dissolved in accordance with law.



16. There is however no dispute that the said late Ellammal and the third defendant Chinnathambi were living together and out of said union, the first and the second defendants (the fourth respondent and the appellant herein) were born.

17. The substantial question of law therefore that arises for consideration in this appeal is whether the appellant has established that the suit schedule property in Ex.A1 was indeed purchased by the third defendant Chinnathambi (since deceased) in the name of the first to third plaintiffs' and the first and second defendants' mother said late Ellammal? and If So, whether the first and second defendants can deny shares in the suit schedule property to the plaintiffs?

18. There is no evidence to substantiate that Ex.A1 suit schedule property was purchased by the third defendant Chinnathambi (since deceased) in the name of their mother late Ellammal. Copy of the Judgment of the Criminal Court was also not filed to substantiate the alleged motive for murder of their mother. Therefore, the fact that their mother late Ellammal was murdered on 03.08.1981 by the fifth respondent Selvaraj, the eldest son of the third defendant Chinnathambi (since deceased) and his first wife Pottiammal is of no significance.

19. Even if there was a motive to murder the late Ellammal because the fifth respondent Selvaraj may have believed that his father Chinnathambi (since deceased) the third defendant had allegedly bought Ex.A1 suit schedule property in the name of the said late Ellammal, it cannot be basis to conclude that the Ex.A1 suit schedule property was indeed purchased by his father Chinnathambi (since deceased) in the name of the said late Ellammal in absence of any direct evidences to substantiate the same.

20. Since there is no direct evidence to substantiate that Ex.A1 Suit Schedule property was purchased by the Chinnathambi, the third defendant (since deceased) in the name of late Ellammal, the plaintiffs as the children of late Ellammal are equally entitled to a share in the property that was in the name of their late mother.

21. Even if the marriage between the fourth plaintiff



Ponnusamy (since deceased) and the said late Ellammal was annulled, the relationship between the children and their parents cannot be severed. The law does not recognise cessation of relationship between the children and their parents merely because the parents cease to be husband and wife by a Judgment and Decree of a Court. In this case, there are no documents to either conclude that the late Ellammal had divorced her husband Ponnusamy the fourth plaintiff (since deceased) or any documents to substantiate that the third defendant Chinnathambi (since deceased) had legally divorced his first wife Pottiammal or any documents to prove that Ex.A1 property was purchased by the third respondent Chinnathambi (since deceased).

22. Therefore, the children born to the said late Ellammal cannot be denied of right into the property of either of their parents on their death. There is no dispute between the parties herein and the children of the late Ellammal. Therefore, the decision of the First Appellate Court and the Trial Court cannot be interfered with.

23. In the light of the above discussion, the substantial questions of law are answered against the appellant. Accordingly, this Second Appeal is dismissed. No cost.

Sd/-
Deputy Registrar(ADMN-III)

// True Copy //

Sub Assistant Registrar

jen

To

1. The Subordinate Judge, Krishnagiri.
2. The District Munsif, Krishnagiri.

+1cc to Mr.M.V.Krishnan, Advocate, S.R.No.40956

S.A.No.173 of 2013

GPL(CO)
RLP(08/11/2021)