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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.NOS.50 & 98 OF 2006

R.Subramani ... Appellant in both Appeals

Vs

Narayani Ammal ... Respondent in S.A.No.50 of 2006

1.Narayani Ammal (Deceased)

2.R.Mangayarkarasi ... Respondents/Defendants
in S.A.No.98 of 2006

COMMON PRAYER:

Second Appeals filed under Section 100 C.P.C. against the Decree and Judgment dated 30.09.2004 made in a.S.Nos.183 & 184 of 2003 respectively on the file of the learned VI Additional Judge, City Civil Court, Chennai reversing the Judgment and Decree dated 18.07.2002 made in O.S.Nos.2326 of 1996 and 4127 of 1997 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

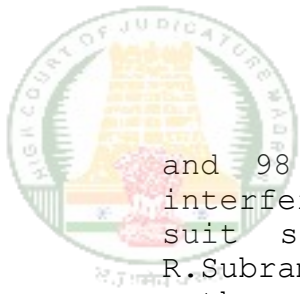
For Appellant : Mr.K.Mani

For Respondent 2 : Mr.Gautham S.Raman

COMMON JUDGMENT

The Hon'ble Supreme Court by its order dated 12.04.2019 passed in I.A.No.43975 of 2017 in C.A.No.111 of 2013 remitted the matter back to this Court only for the purpose of determining as to who is the legal representative of the deceased Appellant Narayani ammal.

2. Admittedly, R.Subramani, the Appellant in S.A.Nos.50 and 98 of 2006 and R.Mangayarkarasi, the second respondent in S.A.No.98 of 2006 are brother and sister respectively. O.S.No.2326 of 1996 was filed by Narayani Ammal (deceased) against her son R.Subramani who is the Appellant in S.A.Nos.50



and 98 of 2006 seeking for injunction restraining him from interfering with her peaceful possession and enjoyment of the suit schedule property. O.S.No.4127 of 1997 was filed by R.Subramani, the Appellant in S.A.No.50 & 98 of 2006 against his mother Narayani Ammal (deceased) as well as his sister R.Mangayarkarasi, seeking for partition of the very same property on the ground that the property is not a self-acquired property of his mother Narayani Ammal (deceased), but the said property was purchased by his father Ramalingam, in whose name, allotment was made and funds were also given by him for the said purchase and not by Narayani Ammal (deceased).

3. Both the suits were tried together by the trial court and the trial court by its judgment and decree dated 18.07.2002, dismissed the suit O.S.No.2326 of 1996 filed by Narayani Ammal (deceased) and decreed the suit O.S.No.4127 of 1997 in favour of R.Subramani by granting preliminary decree for partition by which 1/3rd share in the property was allotted to R.Subramani and the remaining two shares were allotted to Narayani Ammal and R.Mangayarkarasi who are the defendants in the said suit.

4. Aggrieved by the common judgment and decree dated 18.07.2002 passed in O.S.No.2326 of 1996 and O.S.No.4127 of 1997, A.S.No.183 of 2003 has been filed by Narayani Ammal and A.S.No.184 of 2003 has been filed by Narayani Ammal and R.Mangayarkarasi against R.Subramani. By common judgment and decree dated 30.09.2004, the lower appellate court allowed the appeals A.S.Nos.183 & 184 of 2003 by reversing the judgment and decree of the trial court passed in O.S.No.2326 of 1996 and O.S.No.4127 of 1997.

5. Aggrieved by the same, R.Subramani, the plaintiff in O.S.No.4127 of 1997 has preferred these second appeals. By a common judgment dated 22.09.2008, the second appeal S.A.No.50 of 2006 was dismissed by confirming the judgment and decree passed in A.S.No.183 of 2003 under which a permanent injunction was granted in favour of Narayani Ammal (deceased). But however, S.A.No.98 of 2006 was allowed by reversing the findings of the lower appellate court in A.S.No.184 of 2003 which has set aside the judgment and decree of the trial court in O.S.No.4127 of 1997 and remanded O.S.No.4127 of 1997 back to the trial court for fresh consideration. The operative portion of the common judgment passed in S.A.Nos.50 and 98 of 2006 by this Court is extracted hereunder:

"12. S.A.No.50 of 2006 is dismissed confirming the decree and judgment in A.S.No.183 of 2003 on the file of VI Additional Judge, City Civil Court, Chennai and S.A.No.98 of 2006 is allowed and the decree and judgment in A.S.No.184 of 2003 on the file

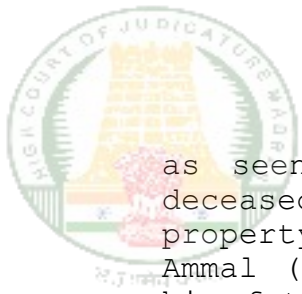


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of VI Additional Judge, City Civil Court, Chennai is set aside and OS.No.4127 of 1997 is remanded to the trial court. The plaintiff in O.S.No.4127 of 1998/the appellant herein in S.A.No.98 of 2006 has to file necessary amendment application as to challenge Ex.B2 and Ex.B12 lease-cum-sale agreement and sale deed respectively effected excluding the other legal heirs of Ramalingam. After amendment, the learned trial judge shall give opportunities to the defendant to file opportunities to the defendant to file additional written statement and after giving sufficient opportunities to both parties to let in further evidence has to decide O.S.No.4127 of 1997 within three months from the date of receipt of a copy of this order. Till disposal of O.S.No.4127 of 1997, the plaintiff in O.S.No.4127 of 1997 shall not disturb the possession of the first defendant therein in respect of the plaint schedule property. No costs."

6. Aggrieved by the Judgment dated 22.09.2008 passed by this Court in S.A.Nos.50 and 98 of 2006, Narayani Ammal, the mother of R.Subramani and R.Mangayarkarasi preferred a special leave petition before the Hon'ble Supreme Court and leave was granted by the Hon'ble Supreme Court and thereafter, the appeal was numbered as C.A.No.111 of 2013. In the said Civil Appeal, R.Subramani and R.Mangayarkarasi are the respondents. During the pendency of the civil appeal before the Hon'ble Supreme Court, Narayani Ammal died on 08.08.2016. Her daughter R.Mangayarkarasi who is the second respondent in C.A.No.111 of 2013, filed I.A.No.43975 of 2017 to transpose herself as the Appellant in C.A.No.111 of 2013. The said application seems to have been hotly contested by R.Subramani who is the son of Narayani Ammal. Since there was a dispute as to who is the legal representative of the deceased Narayani Ammal, the Hon'ble Supreme Court has remanded the matter back to this Court only for the purpose of trying the question as to who is the legal representative of the deceased Narayani Ammal (deceased), the Appellant before the Hon'ble Supreme Court.

7. This Court had directed the learned Master to record the oral evidence of the respective parties with regard to their respective claims for the purpose of adjudicating as to who is the legal representative of the deceased Narayani Ammal. The oral evidence was also recorded and the copy of the deposition of the respective parties are also placed before this Court. As seen from the suit filed by Narayani Ammal (deceased) in O.S.No.2326 of 1996, it is her stand that the suit schedule property is her self-acquired property. According to her, only out of her own funds, she had purchased the said property. But



as seen from the suit filed by R.Subramani, the son of the deceased Narayani Ammal, it is his case that the suit schedule property is not a self-acquired property of his mother Narayani Ammal (deceased), but it is the property which was allotted to his father Ramalingam and only out of his funds, the sale deed was executed in favour of Narayani Ammal (deceased).

8. R.Mangayarkarasi, the daughter of the deceased Narayani Ammal who has been made one of the party defendants in the suit O.S.No.4127 of 1997 filed by R.Subramani, has sailed with her mother by supporting the stand taken by her mother Narayani Ammal that the suit schedule property is a self-acquired property of Narayani Ammal and not a property purchased out of the funds of her father Ramalingam. The trial court by its Judgment and Decree dated 18.07.2002 in both the suits, had dismissed the suit filed by Narayani Ammal seeking for permanent injunction in O.S.No.2326 of 1996 and had decreed the suit O.S.No.4127 of 1997 in favour of R.Subramani seeking for partition by allotting him 1/3rd share.

9. Aggrieved by the said judgment, the mother Narayani Ammal has filed A.S.No.183 of 2003 and the mother Narayani Ammal as well as her daughter, R.Mangayarkarasi have filed A.S.No.184 of 2003 wherein also they have taken an identical stand that the suit schedule property is a self-acquired property of the deceased Narayani Ammal and not a property of Ramalingam, the father of R.Subramani and R.Mangayarkarasi and it is not a property purchased out of his funds, but purchased out of the funds of Narayani Ammal (deceased). Thereafter, the lower appellate court passed a common judgment and decree dated 30.09.2004 in A.S.No.183 and 184 of 2003 and reversed the findings of the trial court and allowed both the appeals in favour of Narayani Ammal and R.Mangayarkarasi.

10. Aggrieved by the same, the son R.Subramani preferred two second appeals S.A.Nos.50 & 98 of 2006 before this Court. Even in the second appeals, both the daughter as well as her mother who are the respondents have sailed together by taking an identical stand that the suit schedule property is a self-acquired property of Narayani Ammal and not a property of Ramalingam.

11. By a common judgment dated 22.09.2008 passed in S.A.Nos.50 and 98 of 2006, this Court confirmed the findings of the lower appellate court in A.S.No.183 of 2003, but however set aside the judgment and decree passed in A.S.No.184 of 2003 and remanded the suit for partition O.S.No.4127 of 1997 back to the trial court for fresh consideration.

12. As seen from the records, a consistent stand has been



taken by R.Mangayarkarasi, the daughter of Narayani Ammal (deceased), that the suit schedule property is a self acquired property of her mother Narayani Ammal (deceased) who is the Appellant in C.A.No.111 of 2013 before the Hon'ble Supreme Court and it was never purchased out of the funds belonging to her father Ramalingam. She has also been sailing along with her mother all throughout the litigation right from the trial court to the Hon'ble Supreme Court.

13. Aggrieved by the findings of this Court in S.A.Nos.50 & 98 of 2006 by its judgment and decree dated 22.09.2008, the mother Narayani Ammal has filed a special leave petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court has also granted leave to file an appeal and thereafter, it has been numbered as C.A.No.111 of 2013. Even as seen from the deposition of the respective parties, before the learned Master who was directed to record the oral evidence of the respective parties by this Court, both the parties have taken a consistent stand with regard to their respective contentions.

14. Narayani Ammal (deceased), the Appellant before the Hon'ble Supreme Court was all along sailing only with her daughter R.Mangayarkarasi as seen from the pleadings as well as the evidence available on record. The Appellant Narayani Ammal before the Hon'ble Supreme Court is now dead. The legal representative will have to represent her interest. Legal representative is defined under section 2(11) of Code of Civil Procedure which reads as follows:

““legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

15. The definition of legal representative under section 2 (11) of Code of Civil Procedure is inclusive in character and its scope is wide. Legal representative is genus and legal heirs is species. Legal representative is not confined to legal heirs only. Instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased, but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executor or as administrator in possession of the estate of the deceased. All such persons are covered by the expression “legal representative”. Therefore, he/she must represent the interest of the deceased.



16. In the case on hand, the deceased Narayani Ammal has consistently pleaded that the suit schedule property is a self-acquired property purchased by her out of her own funds. Her daughter R.Mangayarkarasi has all along sailed with her throughout the litigation right from the trial court to the Hon'ble Supreme court and has also supported the case of her mother that the property is a self acquired property of her mother Narayani Ammal.

17. The son R.Subramani is already one of the respondents in C.A.No.111 of 2013 before the Hon'ble Supreme Court. The interest of the estate of the deceased person will have to be protected. In the case on hand, there is only one Appellant who is the deceased and is a mother of the second respondent in C.A.No.111 of 2013 who has been sailing with her mother all throughout the litigation. Even though the first respondent in C.A.No.111 of 2013 is one of the legal heirs of Narayani Ammal (deceased) along with R.Mangayarkarasi, the legal representative as defined under section 2(11) of CPC is different from a legal heir. The legal representative has to defend the interest of the deceased. The interest of the deceased Narayani Ammal will be protected only if the second respondent R.Mangayarkarasi in C.A.No.111 of 2013 is declared as her legal representative as both of them had identical interest all throughout the litigation, whereas R.Subramani, the other legal heir has contradicted their contention.

18. No prejudice will also be caused to the first respondent before the Hon'ble Supreme Court in C.A.No.111 of 2013 who is the son, if R.Mangayarkarasi is declared as legal representative of the deceased Narayani Ammal for the purpose of contesting her appeal which is pending on the file of the Hon'ble Supreme Court in C.A.No.111 of 2013, as only then the interest of Narayani Ammal (deceased) will be adequately protected.

19. Learned counsel for the Appellant (R.Subramani) has relied upon the following authorities namely:

(a) A Division Bench Judgement of Madras High Court in the case of Good Shepherd Evangelical Mission Private Limited, Formerly known as "The Siloam Evangelical Mission Private Limited" rep. by its Chairman, Trichy vs. Meenakshi Achi and others reported in (2012) 3 MLJ 737;

(b) A Single Bench Judgement of Madras High Court in the case of C.Dhandayutham vs. M.Natarajan and others reported in 1999 (II) MLJ 420;

(c) A Division Bench Judgement of Madras High Court in the case of Devaki Thiagarajan vs. Ahamed and others reported in 2015 (4) CTC 293;

(d) A Single Bench Judgement of Madras High Court in the case of Govinda Iyer vs. Kumar and others reported in AIR 1980



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20. In the decisions referred to supra, it is made clear that the person who seeks to transpose himself or herself as a plaintiff as contemplated under Order 23 Rule 1-A of the Code of Civil Procedure, 1908 must prove that he has substantial question to be decided and must have identity of interest along with plaintiff.

21. In the case on hand, as observed earlier, the daughter of Narayani Ammal (deceased) by name R.Mangayarkarasi has identical interest with that of her mother all throughout the litigation as both of them had contended consistently that the property is a self-acquired property of Narayani Ammal. Whereas, R.Subramani, the son of Narayani Ammal (deceased) had taken a contradictory stand claiming that the property is not a self-acquired property of Narayani Ammal (deceased), but the property was purchased out of the retirement benefits of his father Ramalingam in the name of Narayani Ammal (deceased) and therefore, it is not a self-acquired property of Narayani Ammal. Therefore, the principles laid down in the aforementioned decisions for the purpose of declaring a person to be a legal representative of the deceased having been satisfied by R.Mangayarkarasi, she has to be declared as the legal representative of the deceased Narayani Ammal.

22. For the foregoing reasons and in compliance with the directions given by the Hon'ble Supreme Court in its order dated 12.04.2019, this Court declares R.Mangayarkarasi, the second respondent in C.A.No.111 of 2013 as the legal representative of the deceased Narayani Ammal, the Appellant in C.A.No.111 of 2013.

23. With the aforementioned findings, these second appeals are disposed of and the matter is sent back to the Hon'ble Supreme Court.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The VI Additional Judge, City Civil Court, Chennai
2. The XVI Assistant Judge, City Civil Court, Chennai.



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+1cc to Mr.K.Mani, Advocate, S.R.No.35344

S.A.Nos.50 & 98 of 2006

RGN(CO)
CS/26/07/2021