



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)No.421 of 2007

and

C.M.P. (MD)No.1 of 2007

WEB COPY

Chellammal

... Plaintiff / Appellant / Appellant

-Vs-

1.Guruvu Asaari

2.Subboah Naicker

... Defendants / Respondents /

Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 21.03.2006 made in A.S.No.202 of 2003 on the file of the I Additional Sub Judge, Madurai in confirming the judgment and decree dated 04.07.2003 made in O.S.No.199 of 2001 on the file of the District Munsif Court, Tirumangalam.

For Appellant

: Mr.K.Hemakarthiskeyan

for Mr.N.Namasivayam

For Respondents

: no appearance

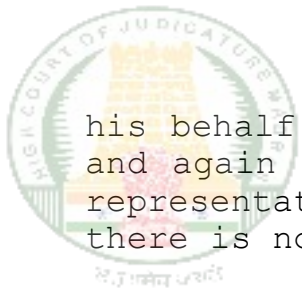
JUDGMENT

The plaintiff in O.S.No.199 of 2001 on the file of the District Munsif Court, Tirumangalam is the appellant in this second appeal.

2. The suit was for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit items. The suit items are four in number. The first defendant alone contested the proceedings. The trial court by judgment and decree dated 04.07.2003 granted relief only in respect of the second item and dismissed the suit in respect of the remaining suit items. Aggrieved by the same, the plaintiff filed A.S.No.202 of 2003 before the first Additional Sub Judge, Madurai. The first appellate Court by the impugned judgment and decree dated 21.03.2006 confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. The second appeal was admitted on 07.01.2008 on the following substantial question of law:-

"Whether the courts below are correct in law in rejecting the claim of the plaintiff / appellant in respect of item No.1 of suit schedule property when the courts below have accepted the title of the plaintiff as per Ex.A1-settlement deed?"

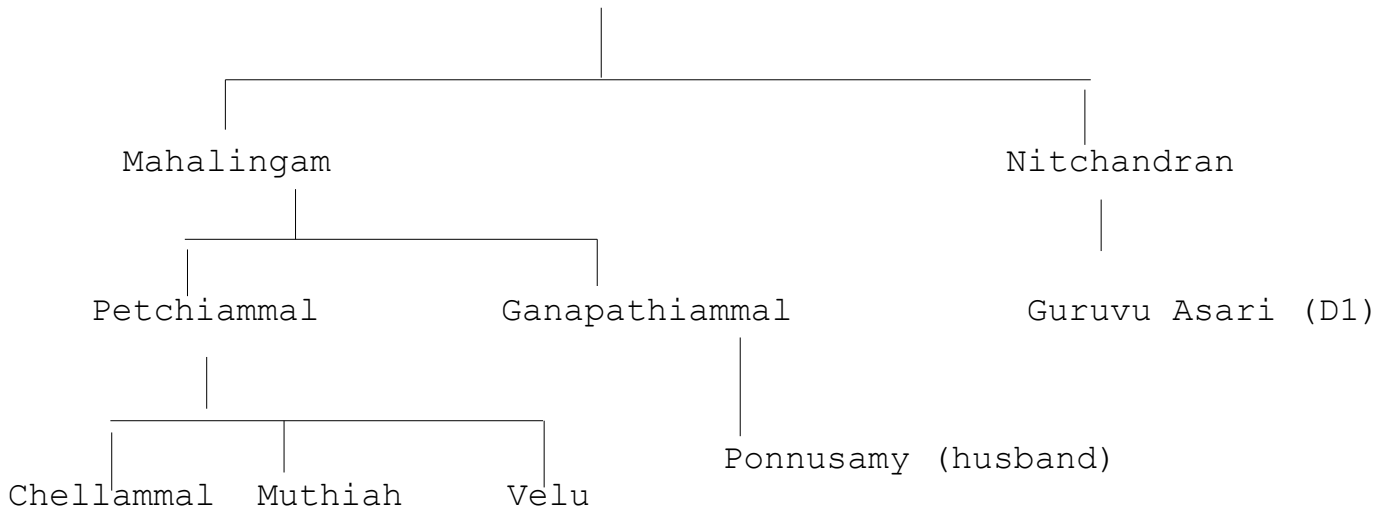
Notice was ordered to the first respondent and even though he entered appearance through counsel, there is no representation on



his behalf. The second appeal was listed on 24.09.2021, 21.10.2021 and again on 25.10.2021. On all the three occasions, there was no representation on the side of the first respondent. Even today, there is no representation. Hence, the respondents are set exparte.

3. The genealogy is as under:-

Arumugam Asari



4. The case of the plaintiff is that the suit items 1 and 2 absolutely belonged to her grandfather namely Mahalingam Asari. Mahalingam Asari had two daughters namely Petchiammal and Ganapathiammal. Vide Ex.B17 dated 27.12.1957, he settled half share in suit items 1 and 2 in favour of his son-in-law namely Ponnusamy. Later, Ponnusamy released his share in suit items 1 and 2 in favour of his father-in-law under Ex.A7 dated 27.09.1958. Thus, as a result of Ex.A7, Mahalingam Asari once again became the absolute owner of the entire suit items 1 and 2. Later, under Ex.A1 dated 30.03.1959, he settled the said two items 1 and 2 in favour of his other daughter namely Petchiammal. According to the appellant Chellammal, her mother passed on these two items as sridhana property. In support of this contention, the appellant examined not only herself as P.W.1 but also brother Velu as P.W.2. Ex.A1 to Ex.A8 were marked on her side. The first respondent herein namely Guruvu Asari examined himself as D.W.1 and marked Ex.B1 to Ex.B17. Ponnusamy son-in-law of Mahalingam Asari was examined as D.W.2. It is seen that Ponnusamy had conveyed his undivided half share in suit first item under Ex.B10 dated 06.08.1959. In view of the same, the trial court chose to dismiss the suit as regards the suit item No.1 also. It is relevant to mention here that Ex.B10 was executed subsequent to Ex.A7. It is true that Ponnusamy was given half share in suit items 1 and 2 by his father-in-law Mahalingam Asari under Ex.B17. But Ponnusamy for the reasons best known chose to relinquish the same under Ex.A7. Ex.A7 was executed on 27.09.1958. Thereafter, Ponnusamy Asari did not have any interest or right or title in suit items 1 and 2. Therefore, he could not have conveyed any title on Guruvu Asari under Ex.B10 dated



06.08.1959. That is why, the courts below rightly held that title in respect of suit item No.1 also remained only with the plaintiff Chellammal. Yet they chose to non-suit her in respect of the remaining suit items on the strength of the stray admission made by her during the course of cross examination. It appears that the suit item No.1 was mortgaged by Mahalingam in favour of his brother Nitchandran under Ex.A8 dated 12.10.1936. Nitchandran is none other than the father of Guruvu Asari. When a question was put to the plaintiff as to whether Ex.A8 was redeemed, she answered that it was not redeemed. On the strength of this answer given by the plaintiff, the trial court came to the conclusion that she is not entitled to the relief of injunction. The case of the contesting defendant was never that he is in possession in respect of suit item No.1 by virtue of the mortgage deed dated 12.10.1936.

5. I went through the written statement filed by the first defendant. There is absolutely no reference under Ex.A8. The claim of the defendant is anchored entirely on Ex.B10 dated 06.08.1959. The fact that the plaintiff has filed the original mortgage deed shows that it must have been obviously redeemed. In the plaint, the plaintiff has stated that she mortgaged the suit item No.2 in favour of Nagaiya Asari on 14.10.1997 for a period of one year under Ex.A2 and that it was later redeemed also.

6. Even though the defendant has marked a number of kist receipts namely Ex.B2 to Ex.B7, they do not relate to suit item No.1. The courts below after correctly holding that the plaintiff is very much having the title over the suit item No.1 also ought to have granted the decree of permanent injunction, since the defendant has not placed any material to show that he is in possession of the suit property. The only document, on which the defendant placed reliance, was Ex.B10. It has already been shown that under Ex.B10, the first defendant could not derive any right or title. Therefore, the substantial question of law is answered in favour of the appellant. The judgment and decree passed by the courts below are modified. It is declared that the plaintiff will be entitled to the relief of permanent injunction in suit item No.1 also. The dismissal of the suit by the courts below in respect of the suit items 3 and 4 is confirmed.

7. The second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

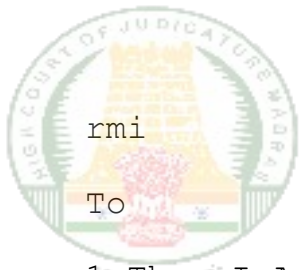
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Assistant Registrar ()

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/ /2022

Sub Assistant Registrar (CS)



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To

1.The I Additional Sub Judge, Madurai.

2.The District Munsif Court, Tirumangalam.

Copy To

The Section Officer, (2c)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-32893[F] dated
27/10/2021)

S.A. (MD) No.421 of 2007
and
C.M.P. (MD) No.1 of 2007
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ARK (CO)
KB (15.02.2022) 4P 6C