



SA(MD)No.219 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.219 of 2011

1.N.Rajeswari

2.S.Maleeswari

3.V.Sakunthala

... Appellants/Respondents/
Plaintiffs

Vs.

1.V.Bangaru Ammal

2.Minor Devakumar

3.Kavithveni

... Respondents / Appellants / Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree of the lower appellate court dated 23.12.2009 passed in A.S No.134 of 2009 on the file of the Principal District Judge, Tiruchirappalli modifying the judgment and decree of the trial court dated 01.04.2009 passed in O.S No.396 of 1995 on the file of the I Additional Sub Judge, Thiruchirappalli.



SA(MD)No.219 of 2011

For Appellants : Mr.H.Lakshmi Shankar
for T.V.Sivakumar

For Respondents : Mr.J.Anandavalli for R1 to R3

JUDGMENT

The plaintiffs in O.S No.396 of 1995 on the file of the I Additional Sub Judge, Thiruchirappalli are the appellants in this second appeal. It was a suit for partition. The trial court passed preliminary decree on 01.04.2009. The plaintiffs were given 7/8th share in the first item and half share in the second item. Challenging the same, the defendants filed A.S No.134 of 2009 on the file of the Principal District Judge, Trichirappalli. The appeal was partly allowed on 23.12.2009 and the plaintiffs' share in the first item was reduced to half. Challenging the same, this second appeal came to be filed.

2.The second appeal was admitted on 23.07.2021 on the following substantial question of law :

“Is the lower appellate court correct and justified in granting a share in favour of the defendants when the property is the exclusive property of the plaintiffs' mother ?”



SA(MD)No.219 of 2011

The counsel on either side took me through the pleadings, evidence on record and the impugned judgments. The learned counsel for the appellants would call upon this Court to answer the substantial question of law in favour of the appellants and restore the decision of the trial Court. The learned counsel for the respondents contended to the contrary and sought dismissal of the second appeal.

3.The basic facts regarding genealogy. The plaintiffs are the daughters of Venugopal Chettiar born through his first wife Navaneetha Ammal. Bangaru Ammal was the second wife. Of course, Navaneetha Ammal had died earlier. Defendants 2 and 3 are also children of Venugopal Chettiar born through Bangaru Ammal. There is no dispute regarding the second item. The dispute is only regarding the first item.

4.The appellants' case is that the property belonged to Krishnammal @ Chinnammal. She was the sister of Navaneetha Ammal. She had executed Ex.A1 Will dated 09.12.1956 in favour of Navaneetha Ammal. The Will came into force. Following Navaneetha Ammal's demise, the property devolved in 4 equal shares. The appellants got



SA(MD)No.219 of 2011

3/4th share. The remaining 1/4th devolved on Venugopal Chettiar. It is this share that again devolved equally on all the 6 legal heirs (3 daughters born through the first wife, 2 children born through the second wife and the second wife herself). That is why, the trial court held that each of them will take 1/24th share. The plaintiffs will take this additional share over and above what they already got. The question that calls for consideration is whether the first appellate court was justified in interfering with this.

5.The first appellate court arrived at the conclusion that the plaintiffs are entitled to half share only for the reasons that Ex.A1 Will was not proved and that Venugopal Chettiar was admittedly in possession till his death. The first appellate court ought to have taken into account the totality of evidence. It is seen that Navaneetha Ammal had filed O.S No.407 of 1963 on the file of the District Munsif Court, Trichirappalli for recovery of possession of the first item. The plaint filed in the said suit was marked as Ex.B7. The suit itself was dismissed on 30.03.1966. Certified copy of the judgment dismissing the suit was marked as Ex.B8. The dismissal was because plaintiff Navaneetha



SA(MD)No.219 of 2011

Ammal during the pendency of the suit. The appellants here were minors. Venugopal Chettiar happily remained quiet. The suit was dismissed as abated. The plaint averments was to the effect that Chinnammal had title over the property and that she executed Will dated 09.12.1956 bequeathing the property in favor of Navaneetha Ammal and that the Will was with and in the custody of Venugopal Chettiar, her husband. Navaneetha Ammal wanted recovery of possession. Interestingly, Venugopal Chettiar never pleaded that he had title. He questioned the genuineness of the Will. One of the issues framed in the said suit was “Has the defendant incurred expenses in Chinnammal's account and made the repairs alleged in para 5 of the written statement and has the defendant a right to be reimbursed on any account and if so what is the provision to be made?”.

6.It is Ex.B8 which was marked by the defendants that contains the key. It should be appreciated in the light of Ex.B7 plaint averments. Venugopal Chettiar resisted Navaneetha Ammal's suit for recovery of possession on the ground that he had spent moneys on the property and that he should be reimbursed. The certified copy of the Will filed in the



SA(MD)No.219 of 2011

said suit has been marked in this case as Ex.A1. The expression “proof” has been defined in the Evidence Act as the belief entertained by the court as to the probable existence of a fact. On a careful appreciation of the entire evidence on record, I have absolutely no doubt that the trial court's finding that the property (Item 1) was that of Navaneetha Ammal is sound. The first appellate court by a convoluted and improper legal reasoning interfered with the aforesaid finding. The substantial question of law is answered in favour of the appellants. The impugned judgment and decree passed by the first appellate court is interfered with to the aforesaid extent. The decision of the trial court is restored. This second appeal is allowed. No costs.

05.08.2021

kmm/skm

To:

- 1.The Principal District Judge, Tiruchirappalli.
- 2.The I Additional Sub Judge, Thiruchirappalli.

Copy to:

The Record Keeper,V.R. Section,
Madurai Bench of Madras High Court, Madurai.

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SA(MD)No.219 of 2011

G.R.SWAMINATHAN, J.

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SA(MD)No.219 of 2011

05.08.2021