



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.(MD)No.813 of 2011

WEB COPY

1.Lakshmiammal
2.Angaleswari
3.Angusamy
4.Meenatchi

... Appellants/Appellants/Plaintiffs

Vs.

1.Nagavalli
2.Ramkumar
3.Jeeva
4.Sudha
5.Rathika

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.31 of 2010, dated 12.11.2010, on the file of Sub Court, Ramanathapuram, confirming the judgment and decree made in O.S.No.12 of 2008, dated 27.03.2010, on the file of District Munsif cum Judicial Magistrate, Rameswaram.

For Appellants : Mr.S.Vellaichamy
For Respondents : Mr.H.Lakshmi Shankar

JUDGMENT

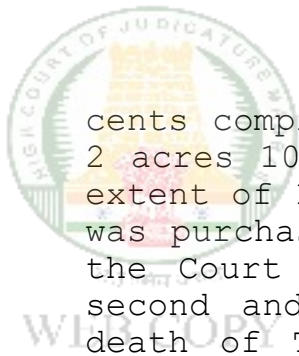
Aggrieved over the concurrent findings of the Courts below, dismissing the suit for recovery of possession in respect of first item of the suit property and declaration in respect of second and third item of the suit property, the present second appeal is filed.

2. The application filed by the appellants in C.M.P.(MD) No.716 of 2017 for withdrawal of the suit with liberty to file a fresh suit, was dismissed. It is the contention of the learned counsel for the appellants that the Courts below has not considered the documentary evidence. Therefore, the second appeal has to be decided on merits. However, the learned counsel for the appellants submitted that if the Court comes to the conclusion that only the suit is maintainable for partition, he is ready to file a partition suit also.

3. The parties are referred to as per their rank before the trial Court.

4. The brief facts, leading to filing of this Second Appeal, are as follows:-

Three items are shown as suit properties. All the properties are situate in Meyyampuli Village. The first item, an extent of 27



cents comprised in Survey No.328/3B. The second item, an extent of 2 acres 10 cents comprised in S.No.250/2B2 and the third item, an extent of 17 cents comprised in survey No.3229/2A2B. The first item was purchased by one Theerthan Mudali, as per the delivery order of the Court of District Munsif, Paramakudi, dated 26.07.1894. The second and third items are the ancestral properties. After the death of Theerthan Mudali, his wife Karuppayee Ammal enjoyed the suit property. One veerabathira Mudali and Veeramahali were the legal heirs of the said Theerthan Mudali. The said Veeramahali got married even prior to 1956. Theerthan Mudali and Karuppayee Ammal also died prior to 1956. Therefore, Veerabathira Mudali inherited the entire properties. Veerabathira Mudali married one Muniyayee and got two male children viz., Ramar and Lakshmanan. Ramar died when he was child. Thereafter, the said Veerabathira Mudali settled the properties in the name of his wife Muniyayee and his son Lakshmanan. Thereafter, the said Muniyayee given birth to one female child viz., Thangammal, who was also married even prior to 1956. The son of Veerabathira Mudali viz., Lakshmanan, also died intestate and without heirs. Therefore, Muniyayee became the owner of the entire suit properties. She settled the property in favour of one Ayyavoo Mudali, who is her son born through her first husband. The plaintiffs are the legal heirs of the said Ayyavoo Mudali. The defendants have no manner of right or title over the suit properties and tried to interfere with the enjoyment of the plaintiffs in the suit properties right from January 2007. Hence, the suit.

5. The defendants main contention is that the suit is not maintainable. In fact, the legal heirs of the said Theerthan Mudali were suppressed in the suit. Third defendant is the daughter of Rathinavalli, who is the daughter of Ayyavoo Mudali who is the son of Muniyayee. Hence, it is his contention that the entire suit property not belonged to the plaintiffs. Hence, prayed for dismissal of the suit.

6. Based on the above pleadings, the trial Court has framed the following issues:

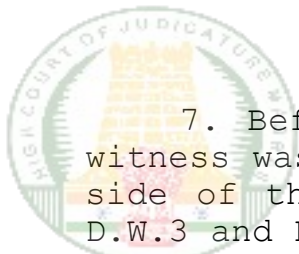
1. *Whether the suit schedule properties belongs to Ayyavoo Mudali, the predecessor of the plaintiffs?*

2. *Whether the plaintiffs are entitled to the relief of declaration as prayed for in respect of the suit schedule properties?*

3. *Whether the plaintiffs are entitled to the consequential relief of permanent injunction in respect of suit 2nd and 3rd schedule of properties?*

4. *Whether the plaintiffs are entitled for the relief of recovery of possession in respect of suit 1st schedule properties?*

5. *To what other reliefs the plaintiffs are entitled to?*



7. Before the trial Court, on the side of the plaintiffs, one witness was examined as P.W.1 and Exs.A1 to A30 were marked. On the side of the defendants three witnesses were examined as D.Ws.1 to D.W.3 and Exs.B1 to B9 were marked. After considering the evidence and materials, the trial Court had dismissed the suit. The first appellate Court has also confirmed the judgment of the trial Court. As against the concurrent findings, the present second appeal is filed.

8. Both the Courts below found that the plaintiffs have not established the identification of the properties, besides some of the properties have already been sold by them and the other legal heirs have been suppressed and hence, non-suited the plaintiffs for the relief of declaration and recovery of possession. As against which, the present second appeal is filed.

9. This Court, on a perusal of judgments of the Courts below, is of the view that the suit for declaration and recovery of possession has necessarily to fail not only on the ground of failure of identification of the suit property, but also the legal heirs through the daughter of original ancestor Theerthan Mudali were suppressed in the suit. The third defendant is also claims to be the legal heirs, through the daughter of original ancestor. The relationship has also to be established and recorded.

10. In such view of the matter, the main suit for declaration and recovery of possession, as if the property belongs to the plaintiffs, necessarily to fail. This Court does not find any material to admit this Second Appeal, since the entire decision of the Courts below are based on the oral and documentary evidences and arrived on facts. Hence, there is no substantial question of law in this Second Appeal.

11. Accordingly, this second appeal is dismissed. However, it is open to the appellants, to seek for partition by filing a necessary suit, if so advised. It is also open to the defendants to take all legal pleas available to them in the said suit. No costs.

Sd/-

Assistant Registrar(T & P)

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Sub Assistant Registrar(CS)

vsm



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Subordinate Judge, Ramanathapuram.
2. The District Munsif cum Judicial Magistrate, Rameswaram.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-12684[F] dated 22/03/2021)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-12910[F] dated 23/03/2021)

S.A. (MD) No.813 of 2011
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SJ(CO)
TR(21.05.2021) 4P 7C