



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD)No.165 of 2021 and

CMP(MD) No.2381 of 2021

1.C.Andiappan
2.Smt.Rajamani
3.A.Vairamani
4.A.Kannan
5.A.Kumar

...Appellants/Respondents/Defendants

Vs.

T.V.Kailasam

...Respondent/Appellant/Plaintiff

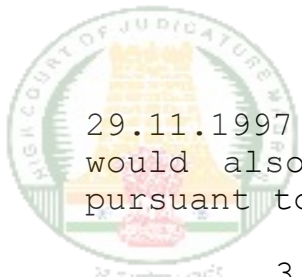
PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 04.09.2019, in A.S.No.84 of 2015, on the file of II Additional Subordinate Court at Trichy, reversed the judgment and decree dated 05.03.2015, in O.S.No.600 of 2010, on the file of the II Additional District Munsif Court at Trichy.

For Appellants : Mr.G.Vidhyamaheswaran

J U D G M E N T

The defendants in O.S.No.600 of 2010 are the appellants. They are aggrieved by the reversal of the judgment of the trial Court, dismissing the suit. The plaintiff sued for permanent injunction claiming that the suit property belonged to his sister in law, namely, Meenakshi. The said Meenakshi had no issues and therefore, she executed a Registered Will, dated 08.12.1983, bequeathing the suit property and other properties to her younger sister, namely, Sivagami. On the death of Meenakshi on 11.05.2006, the property devolved on the legatee, namely, Sivagami. Claiming that the said Sivagami had executed a settlement deed, in favour of the plaintiff, her husband, on 01.02.2010, the plaintiff would seek decree for permanent injunction, on the ground that the defendants attempted to interfere with his possession.

2.The suit was resisted by the defendants contending that Meenakshi had entered into an agreement of sale with them on
<https://hcservices.ecourts.gov.in/hcservices/>

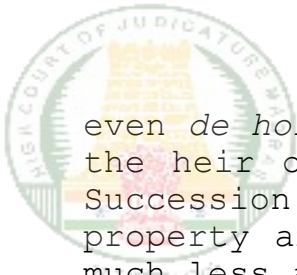


29.11.1997 and she died before the sale deed could be executed. They would also contend that they are in possession of the property pursuant to the said agreement.

3.At trial, the plaintiff was examined as PW 1. Exs.A1 to A8 were marked. The defendants 5,4 & 2 were examined as DW 1, DW 2 and DW 3 respectively. One Subramanian was examined as DW 4. Exs.B1 to B4 were marked.

4.The trial Court, upon consideration of the evidence on record, concluded that the suit property is not found place in Ex.A1, Will. The trial Court also found that the Will has not been proved as required under Section 68 of the Evidence Act. On the said findings, the learned trial judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.84 of 2015. The learned Appellate Judge, upon reconsideration of the evidence on record, concluded that even *de hors* the Will, the plaintiff's wife Sivagami would get right to the property as the sister of Meenakshi. Therefore, non-proving of the Will or the absence of the suit property in the Will, will not prevent the plaintiff from claiming title under the Settlement Deed executed by Sivagami, who happened to be the sister of Meenakshi. The lower Appellate Court also concluded that the suit property does not form part of the alleged agreement dated 29.11.1997, said to have been entered between Meenakshi with the defendants. Going by preponderance of the properties, the learned Appellate Judge found that the plaintiff has made out a better title than the defendants, the learned Appellate Judge decreed the suit for injunction. The contentions of the defendants that the plaintiff should be sought for declaration of title on the ground that since both parties admitted the title of Meenakshi Ammal and what is to be decided is only the question of devolution and therefore, failure on the part of the plaintiff to seek declaration would not vitiate the suit. It is this judgment and decree that is under challenge in this second Appeal.

5.I have heard Mr.C.Vidhyamaheswaran, the learned counsel appearing for the appellant. The learned counsel appearing for the appellant would vehemently contend that the Appellate Court had erred in concluding that the plaintiff has made out title, in the light of the factual finding of the trial Court that the property does not find place in the Will would show that Meenakshi did not intend to bequeath the property to the plaintiff's wife. According to the learned counsel for the appellant, non inclusion of the property in the Will is only because of the fact that Meenakshi had entered into an agreement of sale with the defendants with reference to the suit property. I am unable to countenance the contentions of the learned counsel for the appellant. The Appellate Court had in fact found that the suit property is not included in the agreement dated 29.11.1997, under which, the defendants set up a right over the suit property. As rightly pointed out by the Appellate Court,



even de hors the Will, the wife of the plaintiff, Sivagami, would be the heir of Meenakshi, in her own right under Section 15 of Hindu Succession Act. Therefore, she would be entitled to inherit the property and transfer the same. I do not find any question of law, much less a substantial question of law in this appeal.

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6. Accordingly, this second appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The II Additional Subordinate Court, Trichy.
- 2.The II Additional District Munsif Court at Trichy.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1cc to Mr.T.MARUTHAMUTHU, ADVOCATE, SR NO.10011

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