



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.576 of 2021

and

C.M.P(MD)No.7663 of 2021

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1.R.Govindarajan

2.Viswanathan

... Appellants/Appellants/Defendants

Vs.

1.C.Krishnamoorthy

2.R.Seethalakshmi

3.R.Mahalakshmi

... Respondents/Respondents/plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 21.11.2019 passed in A.S.No.18 of 2016, on the file of the Additional Subordinate Court, Thanjavur, confirming the judgment and decree, dated 27.01.2015 passed in O.S.No.30 of 2011, on the file of the District Munsif Court, Thiruvaiyaru.

For Appellants : Mr.V.Chandrasekar

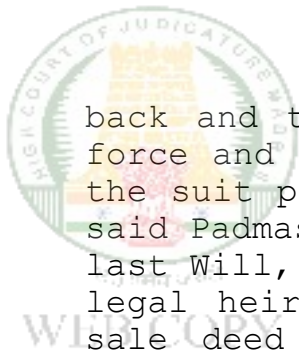
For Respondents : Mr.M.R.S.Prabhu

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.30 of 2011, by the District Munsif Court, Thiruvaiyaru and in A.S.No.18 of 2016, on the file of the Additional Subordinate Court, Thanjavur, are being challenged in the present Second Appeal.

2. The respondents, as plaintiffs, have instituted a suit in O.S.No.30 of 2011 on the file of the trial Court for the relief of declaration and for recovery of possession, wherein, the present appellants have been shown as the defendants.

3. The case of the plaintiffs is that originally the suit property was owned by one K.S.Rengaswamy Iyyangar, the elder brother of the plaintiffs' great grandfather K.S.Swamy Iyyangar. The said K.S.Rengaswamy Iyyangar had only two daughters, namely Padmasani and Ruckmani and he had no male issues. The said K.S.Rengaswamy Iyyangar in a sound and disposing state of mind had executed his last and Will and testament on 20.11.1961 and registered the same at the Sub-Registrar's Office at Thirukkattupalli. As per the terms of the said Will, the under mentioned suit property has to be enjoyed by the first daughter Padmasani for life and after her life, it has to be succeeded by the father of the plaintiff K.S.Rengaraj and his legal heirs. The said K.S.Rengaswamy Iyyangar died about 20 years



back and the above said Will of K.S.Rengaswamy Iyyangar came into force and as per the terms of the said Will, Padmasani was enjoying the suit property during her life time as a life estate holder. The said Padmasani died in the year 2005. Hence, as per the terms of the last Will, the plaintiffs have succeeded to the suit property as the legal heirs of K.S.Rengaraj Iyyangar. The defendants have taken a sale deed from the abovesaid Padmasani Ammal on 17.02.2003 with respect to the suit property and have taken possession of the suit property from the said Padmasani Ammal. In the Will, dated 20.11.1961, the said Padmasani was given only a life estate over the suit property and she had no right of alienation over the suit property. These plaintiffs, being the only legal heirs of their father K.S.Rengarajan, had succeeded to the suit property as per the terms of the abovesaid Will.

4. The sale deed, dated 17.03.2003 was executed by Padmasani in favour of the defendants is not valid and beyond the lifetime of Padmasani, the defendants have no right to continue in possession of the suit property. After the death of Padmasani, the plaintiffs approached the defendants and explained them that the sale deed executed by Padmasani is not valid beyond the lifetime of the said Padmasani and requested them to surrender possession. But, the defendants did not give proper reply. Hence, the first plaintiff issued a legal notice on 29.06.2007, calling upon the defendants to surrender possession of the suit property. After receiving the notice, the defendants issued a false reply through their counsel. It is false to contend that the limited estate given to Padmasani ripened into a full estate by operation of Section 14(1) of the Hindu Succession act. As per the provisions of Section 14(2), Section 14 (1) is not applicable to the bequeaths under the Will. Hence, the defendants have no right to continue in possession of the said suit property as per the terms of the Will, dated 20.01.1961. After the issue of reply notice, there was a Mediation in the Village in the presence of the Village elders. The plaintiffs explained them that the defendants have no right to continue in possession of the suit property. At the instance of the Village Panchayathars, the defendants agreed to vacate the suit property and hand over possession within one year and the Panchayathars also advised the plaintiffs to wait for one year. Accordingly, the plaintiffs have waited for an amicable settlement. But, even after the lapse of the time given by the Panchayathars, the defendants have not come forward to keep up their promise. Hence, the plaintiffs filed the suit.

5. The defendants filed a written statement and admitted that Rengaswamy Iyyangar was the owner of the suit property and he had two daughters, namely Padmasini and Rukmani and had no male issues. It is also admitted that the said Rengaswamy Iyyangar had executed a Will on 20.11.1961, in which, the suit property was shown in the 'C' schedule. The said Padmasini and Rukmani had no issues during the



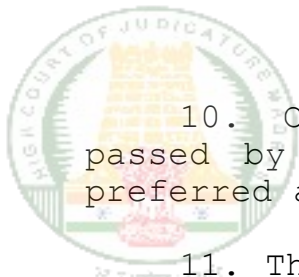
Iyyangar, in order to protect the suit property, gave only life estate to his daughter Padmasini. After the death of Rengaswamy Iyyangar, Padmasini was enjoying the suit property and had executed a registered sale deed in favour of the defendants on 17.02.2003. From the date of execution of the sale deed, the defendants are residing in the said place with the permission of Padmasini. The plaintiffs never succeeded the suit property as the only legal heirs of K.S.Rengaswamy Iyyangar. In fact, two daughters are there for Rengaswamy Iyyangar, but they have not been added as party to the proceedings. Therefore, the suit is bad for non-joinder of necessary parties. After the death of Padmasini, the plaintiffs never approached the defendants seeking for surrender of possession. The plaintiffs issued a legal notice on 29.06.2007 and the same was replied. The said Rengaswamy Iyyangar with an intention to give economic support and shelter to her daughter Padmasini, executed the Will in favour of her and some others, therefore, the life estate enlarged into full estate by operation of Section 14(1) of the Hindu Succession Act. Therefore, the sale deed executed by Padmasini for consideration is valid under law. The said Padmasini, as widowed daughter of Rengaswamy Iyyangar, had pre-existing right over the suit property and therefore, Section 14(2) is not applicable in this case.

6. After the issue of reply notice, there was no Mediation in the Village, as alleged in the plaint. It is also false to allege that the defendants agreed to hand over the possession of the suit property within one year at the instance of the Village Panchayathars. The plaintiffs filed the suit four years, after the reply notice given by the defendants. Therefore, the suit is barred by limitation and there was no cause of action for the suit and the plaintiffs are not entitled to the relief of declaration and recovery of possession as sought for by them and they are also not entitled to past or future profits and prayed for dismissal of the suit.

7. Before the trial Court, on the side of the plaintiffs, the first plaintiff was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and Ex.B.1 to Ex.B.10 were marked.

8. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

9. Aggrieved by the Judgment and decree passed by the trial Court, the defendants, as appellants have filed an Appeal Suit in A.S.No.18 of 2016. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.



10. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendants, as appellants.

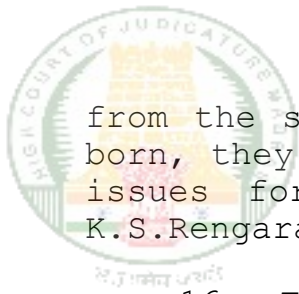
11. The learned counsel appearing for the appellants/defendants would submit that the courts below had failed to note that the plaintiffs have claimed the right over the property only as per the Will executed by K.S.Rengaswamy Iyanger in the year 1961 and the said K.S.Rengaswamy Iyanger had bequeathed the property to his daughter Padmasini for lifetime and after her lifetime, it has to be succeeded to the father of the plaintiffs viz., K.S.Rengaraj and his legal heirs. The Courts below failed to note of the fact that the father of the original plaintiff K.S.Rengaraj knew that the property was sold by the legatee Padmasini and therefore, he has not claimed any right over the property and he has not questioned the sale by Padmasini. The Courts below have failed to note that the legatee Padmasini originally has granted life estate by her father which was enlarged into a full estate as per Section 14(1) of the Hindu Succession Act and no right flows to the said K.S.Rengaraj or his legal heirs and prayed for allowing the Second Appeal.

12. The learned counsel appearing for the respondents / plaintiffs submitted that the Courts below, after analysing the documents available on record, has rightly decreed the suit in favour of the respondents/plaintiffs, in which, no interference is called for and thus prayed for dismissing the Second Appeal.

13. Heard the learned counsel for the appellants and the learned counsel for the respondents and also perused the records carefully.

14. It is the contention of the appellants/defendants that the Courts below had failed to consider the object and intention of the executor of Ex.A.4 and also pointed out the transaction based on the sale deed, dated 17.02.2003, which was marked as Ex.A.1. It is the contention of the respondents/plaintiffs that the suit property was acquired by the plaintiffs' mother through the Will, dated 20.11.1961.

15. On a perusal of the materials available on record, it is seen that there is no dispute or have any other suspicious over the Will. In the said circumstances, in the Hindu Succession Act, 1956, Section 14(1) and (2) clearly distinguished the difference between the kinds of acquiring the properties. To support the defendants case, there is no whisper about the livelihood of the plaintiffs with minor children. On a perusal of Ex.A.4-Will, dated 20.11.1961, it is seen that the same has not been disputed by both the parties. The executor's intention was when 'A' schedule property was purchased by him and both the daughters have to enjoy the same till their life time and they have to utilise the income from the said property and further they have to pay kist and revenue tax



from the said amount and if at all they have any male issue to be born, they are entitled for the same equally and if there is no male issues for them, the said brother one K.S.Sami Iyyangar's son K.S.Rengarajan is entitled to inherit the same.

16. From the above said Will, it could be seen that the intention of the father of Padmasini Ammal is that only for life time they are entitled to enjoy 'A' schedule property and if they are not having any male issues, the said property has to devolve on one K.S.Rengarajan ie, the brother of brother's son, who is entitled to inherit the same.

17. In the mean time, the said Padmasini Ammal alleged to have executed a sale deed, dated 17.02.2003, which was marked as Ex.A.1 and in the sale deed, it is found that the schedule properties belonged to her father Rengaswamy Iyyangar and he has executed a Will in her favour and after his death, the said Padmasini Ammal was in possession and enjoyment of the property and she was willing to sell the same. But Ex.A.4-Will, clearly disclosed that the object and intention of the executor that they can enjoy the property for a life time and if they do not have any male issues, the property shall devolve on his brothers's son, has been made clear. That being the case, when the object is very clear that whether Section 14(2) of the Hindu Succession Act, 1956, will apply to the facts of the present case or not has to be decided.

18. Section 14(2) of the Hindu Succession Act, 1956, reads as follows:-

"14.Property of a female Hindu to be her absolute property - (1)

.....

(2) Nothing contained in sub-Section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property."

19.The sale deed, dated 17.02.2003 was executed by Padmasini Ammal only based on the Will executed by K.S.Rengasamy. The Will confers only the life estate and no right over the property as an absolute owner. The Will itself would prove that the father of the said Padmasini Ammal had an intention that his daughters would enjoy the property in the life time and in case, if they have male issues, they would inherit the same and in case, if they have no male issues, the suit property will devolve on his brother's son K.S.Rengarajan. The subsequent sale deed alleged to have been executed by Padmasini Ammal is not permissible, as it is against the original intention of the executor. The sale deed executed by



Padmasini Ammal is invalid one, as she does not have any absolute right to transfer such property to others. That being the case, the trial Court as well as the first Appellate Court have rightly come to the conclusion that the alleged claim made by the defendants does not hold good and dismissed the same.

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20. When the executor's original intention was very clear that the said Padmasini Ammal has got no right over the property absolutely and it is only a limited interest ie., only till her life time, she can utilise the same and enjoy the income alone and definitely the alleged sale deed executed in favour the defendants is not valid in the eye of law and further Section 14(1) of the Hindu Succession Act states that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner, but clause (2) states that nothing contained in sub-Section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property. Accordingly, a Hindu female has been given only a life interest through a Will or gift or any other document, the said rights would not stand or prescribes an absolute ownership as she has only a restricted life time interest and accordingly, the life interest would remain, as the same even after then commencement of the Act, 1956 and the Hindu daughter cannot acquire absolute title when the same has been made clear by the executor. Accordingly, this Court is not inclined to interfere with the well considered Judgments and Decrees rendered by the trial Court as well as the first Appellate Court.

21. For the reasons aforesaid, this Court is of the considered view that no substantial questions of law has been made out by the appellants/defendants to interfere with the well considered judgment and decree rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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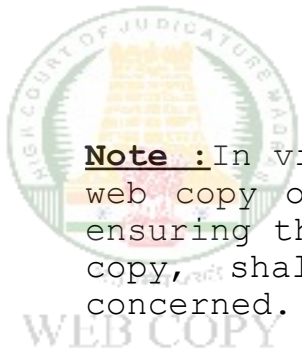
Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar (CS)

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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 Additional Subordinate Judge,
Thanjavur.
- 2.The District Munsif,
Thiruvaiyaru.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-39067[F]
dated 16/12/2021)

+1 CC to M/s.V.K.VIJAYARAGAVAN, Advocate (SR-38922[F]
dated 15/12/2021)

Judgment made in
S.A(MD) No.576 of 2021
14.12.2021

KMV (CO)
GC(04.01.2022) 7P 7C