



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.01.2021

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A. (MD) .No.723 of 2020 and
C.M.P (MD) No.80 of 2021

M.Sarala :Appellant /Respondent/Defendant

Vs.

Seethaiyammal
Rep by her power agent
Kasiviswanathan :Respondent/Appellant/Plaintiff

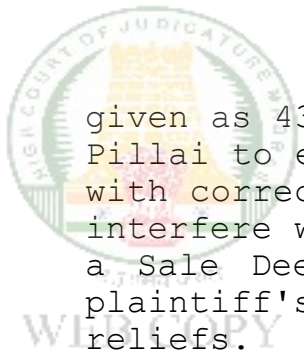
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against judgment and decree dated 05.12.2019 made in A.S.No.65 of 2017, on the file of Subordinate Court, Paramakudi, reversing the judgment and decree dated 29.07.2016 in O.S.No.19 of 2014, on the file of the District Munsif Court, Paramakudi.

For Appellant : Mr.H.Thayumanaswamy

J U D G M E N T

The defendant in O.S.No.19 of 2014, on the file of the District Munsif Court, Paramakudi has come up with this Second Appeal. Challenge is to the Judgment and Decree of the Appellate Court made in A.S.No.65 of 2017, in and by which, the Appellate Court reversed the Decree granted in O.S.No.19 of 2014.

2. The Suit in O.S.No.19 of 2014 was filed by the plaintiff, claiming the relief of declaration of title and injunction. According to the plaintiff, the suit property originally belonged to one Janaki Ammal, who had purchased the same under Sale Deed dated 05.09.1949 from one Nagaiah vagayara. After the death of the said Janaki Ammal in the year 1955 (Wrongly mentioned as 1945 in the plaint), the property devolved on her only son Muthiah Pillai. The said Muthiah Pillai died 20 years prior to the suit, i.e around 1994, leaving behind the husband of the plaintiff, namely, Karuppiyah Pillai, who is his only son. Claiming that the sisters of Karuppiyah Pillai had accepted the title of Karuppiyah Pillai, the plaintiff would set up title in herself under the settlement deed, said to have been executed by the said Karuppiyah Pillai on 28.03.2003. It is further case of the plaintiff that though the settlement deed dated 28.03.2003 described the property correctly, the survey number was



given as 43/2 instead of 43/11. This necessitated the said Karuppiyah Pillai to execute another instrument of settlement dated 19.01.2007, with correct survey number. Claiming that the defendant attempted to interfere with her possession, setting up title in her favour, under a Sale Deed dated 03.02.2006, said to have been executed by the plaintiff's son Nithyanantham, the plaintiff sued for the above reliefs.

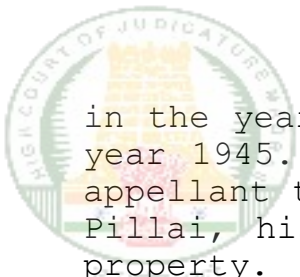
3.The suit was resisted by the defendant contending that the suit property is the ancestral property of Karuppiyah Pillai and that an oral partition between him and his son Nithyanantham, an extent of 43 cents was allotted to Nithyanantham, which was sold by Nithyanantham to the defendant under a Sale Deed dated 03.02.2006. It is claimed that the Settlement Deeds dated 28.03.2003 and 19.01.2007 executed by Karuppiyah Pillai were created by the plaintiff to set up title in herself. It should be pointed out that the execution of those documents by Karuppiyah Pillai, was not specifically denied in the written statement.

4.At trial, one Kasi Viswanathan was examined as PW 1 and three other witnesses were examined as PWs 2 to 4. Exs.A1 to A13 were marked. The defendant was examined as DW 1 and Karuppusamy was examined as DW 2. Exs.B1 to B4 were marked. Exs.C1 to C4 were also marked through witnesses.

5.The trial Court, upon consideration of the evidence on record, concluded that the plaintiff has not established her case. The trial Court accepted the claim of the defendant that the property being an ancestral property of Karuppiyah Pillai, the settlement deeds executed by him are not valid. On the above conclusions, the learned trial Judge dismissed the suit.

6.Aggrieved, the plaintiff preferred an appeal in A.S.No.65 of 2017, before the Subordinate Court, Paramakudi. The learned Appellate Judge, upon reappraisal of the evidence on record, concluded that the property having been inherited by Karuppiyah Pillai from his paternal grand mother cannot be termed as ancestral property in his hands. If the property is self acquired in the hands of Karuppiyah Pillai, his son Nithyanantham would not get right by birth, so as to enable him to alienate the property even during the life time of his father Karuppiyah Pillai. The lower Appellate Court allowed the appeal and decreed the suit as prayed for. Hence, the Second Appeal.

7. I have heard Mr. H.Thayumanaswamy, learned counsel for the appellant. He would vehemently contend that the lower Appellate Court was not right in accepting the settlement deeds, which have been marked as Ex.A2 and Ex.A3. Since no attesting witness was examined and the documents were not proved under Section 68 of the Evidence Act. He would also further contend that though the claim is



in the year 1949, even according to the plaint, she had died in the year 1945. It is further contention of the learned counsel for the appellant that the property being an ancestral property of Karuppiyah Pillai, his son Nithyanantham would be entitled to a share in the property.

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8. Considered the submissions of the learned counsel for the appellant. The question of examination of attesting witnesses does not arise, as there is no specific denial of the execution of settlement deeds by Karuppiyah Pillai. Section 68 of the Evidence Act, 1872 reads as follows:-

68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: **1[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied]**

9. In view of the Proviso of Section 68, the lower Appellate Court can not be faulted for accepting the registered Settlement deed in the absence of specific denial. It should also be pointed at this juncture that the specific case of the defendant is that the settlement deed was not acted upon. As regards the next contention of the learned counsel for the appellant that Janaki Ammal could not purchase the property under Ex.A1 Sale Deed dated 05.09.1949, since she had died even in the year 1945, according to the plaint. Answer to this contention of the learned counsel for the appellant lies in the cross examination of PW 1 by the counsel for the defendant, where a suggestion has been made to the effect that, the said Janaki Ammal died, only in the year 1955. Therefore, the contention of the learned counsel for the appellant does not merit acceptance. Once it is found that the property was not ancestral property of Karuppiyah Pillai, his father Muthiah Pillai, having died after 1956, the property is inherited by Karuppiyah Pillai under Section 8 of Hindu Succession Act will be separate property and not as ancestral property.

10. In view of the above, I do not find any question of law, much less a substantial question of law to enable me to entertain the Second Appeal. The Second Appeal fails and it is accordingly



dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Court, Paramakudi.

2.The District Munsif Court, Paramakudi.

3.The Section Officer, (2 copies)

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to Mr.H.THAYUMANASWAMY, Advocate (SR-2418[F] dated 29/01/2021)

Judgment made in
S.A. (MD) .No.723 of 2020 and
C.M.P (MD) No.80 of 2021
Dated 29.01.2021

VB (25.02.2021) 4P 6C