



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.02.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A(MD)No.180 of 2015

S.Ganesan ...Appellant/Appellant/3rd Defendant

Vs.

1.Ramkumar ...1st Respondent/1st Respondent/Plaintiff

2.The Tahsildar,
Taluk Office,
Uthamapalayam,
Theni District.

3.The Assistant Electric Engineer,
Tamil Nadu Electricity Board (TNEB),
Cumbum Town,
Uthamapalayam Taluk,
Theni District.

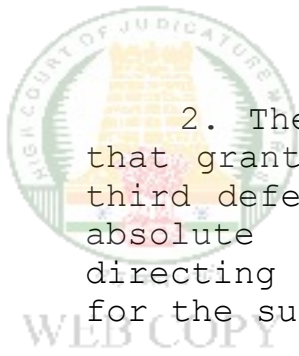
...Respondents 2 and 3/
Respondents 2 & 3/
Defendants 1 and 2

PRAYER:- Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.13 of 2014 on the file of the Sub Court, Uthamapalayam dated 10.09.2014 confirming the judgment and decree passed in O.S.No.56 of 2011 on the file of the District Munsif Court, Uthamapalayam dated 30.09.2013.

For Appellant	:	Mr.D.Senthil
For R1	:	Mr.A.Arumugam for M/s Ajmal Associates
For R2	:	Mr.V.R.Shanmuganathan Special Government Pleader
For R3	:	Mr.C.Selvaraj

J U D G M E N T

The third defendant in O.S.No.56 of 2011 on the file of the District Munsif Court, Uthamapalayam is the appellant.



2. The suit was filed by the plaintiff seeking a declaration that grant of a joint patta in the name of the plaintiff and the third defendant is invalid, declaration that the plaintiff is the absolute owner of the property and for mandatory injunction directing the defendants 1 and 2 to transfer the revenue records for the suit property in the name of the plaintiff.

3. According to the plaintiff, the suit property belonged to his paternal grand mother Krishnammal, who died in the year 2010. The plaintiff is the son of one Jeyachandran, son of Krishnammal. The third defendant is the other son of Krishnammal. Contending that both Jeyachandran and the third defendant ignored Krishnammal and it was the plaintiff who was taking care of her and out of love and affection she had towards him, she had bequeathed the suit property to him under the Will dated 20.10.2009. The plaintiff sought for the declaratory relief. The plaintiff had also stated that there was some typographical error in the Will, where service connection number was shown as 212 instead of 213 and survey number of the property was shown as 503/1D instead of 503/1B.

4. The suit was resisted by the defendants contending that the suit property did not belong to Krishnammal absolutely and it was a joint family property purchased by the third defendant, his brother and his father in the name of Krishnammal. It was contended that the Will executed by Krishnammal is not true and valid. The mistakes in the Will pleaded by the plaintiff are also disputed.

5. At trial, the plaintiff was examined as P.W.1 and one Muniyandi, attesting witness to the Will was examined as P.W.2. Exts.A1 to A.11 were marked. One Mannavan was examined as D.W.1 and one Saravanapriya was examined as D.W.2. No documentary evidence was let in on behalf of the defendants.

6. The trial court, upon consideration of the evidence on record, concluded that the plaintiff has proved execution and attestation of the Will dated 20.10.2009. It also agreed with the claim of the plaintiff that there were certain mistakes in the Will. The claim that the property was purchased by the third defendant, his brother and father was rejected by the trial court for lack of evidence. On the above conclusions, the trial Judge decreed the suit as prayed for.

7. Aggrieved, the third defendant preferred an appeal in A.S.No.13 of 2014. The learned appellate Judge, upon re-consideration of the evidence, concurred with the findings of the trial court and dismissed the appeal. Hence, the Second Appeal.



8. The following questions of law have been framed by this Court at the time of admissions:

i) Whether the courts below had correctly framed the issues, ignoring the available evidence and testimony of the witness?

ii) Whether the courts below are right in determining the points for consideration from correct stand point and proper perception as required under Order 41 of the Civil Procedure Code?

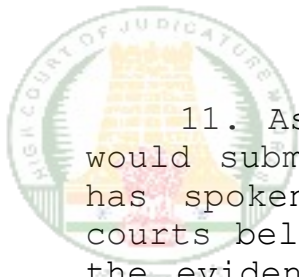
iii) Whether the courts below are right in granting a decree for declaration and mandatory injunction to transfer the name in the patta as against the provisions under Section 14 of the Patta Pass Book Act?

iv) Whether the courts below are right in granting a decree since the plaintiff not added the proper parties to the suit?

v) Whether the plaintiff proved the Will dated 20.10.2009 as per Section 68 of Evidence Act?

9. Mr.Senthil, learned counsel appearing for the appellant would vehemently contend that the appellate court ought to have given an opportunity to the appellant/third defendant to let in evidence. According to him, the counsel who appeared for the third defendant before the trial court had made an endorsement without instructions from the third defendant and therefore, the appellant/third defendant may be given a chance to let in further evidence. The learned counsel would further contend that the plaintiff has not proved the Will dated 20.10.2009 in accordance with Section 68 of the Indian Evidence Act. It is the further contention of the learned counsel that the suit for mandatory injunction to direct correction to the revenue records is not maintainable in view of Section 14 of the Patta Pass Book Act, 1983.

10. Contending contra, Mr.A.Arumugam, learned counsel appearing for the first respondent/plaintiff would submit that there is no allegation in the grounds of appeal before the appellate court as well as in the grounds of appeal in the Second Appeal that the counsel, who appeared for the third defendant before the trial court, made an endorsement stating that there is no evidence on the side the third defendant without obtaining instruction from the third defendant. According to him, in the absence of such plea, the claim that the counsel, who appeared for the third defendant before the trial court, made an endorsement that there is no evidence on the side of the third respondent without obtaining instruction from the third defendant, cannot be accepted.



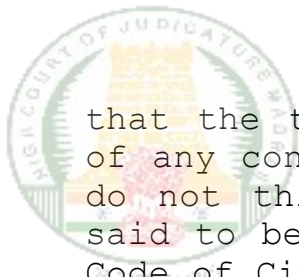
11. As regards proof of Will, Mr.A.Arumugam, learned counsel, would submit that the attesting witness has been examined and he has spoken to execution and attestation of the Will. Both the courts below analyzed the evidence and come to the conclusion that the evidence of the plaintiff coupled with that of the attesting witness P.W.2 would be sufficient to conclude that the Will has been proved in terms of Section 68 of the Indian Evidence Act.

12.As regards decree for mandatory injunction, Mr.A.Arumugam, learned counsel for the first respondent would submit that the defendants 1 and 2 were actually bound by such decree and they have not filed any appeal and therefore, there is no need to interfere with the decree of the courts below.

13. I have considered the rival submissions.

14. The plaintiff has come to the court with a specific case that the property belonged to Krishnammal and she bequeathed the same to him under a testamentary instrument dated 20.10.2009. P.W.2 is the attesting witness to that testament and he has evidenced execution and attestation of the same. The courts below have considered the evidence of P.W.2 and concluded that the same is sufficient to uphold the Will dated 20.10.2009. The learned counsel for the appellant despite his best efforts is unable to demonstrate that the evidence of P.W.2 is not in tune with the requirements of Section 68 of the Indian Evidence Act. Once evidence of the attesting witness is available and reliable and relationship between the parties is also admitted, I do not think that the finding of the courts below regarding the proof of the Will could be attacked by the appellant. Both the courts have also found that there is a mistake in the survey number and service connection number in the Will and what was intended to be bequeathed is only the suit survey number and service connection number. The claim of the third defendant is that the property belonged to the joint family property is not supported by any evidence.

15. As rightly contended by Mr.A.Arumugam, learned counsel for the first respondent there is no averment in the grounds of appeal filed before the appellate court or in the grounds of appeal in this Second Appeal that the action of the counsel, who appeared before the trial court, in endorsing no evidence on the side of the third defendant was without getting instruction from the third defendant. No claim was made by the third defendant to that effect before the first appellate court. I am therefore of the considered opinion that the claim of the appellant that the counsel made an endorsement on his own without instruction cannot be accepted at this Second Appellate stage. The lower appellate court has re-considered the evidence on record and had concluded



that the trial court's findings cannot be faulted in the absence of any contra evidence on the side of the appellant. Therefore, I do not think that the judgment of the appellate court could be said to be not in compliance with the requirements of Order 41 of Code of Civil Procedure.

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16. No doubt, Section 14 of the Patta PassBook Act enacts bar on a suit against the Government or any Officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under the Act or to have such entry omitted or amended. The proviso to that Section makes it clear that it will be open to a person, who is having title, to institute a suit for a declaration of his rights under Chapter VI of the Specific Relief Act and upon such declaration being made by the court, the entry in the patta pass book shall be amended in accordance with such declaration. The Act itself enacts a mandatory duty on the authorities concerned to give effect to the declaration issued by the court. Hence, the claim of the appellant that the suit itself is barred cannot be said to be wholly correct. No doubt, there cannot be a mandatory injunction directing the first defendant to effect change in the revenue register but upon the court making a declaration, the first defendant is bound to carry out the declaration and to effect change in the revenue register as per the declaration made by the court. Therefore, the question of law No.3 is answered partly in favour of the plaintiff and the decree for mandatory injunction granted will have to be set aside. I have already concluded that the Will has been proved in accordance with the provision of Section 68 of the Indian Evidence Act and hence, question No.5 is answered against the plaintiff. The question Nos. 1 and 2 are also answered against the appellant in view of my conclusion that the judgment of the appellate court satisfied the requirements of Order 41 C.P.C.

17. In view of the above, this Second Appeal is partly allowed. The decree for mandatory injunction granted by the courts below is set aside. In other respects, the judgment and decree stands confirmed. No costs.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)



To:

1.The Judge, Sub Court,
Uthamapalayam.

2.The District Munsif,
Uthamapalayam.

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The Section Officer-2 copies
VR Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-2984[F] dated
03/02/2021)

+1 CC to Mr.D.SENTHIL, Advocate (SR-2997[F] dated 03/02/2021)

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