



AS.No.1235 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2022

PRONOUNCED ON : 06.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.1235 of 2015

Srinivasan @ Vasu

Appellant

Vs

1. Kasthuri (Died)
2. Janaki
3. M.Usha

Respondents

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated 06.08.2015, made in OS.No.65 of 2014, by the Principal District Judge of Krishnagiri.

For Appellant : Mr.R.Bharathkumar for Mr.V.Nicholas

JUDGEMENT

1. This Appeal Suit has been filed, by the 1st Defendant, against the judgement and decree, dated 06.08.2015, made in OS.No.65 of 2014, by the Principal District Judge of Krishnagiri.
2. The suit was filed for partition of the suit property into four equal shares and to allot one such share to the Plaintiff and for separate possession of the same and to appoint a Commissioner for such purpose and for declaration of the release deeds, dated 20.01.2003 and 26.06.2007, created in favour of the 1st Defendant as null and void and for permanent injunction.
3. The case of the Plaintiff, as set out in the plaint, is as follows:-



AS.No.1235 of 2015

WEB COPY

(a) The Plaintiff is the mother of the Defendants and the wife of one Krishnasamy. The grandfather of the Defendants 1 to 3, namely Venkatadas Naidu had purchased the vacant site, to an extent of Acre 0.11 in S.No.141 of Kattiganapalli Village, Krishnagiri Taluk, under the sale deed, dated 30.01.1974. The said Venkatadas Naidu married one Loganayaki and the said Loganayaki died long ago and after the demise of the said Loganayaki, the said Venkatadas Naidu married one Padmavathi, who also died. The husband of the Plaintiff and the father of the Defendants, namely Krishnasamy, born to the said Venkatadas Naidu through his 2<sup>nd</sup> wife, namely, Padmavathi. After the demise of the said Padmavathi, the said Venkatadas Naidu did not marry anybody. But, one Munilakshmiammal, who already got married, deserted her husband and living with the said Venkatadas Naidu. The said Munilakshmiammal died in the year 2013.

(b) The husband of the Plaintiff, namely, Krishnasamy had purchased the vacant site to an extent of 1800 Sq.ft in S.No.142/1B under the sale deed dated, 19.6.1986. The husband of the Plaintiff constructed a residential house and shops in the said 2 vacant sites, which are the suit properties and he had been in possession and enjoyment of the same. The husband of the Plaintiff died on 04.4.2007, leaving behind the Plaintiff and the Defendants as his legal heirs. The said Munilakshmiammal had no right or title over the suit properties. But, the 1st Defendant had created a gift settlement deed, dated 20.01.2003



AS.No.1235 of 2015

WEB COPY

without the knowledge of the Plaintiff or the Defendants 2 and 3 with a view to defraud them. The said Munilakshmiammal is not the wife of the said Venkatadas Naidu. The 1st Defendant, without the knowledge of the Plaintiff, had created another release deed, dated 20.06.2007 as if the said Munilakshmiammal and the Defendants 2 and 3 relinquished their share in the suit properties by receiving a sum of Rs.4,60,000/-. The release deeds are not valid. The Plaintiff is entitled to 1/4<sup>th</sup> share in the suit properties. The first Defendant is trying to alienate the suit properties. In such circumstances, the suit has been filed, seeking reliefs, as stated above.

4. The case of the Defendant, in a nutshell, as set out in the written statement, is as follows:-

- a) The Plaintiff is the mother of the Defendants and wife of Krishnasamy. Venkatadas Naidu did not purchase the vacant site, to an extent of Acre 0.11 in S.No.141 of Kattiyanaipalli Village, Krishnagiri Taluk, as per the registered sale deed dated 30.01.1974. Munilakshmiammal, who is the wife of the said Venkatadas Naidu, had purchased the said property on 30.01.1974 and subsequently, she constructed a house and shop buildings therein, but the said deed dated was obtained in the name of her husband Venkatadas Naidu. Venkatadas Naidu had not married Loganayaki and Padmavathi. The husband of the Plaintiff, by name Krishnasamy, had purchased the vacant site to an extent of 1,800 square feet in S.No. 142/1B, under the sale deed, dated 19.06.1986 and



AS.No.1235 of 2015

WEB COPY

he only constructed the residential house, but not the shop buildings.

Munilakshmiammal is the legal heir of the said Krishnasamy and the Plaintiff, Munilakshmiammal and Defendants are each entitled to 1/5 share in the suit properties.

- b) It is falsely alleged that the said Munilakshmiammal had no right or title over the suit properties, but the 1st Defendant Defendant allegedly created a Gift Settlement deed dated 20.01.2003, without knowledge of the Plaintiff or the Defendants with a view to defraud the Plaintiff and the Defendants 2 and 3 and that the said Munilakshmiammal is not the wife of the said Venkatadas Naidu, and that her name is included in the legal heirs certificate issued by the Tahsildar, Krishnagiri, and that the Gift Settlement deed in favour of the first Defendant executed by the said Munilakshmiammal is valid in law and binding on the Plaintiff. In fact the said Krishnasamy, who is the husband of the Plaintiff, had also signed in the said gift settlement deed, dated 20.01.2003. The Plaintiff claims right only through her husband and that the said Gift settlement deed dated 20.01.2003 is binding on the Plaintiff and the Defendants 2 and 3.
- c) It is false to allege that the 1st Defendant, without the knowledge of the Plaintiff created release deed, dated 20.06.2007 in respect of the shares of Munilakshmiammal and the Defendants 2 and 3. The Plaintiff is not entitled to share in the suit properties. After the demise of the said Krishnasamy, the Defendants and her mother Munilakshmiammal succeeded the suit property item No.1, and that they had been in joint



AS.No.1235 of 2015

WEB COPY

possession and enjoyment of the same and that they are each entitled to 1/4 share and on 20.06.2007, the said Munilakshmiammal, and the Defendants 2 and 3 relinquished their shares into the suit properties by receiving a sum of Rs.4,60,000/ from the 1st Defendant and executed the registered release deed dated 20.06.2007. The Plaintiff and the Defendants 2 and 3, with a view to grab the suit properties, have collusively filed the suit. The Plaintiff is not in joint possession of the suit properties. In such circumstances, the suit is liable to be dismissed.

5. On the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the Plaintiff is entitled to 1/4<sup>th</sup> share in the suit property?
  2. Whether the gift settlement deed dated 20.01.2003 is liable to be declared as not valid?
  3. Whether the release deed dated 26.06.2007 is liable to be declared as not valid?
  4. Whether the Plaintiff is entitled for permanent injunction?
  5. Whether Munilakshmiammal is the legally wedded wife of Venkatadasa Naidu?
  6. Whether Munilakshmiammal was in separate possession of the suit property till 20.1.2003?
  7. Whether as per the gift deed dated 20.1.2003, the 1st Defendant was in possession and enjoyment of the suit property?
  8. Whether the Plaintiff is not in joint possession of the suit property?
  9. To what other relief the Plaintiff is entitled?
6. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A5 were marked and PW.1 was examined. On the side of the Defendants, Ex.B1 to



AS.No.1235 of 2015

WEB COPY

Ex.B8 were marked and DW.1 to DW.3 were examined. The Trial Court had decreed the suit in part, thereby declaring that the Plaintiff is entitled to 1/8<sup>th</sup> share in the item (1) of the suit properties and 1/5<sup>th</sup> share in the item (2) of the suit properties and declaring the release deeds as null and void and granting permanent injunction. Aggrieved against the same, this Appeal Suit has been filed by the 1st Defendant.

7. This Court heard the submissions of the learned counsel on either side.
8. The learned counsel for the Appellant has submitted that the Appellant established that Munilakshmiammal purchased the item (2) of the suit property from her income in the name of her husband. She only constructed the house and shops and enjoyed the property as a owner. Thereafter, the 1st Respondent cannot claim any share. The 1st Respondent has not proved that she was in possession of the property along with the Defendants. The lower court without considering this aspect decreed the suit. Hence, he prays for allowing this appeal.
9. This Court considered the submissions of the learned counsel for the Appellant and the materials placed on record.
10. The contention of the Appellant is that the item (2) of the suit property was purchased by Munilakshmiammal and she has got every right to execute the settlement deed and the 1st Respondent cannot claim any right in the suit property.
11. A perusal of Ex.A1 reveals that it was purchased by Venkatadas Naidu and the sale consideration was paid by him. Since the property stands in the



AS.No.1235 of 2015

WEB COPY

name of Venkatadas Naidu, Munilakshmiammal has no right to execute the settlement deed in favour of the Appellant. Since the 1st Respondent is the wife of Krishnasamy, she is also entitled to share in item (2) of the suit property.

12.Krishnasamy, husband of the 1st Defendant has not executed any document for his wife's livelihood. Since she got share in the 2<sup>nd</sup> item of the suit property it was presumed that she was in joint possession of the property (along with the co-sharers. Therefore, the contention of the Appellant is not acceptable.

13.The lower court after perusal of all the oral and documentary evidence and document, has arrived at a right conclusion and partly allowed the appeal. Therefore, no interference of this Court is required. Hence, this appeal is liable to be dismissed.

14.In fine, this Appeal Suit is dismissed. No costs.

06.06.2022

Index:Yes/No  
Web:Yes/No  
Speaking/Non Speaking  
Srcm/-

To

1. The Principal District Judge of Krishnagiri
2. The Record Keeper, VR Section, Madras High Court



WEB COPY



AS.No.1235 of 2015

A.A.NAKKIRAN, J.

Srcm/-

Pre-Delivery Judgement in  
AS.No.1235 of 2015

06.06.2022