



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.12.2022

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.2211 of 2002

1. Sowdammal
2. Santhammal
3. Rangammal
4. Chennaraji @ Cinnarajammal
5. N.Venkatachalam
- 6.N.Ramachandran
- 7.N.Chinnasamy
- 8.Subbulakshmi
- 9.Sambooranam
- 10.Balasubramaniam
- 11.Pathurusamy
- 12.Cinnakkannan
- 13.Dharmalingam
- 14.Kaliammal
- 15.Vijaya
- 16.Jothi
- 17.Nagammal

...Appellants

Vs.

1. Rajamani
2. Subramani
3. Ellammal
4. Suseela
5. Ramu
6. Palanisamy
7. Subramani
8. Ramachandran



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9. Paramesh

10. Vadivelu

11. Kannan

...Respondents

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24.12.2001 in A.S.No.221 of 2000 on the file of the 1st Additional District Judge-Cum-Chief Judicial Magistrate, Coimbatore confirming the judgment and decree dated 31.08.2000 in O.S.No.27 of 1983 on the file of the 1st Additional Sub Court, Coimbatore.

For Appellants : Mr.K.Selvaraj
Respondent-1 : AR.M.Arunachalam
For Respondent-4 : Died
For Respondent-5 : Served-No Appearance
For Respondents
2,3,6 to 11 : Not ready in notice

J U D G M E N T

The defendants are the appellants before this Court challenging the concurrent judgment and decree of the Courts below.

2. The facts leading to filing of the above second appeal are herein below narrated briefly and the parties are referred to as the plaintiffs and defendants respectively as set out in the suit O.S.No.27 of 1983 on the file of the I Additional Subordinate Judge, Coimbatore.



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3. The plaintiffs had filed the suit O.S.No.27 of 1983 on the file of the I Additional Subordinate Judge, Coimbatore seeking the relief of a declaration that the 2nd plaintiff is entitled to “A” and “B” schedule properties, as the sole heir succeeding to the estate of the deceased Chinnanaa Chettiar through the 1st plaintiff and for separate possession of the plaintiff “A” schedule properties, apart from seeking the issue of mesne profits in respect of the “A” schedule properties from the date of the suit till the date of handing over the possession to be relegated to other proceedings.

4. The suit was originally filed by Lakshmiammal and on her death, her daughter, Rajamani was brought on record as the second plaintiff. Since the plaint was originally filed only by the 1st plaintiff, the reference to plaintiff herein below only refers to the 1st plaintiff. It is the case of the plaintiff that the suit “A” and “B” schedule properties belonged to one Chinnana Chettiar. Chinnana Chettiar died on 01.06.1980 as a bachelor, issue less and intestate. Therefore, as per the provision of the Section 8 of the Hindu Succession Act, since there were no class-I legal heir, Lakshmiammal as his Clause-II legal heir was



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entitled to the property. The case of the plaintiff is that besides herself and Chinnana Chettiar, she had 4 other siblings, Nanjappa Chettiar, Mari Chettiar, Ramasamy Chettiar, Konnaiya Chettiar. All the 4 brothers had pre-deceased Chinnana Chettiar. Mari Chettiar and Konnaiya Chettiar died issue less. Nanjappa Chettiar died leaving behind him surviving defendants 1 to 10 as his legal representatives. Likewise, Ramasamy Chettiar had died leaving behind him surviving defendants 11 to 14. Defendants 15 to 20 are the tenants in respect of the suit “A” schedule properties. The plaintiff would submit that due to her lack of knowledge about the legal proposition, she had issued a notice dated 22.03.1982 to the defendants 1 to 11 calling upon them to partition the properties.

5. The first plaintiff died on 08.07.1988. Before her death, she had executed a registered Will on 28.04.1988 bequeathing the suit properties in favour of the 2nd plaintiff. Therefore, the 2nd plaintiff on the death of the 1st plaintiff had succeeded to the suit schedule properties. Therefore, she had impleaded herself as the 2nd plaintiff in the above suit.



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6. The suit was resisted by the defendants *inter-alia* contending that Chinnana Chettiar had been married to one Lakshmi Ammal and the fact that he had died as a bachelor was totally false. That apart, Nanjappa Chettiar and Ramasamy Chettiar, the brothers of Chinnana Chettiar had died after Chinnana's death. Therefore, it is their contention that they would also get the same share along with the plaintiff, since the Chinnana Chettiar's wife Lakshmi Ammal had passed away on 16.08.1980. They would also contend that the first plaintiff had another son, who had died and the 6th defendant is his wife, who has 2 other children. Therefore, they sought for dismissal of the suit.

7. The learned Subordinate Judge, Coimbatore had framed the following issues:

- “1. வாதி கோரியபடி ஒரு விளம்புகை பரிகாரம் பெற உரிமையுடையவரா?
2. வாதி மகசூல் நடத்திட்டு பெற உரிமையுடையவரா?”

8. The second plaintiff had examined herself as P.W1, one Dhandapani as P.W2, Murthy @ Krsihnamurthy as P.W3 and one Nagaraj as P.W4. Exs.A1 to A6 were marked on their side. On the side



of the defendants, the 23rd defendant had examined himself as D.W1 and Exs.B1 to B6 were marked. Ultimately, the Court below held that the plaintiff had proved that the Chinnana Chettiar had died intestate, issue less and a bachelor and the 1st plaintiff was his only surviving class-II heir. The learned Judge held that the suit has to be decreed in favour of the 2nd plaintiff, as the 1st plaintiff has executed a Will in favour of the 2nd plaintiff.

9. The defendant had challenged this judgment and decree in an appeal A.S.No.221 of 2000 on the file of the I Additional District Judge-Cum-Chief Judicial Magistrate, Coimbatore. The I Additional District Judge, by her judgment and decree dated 24.12.2001, was pleased to dismiss the appeal upholding the findings of the trial Court. Aggrieved by the same, the above Second appeal has been filed by the defendants and the same has been admitted on the following substantial questions of law.

“Whether the Courts below erred in not considering the material and vital admission of the 1st plaintiff in her plaint that right from March, 1982 she was not healthy and she had no faculty of her mind within her command even to instruct her counsel and



when such is the possession, the alleged Will is forged one?

10. The substantial question of law that has been urged by the defendants in this second appeal is totally contrary to the defense pleaded by the defendants both before the trial Court and the appellate Court. Nowhere has there been a mention about the ill health of Lakshmiammal. On the contrary, the contention of the defendants was that the Will was a forged one. This defense has been repulsed through the oral evidence of P.W3 who had not only attested the Will but had also identified the Testator's signature before the Sub Registrar's Office. Questions in cross have also not been raised in this regard. That apart, the plaintiffs have proved the execution of the Will by examining P.Ws 2 and 3, who are the attesting witnesses to Ex.A1-Will dated 28.04.1986. They have, in clear and cogent terms stated how and in what manner the Will-Ex.A1 came to be executed by Lakshmiammal in the presence of the attesting witnesses. Therefore, the substantial question of law framed in this suit has to necessarily be upheld against the defendants.

11. The following question of law has been framed on the basis



of the arguments have been heard on both sides.

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“Whether the defendants have proved that the Nanjappa Chettiar and Ramasamy Chettiar had survived Chinnaian Chettiar and therefore defendants 1 to 14 would also become entitled to a share along with the 2nd plaintiff.

12. Heard the learned counsels on either side and perused the materials available on record.

13. The only issue that hinges for consideration in the above second appeal is whether Nanjappa Chettiar and Ramasamy Chettiar had pre-deceased the Chinnana Chettiar. Ex.A2 is the death certificate of Nanjappa certificate which shows that his death is prior to that of the Chinnaian Chettiar. The plaintiff, who has not been able to produce the death certificate of Ramasamy Chettiar had filed Ex.A4, which is the plaint in O.S.No.1343 of 1996 on the file of the Sub Court, Coimbatore seeking partition of the suit property into 2 equal shares and allotting one share to the plaintiff. In the pleadings, it is seen that the suit property relates to property of Chinnaian Chettiar. The said Chinnaian Chettiar has been described as the brother of Ramasamy Chettiar, who



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incidentally was the plaintiff in the said suit. In the suit, which was filed in the year 1998, Ramasamy Chettiar was shown as dead. Ex.B3, which is the suit in O.S.No.1656 of 1980 filed by defendants 1, 2, 5 and 6 against the legal representatives of Nanjappa Chettiar and Ramasamy Chettiar on 01.12.1980 for partition and separate possession of the suit “A” and “B” schedule properties shows that Ramasamy Chettiar and the Nanjappa Chettiar had died even before institution of the suit and when the said Chinnaian Chettiar was alive. Therefore, the plaintiff has proved her case that Laskshmiaml was the only class-II legal heir entitled to succeed to the estate of late Chinnaian Chettiar. Therefore, by virtue of the Will of the 1st plaintiff, the 2nd plaintiff became entitled to it. The defendants who had come forward with the contention that the Nanjappa Chettiar and Ramasamy Chettiar survived Chinnaian Chettiar have failed to prove the same. In the light of the above, I find no merits in the appeal and the second appeal has to necessarily be fail.

14. Therefore, the second substantial question of law that now raised is answered against the defendants. The judgment and decree of



the both Courts below are confirmed. In fine, the second appeal is dismissed. No costs.

13.12.2022

Index :Yes/No

Internet:Yes/No

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To

1. The Subordinate Judge, Gingee
2. The Principal District Munsif, Gingee
3. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA.J,

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