



S.A.No. 332 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

S.A. No.332 of 2022

and C.M.P. No.6892 of 2022

T.Sakunthala

.. Appellant

Vs.

C.Subramanian (Died)

1. C.Rathinam
2. K.Eswari
3. K.Poovanan
4. K.Karthikeyan
5. B.Gowri
6. B.Sasikumar
7. B.Rajesh Kumar
8. S.Banumathy
9. S.Valarmurugu
10. S.Malathy
11. S.Manikandaprabhu
12. R.K.Srinivasan
13. P.Savitha

.. Respondents

(Respondents 1 to 11 are given up as they remained ex-parte before the
Courts below)



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Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 11.02.2021 made in A.S. No.58 of 2019 on the file of I-Additional Sub-ordinate Judge, Erode confirming the judgment and decree dated 15.07.2019 made in O.S. No.373 of 2012 on the file of the Principal District Munsif, Erode.

For Appellant : Mr. V.P.Sengottuvel

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The parties are referred to the same litigative status as before the trial Court.

2. The facts in brief necessary for disposing of the above second appeal are as follows:

The plaintiff had filed a suit in O.S. No.373 of 2012 on the file of the Principal District Munsif, Erode, seeking for partition of her 1/5th share in the suit schedule property and putting her in possession thereon. It is her case that the suit property is a separate and absolute property of her mother Ponammal. Ponammal and her husband Chenniappa Aasari had four sons and a daughter. The plaintiff is the only daughter of Chennaippa Asari and Ponnamal. Defendants 1, 2 and one Krishnan and Baskaran are their sons.



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Chennaipa Asaari had predeceased his wife as early as during Nov 2000.

Defendants 3 to 5 are the wife and children of deceased Krishnan and defendants 6 to 8 are the wife and sons of deceased Baskaran. It is the case of the plaintiff that the property was being enjoyed by her mother Ponnammal during her lifetime and after her demise, the plaintiff and defendants 1 to 8 are in enjoyment of the same.

2.1 While so, the defendants without the knowledge and consent of the plaintiff had tried to sell the properties which included the plaintiff's share to third parties during the third week of May 2012. This constrained the plaintiff to issue a general paper publication in a local daily 'Dinamalar' on 17.05.2012. The plaintiff had in fact visited the suit property on 03.06.2012 and came to learn that without her consent, the defendants have demolished the building in the suit property and removed the debris thereby retaining the property as a vacant site. The plaintiff had questioned the defendants, however, they did not respond favourably to the plaintiff. Thereupon, the plaintiff had lodged a complaint to the Superintendent of Police, Erode informing about the illegal actions undertaken by the defendants. Thereafter, the plaintiff had issued a legal notice to the defendants dated 06.06.2012 calling upon the defendants to partition the suit



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property. However the defendants did not come forward to partition the same and thereby constraining the plaintiff to file the suit for partition.

2.2 Pending the suit, it appears that the first defendant had died intestate on 11.11.2012 leaving behind him surviving defendants 9 to 12 who are his wife, daughters and two sons and they have been brought on record. The plaintiff also came to learn that the first defendant had created a registered settlement deed dated 12.02.2010 alleged to have been executed by the plaintiff's mother Ponnammal in respect of the suit property. It also appears that the defendants 1,2,4,5,7 & 8 have managed to procure a registered settlement deed dated 31.05.2010 from the said Ponammal. It also appears that the defendants have alienated the property in favour of defendants 13 & 14.

3 Defendants 4,5, 7 & 11 have filed their written statement which is adopted by defendants 2, 8, 9, 10 & 12. The defendants have *inter alia* denied the allegations contained in the plaint and submitted that the deceased Ponammal had enjoyed the property as its absolute owner. While so enjoying, the said Ponammal has executed firstly a settlement deed dated 12.02.2010 in favour of the first defendant which was later resettled by the



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first defendant in favour of the said Ponnammal under a registered settlement deed dated 28.05.2010. Thereafter, Ponnammal had settled the suit property in favour of her sons and grandsons namely defendants 1,2,4,5,7 & 8 under a registered settlement deed dated 31.05.2010. Being her independent property it is well open to the said Ponnammal to deal with her property in any way she desires. After the execution of settlement deed in favour of defendants 1,2,4,5,7 & 8, Ponnammal passed away on 12.11.2011. Therefore, they contended that the plaintiff had no right to claim any share in the property.

4 The 13 and 14th respondents have filed a written statement after being impleaded as parties to the proceedings in which they reiterate the defense raised by other defendants.

5 The plaintiff had filed a reply statement in which she contended that the settlement deeds have been procured without the consent and knowledge of deceased Ponnammal taking advantage of her poor health and mental condition. The plaintiff would further contend that the settlement deed (Ex.P18) was never acted upon and therefore, the plaintiff prayed for decreeing the suit.



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6. The learned Principal District Munsif, Erode, by his judgment and decree dated 15.07.2019 dismissed the suit on the ground that the mother Ponnammal, in her sound and disposing state of mind, had settled the property in favour of her sons. Aggrieved by the judgment and decree of the trial Court, the plaintiff preferred an appeal in A.S. No.58 of 2019 before the I Additional Subordinate Judge, Erode. The lower appellate Court also upheld the judgment and decree of the trial Court. Aggrieved by the concurrent judgment and decree of the Courts below, the appellant / plaintiff is before this Court.

7. Heard Mr.V.P.Sengottuvel, learned counsel appearing for appellant.

8. It is an admitted case that the suit property is the absolute property of the plaintiff's mother Ponammal, a Hindu female. The property in question is her absolute property giving her liberty to deal with it in the manner chosen by her. The said Ponammal, exercising her right as an owner, settled her property in favour of her sons and grandsons and they have also taken possession of their respective shares. The plaintiff is unable to prove that the said document has been obtained by fraud or deceit. She is also



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unable to prove that her mother was not in a sound and disposing state of mind on the said date. Even in her plaint she has not made such a statement i.e. the settlement deed has been obtained by fraud, coercion and undue influence. Once it is proved that the property belongs to a Hindu women and she had exercised her rights as an owner, the action cannot be questioned unless the person so questioning is able to prove extraneous circumstances or suspicious circumstances surrounding the execution of such deeds. The appellant / plaintiff had not been able to make out any grounds for setting aside the concurrent judgment and decree of the lower Courts.

9. In the result the second appeal is dismissed as the plaintiff / appellant has not made out any question of law much less a substantial question of law warranting the admission of the above appeal. However, there shall be no orders as costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non-speaking order

To:

1. The I-Additional Sub-ordinate Judge, Erode.
2. The Principal District Munsif, Erode.



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P.T.ASHA, J.,

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