



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No. 1030 of 2015
and M.P.No. 1 of 2015

1. Dhanasekaran (Died)
2. P.Dhanalakshmi
3. D. Kanagavalli
4. D. Barath
5. D. Vijai

(Appellants 2 to 5 are impleaded as legal heirs
of the deceased first appellant vide Court order dated
24.03.2022 made in CMP No.4978 of 2022 in
S.A.No.1030 of 2015)

...Appellants

Vs

1. Kadirvelu @ Selvam
2. Sundaram Udayar
3. Balasubramanian
4. Ramanathan
5. Ramadass

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to
set aside the Judgment and Decree dated 16.10.2014 in
A.S.No.38 of 2011 on the file of the Principal District Judge,
Pondicherry and confirming the Judgment and Decree dated
02.03.1998 in O.S.No.12 of 1997 on the file of the Additional
Subordinate Judge, Pondicherry.

For Appellants : Mr.B. Balavijayan

For Respondents : Mr.S.Ravichandran for R1
R2 to R5 - No appearance

JUDGMENT

The first defendant is the appellant in this second
appeal.

2. The first respondent/plaintiff filed a suit seeking
for the relief of declaration of title in the 'B' Schedule
property and for delivery of possession. The plaintiff also
sought for the relief of payment of arrears of rent.

3. The case of the plaintiff is that the suit property
was originally owned by one Kuppusamy Naicker. It is stated
that Kuppusamy Naicker and his wife Ayothi Ammal adopted the
plaintiff and he was brought up by them and the plaintiff
further claimed that he was assisting his father in his



business. The said Kuppusamy Naicker died on 22.05.1993. Thereafter, there was some dispute between the plaintiff and his adoptive mother Ayothi Ammal.

4. The further case of the plaintiff is that the said Ayothi Ammal started making a claim as if she is the sole legal heir of the deceased Kuppusamy Naicker and she also filed a suit in O.S.No.893 of 1993 seeking for a declaration to declare herself as the only sole legal heir of the deceased Kuppusamy Naicker. The plaintiff impleaded himself as the second defendant in the suit and contested the suit. After an elaborate trial, the learned First Additional District Munsif, Pondicherry, through Judgment and Decree dated 29.11.1994, marked as Exs.A1 and A2, held that both the plaintiff as well as Ayothi Ammal are the legal heirs of the deceased Kuppusamy Naicker. This decree became final.

5. The grievance of the plaintiff was that the first defendant started disputing the title and ownership of the plaintiff in the suit property. That apart, even the tenants were refusing to attorn the tenancy in favour of the plaintiff and they were recognizing the first defendant as the owner of the property. Left with no other option, the suit came to be filed seeking for the reliefs mentioned supra.

6. The first defendant filed the written statement and took a stand that he has become the absolute owner of the property by virtue of the Will executed by Ayothi Ammal, marked as Ex.B2. Hence, the first defendant completely denied the right and ownership of the plaintiff and sought for the dismissal of the suit.

7. Both the Courts below, on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held in favour of the plaintiff and decreed the suit. Aggrieved by the same, the first defendant has preferred this second appeal.

8. Heard, Mr.B.Balavijayan, learned counsel for the appellants and Mr.S.Ravichandran, learned counsel for the first respondent.

9. There are two main issues that were considered by both the Courts below, while decreeing the suit in favour of the plaintiff. The first issue pertains to the status of the plaintiff, who was claiming to be the adoptive son of Kuppusamy Naicker. Insofar as this issue is concerned, both the Courts below relied upon the Judgment and Decree passed in O.S.No.893 of 1993 and held that the plaintiff has been recognized as the adoptive son of Kuppusamy Naicker by a competent Civil Court and the decree has become final and hence the plaintiff is entitled to seek for ownership and title over the property that belonged to the adoptive father Kuppusamy Naicker.



10. The second issue pertained to the genuineness of the Will that was relied upon by the first defendant. Both the Courts below appreciated the evidence of DW.3, who was the attesting witness and also considered the suspicious circumstances surrounding the execution of the Will. It was found that Ayothi Ammal was admitted in JIPMER Hospital on 08.12.1994 as an inpatient and she died ultimately in the hospital on 20.12.1994. During the interregnum period, that is on 13.12.1994, the Will is said to have been executed by her in favour of the first defendant. Both the Courts below also considered the medical records that were marked as Exs.X1 and X2 and it was found that Ayothi Ammal was not in a fit state of health or mind on 12th or 13th of December 1994 and she could not have consciously executed the Will in favour of the first defendant.

11. The above finding rendered by both the Courts below was after appreciation of evidence and this Court does not find any perversity in those findings.

12. In view of the above discussion, this Court finds that there are no grounds to interfere with the Judgment and Decree of both the Courts below and this Court does not find any perversity in the finding rendered by both the Courts below. In any event, no substantial question of law is involved in this second appeal.

13. In the result, this second appeal is dismissed. Consequently, connected miscellaneous petition is closed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Pondicherry.

2.The Additional Subordinate Judge, Pondicherry.

+1cc to Mr.S.Ravichandran, Advocate SR. No. 20189

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and

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