



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A No.450 of 2013

1.R.Chinnasamy

... Appellant

Vs.

1.Rajammal

2.Gandhi

3.R.Rajendran

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against decree and judgement on the file of the Sub-Court Tirupattur dated 11.12.2012 in A.S No.15/2011 confirming the decree and Judgement of the learned District Munsif, Vaniyambadi dated 11.02.2011 in O.S No.140/2006.

For Appellant	: Mr.R.Subramanian for Mr.V.V.Sairam
For R1 & R2	: Served
For R3	: Mr.P.A Suresh Kumar



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JUDGMENT

The appellant herein is the first plaintiff in suit O.S No.140 of 2006 on the file of the District Munsif-Cum-Judicial Magistrate Court, Vaniyampadi, filed against the defendant/respondent herein for the relief of declaration and permanent injunction with respect to the suit property in S.No.99/2A and 384/2A at Sorakayalnatham Village by way of sale deed dated 21.04.1995 executed by one Chinamalai wife of Samudi and her son, against the defendants. First defendant claimed herself as wife of said Samudi who submitted that she is the legally wedded wife of Said samudi and the suit property was in her possession and the same was sold to the second defendant herein. Thereby, she denied the plaintiffs claim, both adduced evidence and documents before the Trial Court, based upon that the Trial Court framed issues and finally held that Chinnamali was not legally wedded wife of Samudi hence the sale deed executed by her in favour of the plaintiff is invalid and it will not bind the plaintiffs, and also held that the first defendant Rajammal is the legally wedded wife of deceased samudi and her claim over the suit property is maintainable accordingly suit was dismissed by the Trial Court.



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2. Aggrieved over the same, the plaintiff preferred an appeal in A.S NO.15 of 2011 before the said Thirupathur, wherein the first appellate Judge framed separate issues and analysed the facts and evidence and came of conclusion that no document was produced in favour of the Chinmmali as legally wedded wife of the samudi, hence the purchase made by the plaintiff as such is not maintainable because she is not legal heir of the deceased samudi and also held that first defendant was legally wedded wife of the deceased Samudi thereby the findings rendered by the Trial Court was confirmed.

3. Challenging the same, the plaintiff prepared this second appeal by submitting that both the Court below failed to appreciate the documents like marriage register and birth certificate of the minor samudi dated 01.12.1993 through which the plaintiff able to establish that Chennamali is wife of the said Samundi, but both the Court below erroneously dismissed the suit and which is totally unjust and illegal and prayed to set aside the findings rendered by both the Court below. Parties are denoted as per the Suit.



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and stated that alleged Chinnamali is not a wife of the said Samudi, indeed first defendant is the legally wedded wife of the Samudi and enjoyed the property after the demise of her husband/Samudi. Subsequently she sold the property to the second defendant for valid consideration. Hence the findings rendered by both the Court below needs no interference and he prays to dismiss the second appeal

7. Foremost point to be decided is who is the legally wedded wife of the Samudi ? As plaintiff approached the Court for declaration hence the burden is on the plaintiff to prove that he purchased the suit property from original legal heir of Samudi, to prove his claim the plaintiff examined said Chinnamali as P.W.3 she is being a illiterate women not able to understand the question of the Judge hence the trial Judge observed her caliber and closed the evidence. The contention of the plaintiff is that the said Samudi married Chinnamali which was registered at Sub Registrar Office, Natrarmaplli on 05.06.1987 to that effect Marriage Registration certificate was produced before the Court which marked as Ex.P3 . Admittedly, there is no dispute with regard to first wife of Samudi Amaravathi who died on 21.05.1986 the death certificate also marked as Ex.B1. Thereafter, the said Samudi married Chinnamali on 05.06.1987 at



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Makkagunda Sri Mamundeswari Ammal Koil, but in the said certificate/Ex.P3 as observed by the first appellate Judge no where mentioned about where the marriage was taken place, it is settled proposition that mere production of marriage certificate alone is not sufficient to prove the factum of marriage without examining independent witnesses, but case in hand the plaintiff produced marriage certificate/Ex.P3 which was obtained after 10 years of the alleged marriage is not sufficient to conclude that the Samudi married Chinnamali after demise of his first wife Amaravathi. On the other hand, the first defendant claimed herself as the legally wedded wife of Samudi and submitted that after the death of Amaravathi, Samundi was married the Rajammal/first defendant in front of family elders and they got three children. One of their children died at the age of 15 years and she produced the school certificate of that child which marked as Ex.B11 which established her matrimonial life with Samudi. Futher, she produced Voter list Ex.B5, B6 & B7 for the year of 1978, 1984, and 1988 respectively. As per the voter list the name of the Rajammal wife of samudi is mentioned, so also Amaravathi name also found, and in the ration card the name of the Samudi is mentioned as family head Rajamal and her children also shown as family members. Hence in the voter list of 1975 as



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well as 1984 name of the Rajammal was mentioned as wife of Samudi, But the plaintiff contended that even during the life time of Amaravathi the first defendant was lived with Samudi as his wife but the plaintiff not produced any evidence to prove that. As per the death certificate, Amaravathi was died in the year 1986. Even assuming that Rajamal being a second wife after demise of Amaravathi in the year of 1986 she became legally wedded wife of the Samundi. Furthermore, son born to the first defendant and Samundi was proved through Ex.B.11. Therefore, from these materials evidence the first defendant Rajammal established that she is the legal heir of deceased Samudi. Both the Court below properly appreciated all these facts and the evidence and rightly held that the first defendant is legal heir of the deceased Samudi who lived with him as wife during the life time of Samudi.

8. However the learned counsel for the plaintiff contended that during the life time of Samudi he entered into the sale agreement with him on 08.06.1994 within six months he died. Thereafter the plaintiff obtained sale deed from his wife Chinnamali by sale agreement by paying remaining amount. Assuming that agreement is valid one as per the terms of sale agreement sale consideration was fixed as 30,000/- and paid 25,000 as advance and for the remaining amount 5,000/- amount is to be paid within



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one years is condition. But within six months Samudi was died hence the plaintiff obtained sale deed/Ex.A1 from one Chinnamali as per the sale deed Ex.A1 dated 21.04.1995 the sale consideration was mentioned as 52,750/- the said amount was paid by the plaintiff to the Chinnamali at the time of registration of sale deed based upon the sale agreement dated 08.06.1994 in which sale consideration was mentioned only as 30,000 rupees. Furthermore, as per the agreement the plaintiff already paid 25000/- to the plaintiff that being so what necessitate the plaintiffs again to pay a sum of rupees 52, 750/- at the time of execution of the sale deed/Ex.A1. Furthermore, there is no recitals in the sale deed about alleged sale agreement. Therefore the plaintiff failed to establish that he entered into sale agreement with Samudi and his document Ex.A1 sale deed is contrary to his alleged agreement. Therefore the plaintiff failed to establish the sale agreement with Samudi this fact was rightly appreciated by the Court below which needs no interference.

9. Hence, the plaintiff miserably failed to establish that he entered into sale agreement with deceased Samudi and also not established that alleged Chinnamali is a legally wedded wife of the said Samudi. On the



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other hand the first defendant proved that she was a legal heir of the Samudi and during his life time she lived with Samudi and begotten children. As a legal heir of the Samudi she executed sale deed in favour of the second defendant after the demise of her husband. Furthermore, the first defendant was in possession of the property. Though the plaintiff claim he is in possession of the property there is no documentary proof on the side of him to prove his possession but both the Court below rightly appreciated this facts. Accordingly questions of laws are answered. Findings of the Court below is confirmed.

10. In the result, the Second Appeal is dismissed, as such suit is dismissed as devoid of merits. There shall be no order as to costs.

07.11.2022

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T.V.THAMILSELVI,J.

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To

1. The Sub-Court, Tirupattur.
2. The District Munsif, Vaniyambadi

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