



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.734 of 2013

T. Gunasekaran ... Appellant/Respondent/Plaintiff

Vs.

1. P. Jayaraman Naidu(died)

2. J. Narayanan

*3. Saroja ... Respondents/Appellants/Defendants

*R3 brought into record as legal heir of the deceased
R1 viz., P.Jayaraman Naidu, vide Court order dated 18.02.22
made in CMP No.20461/21, in SA No.734/2021 (NAVJ)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the II Additional Judge, City Civil Court, Chennai dated 15.03.2013 in A.S.No.137/2012 reversing the judgment and decree of the XVI Asst. Judge, City Civil Court, Chennai dated 15.07.2011 passed in O.S.No.6668/2009.

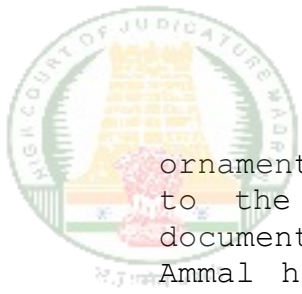
For Appellant : Mr.S.Rajendrakumar

For Respondents : Mr.T.S.Baskaran

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The case of the plaintiff is that the first defendant is the brother of the plaintiff's mother late Amsaveni Ammal. It is stated that she died when the plaintiff was very young and the plaintiff was brought up by his grandmother Thayarammal. The further case of the plaintiff is that during the year 2008 he got hold of a document which was executed by the grandmother of the plaintiff namely Thayarammal, wherein it was stated that the first defendant was directed to hand over the gold jewellery and



ornaments belonging to Amsaveni Ammal (mother of the plaintiff) to the plaintiff. Immediately after becoming aware of this document, the plaintiff came to know that his mother Amsaveni Ammal had certain jewellerys and other articles and after her death it was left to the custody of the grandmother namely Thayarammal. The said Thayarammal before her death in the year 2001, had given specific instructions to the first defendant to hand over the jewellery of Amsaveni Ammal to the plaintiff. Since the first defendant did not hand over the jewellery to the plaintiff as per the instructions of Thayarammal, contained in the document dated 20.01.2001, the plaintiff issued a legal notice calling upon the first defendant to hand over the jewellery and ornaments that were listed in the notice. The first defendant in spite of the receipt of the notice, did not act upon the same nor did he issue any reply for the legal notice. Hence, the plaintiff has proceeded to file the suit seeking for the relief of recovery of a sum of Rs.1,00,000/- which is the value of the gold ornaments that was retained by the first defendant and this amount has been sought to be recovered with interest.

3. The defendants filed a written statement and denied the case that was put forward by the plaintiff. The defendants also questioned the maintainability of the suit on the ground that it is barred by limitation and also on the ground that the Court below did not have the territorial jurisdiction to deal with the suit.

4. The Trial Court on appreciation of the oral and documentary evidence, through judgment and decree dated 15.07.2011, decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendants filed an appeal before the II Additional City Civil Court at Chennai in AS No.137 of 2012. The Lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed the Appeal through a judgment and decree dated 15.03.2013 and thereby set aside the judgment and decree of the Trial Court and consequently dismissed the suit. Aggrieved by the same, the plaintiff has come forward with this Second Appeal.

5. Heard Mr.S.Rajendrakumar, learned counsel appearing for the appellant and Mr.T.S.Baskaran, learned counsel appearing for the respondents. This Court also carefully considered the materials available on record and the findings of both the Courts below.

6. In the present case, there is one fundamental fact which has not been proved by the plaintiff and that by itself is



fatal to the case of the plaintiff. There was absolutely no proof to show that Ammsaveni Ammal had handed over the jewels to the custody of Thayarammal and she in turn had handed over custody to the first defendant and directed the first defendant to hand it over to the plaintiff. This is not a matter of presumption and this is the basic fact that requires to be proved by the plaintiff. If the plaintiff does not prove this fact, all the other materials pales into insignificance. Therefore, this Court does not want to go into the other findings rendered by the Lower Appellate Court and it is enough to sustain the judgment and decree of the Appellate Court on the ground that the plaintiff has failed to prove the handing over of the custody of the gold ornaments by Amsaveni Ammal to Thayarammal and thereafter, by Thayarammal to the first defendant. This is a factual finding given by the Lower Appellate Court based on the evidence available on record and this Court does not find any perversity in that finding. In any event, this court does not find any substantial questions of law involved in the Second Appeal.

7. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

jv

To

1.The II Additional Judge
City Civil Court, Chennai.

2.The XVI Asst. Judge,
City Civil Court, Chennai.

+1cc to Mr.Rajendra Kumar for M/s.Norton & Grant, Advocate
SR.No.16186

+1cc to Mr.T.S.Baskaran, Advocate SR.No.15641

Second Appeal No.734 of 2013

SJ(CO)
CB(28/03/2022)