



S.A No. 99 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

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

S.A No.99 of 2013

1.Antonisamy
2.Santhi
3.P.Amrithan
4.Jayaseeli
5.Maria Joseph

... Appellants

Vs.

1.Rajammal
2.The District Collector,
Villupuram District.
3.The Revenue Divisional Officer,]
Thirukoilur.
4.The Tahsildar
Thirukoilur.

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree dated 27.04.2010 in A.S No. 94 of 2004 on the file of the I Additional Sub Court, Villupuram Reversing the Judgment and Decree dated 08.04.2004 in O.S No.313 of 2000 on the file of the II Additional District Munsif Court, Tirukoilur.



WEB COPY



S.A No. 99 of 2013

For Appellants : Mr.A.R.Nixon

For R1 : Mr.D.Rajasekar

For R2 to R4 : Mr.S.Suriya

Additional Government Pleader.

JUDGMENT

The appellants herein are the defendants in suit O.S No.313 of 2000 filed by the first respondent/plaintiff herein for the relief of declaration and injunction with regard to suit property in Natham Survey No. 172/8 with an extent of one acre and new No.229/18 with an extent of 105 square meter vacant site. Claiming that the said property belongs to his mother Chellamal and during her life time she executed registered Will in favour of her/plaintiff dated 19.05.1987 in the year of 1998 her mother died then she became a absolute owner of the property. Thereafter, she/plaintiff tried to start up construction the defendants raised objection and claimed right over the property. Hence the suit.

2. The defendants claimed that the suit property along with other properties in S.No. 172 belongs to one Salankathi from him



S.A No. 99 of 2013

defendant's grand father orally purchased the property for rupees 50 rupees including suit properties after their grandfather demise at allotted to the share of the defendant's father and his brothers are in possession of the property, after his demise as per the oral division the defendants are enjoyed the property. On considering their possession and enjoyment the the government revenue authorities assigned pattta to the defendants 1, 2 and 3 and as such they constructed house and enjoyed the property including suit property i.e., 12, 13, 14 in Survey No. 172/8 thereby they totally denied the plaintiffs right over the suit property. Before the Trial Court on the side of the plaintiff five witnesses were examined and Ex.A1 to A17 documents were marked and on the side of the defendants three witnesses were examined and Ex. B1 to B11 documents were marked and the commissioner report also marked as Ex.C1 to C3.

3. Considering the evidence as well as the documents adduced on either side the Trial Court held that plaintiff not proved the Will so also possession of her mother dismissed the suit.

4. Aggrieved over the findings of the Trial Court plaintiff preferred an appeal in A.S No.94 of 2004 before the Sub Court, Villupuram, the Lower appellate Court independently analysed the facts and evidence



S.A No. 99 of 2013

held that Will was proved by the plaintiff so also possession thereby the appeal was allowed granting the relief in favour of the plaintiff.

5. Aggrieved over the same the defendant preferred this second appeal.

6. At the time of the arguments the learned counsel for the appellant submitted that it was reported that third respondent died and the second respondent remains exparte. The first defendant/first respondent alone contested the suit. Hence before submitting to the arguments, the learned counsel for the appellant herein/first respondent submitted that without impleading legal heirs of the deceased 3rd respondent the plaintiff contested the appeal as such is not maintainable so also the decree passed by the appellate Judge also against the dead persons is nullity. He relied the Judgement reported in 2020 STPL 6956 HP in Amar Singh & Another Vs State of Himachal Pradesh & Another.

7. By way of reply the learned counsel for the respondent relied the following Judgement reported in AIR 1963 (Cal) 289, relying the above proposition plaintiff/respondent counsel submitted that if the decree is passed in favour of the deceased already in ignorance of his death the



S.A No. 99 of 2013

Court is not bound to treat it as nullity and to vacate it at the instance of party who has been fully heard. On behalf of the third defendants the first defendant alone contested the suit therefore even if the third defendant died his brother first defendant contested the suit hence the decree as such is valid one.

8. Both the Court below impleaded legal heirs of the third defendants and the cause title accepted vide order dated 04.12.12 by this Court. Therefore, now the legal heirs of the deceased third respondent also on record and their cause title also accepted by this Court and the counsel for the defendant/respondent not raised any objection at the time of accepting the cause title subsequently at the time of the arguments he raised such objections as such is not acceptable. The contention of the appellant is that the suit property and other properties are belongs to him by way of purchase as well as patta stands in his name.

9. Heard both sides.

10. The suit property belongs to her/Plaintiff as per the Will executed by her mother marked as Ex.A1 dated 19.05.1987 is registered Will executed in favour of the plaintiff. To prove the Will, the plaintiff examined one of the attester P.W.3, as per his evidence he along with two



S.A No. 99 of 2013

other signed the documents as attesor. But the Trial Court simply rejected the evidence of P.W.3 that he is not deposed about the sound state of mind by the attesor. However on considering the entire evidence of D.W.3 she deposed that in respect of the suit property Chellamal executed the Will in favour of the plaintiff but the defendant not suggested to the said witness that Chellamal was not executed the Will with sound state of mind. As per Ex.A2 (14 day memorial card sqaurely reveals that mother of the plaintiff was died in the year 1999 near about 10 years after execution of the Will. The plaintiff also cross examined another witnesses P.W.3 who was attesor of the Will also deposed that chellamal executed two Will in favour of the plaintiff and signed the documents through P.W.2 and P.W.3 plaintiff proved the execution of the Will as required under Section 68 of the Indian Evidence Act. Furthermore, enjoyment of her mother plaintiff examined P.W.5 age about 81 years as per his evidence Chellamal enjoyed the property thereafter it belongs to the plaintiff but the plaintiff enjoyed the property by putting up bath room So through the independent witness plaintiff also established that the property was enjoyed by her mother Chellamal. Moreover, as per the recitals of the Will it reveals that said property was purchased by the plaintiff's mother. By way of purchase in the



year of 1987 from one Chinnammal near about 13 years after registered Will was executed by the plaintiff's mother in favour of the plaintiff. Thus plaintiff her mother's title over the property and execution of Will in her favour by examining attestor. But the Trial Court findings with regard to the Will Ex.A1 that it was not proved by the plaintiff it is un-sustainable one for the reason that through evidence of P.W.3 and P.W.4 the plaintiff proved the Will as discussed above.

11. The claim of the defendant is that the suit property originally belongs to Salangati with vast extent but portion of the property was purchased by his grand father after his death property was divided among the defendants as legal heirs. Now the suit property along with properties enjoyed by them and the patta already assigned to them, to established their contention they relied the patta which was marked as EX.B1. But as observed by the Court below two properties described in the patta in sold are not dealt with the suit properties, besides boundaries of properties also totally adverse as per the commissioner report. Further, also the patta assigned to the defendants 1, 2 and 3 also not dealt with the suit properties stands in the name of the plaintiff, as per Ex.A3 patta No.445 issued in favour of the plaintiff with specific four boundaries as described



S.A No. 99 of 2013

in the plaint schedule. Existence of the physical features of the property also proved through commissioner report. As per the report submitted by the commissioner the suit property is shown as MNOP with green colour. And the physical features reveals that it is lying as vacant site and there is no Salame Village as alleged by defendants. As per the patta issued in the name of the defendants they are put up house and residing there but the suit property is admitted to be encroached along with their house properties. Hence, the plaintiff proved the suit property is belongs to her through Will so also possession lower appellate Judge also rightly appreciated the evidence and documents and rightly held that defendants not proved their claim and right over the property. On the other hand plaintiff proved that the suit property is absolutely belongs to her hence the findings rendered by the lower appellate Judge needs no interference. Hence question of law A is answered.

12. With regard to adverse possession though the plaintiff claimed that more than decades she enjoyed the property knowingly with the knowledge of the defendants, but as discussed above as per the Will she became absolute and true owner of the property there is no necessity to give findings with regard to adverse possession. Accordingly, question of law B



S.A No. 99 of 2013

is answered.

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13. With regard to questions of law C and D Will is proved by the plaintiff and with regard to date of death of her mother Ex.A2 (40 day memorial day card proves that her mother was died on 23.02.1999 and there is no possibility of creating the fake document about 11 years earlier. So dated of death also proved by the plaintiff accordingly, question of law B E F G is answered.

14. Thud property belongs to the plaintiff's mother Chellamal by way of purchase also mentioned in the Will and through the commissioner report physical features of the suit properties also proved that apart Examination of P.W.5 who aged more than 80 years mentioned the possession and enjoyment of the plaintiff and her mother was proved. Hence, the plaintiff proved the possession through material evidence accordingly question of law E and J is answered. Hence, the findings rendered by the Lower Appellate Court is confirmed. Accordingly, suit is decreed as prayed for.



S.A No. 99 of 2013

WEB COPY

15. In the result, Second appeal is dismissed as devoid of merits. No costs.

31.10.2022

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S.A No. 99 of 2013

T.V.THAMILSELVI,J.

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To

1. The I Additional Sub Court, Villupuram.
2. The II Additional District Munsif, Tirukoilur.
3. The Section Officer,
V.R Section.

SA.No.99 of 2013

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