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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2022
PRONOUNCED ON : 18.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SECOND APPEAL NOS.119 AND 120 OF 2016
& CMP.NO.2608 OF 2016

Bharathi (a) Jayabharathi ...Appellant in both SAs /
Defendant & Plaintiff

Vs

1.Perumal ...Respondent in SA.No.119 of 2016 /
R1 in SA.No.120 of 2016 /
Plaintiff & Defendant

2.Vijayalakshmi ...R2 in SA.No.120 of 2016 /
2nd Defendant

Appeal under Section 100 of the Civil Procedure Code against the common judgment and decrees dated 30.6.2015 in A.S.Nos.7 and 8 of 2010 on the file of the First Additional District and Sessions Court, Vellore reversing the common judgment and decrees dated 29.4.2009 in O.S.Nos.32 of 2005 and 45 of 2007 on the file of the Subordinate Court, Gudiyatham, Vellore.

For Appellant in both SAs : Ms.P.Veena Suresh

For Sole Respondent in
SA.No.119 of 2016 &
R1 in SA.No.120 of 2016 : Mr.T.Karunakaran

COMMON JUDGMENT

The issue involved in both these second appeals are common and hence, they are taken up together, heard and disposed of through this common judgment.

2. The appellant was the defendant in the suit filed by the respondent namely Perumal in O.S.No.32 of 2005 on the file of the Subordinate Court, Gudiyatham. She was the plaintiff in the suit filed by her in O.S.No.45 of 2007 on the file of the same Court against the same respondent and another.



3. For the sake of convenience, the rank of the parties will be identified as arrayed in O.S.No.32 of 2005.

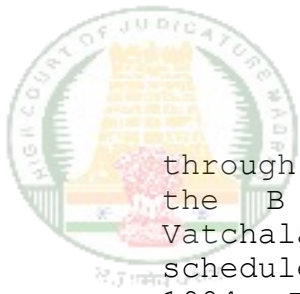
4. The respondent herein - plaintiff filed the suit seeking for the relief of declaration of title over B schedule property and for a direction to the appellant herein - defendant to deliver possession of the B schedule property.

5. The case of the plaintiff is that he and his father Dhanapal Mudaliar constituted a Hindu joint family and A schedule property was the total property consisting of a tiled house and vacant site. It is stated that the A schedule property fell to the share of the father of the plaintiff under a registered partition deed dated 27.7.1950. According to the plaintiff, he and his father were jointly enjoying the A schedule property, which was claimed to be a joint family property.

6. The further case of the plaintiff was that the defendant is the daughter of the second wife of his father and according to the plaintiff, she is not entitled for any share in the A schedule property. That apart, the defendant already got married in the year 1988 and she has given birth to two male children and a female child and she is settled in her matrimonial home. Accordingly, the defendant is not entitled for the right conferred under the State Amendment made to the Hindu Succession Act, which came into force on 25.3.1989.

7. The plaintiff further pleaded that his father sold his share through a registered sale deed dated 12.1.1993, marked as Ex.A1, in favour of the plaintiff and possession was also handed over to the plaintiff. As such, the plaintiff is claiming to be the absolute owner of the entire A schedule property. The father of the plaintiff died in the year 1994. The mother of the defendant had executed a registered settlement deed dated 20.2.1995, marked as Ex.B23, in favour of the defendant as if she is the owner of the B schedule property. Based on this document, the defendant filed a suit for permanent injunction in O.S.No.159 of 2004 (renumbered as O.S.No.45 of 2007) with respect to the B schedule property against the plaintiff and another. Thus, the defendant was attempting to create a cloud over the title of the plaintiff with respect to the B schedule property. Hence, the plaintiff filed the suit seeking for the relief of declaration of title and to deliver possession of the B schedule property.

8. The case of the defendant was that the A schedule property was allotted in favour of her father Dhanapal Mudaliar under a registered partition deed dated 27.7.1950. He, in turn,



through oral partition that took place on 05.2.1987, allotted the B schedule property in favour of his second wife Vatchalammal. She was in possession and enjoyment of the B schedule property till the death of her husband in the year 1994. Thereafter, the said Vatchalammal executed a settlement deed dated 20.2.1995 in favour of the defendant and possession was also handed over to her. The defendant continued to possess and enjoy the B schedule property by paying the house tax and the electricity charges. The grievance of the defendant is that the plaintiff attempted to trespass into the B schedule property and hence, she filed an independent suit seeking for the relief of permanent injunction.

9. The Trial Court, after considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, was pleased to dismiss the suit filed in O.S.No.32 of 2005 and decreed the suit filed in O.S.No.45 of 2007 by common judgment dated 29.4.2009.

10. Aggrieved by the same, the plaintiff filed two appeals in A.S.Nos.7 and 8 of 2010 on the file of the First Additional District and Sessions Court, Vellore, Vellore District. The Lower Appellate Court, on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, through common judgment dated 30.6.2015, allowed both the appeals and thereby the common judgment and decrees of the Trial Court were set aside and the suit filed in O.S.No.32 of 2005 was decreed. As against the same, the defendant filed these second appeals.

11. When the second appeals were admitted on 18.2.2016, the following substantial questions of law were framed by this Court:

"1. On the facts and circumstances of the case, when the B schedule property is given to Vatchalammal, being the second wife of V.R.Dhanapal Mudaliar towards her maintenance, is the learned I Additional District Judge right in holding that the suit property is not the absolute property of Vatchalammal under Section 14(1) of the Hindu Succession Act?

2. From the evidence, when it is clear that the B schedule property was allotted to the second wife towards her maintenance, is the learned I Additional District Judge right in not invoking Section 14(1) of the Hindu Succession Act in favour of the defendant ?

3. Whether the learned I Additional



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District Judge is right in reversing the well considered judgment of the Trial Court by ignoring the vital admission of the plaintiff as PW1 ? and

4. In the facts and circumstances, when the plaintiff has miserably failed to prove permissive occupation of the defendant's mother over the suit B schedule property, whether the learned I Additional District Judge right in allowing the appeals?"

12. This Court heard Ms.P.Veena Suresh, learned counsel appearing for the appellant in both the appeals and Mr.T.Karunakaran, learned counsel appearing for the sole respondent in SA.No.119 of 2016 and for the first respondent in SA.No.120 of 2016. This Court carefully went through the materials available on record and also the findings rendered by both the Courts below.

13. There is no dispute with regard to the fact that the A schedule property was allotted in favour of Dhanapal Mudaliar through a registered partition deed dated 27.7.1950. There is also no dispute with regard to the fact that the property in question was in the nature of a joint family property. The respondent was the son born to the said Dhanapal Mudaliar through his first wife and the appellant was the daughter born to him through his second wife Vatchalammal. It is also admitted that the said Dhanapal Mudaliar married the mother of the appellant only after the demise of the first wife. It will also be relevant to state that the said Dhanapal Mudaliar had another daughter through his first wife and she was married much prior to the coming into force of the Tamil Nadu Hindu Succession Amendment Act (Act 1 of 1990). There is also no dispute with regard to the fact that the said Dhanapal Mudaliar died on 25.4.1994 much prior to coming into force of the Central Amendment to the Hindu Succession Act through Act 39 of 2005.

14. The respondent claimed absolute right over the A schedule property. He is entitled to claim half share in the A schedule property on his birth since it is an ancestral property. In so far as the other half share is concerned, he is claiming right through the sale deed executed by his father on 12.1.1993.

15. The case of the appellant is that there was an oral partition wherein the B schedule property was allotted in favour of her mother on 05.2.1987 and she, in turn, executed a settlement deed dated 20.2.1995 in favour of the appellant and thereby the appellant is claiming absolute right over the B schedule property.



16. The Lower Appellate Court found that the appellant was not able to prove the so called oral partition and the allotment of the B schedule property in favour of her mother. In order to arrive at such a finding, the Lower Appellate Court took into consideration the oral evidence of the appellant wherein she has given different versions on the oral partition. On the one hand, she states that the B schedule property was allotted in favour of her mother in the year 1965 towards her maintenance. She has also stated that the B schedule property was allotted in favour of her mother in the oral partition that took place on 05.2.1987. Thus, the appellant was not clear as to when the B schedule property was allotted in favour of her mother.

17. The Lower Appellate Court also took into consideration the evidence of DW3, who was the mother of the appellant. She had clearly admitted that she filed a maintenance suit in O.S.No.844 of 1991 against the said Dhanapal Mudaliar and sought for creating a charge over the entire A schedule property. If this version given by DW3 is taken to be correct, then the allotment of the B schedule property through oral partition in the year 1965 or in the year 1987 becomes unbelievable. The mother of the appellant could not have asked for creating a charge over the property, which was allotted in her favour in the oral partition. Thus, the theory of oral partition completely failed and the same was taken note of by the Lower Appellate Court.

18. The Lower Appellate Court also took into consideration the fact that the appellant had filed a partition suit in O.S.No.836 of 1991 against the said Dhanapal Mudaliar. In that suit, she pleaded as if her father is the owner of the suit property along with the respondent and she does not indicate anywhere about the right of her mother in the B schedule property. The Lower Appellate Court has assigned sufficient reasons to disbelieve the theory of oral partition as propounded by the appellant.

19. In the present case, Section 14(1) of the Hindu Succession Act will not come into play. This is by reason of the fact that the B schedule property was never allotted in favour of the mother of the appellant in lieu of maintenance. This provision will come into play only to a property, in which, a female Hindu has acquired some kind of title, howsoever the restricted nature of interest may be. By virtue of this provision, a female Hindu, who had a limited ownership over the property becomes a complete owner of the property. Therefore, the sine qua non to apply this provision is that the female Hindu should have acquired some title over the property, failing which, this provision cannot be applied.



20. In the present case, the mother of the appellant had married the said Dhanapal Mudaliar and was residing along with him in the property. That, by itself, will not clothe her with any title over the property. This is more so in view of the fact that the so called oral partition, through which, she claimed a right over the property, was not proved. Thus, the suit property was not allotted in favour of the mother of the appellant in lieu of maintenance and Section 14(1) of the Hindu Succession Act will not have any applicability to the facts of the present case. Accordingly, the first and second substantial questions of law are answered against the appellant.

21. In the absence of any right for the mother of the appellant over the B schedule property, she could not have conferred any right or title through the settlement deed in favour of the appellant. Therefore, the Lower Appellate Court was perfectly right in holding that the appellant does not have right or title over the B schedule property.

22. It is true that the appellant was in possession and enjoyment of the B schedule property. That does not mean that the relief of permanent injunction can be granted in her favour since the respondent has established his title over the property and consequently will be entitled for the relief of recovery of possession. Hence, the documents filed on the side of the appellant to show her possession and enjoyment of the B schedule property will be of no avail when the appellant does not have any right or title to remain in possession of the B schedule property.

23. In view of the above, the Lower Appellate Court was perfectly right in rejecting the relief sought for by the appellant for permanent injunction and granting the relief sought for by the respondent for declaration of title and delivery of possession. The possession of the mother of the appellant in the suit property and the possession claimed by the appellant in the B schedule property can only be termed as permissive possession and they cannot remain in possession of the property as a matter of right since they do not have any right or title over the B schedule property. The fourth substantial question of law is answered accordingly against the appellant.

24. The Lower Appellate Court has assigned cogent reasons while rendering its findings and while differing with the findings of the Trial Court. The Lower Appellate Court has fulfilled the requirements of Order XLI Rule 31 of the Civil Procedure Code. The third substantial question of law is answered accordingly against the appellant.



25. In view of the above discussions, this Court does not find any ground to interfere with the findings of the Lower Appellate Court and the common judgment and decrees rendered by the Lower Appellate Court in both the appeals are hereby confirmed. The substantial questions of law framed for consideration are answered against the appellant.

26. In the result, both the second appeals are dismissed. There shall be a direction to the appellant to quit and deliver vacant possession of the B schedule property to the respondent namely Perumal within a period of three months from the date of this judgment. Consequently, the connected CMP is also dismissed. Considering the relationship between the parties and after considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

RS

To

1.The First Additional District
and Sessions Court,
Vellore.

2.The Subordinate Court,
Gudiyatham, Vellore.

+1cc to M/s.P.Veena Suresh, Advocate Sr.No.25868

+3ccs to Mr.T.Karunakaran, Advocate Sr.No.25866, 25867

S.A.Nos.119 and 120 of 2016

SR(CO)
RVM(04/07/2022)