



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.Nos.644 & 645 of 2016

S.A.No.644 of 2016

1.Selvam
2.Revathi
3.Chinnammal

...Appellants / Appellants /
Plaintiffs

Vs

1.Pushparani
2.Malliga
3.Thillaikarasi
4.Devagi
5.Venkatachalam

...Respondents / Respondents /
Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 13.08.2015 in A.S.No.38 of 2013 on the file of the Principal District Judge, Salem and confirming the Judgment and Decree dated 08.11.2012 in O.S.No.270 of 2010 on the file of the Principal Subordinate Judge, Salem.

For Appellants : Mr.Arjun
for Mr.Muthumani Doraisami

For Respondent : R1 to R3 - No appearance
Mr.Kalyana Raman for R4 & R5

S.A.No.645 of 2016

1.Selvam
2.Revathi
3.Chinnammal

...Appellants / Appellants /
Defendants

Vs

C.R.Venkatachalam

...Respondent / Respondent /
Plaintiff



PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 13.08.2015 in A.S.No.39 of 2013 on the file of the Principal District Judge, Salem and confirming the Judgment and Decree dated 08.11.2012 in O.S.No.438 of 2011 on the file of the Principal Subordinate Judge, Salem.

For Appellants : Mr.Arjun
for Mr.Muthumani Doraisami

For Respondent : Mr.Kalyana Raman

COMMON JUDGMENT

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

2. The appellants in S.A.No.644 of 2016 are the plaintiffs, who filed the suit in O.S.No.270 of 2010, seeking for the relief of partition and for allotment of 3/5th share in the suit properties. They also sought for the relief of permanent injunction restraining the defendants from encumbering or alienating the suit properties. The fifth defendant in the suit was the plaintiff in O.S.No.438 of 2011 and the appellants herein were the defendants in that suit. The fifth defendant filed that suit seeking for the relief of permanent injunction.

3. For proper understanding, the rank of the parties will be identified as they are described in O.S.No.270 of 2010.

4. The case of the plaintiffs is that the suit properties are in the nature of ancestral properties of Kolandai Gounder and according to the plaintiffs, the first and second plaintiffs and the first and second defendants are entitled for a share in the said property. It is stated that Kolandai Gounder got this property through a registered partition deed dated 15.07.1958, marked as Ex.A1. The further case of the plaintiffs is that the plaintiffs 1 and 2 are the daughters of the third plaintiff Chinnammal and the defendants 1 and 2 are the daughters of Kolandai Gounder born through the first wife Sellammal. The third plaintiff is the second wife of Kolandai Gounder.

5. It is stated that the said Kolandai Gounder died intestate on 07.12.2004 and thereafter, the plaintiffs 1 and 2 and defendant 1 and 2 are entitled for a share in the property. The grievance of the plaintiffs is that the first and second defendants were refusing to partition the properties inspite of several request made by the plaintiffs and left with no other



alternative, the suit was filed seeking for the relief of partition and permanent injunction.

6. The first and second defendants filed a written statement and took a stand that the first and second plaintiffs were married more than 25 years ago and they were living in their matrimonial home and they were provided sufficiently by the said Kolandai Gounder. They took a further stand that the said Kolandai Gounder executed a registered Will dated 27.09.2004, marked as Ex.B3, whereby the suit properties were bequeathed in favour of the first defendant absolutely. On the demise of Kolandai Gounder on 07.12.2004, the first defendant became the absolute owner of the suit property and hence the plaintiffs do not have any right, interest or share in the suit properties. Accordingly, the first and second defendants sought for the dismissal of the suit.

7. The stand taken by the fifth defendant in the suit filed by him in O.S.No.438 of 2011 is that the first defendant, who was the absolute owner of the suit property, wanted to sell the suit property and the first defendant along with her sons gave a registered power of attorney dated 14.10.2009 in favour of the fourth defendant. Based on the said power of attorney, two sale deeds were executed in favour of the fifth defendant and those sale deeds were marked as Exs.B7 & B8. The further case of the fifth defendant is that he is in possession and enjoyment of the suit property and the revenue records were also mutated in his name. The grievance of the fifth defendant was that the plaintiffs attempted to interfere with his possession and enjoyment of the suit property and hence he was forced to file a separate suit seeking for a relief of permanent injunction.

8. The issues involved in both the suits were interconnected and the parties were the same and the property involved was also the same and hence both the suits were taken up together and a joint trial was conducted. Both the Courts below concurrently held against the plaintiffs and dismissed the suit and allowed the suit filed by the fifth defendant. Aggrieved by the same, both the second appeals have been filed before this Court.

9. Heard the learned counsel appearing on either side. This Court carefully perused the materials available on record and also the findings of both the Courts below.

10. The present case revolves around the document that was marked as Ex.B5. It was an admitted case that the suit properties were the ancestral properties in the hands of Kolandai Gounder. There is no dispute with regard to the relationship between the parties. During the life time of Kolandai Gounder, he had executed a document, which is styled as



cannot interfere with the possession and enjoyment of the fifth defendant in the suit property.

15. In the considered view of this Court, the findings rendered by both the Courts below were based on the oral and documentary evidence and this Court does not find those findings to be perverse. The facts and circumstances of the case shows that the first and second plaintiffs were sufficiently provided at the time of their marriage and the second wife, viz., the third plaintiff was also sufficiently taken care and in any case the third plaintiff will not have any share in the suit property. This Court does not find any substantial question of law is involved in these second appeals.

16. In the result both the second appeals are dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

Lpp

To

1.The Principal District Judge,
Salem

2.The Principal Subordinate Judge,
Salem.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to Mr.S.Kalyanaraman, Advocate Sr.No.20216, 20217

+2ccs to Mr.Muthumani Doraisami, Advocate Sr.No.20529

S.A.Nos.644 & 645 of 2016

VBM(CO)
RVM(05/05/2022)