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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.289 of 2014

and

M.P.No.1 of 2014

Palaniammal

.... Appellant/Plaintiff

Vs

1. Kesavan @ Vaiyapuri

2. Kandayee

3. Minor.Shobika

Rep by her next friend Kesavan @ Vaiyapuri

4. Thangammal

5. K. Arasu

.... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 12.11.2013 in A.S.No.9 of 2013 on the file of the Principal District Judge, Namakkal confirming the Judgment and Decree dated 02.11.2012 in O.S.No.138 of 2008 on the file of the Subordinate Court, Tiruchengode, Namakkal District.

For Appellant : Mr.I.C.Vasudevan

For Respondents : Mr.E.P.Senniyangiri for R1 to R4

JUDGMENT

The plaintiff is the appellant in this second appeal.

2. The plaintiff filed the suit seeking for the relief of declaration to declare the alienation of the 1/5th share in the 'B' Schedule property as null and void and not binding on the plaintiff and for a decree of partition of 'A' and 'C' Schedule properties and allotment of 1/5th share in those properties.

3. The first defendant is the brother of the plaintiff. The second defendant is the mother of the plaintiff. The third defendant is the daughter of the first defendant and the fourth



defendant was the subsequent purchaser from the first and second defendants. It is further stated that the father of the plaintiff late Muthusamy died intestate in the year 1970 leaving behind the plaintiff and the defendants 1 and 2 as his legal heirs. The further case of the plaintiff is that the suit properties are the ancestral properties of late Muthusamy and that she is entitled for a share in the suit properties by virtue of the 2005 Amendment Act. It is further stated that the first and second defendants alienated a portion of the suit property without the consent and knowledge of the plaintiff and therefore the same is not binding on the plaintiff. Since the defendants were not coming forward to partition the properties and allot the share of the plaintiff, the suit came to be filed seeking for the relief mentioned supra.

4. The defendants filed a written statement and they took a stand that the suit properties are the self-acquired properties of the paternal grandfather Kandappa Gounder. He executed a Will dated 20.01.1978, marked as Ex.B1 in favour of the first defendant and the second defendant was made to represent the first defendant in her capacity as the natural guardian. On the demise of the said Kandappa Gounder, the first defendant became the absolute owner of the suit properties. Thereafter, they had executed sale deeds in favour of third parties and sold portions of the suit properties in their own right. The defendants took a further stand that the husband of the plaintiff even acted as the attesting witness when two portions of the suit properties were sold in the year 1988. Therefore, it was contended that the plaintiff was very much aware about the Will executed by Kandappa Gounder and also the fact that the suit properties were the self-acquired properties. Accordingly, the defendants denied the very claim of the plaintiff seeking for a share in the suit properties and sought for the dismissal of the suit.

5. Both the Courts below, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this second appeal.

6. Heard, Mr.I.C.Vasudevan, learned counsel for the appellant and Mr.E.P.Senniyangiri, learned counsel for the respondents 1 to 4. This Court carefully considered the materials available on record and the findings of both the Courts below.

7. Both the Courts below primarily considered the nature of the properties since the plaintiff took a stand that the suit properties are the ancestral properties of Kandappa Gounder.



The Courts below in the first place took note of the conduct of the plaintiff in not even mentioning about the Will dated 20.01.1978 in the plaint inspite of having knowledge about the same. It is a registered Will that was executed by Kandappa Gounder in favour of his grandson viz., the first defendant. By virtue of the Will, the suit properties were bequeathed in favour of the first defendant. The husband of the plaintiff was examined as PW.2 and he admitted that he had knowledge about Ex.B1-Will. He had purchased properties under Ex.A15-Sale Deed dated 23.06.1995, from the first and second defendants. In this sale deed, there is a specific mention about the Will, marked as Ex.B1. That apart, in the sale deeds, marked as Exs.A13 and A14, there is a specific mention about Ex.B1-Will and the husband of the plaintiff had stood as a attesting witness in these documents.

8. The Courts below took into consideration all these documents and the evidence of P.W.2 and found that the plaintiff was aware about the Ex.B1-Will and had never raised any objections or questioned its validity.

9. In the Ex.B1-Will, it has been clearly stated that the properties are the self-acquired properties of Kandappa Gounder. This was the basis of which Ex.A15-Sale Deed was executed in favour of the husband of the plaintiff and Exs.A13 and A14-Sale Deeds were executed wherein the husband of the plaintiff stood as the attesting witness. It is under these circumstances, the plaintiff, all of a sudden, turned around and questioned the very basis of the sale deeds and took a stand that the properties are ancestral in nature and that the said Kandappa Gounder did not have the right to execute the Will. Such a stand taken by the plaintiff was rightly rejected by both the Courts below and it was held that the properties in question were the self-acquired properties of Kandappa Gounder and by virtue of Ex.B1-Will the first defendant became entitled to those properties.

10. Both the Courts below have also gone into the question of applicability of the 2005 Amendment Act and they held that the plaintiff cannot take advantage of the amendment since, the properties are the self-acquired properties of Kandappa Gounder. There is no ground to interfere with this finding also.

11. In the considered view of this Court, the findings rendered by both the Courts below does not suffer from any perversity. In any event, no substantial question of law is involved in the second appeal.

12. In the result, the second appeal is dismissed.



Consequently, connected Miscellaneous Petition is closed.
Considering the facts and circumstances of the case, there shall
be no order as to costs.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Principal District Judge,
Namakkal.
2. The Subordinate Judge,
Tiruchengode,
Namakkal Disitric.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.27773

+1cc to Mr.E.P.Senniyangiri, Advocate, S.R.No.27211

S.A.No.289 of 2014
and
M.P.No.1 of 2014

EV (CO)
SU (05/05/2022)