



A.S.No.14 of 2017 and
C.M.P.No.696 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.08.2022
Pronounced on	26.08.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

A.S.No.14 of 2017 and
C.M.P.No.696 of 2017

Badrunnisa

... Appellant

Vs.

1.Meharunnisa

2.Mumtaj

3.Shehnaz

... Respondents

Prayer : This Appeal has been filed under Section 96 of C.P.C., to set aside the judgment and decree dated 19.07.2016 passed in O.S.No.185 of 2015 on the file of the Principal District Judge of Cuddalore.

For Appellant : Mrs.Manjula

For Respondents : Mr.Mohammed Abbas for R2 & R3

No appearance for R1



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This Appeal Suit has been filed to set aside the judgment and decree dated 19.07.2016 passed in O.S.No.185 of 2015 on the file of the Principal District Judge, Cuddalore.

2. Heard Mrs.Manjula, learned counsel for the appellant and Mr.Mohammed Abbas, learned counsel for the second and third respondents and perused the materials placed on record.

3. The short facts of the case are as follows:

The appellant is the plaintiff. The suit has been filed by the plaintiff against the defendants to declare that the plaintiff is entitled to 1/2 share in the suit 'A' schedule property and to appoint an Advocate Commissioner to divide the properties by metes and bounds and deliver possession along with permanent injunction in respect of 'B' schedule property and for recovery of vacant 'C' schedule property from the defendants 2 and 3.

3.1. From the facts of the case, as it appears from the plaint of the plaintiff, a total extent of 2 Acres and 87 Cents was originally belonged to one



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Jainab Beevi. After the death of Jainab Beevi, her daughter Ayisha Beevi succeeded the property and she was in enjoyment of the entire 2 Acres and 87 Cents. The plaintiff and the first defendant are daughters of Ayisha Beevi. When Ayisha Beevi was alive, she executed two separate settlement deeds dated 06.04.1999 in respect of 40 Cents in favour of the first defendant and another 40 Cents in favour of the plaintiff. The above 80 Cents lies in the middle portion of the entire extent of 2 Acres and 87 Cents.

3.2. The suit 'A' schedule property is 71 Cents, east of 80 Cents covered by two settlement deeds and in the southern most end of 'A' schedule property, the defendants 2 and 3 were living. The defendants 2 and 3 were in occupation of southern most part measuring 5 Cents of the 'A' schedule property. The second and third defendants are the mother and daughter and they came to occupy the property on a monthly rent of Rs.1/- per month under Ayisha Beevi. Since the second defendant is a distant relative of Ayisha Beevi, she was allowed to put a hut and reside there. The rent payable by the second defendant was raised to Rs.10/- per month. In due course, the second defendant stopped paying rent. Considering the low value, Ayisha Beevi also was indifferent to receive rent from the second defendant.



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3.3. Until Ayisha Beevi was alive, there was no problem. Before a couple of days of filing of the suit, the defendants 2 and 3 attempted to put up a permanent structure and extended it beyond 5 Cents on the northern side. The defendants 2 and 3 claimed that they purchased 15 Cents from Jainab Beevi under a registered sale deed dated 04.05.1979 in favour of the second defendant's husband Sheik Ismail. Since Jainab Beevi died on 08.12.1976, the sale deed could not have been executed by Jainab Beevi. The alleged sale deed could be a concocted one. The defendants 2 and 3 exceeding their right as tenants and created false claim over the property. Hence the suit has been filed for recovery of possession of excess 10 Cents as described in 'B' schedule. The actual extent of possession by the second and third defendants is only 5 Cents and that is shown in 'C' schedule property.

4. Written statement of the defendants 2 and 3 in brief:

The second and third defendants resisted the suit by stating that the suit itself is not maintainable. The entire 2 Acres and 87 Cents has been classified as Thope Poromboke. The 'B' schedule property is in possession and enjoyment of the second defendant's husband Sheik Ismail along with the defendants 2 and 3. Even during the life time of Jainab Beevi itself, Sheik



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Ismail had purchased 15 Cents by virtue of a registered sale deed dated 04.05.1979. On the same day, he was given with possession over the said property and over which, he had constructed two thatched houses and was living there with his family. The third defendant is the daughter of Sheik Ismail through his first wife. The second defendant is the second wife of Sheik Ismail. The third defendant has a younger brother Sadiq Basha whose family is living in one of the thatched houses. The house tax has been made in the names of Jaibunnisa and Karirunnisa and the land kist is being paid by the second defendant or Jaibunnisa. The property has electricity connection as well. That also stands in the name of the second defendant and Jaibunnisa. According to the defendants 2 and 3, it is false to state that Jainab Beevi died on 08.12.1976. She died only on 19.12.1981. The second defendant was not a tenant under the mother of the plaintiff. The allegation of tenancy is just to evade to pay Court fee for the relief of recovery of possession. Therefore, the plaintiff is not entitled to the relief as prayed for.

5. On the basis of the above pleadings, the learned Trial Judge has framed the following issues:



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“1. Whether the settlement deed dated 06.04.1999 is valid and binding on the parties?

2. Whether the 2nd and 3rd defendants were tenants over the property comprised in A schedule property?

3. Whether the sale deed dated 04.05.1979 is valid and binding on the parties?

4. Whether the 2nd and 3rd defendants were in possession of only 5 Cents in the C schedule?

5. Whether the entire 2.87 Acres is classified as Thope Poromboke?

6. What is the correct date of death of Jainab Beevi?

7. Whether the plaintiff is entitled for ½ share in the suit A schedule properties?

8. Whether the plaintiff is entitled for an order of injunction for the suit B schedule property?

9. Whether the plaintiff is entitled for delivery of possession for the suit C schedule property?

10. To what other reliefs, the plaintiff is entitled?”

6. During the course of the trial, on the side of the plaintiff, four witnesses were examined as P.W.1 to 4 and Exhibits A1 and A2 were marked.



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On the side of the defendants, the second defendant examined herself as D.W.1 and Exs.B.1 to B.34 were marked. On conclusion of the trial and considering the evidence available on record, the learned Trial Judge had dismissed the suit. Aggrieved over that, the plaintiff has preferred this Appeal.

7. Mrs.Manjula, learned counsel for the appellant submitted that since Jainab Beevi was in possession of the larger extent of 2 Acres and 87 Cents nearly for two centuries, there cannot be any document of title; since the Registration Act was not in force at the time when Jainab Beevi acquired the property, there cannot be any title deed; in the decision reported in ***AIR 1954 SC 379 (Shrinivas Krishnarao Kango Vs.Narayan Devji Kango and others)***, it is held that for ancestral properties of the Hindus, one cannot expect document of title whereas, for separate properties, documents can be produced; though coparcenary system is not prevalent among Muslims, right to get possession of the properties from the ancestors cannot be denied.

7.1. After the life time of Jainab Beevi, her daughter Ayisha Beevi succeeded the properties and was in enjoyment of the same; subsequent to the death of the Ayisha Beevi, the plaintiff and the first defendant have inherited



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the property; even though Ayisha Beevi had settled 40 Cents each for the plaintiff and the first defendant, the documents could not be produced due to the dispute about the extents; the second defendant was permitted to occupy a portion of the property measuring 5 Cents as detailed under 'C' schedule and she cannot claim right of possession over a larger extent; only after the death of Ayisha Beevi, the second and third defendants started to give troubles; since Jainab Beevi died during the year 1976 itself, the alleged sale deed in favour of the second defendant's husband dated 04.05.1979 is false; the sale deed which is marked as Ex.B1 was not proved by the defendants and that was overlooked by the learned Trial Judge; without pleadings, the defendants 2 and 3 cannot take advantage of the genuineness attached to 30 years old documents.

7.2. In the judgment reported in *AIR 1967 Bombay 382 (Rangu Vithoba and others Vs. Rambha Dina and another)*, it is held that the presumption of genuineness about the Will cannot be drawn unless it is specifically pleaded; the learned Trial Judge failed to take into consideration of the boundaries of Ex.B1; the boundaries of Ex.B1 would show that the property of the plaintiff is lying on two sides; the signature / thumb impression over Ex.B1 is not admitted; as per Ex.A1, the date of death of Jainab Beevi is



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shown as 08.12.1976; since the death was not registered, an order was obtained from the learned Judicial Magistrate; Ex.B29 death certificate produced by the defendants has no relevance to Jainab Beevi, though similar name is found therein; the learned Trial Judge has placed reliance on Ex.B29 death certificate and dismissed the suit; the plaintiff has proved her title through the admission of boundaries as seen in Ex.B1 itself; hence, the judgment of the Trial Court should be set aside and the Appeal should be allowed.

8. Mr.Mohammed Abbas, learned counsel for the second and third respondents submitted that the 'B' Schedule property is in possession and enjoyment of the second respondent's husband Sheik Ismail along with the second and third respondents; during the life time of Jainab Beevi herself she sold 15 Cents in favour of Sheik Ismail by virtue of a sale deed dated 04.05.1979; in pursuance of the said sale deed, Sheik Ismail took possession of 15 Cents and he had even constructed thatched houses and living with his family; the respondents 2 and 3 claimed that the allegation that Jainab Beevi died on 08.12.1976 is false; since Jainab Beevi died only on 19.12.1981 and she had executed a sale deed in favour of Sheik Ismail on 04.05.1979 while



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she was alive; the appellant cannot call the second respondent as tenant in the suit property; there is no tenancy agreement as alleged by the appellant; the appellant herself relies on Ex.B1 boundaries in order to claim entitlement over the suit property; the appellant managed to get a death certificate through Court by giving false information that Jainab Beevi died on 08.12.1976; the certificate so obtained from the Court Ex.A1 does not have the true particulars; the respondents have produced the death extract and death certificate of Jainab Beevi which is maintained by the local body; hence the respondents have proved through Ex.B29 and Ex.B34 that Jainab Beevi died only in the year 1981; since the appellant has not proved her case, the learned Trial Judge has rightly dismissed the suit and it does not call for interference.

9. Point for consideration:

Whether the judgment of the learned Trial Judge in dismissing the suit filed by the appellant is fair and proper?

10. The appellant/plaintiff claims right over the suit property through her grand mother Jainab Beevi. Her evidence would reveal that the suit property is a poromboke property and the entries in the settlement register is



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shown to her and she admitted the same. Even as per the case of the appellant, the suit property measuring 2 Acres and 87 Cents was not purchased by Jainab Beevi at any point of time from any one. It is admitted that the appellant does not have any title deeds in the name of Jainab Beevi and there cannot be any title deeds for the Poromboke property. Jainab Beevi is said to be in possession of the whole of 2 Acres and 87 Cents and after her life time, her daughter Ayisha Beevi inherited the properties and Ayisha Beevi executed two settlement deeds dated 06.04.1999, in favour of her two daughters i.e., the appellant and her sister / first defendant and gifted 40 cents each in the suit property. But the settlement deeds dated 06.04.1999, were not produced to show their right over the same. 71 Cents of 'A' Schedule property is claimed to be a part of 80 Cents covered under the two registered settlement deeds dated 06.04.1999. The appellant who has filed a suit, has got the duty to prove title in respect of the suit 'A' Schedule property by producing the relevant documents. For the reasons best known to the appellant, the said documents are not produced.

11. Though it is claimed by the appellant that the second defendant was inducted as a tenant in respect of the southern extreme of 71 Cents, no



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document has been produced to prove the same. It is correct to state that the entitlement of a person before the Registration Act came into force, cannot be proved by producing the title deeds. However, the continuous enjoyment over the property could have been proved by showing the documents pertaining to possession.

12. Even though it is claimed by the appellant that the second defendant was permitted to occupy 5 Cents on the extreme south of 'A' Schedule property, the second defendant claims that she is entitled to 15 Cents by virtue of a sale deed executed by Jainab Beevi herself in favour of Sheik Ismail on 04.05.1979. The sale deed has been marked as Ex.B1. Even though the sale deed is 30 years old, the appellant has chosen to deny its genuineness by stating that Jainab Beevi herself died in the year 1976 and hence, the signature/thumb impression on Ex.B1 could not have been affixed by Jainab Beevi. In order to substantiate the said point, the only document produced by the appellant is the death certificate of Jainab Beevi which is marked as Ex.A1.

13. The defendants 2 and 3 claimed that Jainab Beevi had not died in



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the year 1976 but she died only in the year 1981. The death extract of Jainab Beevi has been produced as Ex.B34 in order to prove the same. When the registration of her death was done and the death extract could be produced by the defendants 2 and 3, the appellant had chosen to produce the certificate obtained from the Court, it is the procedure adopted in cases where the registration of death is not made.

14. Though the appellant denied the genuineness of Ex.B29, she has not chosen to prove that the person by name Jainab Beevi as shown in Ex.B29 has no relevance to her grandmother Jainab Beevi. Though the defendants have produced their title deed Ex.B1, the plaintiff had not disproved the signature/thumb impression of Jainab Beevi found in Ex.B1 by filing any petition for comparing the signatures by an Expert. Admittedly the sale deed Ex.B1 is 30 years old document. So, the second defendant can take advantage of its genuineness, in view of Section 90 of the Indian Evidence Act.

15. It is submitted by the learned counsel for the appellant that in order to get the advantage of the presumptive genuineness of 30 years old document, the same should be pleaded. The core contention of the defendants 2 and 3 is



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that they derived title in respect of 15 Cents through Ex.B1 sale deed. Since Ex.B1 is a registered sale deed and it is more than 30 years old, the appellant can get the benefit of presumption of its genuineness. The appellant at one stretch denies the very execution of Ex.B1 sale deed and at another stretch she relies Ex.B1 for substantiating the facts about the boundaries. The appellant cannot blow hot and cold. If she admits the boundaries in Ex.B1, she is estopped from denying the genuineness of Ex.B1.

16. The one and only document produced by the plaintiff in support of her case is the death certificate of Jainab Beevi and that too obtained from the Court by adopting special procedure. In certificates for birth and death obtained from the Judicial Magistrate Court, the date of birth and death is mentioned by the party. But if the information about birth and death is given to the local body immediately at the time of death itself and that forms part of the Government records. So, Ex.B29 has got more evidentiary value than Ex.A1. The genuineness of Ex.B29 was not disproved by the appellant though it was claimed by the appellant that Ex.B29 is false and does not relate to 'Jainab Beevi'.



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17. At the risk of repetition, it is reiterated that the appellant had to rely on the boundaries in Ex.B1 in support of her claim. When the terms of contract between two persons is reduced into writing, the same cannot be proved by any other means except by producing the written instrument (Section 91 of the Evidence Act). In the case in hand, the second defendant who claims title over the suit property in pursuance of the registered sale deed dated 04.05.1979, had produced the same. In the event of denying its genuineness by alleging fraud, the said fact should be proved by the appellant herself. But, there is no rebuttal proof available from the side of the appellant to disprove the genuineness of Ex.B1. The rebuttal proof need not be direct, but through the lack of preponderance of probability in the defence. But, the appellant failed to establish the above lack of preponderance of probability as well. On the other hand, the second and third defendants who claimed title in respect of 15 Cents under their possession have produced Ex.B1 sale deed and proved that the preponderance of probability is in their favour.

18. Though the plaintiff had claimed title for 2 Acres and 87 Cents, she did not prove the same. Neither did she prove the disentitlement of the defendants in respect of 15 Cents on the south extremity of the suit 'A'



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Schedule. In fact, the appellant had relied on the boundaries in Ex.B1 as a proof of her title over the suit property. Having done so, she cannot deny its genuineness and the claim of the defendants 2 and 3. Since the plaintiff who filed the suit did not prove her title or that the occupation of the defendants in respect of the suit B and C Schedule properties is illegal the learned Trial Judge has rightly dismissed the suit. The documents produced by the defendants 2 and 3 in respect of possession over the suit properties also found to be strengthening the probabilities of the defence. Therefore, I find no reason for interference in the judgment of the learned Trial Judge.

19. In the result, **this Appeal Suit is dismissed** and the judgment and decree passed by the Principal District Judge, Cuddalore dated 19.07.2016 passed in O.S.No.185 of 2015 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Index: Yes/No
Speaking / Non Speaking Order
gsk

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To
The Principal District Judge,
Cuddalore.



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