



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.645 OF 2017

Gunasundari

...Appellant / Plaintiff

Vs.

H.Pushpalingam

...Respondent / Defendant

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 04.01.2017 in A.S.No.59 of 2016 on the file of the VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 27.11.2015 in O.S.No.753 of 2012 on the file of the III Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Kannan

For Respondent : Mr.R.Thiagarajan

J U D G M E N T

The unsuccessful plaintiff has preferred the present Second Appeal challenging the concurrent findings of the Courts below.

2. The plaintiff filed a suit for partition claiming that her father, by name K.Harikrishnan, during his life time, had executed a Settlement Deed in her favour, vide Document No.88 of 2006, dated 18.01.2006 at the office of the Sub-Registrar, Royapuram, Chennai. She is entitled to half share of the property and other half share was settled in favour of her younger brother Pushpalingam. However, while executing the Settlement Deed, her initial was wrongly mentioned as 'R' and her husband's name was shown as Raghupathi, whereas, her husband's name is Nagooran. She has another sister, by name Kalavathi @ Sasikala, who was married to G.Raghupathi on 12.06.1994. The said Sasikala obtained two Ration Cards in two places, one at Palaniamman Koil North 1st Street, and another one from Chockalingam Colony 4th Street. In the first Ration Card, her name was mentioned as Gunasundari and in the second Ration Card, it is mentioned as Kalavathi. In order to grab the property, she had given her name as Gunasundari, W/o. Raghupathi. Therefore, the plaintiff issued a legal notice dated



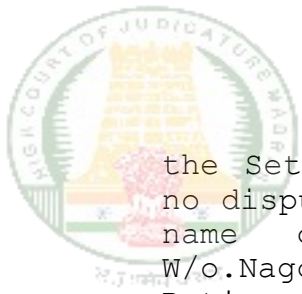
20.07.2011, which was replied by the defendant on 02.08.2011, with untenable allegations. Hence, she was constrained to file a suit for partition.

3. The defendant denied the averments made in the plaint and contended that the property was executed in favour of his sister R.Gunasundari W/o. G.Raghupathi and her husband G.Raghupathi is also shown as witness to the execution of the Settlement Deed. The said R.Gunasundari is in enjoyment of the property without any encumbrance. If at all, it was a mistake, it could have been rectified by executing Rectification Deed, whereas, the plaintiff, whose name is Guna, created some false documents for the purpose of filing the suit and also created one marriage invitation that her sister name, is Sasikala. In the Legal Heirship certificate, the legal heirs were shown as (1) H.Sadaiaamma, Wife of Harikrishnan (2) Guna, Daughter (married) (3) Gunasundari, Daughter (married) and (4) H.Pushpalingam, Son (married). As per the Legal Heirship certificate, the plaintiff's name is Guna and her sister's name is Gunasundari. The Settlement Deed was executed in favour of daughter, Gunasundari and son, Pushpalingam. The name, Sasikala in the marriage invitation is not connected to the suit. Therefore, the property is not liable for partition.

4. The Trial Court framed appropriate issues and dismissed the suit on the ground that the plaintiff has failed to establish her identity and the entitlement to half share of the property. The First Appellate Court has confirmed the same. Aggrieved by the concurrent judgments of the Courts below, the plaintiff is before this Court.

5. Heard the submissions made by the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

6. At the outset, it has to be found as to whether the Settlement Deed dated 18.01.2006, was executed in favour of the plaintiff. On the side of the plaintiff, her husband was examined supporting her evidence. Curiously, the mother of the parties, namely, H.Sadaiaamma, was examined as D.W.3 and the other sister, Gunasundari, was examined as D.W.2. The evidence of D.W.3 affirms that her husband executed the Settlement Deed only in favour of their younger daughter, Gunasundari. From the evidence, it is clearly elicited that the plaintiff was given a house at Thazhankuppam, Ennore at the time of her marriage. She sold the property and purchased a Fishing Boat under Ex.B1. The factum is that she owns the Fishing Boat, which was not refused by the plaintiff. Further, D.W.3 deposed that the house property was settled in favour of her younger daughter and son. The plaintiff had marked Exs.A1 to A18 to prove her case. Ex.A1 is



the Settlement Deed, Ex.A2 is the Death Certificate. There is no dispute over the same and Ex.A3 is Ration Card, in which, the name of the plaintiff was mentioned as Gunasundari, W/o.Nagooran, but, her age was mentioned as 37 years. Ex.A3, Ration Card, was issued between 2005-2009 and the address in the Ration Card is mentioned as No.41/51, Puthumanai Kuppam, 4th Street, Royapuram, Chennai - 600 081. In the Settlement Deed, which is marked as Ex.A1, the address of the Settlee is mentioned as Old.No.4, New No.7, Palaniamman Koil, North First Street, Chepauk. This Family Card was also issued during the same period i.e. 2005-2009. This Family Card was marked as Ex.A-11, which tallys with the address in the Settlement Deed and in that, the age of Gunasundari was shown as 28 years. Therefore, at the time of execution of the Settlement Deed, dated 18.01.2006, Gunasundari W/o.Raghupathy, was residing at No.4/7, Palaniamman Koil North First Street, Chepauk, and not with the plaintiff, who is the wife of Nagooran. The age of the plaintiff during 2006 was 37 years and the age of the younger sister was 28 years. The fact that the the younger sister of the plaintiff is R.Gunasundari, W/o.G.Raghupathy, probabalise the evidence of D.W.3 that the Settlement Deed was executed in favour of the younger daughter of Harikrishnan and not in favour of the plaintiff.

7. The learned counsel for the appellant/plaintiff strongly relied on his case on the basis of Ex.A4 Marriage Invitation, wherein, the younger sister's name was shown as Sasikala, who married to G.Raghupathy and her name was shown at the back side showing her husband's name is Nagooran. Therefore, her younger sister's name is only Sasikala and not R.Gunasundari. But, to substantiate the Marriage Invitation, no witness was examined. Therefore, it is clear that the case projected by the plaintiff that her sister's name Sasikala has not been established by any evidence. On the other hand, the plaintiff attempts to identify her as R.Gunasundari by marking Voter ID, Electricity Bill Receipt, Letter from the Electricity Board, Savings Bank Passbook and Tamil Nadu Government Gazette. Curiously, the documents marked as Exs.A9, A10, A13, A14, etc are post suit documents. The suit was filed on 27.01.2012, whereas these documents are subsequent to the suit. Therefore, the documents marked as Exs.A4, A9, A10, A13 and A14 do not establish her identity and that the Settlement Deed was executed in favour of the plaintiff. Therefore, at the first instance, the plaintiff failed to prove that her younger sister's name is Kalavathy @ Sasikala and that there is some typographical error in the Settlement Deed, which was executed in her favour and as contended by the learned counsel for the respondent/defendant, it could have been rectified in the manner known to law. It can be said that at the time due to the confusion, her husband's name was wrongly typed by the father, but, the father did not



mention the daughter's name wrongly. The Legal Heirship certificate shows that the first daughter is N.Guna. In that case, the father should have typed the name of the daughter as Guna and not as Gunasundari, more particularly, when another daughter by name Gunasundari is there. The husband of younger daughter attested the Settlement Deed. The fact that the husband of the younger daughter, namely, Gunasundari, attests the Settlement Deed, which leads to inference that the Settlement Deed was intended in favour of his wife and not in favour of the elder daughter of the Settlee. The issues have been analysed threadbare by both the Courts below and have given concrete findings on the evidence that the plaintiff is not entitled to claim partition in the property settled in favour of her younger sister.

8. I do not find any substantial question of law arising out of the factual matrix of the suit and the Second Appeal does not merit admission. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The VII Additional Judge,
City Civil Court,
Chennai.

2.The III Assistant Judge,
City Civil Court,
Chennai.

+2ccs to Mr.R.Thiagarajan, Advocate Sr.No.6950

S.A.No.645 of 2017

JPL (CO)
RVM(08/06/2022)