



S.A(MD)No.871 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.871 of 2011

- 1.Pitchaiammal
- 2.Ramalakshmi
- 3.Ramalingam

...Appellants

-Vs-

- 1.Pappathi
- 2.Ramu Ammal
- 3.Subramaniam

... Respondents

(second respondent, insane person represented through her Guardian/Mother, 1st respondent)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 25.11.2003 in A.S.No.252 of 2001 on the file of the Sub Court, Arupukottai, confirming the judgment and decree dated 27.02.2001, passed in O.S.No.329 of 1998, on the file of the District Munsif Court, Aruppukottai.



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For Appellants : Ms.R.Pranavi
for Mr.K.S.Durai Pandian
For R3 : Mr.K.Sekar
R1 and R2 : died

JUDGMENT

The plaintiffs in the suit are the appellants. The appellants filed a suit for declaration that the appellants and the second respondent are entitled to suit property after the life time of the first respondent and for a consequential injunction restraining the respondents from interfering with the possession of the appellants. The said suit was dismissed by the trial Court and the appeal filed by the appellants/plaintiffs was also dismissed and hence, the appellants are before this Court.

2.According to the appellants/plaintiffs, the suit property originally belongs to Ramanatha Thevar. The appellants claimed themselves as children of Ramanatha Thevar through his second wife Irulayee. The first respondent is the first wife of the said Ramanatha Thevar. The second respondent is the daughter of Ramanatha Thevar through his first wife, namely, first respondent. The third



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respondent is the purchaser of the suit property from the respondents 1 and 2.

According to the plaint averments, the said Ramanatha Thevar, at the time of his second marriage with the mother of the appellants, in order to make provision for maintenance of his first wife, namely, first respondent, executed a settlement deed dated 05.03.1963 in respect of the suit property giving life estate to the first respondent with vested remainder to the heirs of Ramanatha Thevar and first respondent. It is also averred in the plaint that as per the terms of said settlement deed, the life estate holder, namely, first respondent is not entitled to make any alienation. It is also stated in the plaint that in respect of his other properties, Ramanatha Thevar executed a Will in favour of his second wife, Irulayee, namely, the mother of the appellants. It is a specific claim of the appellants that after the death of the first respondent, as per the terms of settlement deed, the heirs of Ramanatha Thevar and the first respondent were entitled to the suit property. Therefore, it is the case of the appellants that the appellants, namely, the children of Ramanatha Thevar through his second wife and the second respondent, namely, the daughter of Ramanatha Thevar through his first wife are entitled to suit property after the life estate holder, namely, the first respondent.



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3.The respondents 1 and 2 filed a written statement and resisted the suit on the grounds that as per the terms of settlement deed executed by Ramanatha Thevar, only the heirs of Ramanatha Thevar and the first respondent were entitled to absolute estate. It was specifically averred that the heirs of Ramanatha Thevar through his second wife, namely, Irulayee were not entitled to any vested remainder under the terms of settlement. It was also specifically averred by the respondents 1 and 2 that after the death of Ramanatha Thevar, the first respondent enjoyed the suit property, namely, the subject matter of the settlement deed, dated 05.03.1963, as its absolute owner. It was also averred that the respondents 1 and 2 jointly executed a sale deed in favour of the third respondent on 19.08.1998. On these grounds, the respondents 1 and 2 sought for dismissal of the suit.

4.Before the trial Court, the first appellant was examined as P.W.1 and six exhibits were marked on behalf of the appellants/plaintiffs as Ex.A.1 to Ex.A.6. The second respondent was examined as D.W.1 and sixteen documents were marked through her as Ex.B.1 to Ex.B.16.



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5.The trial Court, on appreciation of oral and documentary evidence especially on consideration of terms of settlement deed, dated 05.03.1963, which was marked as Ex.A.1, came to the conclusion that on death of the first respondent, the suit property shall go to the second respondent, who is the only heir of Ramanatha Thevar and first respondent and consequently, dismissed the suit. Aggrieved by the same, the appellants herein filed the first appeal in A.S.No. 252 of 2001, on the file of the Sub Court, Aruppukkottai. The learned First Appellate Judge also concurred with the findings of the trial Court and hence, the appellants have come up by way of this second appeal.

6.The learned counsel for the appellants by drawing the attention of this Court to the recitals found in Ex.A.1-settlement deed submitted that only life estate was given to first respondent and on her death the property shall go the heirs of both Ramanatha Thevar and first respondent. In other words, it is the submission of the learned counsel for the appellants that since the appellants, who are all heirs of Ramanatha Thevar, as they are the children of his second wife, they are also entitled to right over the suit property in their capacity as heirs of Ramanatha Thevar. The learned counsel for the appellants by drawing the



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attention of this Court to the deposition of D.W.1, submitted that D.W.1 herself admitted that after death of first respondent, the appellants and the second respondent are entitled to the suit property.

7.A perusal of Ex.A1-settlement deed executed by the Ramanatha Thevar would show that it was styled as settlement in lieu of maintenance. The recitals found in Ex.A.1-settlement deed also would make it clear that the said document was executed by Ramanatha Thevar in contemplation of his second marriage. There is a clear recitals in Ex.A1 that in order to make certain provision for maintenance of his first wife, namely, the first respondent herein, the settlement deed was executed. Under the terms of settlement deed, a life estate was given to the first respondent with vested remainder to the heirs of Ramanatha Thevar and first respondent. First of all, the life estate given to the first respondent is in lieu of her right of maintenance. Therefore, by operation of Section 14(1) of Hindu Succession Act, the life estate conferred on first respondent, would blossom into an absolute estate. Therefore, after the death of the first respondent, the property will go to her Class-I heir, namely, the second respondent alone. The appellants are not entitled to claim any right over the



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property. Even otherwise, as per the recitals found in Ex.A.1, after the death of first respondent, the property shall go to the heirs of Ramanatha Thevar and his wife, namely, the first respondent. As I mentioned earlier, Ex.A.1 was executed in contemplation of second marriage of Ramanatha Thevar. On the date of execution of Ex.A.1, there were only two heirs to the Ramanatha Thevar, namely, Thannammal, deceased sister of second respondent and the second respondent herself. Therefore, by virtue of clear recitals found in Ex.A1, on the death of first respondent, namely, Pappathi, the only heir of Ramanatha Thevar and Pappathi, namely, Ramu Ammal, the second respondent herein is entitled to the suit property. The appellants/plaintiffs were not even born on the date of execution of Ex.A.1. There cannot be a gift of immovable property in favour of a person, who is not in existence. Therefore, the contention made by the learned counsel for the appellants that on the basis of recitals found in Ex.A.1, the appellants are also entitled to the suit property along with second respondent, cannot be accepted. Both the Courts below by rightly appreciating the recitals found in Ex.A.1 held that the appellants are not entitled any right over the suit property. The said finding requires no interference by this Court.



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8.Though the learned counsel for the appellants submitted that the second respondent herself as D.W.1 admitted the rights of the appellants over the suit property in her evidence, a perusal of evidence of D.W.1 circulated by the learned counsel for the appellants, makes it clear that there is no such admission. D.W.1 only says that after the death of her mother, namely, the first respondent, her heirs were entitled to the suit property. Even assuming that there is an admission, an erroneous admission will never confer title on the appellants. In such circumstances, I do not find any question of law muchless the substantial question of law in this appeal and consequently, the second Appeal is dismissed by confirming the concurrent judgments and decrees passed by the Courts below. However, there will be no order as to costs.

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Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Judge,
Arupukottai.

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2.The District Munsif,
Aruppukottai.

3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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