



S.A.No.721 of 2007 & M.P. No.1 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.721 of 2007 &

M.P. No.1 of 2007

Saji Thomas

...Appellant

Vs.

1. Naniyamma (died)

2. Saminathan

3. Sasikumar

4. Sasankan

... Respondents

RR2 to 4 brought on record as LR's of the deceased sole respondent vide order of Court dated 14.11.2019 made in CMP No.23351, 23353 and 23355 of 2019 in S.A. No.721/2007)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 08.03.2007 passed in A.S. No.70 of 2006, on the file of the Subordinate Judge, Nilgiris, Udagamandalam, reversing the decree and judgment dated 27.06.2006 passed in O.S. No.12 of 1994, on the file of the District Munsif, Gudalur.

For Appellant : Mr. Rathina Asohan

For Respondents : No appearance.



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JUDGMENT

The appellant is the defendant in O.S. No.12/1994 on the file of the District Munsif, Gudalur and respondent in A.S. No.70 of 2006 on the file of the Subordinate Judge, Nilgiris, Udagamandalam.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in nutshell:

The respondent/plaintiff, filed the suit in O.S.No.12/1994 for recovery of possession of the suit property morefully described in the plaint schedule as a land measuring one acre in old Survey No.12/5 and new Survey No.778/1 of Gudalur village, Nilgiris District, and a house in Survey No.12/341 of Gudalur Town Panchayat, within the boundaries stated therein. The case of the plaintiff is that the suit property was



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originally owned by her husband and he, during his life time, executed a Will in favour of the plaintiff and the same was also registered on 12.02.1978. According to the plaintiff, the defendant who does not have any right over the suit property, partially demolished the house and also trespassed into the suit property. Hence, she filed the suit seeking for the relief of recovery of possession of the suit property.

4. The suit was resisted by the defendant on the following grounds:

- i. The plaintiff's husband never executed a registered Will in favour of the plaintiff.
- ii. The defendant purchased the land from the son of the plaintiff through a registered sale deed dated 15.08.1988 (Ex.B4)
- iii. The defendant also constructed a house in the suit property and the plaintiff who was keeping quiet all these years, is estopped from contending that she is the owner of the suit property.
- iv. Since the plaintiff has no title over the suit property, the suit filed by the plaintiff is liable to be dismissed.



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5. On the basis of the above pleadings, the the trial court framed the following issues:

- i. Whether the plaintiff has right over the suit property through the Will?
- ii. Whether the defendant has right over the suit property through the sale deed?
- iii. Whether the plaintiff is entitled for the relief as prayed for by her?

6. After full full contest, the learned District Munsif, Gudalur, dismissed the suit vide his decree and judgment dated 27.06.2006. Aggrieved over the same, the plaintiff filed an appeal in A.S. No.70/2006 before the Subordinate Judge, Nilgiris, Udagamandalam. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, allowed the appeal vide his decree and judgment dated 08.03.2007 and set aside the decree and judgment passed by the trial court.



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7. Now the present second appeal is filed by the defendant on the following substantial questions of law.

- 1) Whether the lower appellate court is justified in rejecting the Sale deed which is marked as Ex.B4 in favour of the appellant/defendant by invoking Section 15 of the Gudalur Janmam Estate (Abolition and conversion into Ryotwari) Act, 1969 and at the same time accepting the Will which is marked as Ex.A1 in favour of the respondent/plaintiff which will also be a transfer hit by the very same provisions of Section 15 of the Act.
- 2) Whether the first appellate court is justified in relying upon the evidence of PW1, who is the Power of Attorney of the respondent/plaintiff, who can never depose in favour of his principal as a witness as held by the Apex Court, which is reported in *Janaki Vashdeo Bhojwani and another vs. Indusind Bank Ltd., and others [(2205) 2 SCC 217]*.
- 3) Whether the first appellate court is justified in relying upon the Will, which is marked as Ex.A1 by the respondent/plaintiff, and thereby not testifying the abovesaid document in the teeth of the



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- 4) Whether the first appellate court is justified by relying upon the provisions of Gudalur Janmam Estate (Abolition and conversion into Ryotwari) Act, 1969, even though the respondent/plaintiff has not pleaded any relief under the abovesaid Act.

8. Heard Mr. Rathina Asohan, learned counsel for the appellant. There is no representation on behalf of the respondents when this matter is posted today for the appearance of the respondents.

9. Mr. Rathina Asohan, learned counsel appearing for the appellant/defendant contended that the first appellate court allowed the appeal on the ground that the present appellant/defendant cannot purchase the property from the son of the plaintiff since the plaintiff was given only a life estate in respect of the suit property as per the Will (Ex.A1). His further contention is that during the pendency of the present Second Appeal, the plaintiff died and her legal heirs who were impleaded



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as respondents 2 to 4 cannot claim for recovery of possession of the suit property since as per the Will (Ex.A1) dated 12.02.1978, the plaintiff had only life estate. In view of the same, the Second Appeal is allowed.

10. In the result,

- i. the second appeal is allowed. No costs. consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 08.03.2007 passed in A.S. No.70 of 2006, on the file of the Subordinate Judge, Nilgiris, Udagamandalam, is set aside.
- iii. The suit filed by the respondent/plaintiff in O.S. No. 12 of 1994 on the file of the District Munsif, Gudalur, is dismissed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
bga

To

1. The Subordinate Judge, Nilgiris, Udagamandalam.
2. The District Munsif, Gudalur.
3. The Section Officer, VR Section, High Court, Madras.

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