



S.A.No.142 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.142 of 2005

1.Venkatachalam

2.Kalaiselvi (Died)

3.Gowtham

4.Aravindh

...Appellants

Vs.

1.Sarasu

2.Krishnaveni

3.Kannammal (Died)

4.Ganesan

5.Sakthivel

6.Easwari @ Pappal



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7.Ayyappan

8.Sivakami

9.Sadayappan

10.Sivanandam

11.Pavathal

12.Gangadevi

...Respondents

(Appellants 3 & 4 B/R as LR's of the deceased 2nd appellant.
Respondents 4 to 12 B/R as LR's of the deceased 3rd respondent vide
Court order dated 29.09.2021 made in C.M.P.Nos.10323, 6504, 10329
& 10341 of 2021)

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 31.12.2003 made in A.S.No.85 of 2003 on the file of the Additional District Judge – Fast Tract Court No.IV, Erode at Bhavani confirming the Judgement and Decree dated 14.06.2002 made in O.S.No.474 of 1988 on the file of the Principal District Munsif Court, Bhavani.



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For Appellants : Mr.T.Murugamanickam
Senior Counsel
For Ms.Zeenath Begum

For Respondents : Mr.V.Anandamurthy
7 & 10

For Respondents : No Appearance
1 to 6, 8, 9, 11 & 12

JUDGMENT

The plaintiffs are the appellants before this Court challenging the concurrent Judgement and Decree passed against them. The facts are briefly stated herein below and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiffs had filed a suit O.S.No.474 of 1988 on the file of the Principal District Munsif, Bhavani, for a declaration and injunction. It is their case that the 2nd plaintiff is the wife of the 1st plaintiff. The 1st defendant is the sister of the 1st plaintiff's father. The 2nd defendant is



the son of the 1st defendant. It is the case of the plaintiffs that the 1st plaintiff's father Karuppa Gounder owned considerable landed property in Kurichi village and he was living at Periakurumbapalayam along with his daughter Sembayammal and his son, the 1st plaintiff. In the year 1971 the said Karuppa Gounder died.

3. It is the case of the plaintiffs that the suit property belonged to the family of Karuppa Gounder, who was in possession and enjoyment of the same for over 40 years. Under a Will dated 04.01.1971, the said Karuppa Gounder has bequeathed his half share in the suit property and other properties in favour of the 2nd plaintiff. The 1st plaintiff being the only son of the said Karuppa Gounder is entitled to the other half share in the properties.

4. It is the case of the plaintiffs that the suit property was originally purchased in the name of Palaniammal, the mother of the said Karuppa Gounder and the 1st defendant, since at that relevant point of time Karuppa Gounder and his brother were minors. Thereafter,



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Palaniammal was in management of family properties. The properties though purchased in the name of Palaniammal was always treated as joint family property and never the personal property of the said Palaniammal. However, taking advantage of the fact that the properties stood in the name of Palaniammal, the 1st defendant appears to have obtained settlement deed on 07.09.1939 in her favour. The settlor Palaniammal had no right to execute the settlement deed. They have also not been in possession of the same. However, of late they have been attempting to interfere with the plaintiff's peaceful possession and enjoyment of the property. Therefore, the above suit has been filed.

5. The 1st and 2nd defendants had filed a written statement which was adopted by defendants 3 to 7 inter alia denying the case of the plaintiffs. The defendants would submit that the plaint is absolutely silent about the date of the death of Palaniammal, her husband Semba Gounder and their sons Semba Gounder and Karuppa Gounder. The defendants would submit that apart from the two sons, Palaniammal and Semba Gounder had three daughters, namely, Nachayee, Nanjayee



and Pappayee @ Sembayammal. The 1st defendant is the third daughter and last of the five children.

6. The defendants had denied the fact that the property were purchased in the name of Palaniammal only because her children were minors. They would submit that the property belonging to the Semba Gounder, the husband of the said Palaniammal did not yield sufficient income so as to constitute the nucleus for the purchase of further properties. The said Palaniammal on the other hand was the only daughter of her parents and she had a brother and her family was well off. The said Palaniammal was given cash and jewels at the time of marriage and with this money she had independently purchased the suit property on 15.02.1922 for a sale consideration of a sum of Rs.1,250/-. It was only Palaniammal who was enjoying the property exclusively and absolutely. The property was never treated as a family property.

7. The defendants would submit that the 1st defendant was the last to get married and her brothers were not in a position to provide her



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with the customary cash and seers. The 1st defendant was given in a marriage to one Marappa Gounder who belonged to an ordinary family.

The elder sisters of the 1st defendant were given in marriage into rich families and they have been given all the cash and seers. Therefore, the said Palaniammal had executed a settlement deed in favour of the 1st defendant and put her in possession. The 1st defendant has had the revenue records mutated in her name and she has been paying the kist. The 1st defendant became a young widow and she has been cultivating the suit land herself and appropriating the income for maintaining her children.

8. It is the case of the defendants that after 1970, 1st defendant was living with her daughter at Manikkampalayam. The 2nd defendant, her son after attaining majority was driving lorries and also helping in the cultivation of the lands. Karuppa Gounder while alive had never made any claim to the suit property nor objected to the settlement deed being executed in favour of the 1st defendant. The revenue records provided by the plaintiffs are fabricated documents created by them for



the purpose of the suit. Meanwhile, Karuppa Gounder who had two wives was living with his first wife's daughter Sembayammal. The said Sembayammal had a strong influence over her father. A year prior to the death of Karuppa Gounder, he was totally bed ridden and had also lost his mental faculties. At that point of time, Sembayammal had arranged to have executed the Will dated 04.01.1971, in and by which the properties were bequeathed in favour of her daughters. Therefore, the defendants pleaded that the suit may be dismissed.

9. The Trial Court had framed the following issues:

“1. Whether the suit property was purchased in the name of Palaniammal for the benefit of her family.

2. Whether possession was delivered to the first defendant of the suit property by virtue of the settlement deed dated 7.9.1939?

3. Whether the settlement deed dated 7.9.1939 is invalid for any of the reasons mentioned in the plaint?

4. Whether plaintiff have perfected their title to the



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suit property by adverse possession?

*5. Whether plaintiffs are entitled to the declaration
and Injunction prayed for?*

6. To what relief?

10. The plaintiffs had examined P.W.1 to P.W.3 and marked Ex.A.1 to Ex.A.39. On the side of the defendants D.W.1 alone had been examined and Ex.B.1 to Ex.B.20 were marked. The learned Principal District Munsif, Bhavani, dismissed the suit.

11. Aggrieved by the same, the plaintiffs had filed A.S.No.85 of 2003 on the file of the Additional District Judge, Fast Track Court IV, Erode at Bhavani. The learned Additional District Judge, Fast Track Court IV, Erode at Bhavani had also confirmed the findings and the Judgement of the Trial Court and dismissed the appeal. Aggrieved by the same, the plaintiffs are before this Court.



12. The above Second Appeal was admitted on the following

Substantial Questions of Law:

“(a) Whether it can be presumed that merely because a property purchased in the name of a widow, it was for her benefit, or that it would enure to the benefit of the joint family of which she is the manager?”

(b) Whether the judgment of the Courts below are vitiated in that they have cast the burden on the plaintiffs to prove the joint family nucleus which existed 80 years ago?

(c) Whether the judgment and decree in O.S.No.1264 of 1924 marked in this case as Ex.A.3 would legally invalidate any title in favour of the contesting defendant, assuming she had a settlement deed?”

13. Heard the learned senior counsel appearing on behalf of the appellants / plaintiffs alone since the contesting respondents had not entered appearance though they had been served. The 2nd defendant who is the contesting defendant has also not entered appearance and the



3rd respondent who had passed away is represented by her legal representatives, namely, respondent 4 to respondent 12. The respondents 7 and 10 alone are represented by the learned counsel.

14. The learned senior counsel would contend that the plaintiffs have been in possession and enjoyment of the property for over several decades. The learned senior counsel would submit that the property was a joint family property of Karuppa Gounder and the 1st plaintiff being his son was entitled to the same. The learned senior counsel would further contend that the defendants have not let in any evidence whatsoever to show that they are in possession of the property. The learned senior counsel further would further argue that Palaniammal had no right, title or interest of the property for her to settle the same in favour of the 1st defendant and further the enjoyment of the property by defendants 1 and 2 has not been proved.

15. Heard the learned senior counsel and perused the records.



16. The records would reveal that the property was purchased by Palaniammal as early as in the year 1922 and in 1939 she has settled her property on her daughter, the 1st defendant. This settlement has been effected only to make provision for the 1st defendant who had lost her husband at a very young age. That apart, since the settlement was effected in her favour, the 1st defendant has also been alienating the portions of the property, thereby, exercising her absolute right over the same. The plaintiffs have not been able to explain as to why Karuppa Gounder during his life time had not taken any steps to set aside the settlement deed executed in favour of the 1st defendant. Further, Karuppa Gounder is the identifying witness in the settlement deed executed by Palaniammal in favour of the 1st defendant.

17. The Courts below have rightly considered the evidence available on record which would clearly show that the 1st defendant's mother Palaniammal owned the property absolutely and she has exercised her right as absolute owner to settle the property only on the 1st defendant since the other two daughters were comfortably well of,



whereas, the 1st defendant not only did not have the benefit of having her marriage celebrated pomp and show but had lost her husband at a very young age. It therefore naturally followed that the mother had stepped in to make provisions for her daughter, the 1st defendant.

18. Therefore, the findings of both the Courts below is correct and does not require any re-consideration. Accordingly, the Substantial Questions of Law are answered against the plaintiffs.

19. In the result, the Second Appeal stands dismissed. No costs.

10.01.2023

Index : Yes/No
Internet : Yes/No
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To

1.The Additional District Judge – Fast Tract Court No.IV,
Erode at Bhavani.

2.The Principal District Munsif Court,
Bhavani.



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P.T. ASHA, J,

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