



S.A No.454 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A No.454 of 2013

M.P No. 1 of 2013

A.Lakshmi

... Appellant

Vs.

1.A.Nagaraj

2.M.Ramesh Babu

3.Selvi N.Rooba

4.Kumar

5.Muthusamy

6.Rajamanickam

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 28.04.2011 made in A.S No. 8 of 2011 on the file of the Sub Court, Pollachi confirming the judgment and decree dated 02.02.2010 made in O.S No. 602 of 2004 on the file of the District Munsif Court, Pollachi.

For Appellant : Mr. T.Murugamanickam
For R1 to R3 : Mr.A.L.Gandhimathi
For R4 to R6 : Given up



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JUDGMENT

The appellant herein filed a suit in O.S No. 602 of 2004, on the file of the District Munsif Court, Pollachi, for the relief of partition claiming half share in the suit property from the defendants 1, 2 and 3, who are her brother and her brother's sons, based on the Will executed by her mother Nachiammal on 26.08.1996 in that Will her mother bequeathed her property, the said property was inherited from her predeceased son Thangavelu, after the death of said Nachiammal in the year of 1996 the plaintiff becoming the absolute owner of the undivided property and demanded half share from her brother/first defendant as he refused she filed a suit.

2. The defendant contested the suit and he filed his written statement, in which, the defendants totally denied the plaintiff's right over the suit property. Further he stated that the suit property originally belongs to his Great Grand Mother Kuppammal and she obtained that property by way of purchase through sale deed dated 19.09.1953. During her life time she executed a settlement deed on 02.11.1960 through which the said Kuppammal give life interest in favour of her daughter Valliammal and her great grand children(parents) namely Thangavelu, Nagaraju after their life



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time the property was devolves upon her descendants (Santathi - சந்ததி) absolutely. Further, the defendants submitted that after the settlement deed her Grand Mother(Valliammal) died predeceased. So the property was devolves upon her great grand children namely Thangavelu and the first defendants. While so, in the year of 1965 his brother Thangavelu died as un married without having any issues. So their entire share devolves upon the first defendant and after his life time his son/second defendant is entitled to enjoy the property absolutely as he is only Santhathi as described in the settlement deed. But after the death of his brother Thangavelu without any issues, the plaintiff creating the fabricated Will said to be executed by their mother with regard to undivided half share claiming herself as a legal heir of the predeceased deceased son Thangavelu. Hence he stated that the plaintiff is not entitled to claim half share in the suit property through fabricated Will. So also, she is not entitled to receive rent from the suit property for the reason that their mother/testator/Nachammal is not come under the lienial descendants "Santhathi" through her son pre-deceased Thangavelu thereby prayed to dismiss the suit.

3. After considering the oral and documentary evidence the Trial Court held that mother of the deceased Thangavelu is legal heir but not



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a 'Santhathi' to the deceased Thangavelu thereby she is not entitled to execute the Will in favour of the plaintiff in respect of suit property and as per the settlement deed the first defendant and his sons alone are descendants "Santhathi" hence they are entitle to enjoy the suit property. Accordingly, the suit was dismissed.

4. Aggrieved over the same the plaintiff preferred an appeal in A.S No.8 of 2011 on the file of the Subordinate Court, Pollachi, wherein lower appellate Court independently analysed the facts and evidence of the case, held that there is no lenial descendants to inherit the Thangavelu estate nor the mother of the Thangavelu comes into descendants hence the plaintiff's mother has no right to execute the Will thereby plaintiff claim was declined by the lower appellate Court by confirming the findings of the Trial Court.

5. Challenging the concurrent findings of the Court below the plaintiff preferred this second appeal. For the sake of convenience the parties are denoted as per the suit.

6. The learned Counsel for the plaintiff submitted that as per the Hindu Successions Act, word Santathi Means only legal heirs and not lineal descendants but without appreciate those aspects the Courts below



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erroneously dismissed the suit as such is unjust and liable to be set aside.

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7. This Court admitted the appeal with the following questions of law:

1. When the vested remainder holder dies, whether the rule of succession as laid down by the Hindu Succession Act will prevail over the recitals made in Ex.A2 settlement deed?
2. Whether the judgment of the Court below are vitiated in that, they have interpreted the word Santhathi used in Ex.A2 settlement deed to mean only the lineal descendants and not the legal heirs?

8. The relation between the parties and also the original owner of the suit property are admitted by both parties. The suit property is originally belongs to paternal great grandmother/Kuppammal of the plaintiff. The said Kuppammal executed the settlement deed dated 02.11.1960 granting life interest in favour of her daughter Valliammal after that shall devolves upon her great grand son minor Thangavelu and Nagaraj thereafter absolutely to their "Santhathi". Kuppammal and Valliammal died and the said Thangavelu also died leaving only his mother Valliammal as his legal heir so there is no "Santhathi" descendants to inherit the properties



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of the Thangavelu. But the contention of the plaintiff is that her mother Nachammal being clause I legal heir of the deceased Thangavelu and she becomes the absolute owner of her son's undivided half share in suit property out of love and affection she executed a Will in favour of her daughter/plaintiff on 26.08.1996 in respect of the estate of the Thangavelu. After her death in the year of 1996 the plaintiff became the owner of the undivided half share but the first defendant refused for amicable partition, the plaintiff filed the suit claiming half share in the property. On the other side, the defendants not only denied the plaintiff's claim but also denied the right of his mother Nachammal over the suit property, the contention is that her mother may be a legal heir of the deceased Thangavelu but could not be a descendant (Santhathi) of the deceased Thangavelu, the objection of the defendant was accepted by the Court below and dismissed the suit.

9.The learned Counsel the plaintiff submitted that the expression Santhathi should not be construed in its narrow or etymological sense but should be construed as meaning heirs..

10. By way of reply the learned Counsel for the respondents submitted that as per the recitals of the settlement deed/Ex.A2 with the expression "Santhathi" (சந்ததி) is only means the descendants or the children



of the person concerned and it will not refer to the heirs of the said persons therefore his mother Valliammal as heir of the predeceased son Thangavelu not entitle to have right over the property.

11. Per contra, the learned counsel for the appellant relied the judgement of this Court reported in the case of Shivaprakasam Pillai Vs Sadasivam and Others reported in 1997 1 L.W (738).

11. In Kota Pullaiah V. Grandhi Veeraraghavamm and another (1954 (2) MLJ, 30 (A.P.) = 67 L.W. 1205 (A.P.) Justice Umamesheswaran has held that the estymological meaning of Santhathi is issue of body. The expression Santhatthi Paramparai used as a word of limitation to define the estate taken by a person has however come to acquire the larger significance of heirs. Santhathi should not be construed in its narrow or etymological sense but should be construed as meaning heirs.

12. In G.Appaswami V. R.Sarangapani. (AIR 1978 S.C 1051 + 91 L.W (SC) (SN) the Court held that the expression "Santhathi" could include an adopted son. In Sudaramier V. Sarojingi. (1994-I-MLJ 255) a Division Bench of this Court considered the expression "jesta varasu" and "Santhathi Paramparaya" at some length.....

12. By relying the above judgment the learned counsel for the appellant submitted that Santhathi includes legal heir and has not limited only to his lineal descendants.

13. Further, he relied the judgment of the case of Sundararaman Vs K.N. Sarojini, reported in L.W Vol 97 (169), stated that



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after introduction of Hindu Succession Act, absolute rights are conferred to female members of the Hindu Family and the 'heirs' means both the male and female heirs.

14. Now the point to be decided is whether the mother of the deceased Thangavelu comes under the expression of "Santhathi". Admittedly, Thangavelu is unmarried and died leaving behind his mother as legal heir. As a legal heir of pre-deceased son Thangavelu, she inherited his half share in the suit property in turn she executed a Will by bequeathing the said property inherited from predeceased son Thangavelu in favour of plaintiff. It is settled proposition that under the rule of construction the entire document should be read and the expression used should not be construed primarily on the basis of the recitals contained in the document and if necessary on the basis of the facts and circumstances of the case. Considering the settlement deed executed by the paternal grandmother of the plaintiff Kuppammal marked as Ex.,A2 dated 02.11.1960 was perused as per the recitals she gave life interest only to his daughter and also gave life interest to the grand sons namely Thangavelu and Nagar/ first defendant thereafter absolute right was confirmed to the Santhathi of the said



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Thangavelu. So her intention is that absolute enjoyment of the property was devolve upon the legal heirs Nagaraj/first defendant and deceased Thangavelu. The fact reveals that one of the beneficiary Thangavelu died unmarried leaving behind his mother as legal heir. As discussed above, Santhathi includes heirs so also heirs includes female heirs therefore the mother as Clause - I legal heir, inherited the undivided share of the deceased Thangavelu. Subsequently, she bequeathed the same to the plaintiff through Will. The main objection of the defendants is that testator Nachammal has no right to convey the property but much disputed about the execution of the Will. As discussed above, testator Valliammal comes under the expression of "Santhathi" and she is entitled for undivided half share in the suit property and thus as per Will executed by her plaintiff is entitled for said undivided half share. Accordingly, questions of law is answered. The suit is decreed as prayed for. with regard to rent the plaintiff is directed to work out her remedy before the appropriate forum.

15. In result, the Second appeal is allowed. No Cost. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The Sub Court, Pollachi.
2. The District Munsif Court, Pollachi.
3. The Section Officer,
V.R Section,

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