



S.A.No.789 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.789 of 2023

Muthammal (died)

1.Sakunthala

2.Jothimani

... Appellants / Defendants 3 and 4

Vs

Karumalaiappa Gounder

. . . Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgment and Decree of the Subordinate Judge, Pollachi dated 11.10.2022 made in A.S.No.16 of 2015 confirming the Judgment and Decree of the learned District Munsif, Pollachi dated 04.08.2015 made in O.S.No.138 of 2008.

For Appellants : Mr.V.Anandhamoorthy

For Respondent : No Appearance

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JUDGMENT

The defendants 3 and 4, who have suffered a decree concurrently against them, have filed the above second appeal.

2. The facts which give rise to the above second appeal are herein below set out and the parties are referred to in the same litigative status as before the trial Court.

3. The plaintiff had filed the suit O.S.No.138 of 2008 on the file of the District Munsif, Pollachi against the defendants for a bare injunction. It is his case that the lands situate in S.F.No.246/1, 247/1 of Thippampatti Village, Pollachi Taluk, measuring about 4.40 acres were agricultural lands and these lands constitute the suit properties. The plaintiff's sister, Rajammal, had obtained an undivided right to the property under a Will dated 07.12.1983 from her husband under the Hindu Succession Act. She had executed a will dated 07.12.1983



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in favour of the plaintiff and on her death on 01.12.1984, the Will had come into force. Since 1/3rd share was bequeathed in favour of the plaintiff, the plaintiff had filed a suit in O.S.No.151 of 1996 on the file of the Sub Court, Udumalpet for partition and while the suit was pending, the plaintiff and the brothers of Rajammal's husband, the first defendant, Periyakaliappa Gounder and P Gounder had entered into a compromise and a compromise decree came to be passed. The suit property was allotted to the plaintiff and the same was described as “A” schedule property. The plaintiff was in possession and enjoyment of the same.

4. Thereafter, on 28.11.2001, the plaintiff had sold the land situate in Kolarpatti Village to one K.P.Ramasamy and this deed was attested by the first defendant. The first defendant is none else than the brother-in-law of the plaintiff and the second defendant is his wife



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and defendants 3 and 4 are the daughters of defendants 1 and 2. The first defendant wanted to purchase the plaintiff's land for a meagre amount, which was refused by the plaintiff. Therefore, the defendants and their family members were attempting to disturb the enjoyment of the property of the plaintiff. The plaintiff had made an application for surveying the suit on 25.02.2008. However, since the first defendant had refused to cooperate, the survey could not take place. Therefore, in the light of the disturbance by the defendants, the plaintiff has come forward with the suit for injunction.

5. The defendants had filed a written statement inter-alia denying the averments contained in the plaint and also denying the ownership as per the compromise decree in O.S.No.151 of 1996. It is the contention of the first defendant that he had not appeared before the Court in O.S.No.151 of 1996 and had not signed the compromise.



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It is his contention that the mutation of revenue records had taken place behind his back and was not binding on him. The first defendant who had filed his written statement would contend that the suit properties originally belonged to his paternal grand mother Palaniammal, Palaniammal had executed a settlement deed dated 02.05.1962 in favour of the plaintiff and his two brothers, Palani Gounder and Chinnakaliappa Gounder. Since Chinnakaliappa Gounder was a minor, he was represented by the first defendant as a guardian. Chinnakaliappa Gounder had married the sister of the defendant's wife in the year 1970 and within a few months, Chinnakaliappa Gounder had died. Due to the shock, his wife Rajammal had become insane and was not in a position to execute any documents and had died in the year 1984. The first defendant was the one taking care of Rajammal and to the best of his knowledge, Rajammal had not executed any will or document. The Will put forth



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by the plaintiff is a rank forgery. The defendant had filed A.S.No.1 of 1997 on the file of the District Court, Coimbatore, challenging the judgment and decree in O.S.No.151 of 1996. The first appeal was dismissed. Challenging the same, the defendant had filed S.A.No.642 of 1999 and the same is still pending disposal. Therefore, they sought for dismissal of the suit.

6. The trial Court had framed the following issues:

- 1. Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 2. Whether the Will executed by Rajammal is a forged one?*
- 3. Whether the compromise decree in O.S.No.151 of 1996 is obtained as a collusive one*
- 4. What other relief the plaintiff is entitled for?*



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7.The plaintiff had examined himself as P.W1 and marked Exs.A1 to A10. The first defendant had examined himself as D.W1 and no documents were marked. Apart from that, Exs.C1 and C2, Advocate Commissioner's report and Plan were marked.

8. The trial Judge had decreed the suit as prayed for. Challenging the same, defendants 2 to 4 had filed A.S.No.16 of 2005 on the file of the Subordinate Court, Pollachi. Pending the suit, the second defendant had died and defendants 3 and 4 alone were contesting the appeal. The lower appellate Court had also confirmed the judgment and decree passed by the trial Court and dismissed the appeal, against which, the present second appeal has been filed.

9. Heard the learned counsel for the appellants and perused the materials available on record.



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10. The trial Court has framed an issue as to whether the compromise decree had been obtained collusively in issue No.3. The learned Judge, after considering the evidence on record, both oral as well as documentary, had come to the conclusion that the Will of Rajammal as also the compromise decree have not been obtained by fraud or coercion, neither is it a collusive one. Further, the lower appellate Court had observed that in case, the allegation that the compromise decree had been obtained fraudulently was true, the first defendant would have immediately taken steps to set aside the compromise decree stating that the same had been obtained by fraud and collusion. However, no steps had been taken for over 8 years to set aside the compromise decree as a fraudulent one. The suit was also not maintainable in as much as under the provisions of Order 23 Rule 3 of C.P.C, no suit shall be set aside on the ground that the



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compromise obtained was not lawful. The same has to be set aside only as contemplated under the provisions of Order 23 Rule 3 of C.P.C. Further, the Courts have taken note of the various revenue records which have been filed by the plaintiff to show their continued possession and enjoyment of the suit property. The Court has also taken note of the fact that, pursuant to the compromise, the plaintiff has sold a portion to one K.P.Ramasamy under a registered Sale Deed dated 28.11.2001, in which the first defendant has signed as an attester. All this would clearly go to show that the compromise decree has been given effect with the consent of the parties and not collusively and therefore, the judgment and decree of the Courts below does not require any reconsideration. Further, no substantial questions of law has been made out. Accordingly, the second appeal is dismissed. No costs.

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Index: Yes/No

Speaking order/non-speaking order
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To

1. The Subordinate Judge, Pollachi.
2. The District Munsif, Pollachi.
3. The Section Officer,
V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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