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S.A.No.498 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.498 of 2023
and
C.M.P.No.15256 of 2023

1.K.Kandasamy
2.Lakshmi
3.Rani
4.Maathammal
5.Ramagounder
6.Selvam
7.Murugan
8.Parthiban
9.Boopalan
10.Sakthivel

... Appellants

Vs.

K.Arumugan

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree passed by the learned Additional Sub Ordinate Judge, Dharmapuri, in A.S.No.63 of 2015 dated 16.12.2021



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reversing the Judgement and decree passed by the learned District
Munsif, Dharmapuri, in O.S.No.194 of 2012 dated 31.07.2015.

For Appellants : Mr.B.Balavijayan

For Respondent : Mr.A.Arun

JUDGEMENT

The defendants have filed the above Second Appeal challenging the judgement and decree in A.S.No.63 of 2015 on the file of the Additional Sub Judge, Dharmapuri in and by which the learned Judge has reversed the judgement and decree of the learned Principal District Munsif, Dharmapuri in O.S.No.194 of 2012. The pleadings of either party are set out below and the parties are referred to in the same ranking as before the Trial Court. Before proceedings to set out the facts, it is necessary to extract the genealogy of the plaintiff and the defendants.

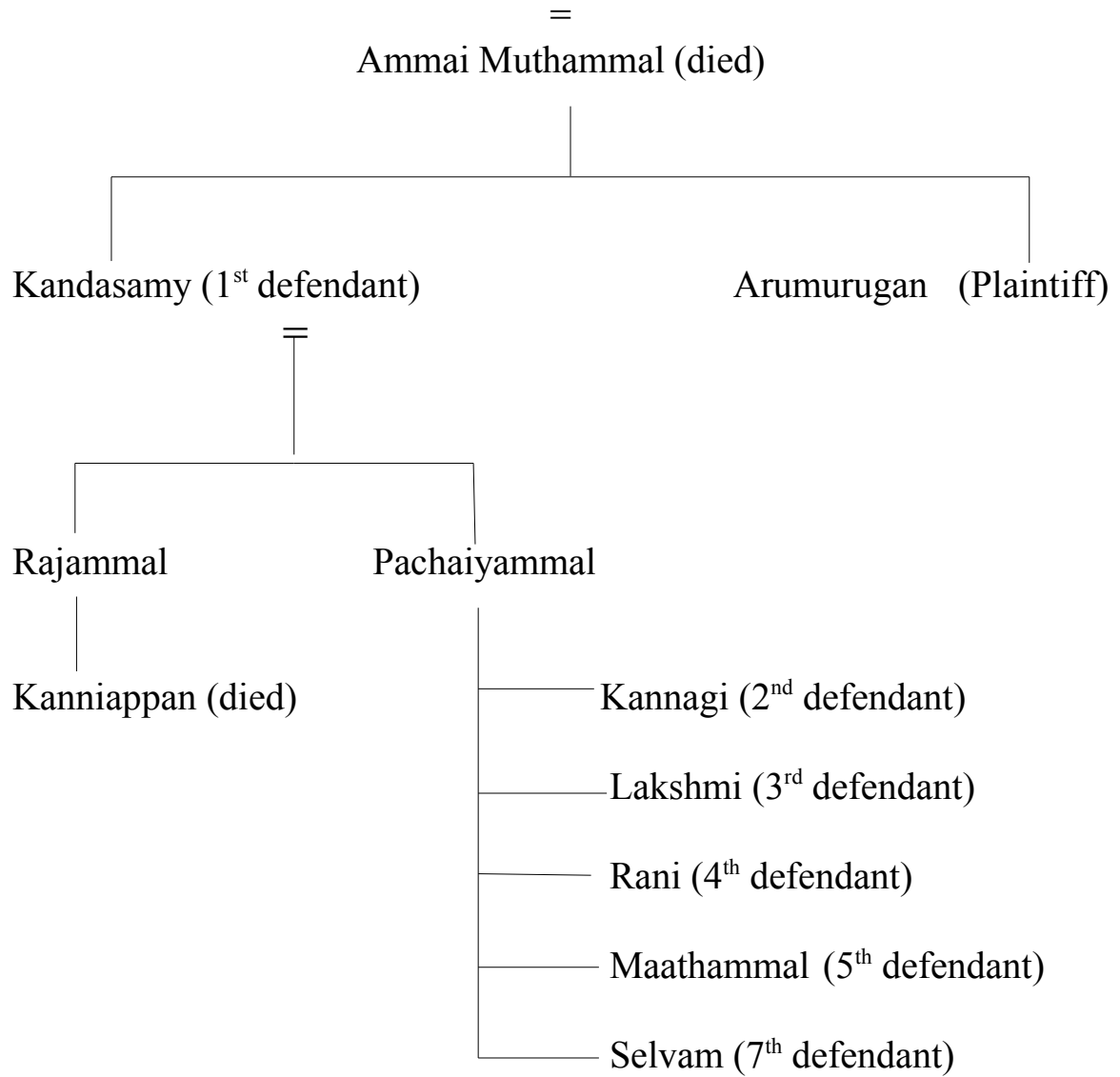


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Periyapaiyan @ Kanniyappa Gounder (died)





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Plaintiff's case:-

2. The plaintiff who is the son of the deceased Periyapaiyan @ Kanniappan and the brother of the 1st defendant has filed the suit O.S.No.194 of 2012 on the file of the Principal District Munsif, Dharmapuri for a declaration and recovery of possession. It is the case of the plaintiff that he and the 1st defendant are brothers and sons of the said Periyapaiyan @ Kanniappan. The 1st defendant is the eldest brother and had two wives Rajammal @ Kaveriammal and Pachiammal. During the subsistence of his first marriage with Rajammal @ Kaveriammal, the 1st defendant has contracted marriage with one Pachiammal. This led to problems in the family. Therefore, Periyapaiyan @ Kanniappan, the father of the 1st defendant had decided to partition the property and the partition deed dated 24.09.1956 came to be executed. Under the said partition deed, the B



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schedule property was allotted to the plaintiff and the C schedule property to the first wife of the 1st defendant. A schedule was allotted to the 1st plaintiff's father Periyapaiyan @ Kanniappan and mother Ammani Muthammal for their lifetime and after their lifetime the same was to be partitioned between the plaintiff and the late Kanniappan. The plaintiff's father had bequeathed his share in favour of the plaintiff which is situate in S.F.No.280 under a registered Will dated 24.12.1979 out of his free will and volition.

3. The said Periyapaiyan @ Kanniappan died on 02.08.1991 and Ammani @ Muthammal died on 14.10.2001. After their demise, the extent of 2.08 acres in SF.No.280 absolutely belongs to the plaintiff. The plaintiff is entitled to the total extent of 3.08 acres in SF.No.280. The plaintiff was working as a Government Servant and he later came to know that the defendants 1 to 6 have fraudulently created a sale deed



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dated 30.01.2012 in favour of the 7th defendant to an extent of 1.23 1/2 acres in SF.No.280 (S.F.No.280/1B) and 1/4th share in the common well and land to an extent of 0.01 cent in S.F.No.280/2. The 7th defendant is the son of the 1st defendant and brother of defendants 2 to 5. The 6th defendant is a third party to the suit property. The plaintiff would contend that defendants have no right, title and interest to the suit property. The plaintiff would submit that the 7th defendant had forcibly trespassed and encroached into the suit schedule properties. Therefore, they have come forward with the suit in question.

4. The written statement filed by the 1st defendant was adopted by defendants 2 to 7. The defendants have denied the entire allegations contained in the plaint. The defendants denied the plaintiff's claim of title and possession over the suit property. They have further submitted that the Will deed dated 24.12.1979 is a forged, fabricated, invalid and



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legally unenforceable document. As per the partition deed Periyapaiyan @ Kanniappan and Ammani Muthammal only had a right of enjoyment and no right to alienate the suit property. Therefore, the Will deed executed is non est and not binding on the defendants.

5. It is their further contention that though in the partition deed, the recitals would state that after the death of the Periyapaiyan @ Kanniappan and Ammani @ Muthammal, late Kanniappan (son of Rajammal and the 1st defendant) and the plaintiff are equally entitled to the property allotted to Periyapaiyan @ Kanniappan, the 1st defendant was not allotted any share in the partition deed. Thus, a compromise was arrived at in the presence of Periyapaiyan @ Kanniappan and Ammani Muthammal, wherein Periyapaiyan @ Kanniappan and Ammani @ Muthammal allotted late Kanniappan's share to the 1st defendant. The plaintiff is aware of the same. Recognising the 1st



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defendant's possession, patta dated 10.06.1984 was granted in favour of the 1st defendant to an extent of 0.51.0 hectares in SF.No.200/1. The 1st defendant had enjoyed the suit property for over 30 years and sold it to the 7th defendant on 30.01.2012. It is their contention that sale deed is a valid document and binding upon the plaintiff.

6. The Trial Court had framed the following issues:-

1. Whether the Will deed dated 24.12.1979 executed by one Periyampaiyan @ Kanniyappan is a true one and whether it was acted upon or not?

2. Whether the Plaintiff is entitled to the relief of declaration as prayed for?

3. Whether the Plaintiff is entitled to the relief of recovery of possession as prayed for?

4. To what other reliefs the Plaintiff is entitled for?



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7. The plaintiff examined himself as P.W.1 and examined 4 other witnesses. He has marked Ex.A.1 to A.6. On the side of the defendant, the 1st defendant examined himself as D.W.1 and examined 3 other witnesses and marked Ex.B.1 to B.21. That apart, Ex.X.1 to X.3 have been marked.

8. Ultimately, the learned District Munsif has dismissed the suit. Challenging the same the plaintiff had filed A.S.No.63 of 2015 on the file of the Additional Sub Court Dharmapuri. The learned Sub Judge allowed the appeal and reversed the judgment and decree of the Trial Court. Aggrieved by the same, the defendants/appellants are before this Court.

9. When the matter had come up for admission, this Court had issued notice to the respondent. The respondent has since entered appearance in the above matter.

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10. Heard the learned counsel on either side.

11. The crux of the dispute is whether only a life interest was given to Periyappaiyan @ Kanniappan and his wife or whether Periyappaiyan @ Kanniappan and his wife had the authority to deal with the property till their life time. The Lower Appellate Court in his judgement extracted the relevant portions of the partition deed dated 24.09.1956 in which it is clearly stated that the A schedule property will be enjoyed by Periyappaiyan @ Kanniappan and his wife Ammani Muthammal. It further read that they could deal with the property till their life time and what remained after their demise has to be enjoyed by the plaintiff herein and late Kanniappan, the minor son of the 1st defendant and Rajammal. Therefore, in effect, the deed has clearly conferred absolute right over the A schedule property to Periyappaiyan @ Kanniappan and his wife.

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12. It is also seen that the reason for excluding the 1st defendant and his 2nd wife has also been set out in the partition deed wherein it has been stated that since the 1st defendant had contracted a second marriage during the subsistence of his 1st marriage, his father Periyappaiyan @ Kanniappan was not inclined to give him a share. It is also seen that on 10.07.1961, Periyappaiyan @ Kanniappan had executed a settlement deed in favour of Rajammal, the 1st defendant's wife with reference to the another property allotted to Pachiyappan @ Kanniappan in the partition deed. It is also seen that Pachiyappan @ Kanniappan had executed a Will dated 24.12.1979 bequeathing the entire 2 acres inclusive of the suit property in favour of the plaintiff. Therefore, the property that has been allotted to the said Pachiyappan @ Kanniappan has been allotted to his daughter in law Rajammal (wife of Kandasamy, the 1st defendant) and the plaintiff. The plaintiff



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has also proved execution of the Will by examining the witnesses and the scribe. The defendants have also admitted that the possession of the property is with the plaintiff. Therefore, the Lower Appellate Court had allowed the appeal and set aside the judgement and decree passed by the Trial Court. The Lower Appellate Court had also declared the plaintiff's right to the suit property and directed the defendants to hand over the possession of the suit property to the plaintiff within three months.

13. The Lower Appellate Court being the final Court of fact has considered the evidence in detail and the appellants/defendants have not been able to point out any perversity in the judgement of the Sub Court. Therefore, I see no reason to interfere with the well-considered judgement and decree of the Lower Appellate Court. Further, the appellants/defendants have not made out any substantial question of law which requires re-consideration of this Court. Accordingly, the



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Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Additional Sub Ordinate Judge, Dharmapuri
2. The District Munsif, Dharmapuri
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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