



S.A.No.559 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.559 of 2023

and

C.M.P.Nos.17609 & 17610 of 2023

Krishnaveni

... Appellant

Vs.

1. Kanni Ammal
2. Selvi
3. Latha
4. Parimala @ Papathi
5. Jayanthi
6. K.Palani
7. G.Kumar Raja

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleaded to set aside the Judgement and Decree passed by the learned Principal District Judge, Kancheepuram District, at Chengalpattu in A.S.No.7 of 2018 dated



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11.03.2022, confirming the Judgement and Decree passed by the learned Subordinate Judge, Tambaram, in O.S.No.268 of 2010 dated 20.02.2017.

For Appellant : Mr.L.Prabahar

For R6/Caveator : Mr.R.Veeramani

JUDGMENT

The second appeal has been filed against the Judgement and Decree passed by the learned Principal District Judge, Kancheepuram, Chengalpattu in A.S.No.7 of 2018 dated 11.03.2022, confirming the Judgement and Decree passed by the learned Subordinate Judge, Tambaram, in O.S.No.268 of 2010 dated 20.02.2017.

2. The appellant herein/plaintiff, had filed the Suit seeking the relief of partition, separate possession in respect of the suit property and a declaration that the registered Will dated 27.03.1995, Sale Deed dated 08.02.2007 and Settlement Deed dated 29.08.2005 as null and void. The suit was dismissed and the same was confirmed by the first appellate Court. Aggrieved against the same, the appellant/plaintiff has filed the present Second Appeal.



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3. For the sake of convenience, the parties are referred to as they are arrayed in the original suit.

4. The case of the plaintiff is as under:-

4.1. The suit property is the the Grama Natham land assigned to the plaintiff's father Thambiran Naicker and mother Sakunthala by the Government of Tamil Nadu 40 years back. The plaintiff's father and mother constructed a brick house in the suit property out of their own joint exertion and had been living along with their daughter, the plaintiff herein and their only son Krishnamurthy. The first defendant is the wife of Krishnamurthy and defendants 2 to 6 are their children.

4.2. The plaintiff's mother Sakunthala died on 15.02.2005 and her brother Krishnamurthy died on 06.03.2007 and her father died on 08.03.2009. During the life time of plaintiff's father and mother, they had jointly executed a registered Will dated 23.08.1986 in favour of the plaintiff and her brother respectively bequeathing 'B' and 'A' schedule property with full rights.



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4.3. After the execution of the said Will, the father and mother of the plaintiff had jointly executed a registered Deed of Cancellation of Will dated 24.03.1995 cancelling the Will dated 23.08.1986. After executing the Deed of Cancellation of Will the plaintiff's father had executed another Will dated 27.03.1995 bequeathing the suit property with house thereon in favour of his wife Sakunthala to be enjoyed till her life time after the demise of said Thambiran Naicker and after the demise of Sakunthala, her son Krishnamurthy should enjoy the suit property and after his demise his son Palani, the 6th defendant should enjoy the suit property with full rights.

4.4. The plaintiff's father had no right to execute the above said Will dated 27.03.1995 as her father and mother had jointly occupied the suit property and constructed the house out of their joint exertion. After the execution of the said Will dated 27.03.1995, the plaintiff's mother Sakunthala died on 25.02.2005 and Krishnamurthy died leaving behind his legal heirs defendants 1 to 6.

4.5. After the death of the plaintiff's mother, the suit property has become the joint family property. The plaintiff's brother Krishnamurthy, husband of 1st defendant has got equal share in the suit property. Whereas,



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after the death of the plaintiff's brother Krishnamurthy, the 1st defendant began to claim full right over the suit property and informed that the plaintiff has no right in the suit property and should vacate the suit property.

4.6. The plaintiff further came to know that a Sale Deed dated 08.02.2007 was executed by the plaintiff's father in respect of item No.2 of the suit properties in favour of the 7th defendant. The said Sale Deed dated 08.02.2007, Will dated 27.03.1995 and Settlement Deed dated 29.08.2005 are not valid documents and have to be declared as null and void and not binding on the plaintiff. Hence, the suit.

5. The crux of the written statement filed by the defendants is as under :-

5.1. The suit site was assigned by the Special Tahsildar (Assignment), Saidapet only to Thambiran Naicker and not to his wife Sakunthala. The property tax and water tax were assessed in the name of said Thambiran Naicker. He also obtained T.N.E.B. service connection for the said house. Even though the said Sakunthala was not the owner of the property bequeathed under the said Will dated 22.08.1986, she was added as a co-executant only to enable her to enjoy the property till her life time.



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5.2. Thereafter, the said Will has been revoked under a registered Revocation Deed dated 24.03.1995, as both the testators were not satisfied about the bequest. Hence, the suit property became the absolute and exclusive property of said Thambiran Naicker alone as he was the sole assignee of the same from the Government of Tamil Nadu and thereby, the plaintiff is estopped from contending contra.

5.3. A portion of the suit property measuring 126 sq.ft., on its East together with the construction put up by Thambiran Naicker acquired by the Special Tahsildar (Land Acquisition) for expansion of the existing Old Mahabalipuram road into six lane road under the provisions of Tamil Nadu Highways Act of 2001.

5.4. Further, the 6th defendant has accepted the Settlement Deed and it has been acted upon. The 6th defendant has put up a residential and non-residential construction over the suit property and leased out to various tenants and they are in possession and enjoyment of the same. Immediately after construction, the Special Demand Notices were issued by the Town Panchayat, Seevaram for levying the proposed property taxes to the 6th defendant. The EB service connection, property tax and water tax for the suit property have been transferred to the name of the 6th defendant.



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5.5. The suit property was never the joint family property and

the 1st defendant never claimed any title as she is not the settlee. It is only the 6th defendant, who is the absolute and exclusive owner of the suit property.

Hence, the plaintiff has no manner of right, title or interest in the suit property and she cannot claim any partition of the suit property and there is also no cause of action for the suit. Hence, prayed for dismissal of the suit.

6. Based on the above pleadings, the trial Court framed the following issues:

1. Whether the suit is valued properly?
2. Whether the plaintiff is entitled for the half share in 1st and 2nd items of the suit?
3. Whether the plaintiff is entitled for a declaration of Will dated 27.03.1995 as null and void?
4. Whether the plaintiff is entitled for a declaration of the settlement deed dated 29.08.2005 as null and void?
5. Whether the plaintiff is entitled for a declaration of the sale deed dated 08.02.2007 document No.642/2007 as null and void?
6. To what other relief?



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7. During trial, on the side of plaintiff, PW1 to PW3 were examined and Ex.A1 to A69 were marked. On the side of the defendants, DW1 and DW2 were examined and Ex.B1 to Ex.B18 were marked.

8. The trial Court, after considering the oral and Documentary evidence, dismissed the Suit, against which, the plaintiff had filed an Appeal Suit in A.S.No.7 of 2018 before the learned Principal District Judge, Kancheepuram, Chennai, contending that the Judgment and Decree passed by the trial Court is against law and the issues are answered in the Judgment without appreciating the documents on the side of the appellant under Ex.A1 to A3 which are vital documents, that the property belonged to the appellant's parents.

9. Based on the grounds raised in the Appeal Suit, the first appellate Court, had framed the following points for determination.

1. Whether the Judgment of the trial Court holding that the plaintiff is not entitled for partition is correct?



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2. Whether the findings of the trial Court that the plaintiff is not entitled for declaration of registered Will dated 27.03.1995 executed by the deceased plaintiff's father Thambiran Naicker as null and void is correct?
3. Whether the findings of the trial Court that the plaintiff is not entitled for declaration of Settlement deed dated 29.08.2005 and Sale deed dated 8.2.2007 are null and void is correct?
4. Whether the Judgment and the Decree of the trial Court is correct?
5. To what other relief?

10. The first appellate Court, after analyzing the oral and documentary evidence on record, found that the property is not a joint property of Thambiran Naicker and his wife Sakunthala as contended by the plaintiff and after analyzing the Settlement Deeds (Ex.A4, Ex.A9 & Ex.A10) executed in favour of the 6th defendant, had come to the conclusion that the plaintiff is not entitled to partition and thereby, confirmed the Judgement and Decree passed by the trial Court and dismissed the Appeal Suit. Aggrieved against the same, the present Second Appeal has been filed.



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11. Learned counsel for the appellant/plaintiff submitted that the Courts below have failed to take into consideration the documents in proper right perspective. He further submitted that the appellant/plaintiff has now filed an application under RTI Act, wherein, she was informed that no records have been maintained with regard to the patta granted in favour of the plaintiff's father. He also submitted that even assuming for the sake of argument, the assignment patta does not disclose that the patta was granted in respect of the entire area of 3250 Sq.ft and the Courts below have not properly considered the same. Thereby, he seeks to allow the present appeal.

12. Learned counsel for the respondent/caveator submitted that it is the admitted case of the plaintiff before the trial Court in the paragraph 7 of her deposition that the assignment patta granted in favour of her father Thambiran Naicker is true and it is only for 3 cents and that it is not given for 8 cents, whereas, in the assignment patta (Ex.B1), it has been categorically stated that the assignment patta is in respect of 3 cents or for the area covered in 840 Sq.ft and the plaintiff's father was allotted Plot 30A. Further, in the cross examination, she has also admitted that she had seen the patta and she has also admitted the patta granted in favour of her father. In such



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circumstances, the present reply from the Revenue Authorities under RTI Act that no records have been maintained, will not confer any right to the property in favour of the plaintiff. He further submitted that absolutely there is no substantial question of law involved in this Second Appeal and thereby, the Second Appeal is liable to be dismissed.

13. Heard the learned counsel appearing for both the appellant and caveator, perused the judgments of the Courts below and also the grounds raised by the appellants.

14. The lis is between the legal heirs of one Thambiran Naicker over the suit property. On one side, his daughter, being the plaintiff, claims that the suit property was assigned by the Government of Tamil Nadu 40 years back in favour of her parents and they constructed a brick house in the suit property out of their own joint exertion and thus, she is entitled to half share in the suit property while the defendants being the legal heirs of one Krishnamurthy, her only brother, who predeceased their father Thambiran Naicker.



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15. It is the allegation of the plaintiff that she had to file the suit though originally, her parents had executed a Will, Ex.A1 dated 23.8.1986 bequeathing 'B' schedule property in her favour and 'A' schedule property in favour of her bother, however, later, they had executed a cancellation deed, Ex.A2 dated 24.3.1995 cancelling the Will dated 23.8.1986 and thereafter, her father Thambiran Naicker alone had executed another Will, Ex.A3 dated 27.3.1995 giving life estate to his wife, thereafter, to his son Krishnamurthy and ultimately bequeathing the suit property in favour of his grandson, the sixth defendant, for which, her father had no right and further, she had come to know that her father had executed a settlement deed dated 29.8.2005 in favour of the sixth defendant and a sale deed dated 8.2.2007 in favour of the 7th defendant. According to the plaintiff, the Will, Ex.A1 having been executed by both of her parents, her father alone had no right to execute another Will, Ex.A3 after cancelling the earlier Will and thereby, she had to file the suit seeking for declarations in respect of those documents.

16. To substantiate the claim of the plaintiff that her father had no individual right over the suit property and it belonged to both her father and mother, the plaintiff had not produced any documentary evidence, though she



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had chosen to file voluminous documents, inasmuch as 69 documents, which are not much relevant to her claim, whereas, the defendants have filed Ex.B1 assignment patta issued in favour of Thambiran Naicker exclusively and thereby, the core foundation of the case of the appellant/plaintiff has to fall to the ground. It is the specific case of the defendants that the wife of Thambiran Naicker was made as co-executant of the earlier Will, Ex.A1 only with an intention of giving life estate to her. Merely because the wife of Thambiran Naicker was shown as co-executant in the earlier Will, Ex.A1, which was also cancelled subsequently by a deed of cancellation, Ex.A2 by the same couple, it cannot lead to an inference that they both are the joint assignees of the suit property, especially, when Ex.B1 assignment patta stands in the name of Thambiran Naicker alone and it cannot be contended that the said Thambiran Naicker had no right to execute the subsequent Will, Ex.A3.

17. Further, it is seen that the plaintiff/appellant has not produced any evidence to substantiate her further claim that the structure put up on the suit property was made with the joint family nucleus and thereby an inference has to be drawn that it was put up with the earnings of the said



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Thambiran Naicker alone. When the assignment patta, ExB1 itself is in the name of the said Thambiran Naicker and the construction thereon was also made with his income alone, it has to be inferred that it is the exclusive property of himself and he has got every right to bequeath the same according to his desire and thereby, the plaintiff has no say in the matter rather to question the Will, settlement or any sale deed executed by him as if the suit property is an ancestral joint family property. Considering all the aspects, the courts below have arrived at a right conclusion and declined to grant the relief sought for by the plaintiff.

18. Having exhausted in all her attempts to prove her case before both the courts below, the plaintiff has chosen to draw the attention of this court by attempting to file some documents viz., replies received by her from the revenue officials for her queries under the Right to Information Act, contending that they do not possess any information about the assignment patta in respect of the suit property in their records. This court feels that it is an outsmart attempt made by the appellant/plaintiff to fish in the troubled water, especially, when it is her case in the plaint itself that it was assigned by the Government, of course, in favour of her father and mother. It is also



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seen that she had admitted about the assignment patta in her evidence itself as PW1. Therefore, this court is not inclined to heed to such contention of the appellant and the petition seeking to file additional documents is liable to be dismissed.

19. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that there is no illegality or perversity in the findings of the Courts below and no substantial question of law is involved to admit this second appeal.

20. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under :-

*"23. Sub-section (1) of **Section 100** of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied*



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that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

21. In view of the above, when no question of law much less substantial question of law arises for consideration, the Second Appeal fails and the same is dismissed at the admission stage itself, by confirming the



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concurrent findings rendered by the Courts below. No costs. The connected Miscellaneous Petitions are closed.

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Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
ham/ssk

To

1. The Principal District Judge, Kancheepuram, .
2. The Subordinate Judge, Tambaram,
3. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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