



S.A.Nos.281 & 421 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos. 281 & 421 of 2017

S.A.No.281 of 2017:

Anjalai Ammal

...Appellant

Vs.

Amsalakshmi

...Respondent

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.8 of 2015 on the file of Subordinate Judge, Panruti, dated 21.12.2016 in confirming the judgment and decree in O.S.No.59 of 2002, on the file of the District Munsif, Panruti, dated 29.04.2015.

S.A.No.421 of 2017:

Anjalai Ammal

...Appellant

Vs.

1.Amsalakshmi  
2.Dhavakumar  
3.Sudha  
4.Saroja  
5.Dharumanathan  
6.Arul

...Respondents



S.A.Nos.281 & 421 of 2017

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.11 of 2015 on the file of Subordinate Judge, Panruti dated 21.12.2016 in confirming the judgment and decree in O.S.No.42 of 2000 on the file of the District Munsif, Panruti dated 29.04.2015.

For Appellant in both S.A.'s : Mr.V.Srimathi

For Respondents 1 to 3 in both S.A's : M/s.R.Gururaj

For Respondents 4 to 6 in both S.A's : Mr.K.Jayachandran

### **COMMON JUDGEMENT**

The appellant herein filed a suit for declaration of title and recovery of possession in respect of 5 items in O.S.No.42 of 2000. The suit was dismissed by the Trial Court. Aggrieved by the same, she preferred an appeal in A.S.No.11 of 2015 on the file of Sub-Court, Panruti. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the same, the appellant has come by way of S.A.No.421 of 2017.

2. The appellant also filed another suit in O.S.No.59 of 2002 seeking mandatory injunction to remove the construction put up by the respondents. The 2<sup>nd</sup> suit was filed by the appellant on the ground that pending first suit, the



S.A.Nos.281 & 421 of 2017

respondents put up construction in item 4 in the earlier suit. The second suit for mandatory injunction was also dismissed by the Trial Court. Aggrieved by the same, the appellant preferred an appeal in A.S.No.8 of 2015 on the file of Sub-Court, Panruti. The First Appellate Court affirmed the findings of the Trial Court and dismissed the first appeal. Aggrieved by the same, the appellant has come by way of S.A.No.281 of 2017

3. For the sake of convenience, the parties are referred as per their ranking in O.S.42 of 2000. The subject matter of the S.A.No.421 of 2017 consists of five items and item 4 in S.A.No.421 of 2017 is the subject matter of S.A.No.281 of 2017. The 1<sup>st</sup> respondent in S.A.No.421 of 2017 is shown as respondent in S.A.No.281 of 2017.

4. According to the appellant/plaintiff, the suit property originally belonged to appellant's father Chinnathambi Padayachi. The suit property was allotted to said Chinnathambi Padayachi in oral partition between him and his brothers in the year 1945. Thereafter, Chinnathambi Padayachi executed settlement deed in favour of appellant/plaintiff on 27.12.1972. Thus, the appellant had been in possession and enjoyment of the suit property from 1972



S.A.Nos.281 & 421 of 2017

onwards. It was also averred by the appellant that suit property was let out to various persons like Govindasamy Padayachi, Murugesu Padayachi and Ramachandira Padayachi and through them the same has been enjoyed by him. It was also claimed by the appellant that 1<sup>st</sup> defendant's father filed a suit and obtained some decree in his favour without impleading the plaintiff and therefore, any decree obtained by the respondent's predecessor will not bind her. As the respondents denied the right of the appellant and acted against her interest, she was constrained to file a suit for declaration of title and recovery of possession.

5. The respondents/defendants filed a written statement and denied the oral partition pleaded by the appellant as if suit property was allotted to her father Chinnathambi Padayachi share in the year 1945. The respondents also denied the settlement deed executed by Chinnathambi Padayachi in favour of appellant in the year 1972. It was further claimed by the respondents that Murugesu Padayachi under whom the defendants 2 to 4 claiming right filed suit for partition in O.S.No.263 of 1974 against appellant's father Chinnathambi Padayachi and got preliminary decree for partition on 24.09.1977. Thereafter, final decree was passed on 30.06.1979 allotting suit properties in favour of



S.A.Nos.281 & 421 of 2017

Muruges Padayachi. In pursuance of said decree, Muruges Padayachi had taken possession of the suit properties on 08.11.1979. Thereafter, Muruges Padayachi executed a Will bequeathing the suit properties in favour of defendants 1 to 4. On these grounds, the respondents sought for dismissal of the suit.

6. The appellant and 1<sup>st</sup> respondent reiterated their stand in their pleadings in O.S.No.59 of 2002.

7. Since the suit properties in both the suits are overlapping with each other and the parties were also one and the same, both the suits were tried together and the evidence was recorded in O.S.No.42 of 2000. Before the Trial Court, the appellant/plaintiff was examined as P.W.1 and one Pazhaniammal was examined as P.W.2. On behalf of the plaintiff, 22 documents were marked as Ex.A1 to Ex.A22. On behalf of the defendants, the 5<sup>th</sup> defendant was examined as D.W.1 and 4 other witnesses were examined as D.W.2 to D.W.5. On behalf of the defendants, 72 documents were marked as Ex.B1 to Ex.B72.

8. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that suit properties was allotted to



S.A.Nos.281 & 421 of 2017

the share of Murugesa Padayachi, the predecessor in interest of defendants 2 to 4 in the partition suit. In O.S.No.263 of 1974, the father of the appellant Chinnathambi Padayachi was defendant in the said suit. The preliminary decree passed in the said suit was marked as Ex.B19. The final decree passed in the said suit was marked as Ex.B20. The delivery warrant under which the properties allotted to Murugesa Padayachi was taken possession by him was marked as Ex.B22. The Trial Court, based on Ex.B19, Ex.B20 and Ex.B22, came to the conclusion that suit properties were allotted to the share of Murugesa Padayachi, in O.S.No.263 of 1974 and he had been taken possession of the suit property through Court. In view of the said finding, the Trial Court came to the conclusion that claim made by the appellant based on Ex.A1, settlement deed executed by Chinnathambi Padayachi in her favour is not tenable in law.

9. The First Appellate Court also concurred with the findings rendered by the Trial Court. Both the Courts below concurrently found that the suit property was allotted to the share of Murugesa Padayachi in O.S.No.263 of 1974, the earlier partition suit was filed by said Murugesa Padayachi, the predecessor in interest of defendants 2 to 4. The said suit was filed against the father of the



S.A.Nos.281 & 421 of 2017

appellant namely Chinnathambi Padayachi. In such circumstances, the decree passed against Chinnathambi Padayachi is binding on appellant who is claiming right under the settlement deed allegedly executed by Chinnathambi Padayachi. The learned counsel for the appellant tried to assail the findings of the Courts below on the ground that in O.S.No.263 of 1974, Chinnathambi Padayachi was set exparte and the appellant had no knowledge about the said decree. It is settled law even exparte decree is binding on the defendants who were set exparte unless it is set aside. The appellant, who is claiming right under Chinnathambi Padayachi cannot say that the decree passed against Chinnathambi Padayachi is not binding upon her in the absence any challenge to the earlier partition decree in O.S.No.263 of 1974 in the manner known to law. The said decree is binding on appellant. Hence, I do not find any substantial question of law arising for consideration in this second appeal to interfere with the findings of the Courts below.

10. Accordingly, both the second appeals are dismissed.

a) by affirming the judgment and decree passed in A.S.No.11 of 2015 and A.S.No.8 of 2015 on the file of Subordinate Judge, Panruti dated 21.12.2016 confirming the decree and judgment passed in O.S.No.42 of 2000 and



S.A.Nos.281 & 421 of 2017

O.S.No.59 of 2002 on the file of the District Munsif, Panruti dated 29.04.2015.

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b)In the above facts and circumstances of the case, there will be no order  
as to costs.

**08.12.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation Case : Yes/No  
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To

- 1.The learned Subordinate Judge, Panruti
- 2.The learned District Munsif, Panruti,



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S.A.Nos.281 & 421 of 2017

**S.SOUNTHAR, J.**

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**S.A.Nos. 281 & 421 of 2017**

**08.12.2023**