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S.A.No.712 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.712 of 2023

&

C.M.P.No. 22342 of 2023

1.Loganayagi

2.P.Subash

...Appellants

Vs

Vijaiyalakshmi

... Respondent

Prayer: The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 27.06.2023 made in A.S.No.61 of 2018 on the file of the Subordinate Court, Paramathy partly reversing the Judgement and Decree dated 27.03.2018 made in O.S.No.105 of 2015 on the file of the District Munsif Court, Paramathy.

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WEB COPY For Appellants : Mr. S.Kaithamalai Kumaran

JUDGEMENT

The defendants are the appellants before this Court. The parties for ease of understanding are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.105 of 2015 on the file of the District Munsif, Paramathy seeking the following reliefs:

“(a)For declaration that the plaintiff is entitled to the suit property till her life time;

(b)That till the plaintiff's lifetime neither the defendants nor their men or agents should interfere with her peaceful possession and enjoyment of this life interest of the plaintiff;

(c)For a declaration that the settlement deed executed by the 1st defendant in favour of the 2nd



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defendant dated 17.10.2014 would not be binding upon the plaintiff's life interest.

3. It is the case of the plaintiff that her husband, K.S.Pazhaniappan owned the properties both ancestral as well as the properties purchased by him. It is her case that with reference to the ancestral property on 30.09.1980, a registered partition deed was entered into and the scheduled property was allotted to the said K.S.Pazhaniappan. That apart, under the various sale deeds, K.S.Pazhaniappan had purchased properties.

4. The plaintiff would submit that she is the 2nd wife of the said K.S.Pazhaniappan and the 1st defendant is the 1st wife of the said K.S.Pazhaniappan. The 2nd defendant is the son born to the said K.S.Pazhaniappan and the 1st defendant. It is her further case that K.S.Pazhaniappan and the 1st defendant had a daughter and three sons



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including the 2nd defendant. The daughter was called Gomathy and the other two sons are Murali and Ramesh.

5. It is her case that on 26.12.2008, the said K.S.Pazhaniappan had partitioned the properties amongst himself and his children. Under the said partition deed, the A - Schedule property was allotted to the share of the said K.S.Pazhaniappan. B – Schedule property to the said Gomathy, C- Schedule property to the said Murali, D – Schedule to Subash, the 2nd defendant, E – Schedule property to the son born to the plaintiff and the said K.S.Pazhaniappan (Suresh). F – schedule property was allotted to the said Ramesh and since he was dead the property devolved on his wife and his children.

6. As per the terms of the partition deed, K.S.Pazhaniappan was allotted A – Schedule property in which he was given a life interest along with his two wives, namely, the plaintiff and the 1st defendant



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and after their life time, the property was to devolve on the 2nd defendant, Subash.

7. The plaintiff would submit that after the death of her husband on 08.12.2009, she and the 1st defendant have been jointly enjoying the properties. It is also her contention that in the partition deed the plaintiff, the 1st defendant and their husband K.S.Pazhaniappan had life interest in the F 3 – Schedule of property in the partition deed till their life time. However, with an intent to deprive the plaintiff of her right and with an intent to grab the property, the 1st defendant had executed settlement deed with respect to the entire property in favour of the 2nd defendant on 17.10.2014. The said document has been registered with the Sub Registrar Office, Vellore in Doc No.3031 of 2014.

8. The plaintiff would submit that now on the strength of this document, the 1st and 2nd defendants are attempting to encroach into the



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property and prevent the plaintiff from cultivating the lands. In fact, on 10.06.2015, the defendants had attempted to prevent the plaintiff from carrying on the agricultural operation and hence the suit.

9. The 2nd defendant had filed a written statement which was adopted by the 1st defendant. The 2nd defendant had taken a defence that the plaintiff was not a wife but only a concubine of the deceased K.S.Pazhaniappan. The defendants denied the contention of the plaintiff that all of them were in joint possession of the property. The defendant denied all the allegations contained in the plaint and would submit that the usage of the word “*wives*” is purely a typographical error and this term is now sought to be misused by the plaintiff to enter possession. The plaintiff is not a legal heir as contemplated under the Hindu Succession Act. The defendants also contended that the plaintiff had demanded monetary compensation and since that was refused, she has come forward with the above suit.



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10. The Trial Court on considering the evidence on record had decreed the suit declaring that the plaintiff would enjoy the property till her life time and for an injunction restraining the defendants, their men, agents from interfering with her possession and a declaration that the settlement deed which was executed by the 1st defendant in favour of the 2nd defendant dated 17.10.2014 would not be binding upon the plaintiff.

11. This Judgement and Decree was taken up on appeal before the Sub Court, Paramathy in A.S.No.61 of 2018 and the learned Sub Judge, Paramathy also confirmed the Judgement of the Court below with reference to the enjoyment of the property till the plaintiff's life time and the settlement deed dated 17.10.2014 been not binding upon the plaintiff. However, with reference to the permanent injunction restraining the defendants, the learned Sub Judge, Paramathy, observed



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that the plaintiff and the 1st defendant shall enjoy the property together till their life time and thereafter the same shall devolve on the 2nd defendant. It is challenging this Judgement and Decree, the defendants are before this Court.

12. Mr. S.Kaithamalai Kumaran, learned counsel appearing on behalf of the defendants would submit that the plaintiff has not proved that she is a legally wedded wife of K.S.Pazhaniappan and therefore she is not entitled to the relief as prayed for. The learned counsel also submitted that the recitals of the partition deed has been misconstrued by the Courts below. Further, the Courts below have failed to appreciate the fact that the plaintiff is not in possession of the property.

13. Heard the learned counsel and perused the records.



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14. The Courts below have considered the recitals of Ex.A.1, partition deed, where the status of the plaintiff's son, born to her and the deceased K.S.Pazhaniappan, namely Suresh has been stated and the properties have also been allotted to him along with the said K.S.Pazhaniappan and his children through the 1st defendant. The wives have been granted only a life interest, which has also been set out in the document in question. The defendants have not denied the execution of this document and their only contention is that she has been wrongly referred to as the wife when she is only a concubine. The status of Suresh as son of K.S.Pazhaniappan and the plaintiff has not been questioned.

15. Be that as it may, the Courts below ultimately observed that the plaintiff is the 2nd wife of the said K.S.Pazhaniappan and under Ex.A.1 she is entitled to life interest. A reading of the partition deed, clearly shows that the property that has been allotted to the share of the



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said K.S.Pazhaniappan would devolve on his wives. In Schedule A it has been stated as follows:

“மேற்படி சொத்துக்களாது மேற்படியாரின்
ஆயுட் காலத்திற்கும், மேற்படியாரின்
மனைவிமார்களின் ஆயுட் காலத்திற்குப் பிறகும்
4 - லக்கமிட்ட சுபாஷ் அவர்களுக்கு சேர
வேண்டியது.

16. Therefore, I see no reason to set side the Judgement and Decree of the lower Appellate Court, particularly when no question of law has been made out by the appellants / defendants. Accordingly, the Second Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To,

1.The Subordinate Court,
Paramathy.

2.The District Munsif Court,
Paramathy.



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P.T.ASHA, J.,

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