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S.A.No.49 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.01.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.49 of 2023
and
CMP.No.1477 of 2023

Jayalakshmi

....

Appellant

Vs

1. Vrithambal
2. Thirumurugan
3. Vinayagamurthy
4. Thirumal
5. Thirumagal
6. Saraswathi

....

Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 30.06.2022 passed in A.S.No.12 of 2018 on the file of the Subordinate Judge, Vridhachalam, confirming the Judgment and Decree dated 28.03.2018 passed in O.S.No.94 of 2010 on the file of the Principal District Munsif, Vridhachalam.

For Appellant : M/s.S.Thamizh Poonkuilmozhi

JUDGMENT

This Second Appeal is directed as against the Judgment and Decree dated 30.06.2022 passed in A.S.No.12 of 2018 on the file of the



S.A.No.49 of 2023

Subordinate Judge, Vridhachalam, confirming the Judgment and Decree dated 28.03.2018 passed in O.S.No.94 of 2010 on the file of the Principal District Munsif, Vridhachalam, thereby dismissing the suit for declaration and injunction.

2. The appellant is the plaintiff and the respondents are the defendants. The appellant filed a suit for declaration and injunction. The case of the appellant is that the suit property originally belonged to one Appu Padayachi. He had two wives. The first wife had one daughter and the second wife had three sons, viz., Ramasamy, Govindasamy and Annamalai. The appellant is the daughter of the said Govindasamy. The said Ramasamy had two sons viz., Thiyagarajan and Gurusamy. The respondents are the son and daughters of the said Thiyagarajan. The said Appu Padayachi died. After his demise, the three sons orally partitioned the property which was left by him. The suit property was allotted to the share of the said Govindasamy viz., the father of the appellant herein. The other two brothers of the said Govindasamy were allotted different properties and they were in possession and enjoyment of their respective shares. The suit property was not allotted in favour of the said Ramasamy. After demise of their parents, her brothers viz., Velmurugan, Venkatesan, Ezhumalai, jointly



S.A.No.49 of 2023

executed a settlement deed dated 09.03.2009. After settlement, the revenue records were mutated in her name and she was also issued patta. Hence, the suit.

3. The respondents resisted the suit and filed written statement stating that the entire description of suit property is wrong and the actual extent of the suit property admeasuring 15 ½ cents. Originally, the suit property was belonged to one Appu Padayachi and it was divided into three shares by three sons. Accordingly, Southern 5.5 cents was allotted to Annamalai, immediate North was allotted to Govindasamy and the next was allotted to Ramasamy. Separate possession was given to the defendants grandfather viz., Ramasamy. On 31.02.1996, he had executed the settlement deed in favour of his sons vi.z, Thiagarajan and Gurusamy by appointing their mother as guardian. Therefore, the respondents are in possession and enjoyment of the suit property.

4. Based on the pleadings, the Trial Court framed the following issues :-

(i) Whether the settlement deed dated 09.03.2009 is true and valid ?



S.A.No.49 of 2023

WEB COPY

(ii) Whether the suit property legally belongs to the plaintiff ?

(iii) Whether the suit property is in the lawful possession and enjoyment of the plaintiff ?

(iv) Whether the suit property allotted to Ramasamy in the partition and is in possession and enjoyment of the defendants ?

(v) Whether the plaintiff is entitled for the declaration and permanent injunction as sought for ?

(vi) To what other relief the plaintiff is entitled for ?

5. On the side of the appellant, she had examined P.Ws.1 to 3 and marked Exs.A1 to A17. The Court marked Ex.X1. On the side of the respondents, D.W.1 was examined and marked Exs.B1 to B4.

6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.12 of 2018 before the Additional Subordinate Judge, Vridhachalam and the same was also dismissed and the Judgment and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.



WEB COPY 7. The learned counsel for the appellant has raised the following substantial questions of law:

(i) Whether the Courts below have appreciated the entire evidence available on record in proper perspective by applying correct preposition of law ?

(ii) Whether the Courts below framed all necessary issues to decide the case depending upon its own facts and circumstances ?

(iii) Whether the first Appellate Court exercised its jurisdiction in proper perspective ?

(iv) Whether the Courts below are correct in holding the view that the oral partition is not proved, which is admitted by the defendants ?

(v) Whether the Lower Appellate Court is correct in dismissing the suit after its findings that the defendants failed to prove that the suit property was allotted the share of their grandfather through Ex.B2 ?

(vi) Whether the Lower Appellate Court is correct in confirming the Trial Court decree and judgment contrary to its own finding ?

(vii) Whether the Lower Appellate Court is correct in holding the view that this appellant is not in possession, while the revenue authorities issued patta in favour of this appellant after enquiry ?



S.A.No.49 of 2023

8. Heard, M/s.Thamizh Poonkuilmozhi, the learned counsel appearing for the appellant and this Court considered the submission made by the learned counsel for the appellant.

9. The learned counsel appearing for the appellant would submit that both the Courts below failed to consider the settlement deed, which was marked as Ex.A1 dated 09.03.2009 and the other revenue documents which were mutated in favour of the appellant herein. The Trial Court also failed to frame any issue in respect of the boundaries of the suit property and validity of Ex.B2, the settlement deed dated 31.05.1966. She further submitted that the suit property belonged to one Appu Padayachi and he owned several properties other than the suit property. After his demise, oral partition was effected between the sons. Both parties categorically admitted that the suit property was allotted in favour of the said Govindasamy, who is none other than the father of the appellant herein. Further, Exs.B3 and B4 series were marked by the respondents herein. Mere issuance of notice by the Revenue Authorities does not confer any title or possession in favour of the respondents. However, Ex.B4 series are tax receipts which reveals that they are not actually related to the suit property.



S.A.No.49 of 2023

10. A perusal of the records reveals that the appellant failed to mark any document to prove that her father had title over the property. In fact, she also categorically admitted during cross examination that she has not filed any document to prove her father's possession over the suit property. She further deposed that the documents were burnt in a fire accident. In the absence of any parent document or patta in order to prove that her father had title over the property and he was in possession of the suit property, the appellant cannot claim any right over the property on the basis of Ex.A1 which relates to her other family properties. Therefore, the appellant failed to prove her title over the suit property.

11. Whereas, the second respondent was examined as D.W.1. He had deposed that the suit property was purchased by the said Appu Padayachi on 21.10.1929 which was marked as Ex.B1. Her father was allotted one share and thereafter, he had executed settlement deed in favour of his sons viz., Thiagarajan and Gurusamy by appointing his wife as guardian. The said certified copy of the settlement deed was marked as Ex.B2. That apart, further the property comprised in S.No.40/13 northern side 0.5 cents was settled in favour of the appellant's father in the year 1966.

Whereas, the suit property is comprised in S.No.56. Therefore, the



S.A.No.49 of 2023

appellant failed to prove her title over the property.

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11. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail, and by giving cogent reasons, concluded rightly and dismissed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 30.06.2022 passed in A.S.No.12 of 2018 on the file of the Additional Subordinate Judge, Vridhachalam, confirming the Judgment and Decree dated 28.03.2018 passed in O.S.No.94 of 2010 on the file of the Principal District Munsif, Vridhachalam, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To



S.A.No.49 of 2023

1. The Subordinate Judge, Vridhachalam.

2. The Principal District Munsif, Vridhachalam.



WEB COPY



S.A.No.49 of 2023

G.K.ILANTHIRAIYAN, J.

Lpp

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