



S.A.No.219 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM :**MR.JUSTICE N.SESHASAYEE**

S.A.No.219 of 2023
and C.M.P.No.6452 of 2023

J.Ramkumar

... Appellant

Vs.

1.N.Chandrasekaran

2.N.Jayachandran

Govindasamy (Deceased)

3.Junior Engineer,
Tamil Nadu Electricity Board,
Kariyamangalam Village,
Chengam Taluk,
Tiruvannamalai District.

4.The Superintending Engineer,
Tamil Nadu Electricity Board,
Vengikkal ,
Thiruvannamalai District.

5.Indrani

6.Rajammani

Rajesh (Deceased)



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7.Renija

Muniammal (Deceased)

8.Periyappa

... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, seeking to set aside the Judgment and decree in A.S.No.1 of 2021, on the file of the Subordinate Judge, Chengam, dated 28.09.2022, in confirming the judgement and decree in O.S.No.427 of 2004, on the file of the Additional District Munsif, Chengam, dated 30.06.2008.

For Appellant : M/s.V.Srimathi

For Respondents : M/s.D.Baskar
for Caveator

JUDGEMENT

The plaintiff laid the suit when he was a minor, for declaration of his title to the entire property and for recovery of possession, and also for a couple of ancillary reliefs, after the demise of his father, the 2nd defendant. The plaintiff having lost the suit successively before the Courts below, have approached this Court in this second appeal.



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2.The present appeal is set in the following factual backdrop:

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- A certain Puniyakoti Ammal owned a piece of property. On 17.03.1958, vide Ex.A1, settlement deed, she settled the property in favour of her sons one Vajaravelu, 1st defendant herein and also in favour of any sons to be born for life, and thereafter, the remainder to her grandsons born to her sons. This settlement deed had taken effect and there is no dispute on it.
- Some three years after the execution of Ex.A1, the said Puniyakoti Ammal begotten 2nd defendant as her third son. The plaintiff is the son of the 2nd defendant.
- In 1988, Vajaravelu died issueless and the said Puniyakoti Ammal, the settlor had only a life estate in the suit property. It is in this backdrop, the 1st defendant and the 2nd defendant chose to divide the property under Ex.A2, partition deed, dated 02.03.1992. Later, the 2nd defendant had sold the property allotted to him under Ex.A2 to the 3rd defendant on 30.06.2004 vide Ex.B4. As to be expected, the 2nd defendant did not contest the suit, the 1st and 3rd



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defendants, who is the purchaser from 2nd defendant contested the suit.

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3.According to 1st defendant, he had adopted a son, some time in 1994, a couple of years after the execution of Ex.A2, partition deed and relied on Ex.A1 for claiming title to the entire property covered under Ex.A1. The purchaser defend the title again based on Ex.A2.

4.The suit went to trial before which both sides adduced oral and documentary evidence. One of the issues before the trial Court was about the alleged adoption by the 1st defendant. The trial Court has held the adoption as valid and so far as the relief sought is concerned, it dismissed the suit.

5.The plaintiff then preferred a first appeal in A.S.No.1 of 2021, and he had a finding to his advantage when the first appellate Court held that the adoption alleged by the 1st defendant has not proved but so far as the remedy sought by the plaintiff is concerned, it held in line with the trial Court. This is now in challenge.



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6. If the facts as presented are undisputed or indisputable, what instantly gets noticed is that on the date of Ex.A1, the 2nd defendant was not born but under Ex.A1, the 2nd defendant was given only a life estate. Here Section 13 of the Transfer of Property Act comes into play. It reads as under:

"13. Transfer for benefit of unborn person.--

Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property."

7. Inasmuch as the 2nd defendant, an unborn child to Puniyakoti Ammal on the date of Ex.A1 was given only a life estate in terms of Section 13 of the Act as extracted above, the transfer fails as it does not cover the whole of



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the remainder. If the 2nd defendant does not get anything, necessarily the plaintiff cannot have a cause of action.

8.As stated, Vajaravelu, one of the beneficiaries under Ex.A1 died issue less. It is thereafter, the 1st defendant chose to share the property with the 2nd defendant under Ex.A2, partition deed. Indeed but for Ex.A2, the 2nd defendant would not have obtained any share in any property. Possibly, unless as a collateral, the eventuality of the 1st defendant passing away leaving no issues himself. But that would be a case of spes successionis and this Court cannot speculate on it. Therefore, the right which the 2nd defendant obtained under Ex.A2, partition deed belongs to him, which he had validly transferred to the 3rd defendant. As already indicated, the plaintiff does not have a sentinel of right against any one of the defendants.

9.So far as adoption by the 1st defendant is concerned, that is personal to the 1st defendant and plaintiff does not have a locus to challenge the same. It is not as if somebody has claimed to be an adopted son of 1st defendant after his demise, but it is something where the 1st defendant himself has pleaded adoption. Therefore, any finding of the first appellate Court concerning the



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alleged adoption by the 1st defendant can only be considered as a finding incidental and ancillary to the fact involved in this case. In fine, this Court does not find any substantial questions of law worthy of consideration as involved in this appeal.

10.This Second Appeal stands dismissed accordingly. Consequently, the connected miscellaneous petition is closed. No Costs.

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Anu

Index : yes / no

Internet : yes / no

Speaking / non speaking

Copy to:

- 1.The Subordinate Judge, Chengam
- 2.The Additional District Munsif, Chengam

N.SESHASAYEE.J.,
Anu



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