



S.A.No.679 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.04.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

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- 1.Veera Boyan (died)
- 2.Dasaboyan (died)
- 3.Subramani
- 4.Meenammal (died)
- 5.Parthiban
- 6.Dasan
- 7.Gopinath

(Appellants 5 to 7 are brought on record as
Legal Heirs of the deceased 2nd appellant and AA 3 & 4
are already on record and recorded as Legal Heirs of
the deceased 2nd appellant vide court order dated 24.01.2020 in
C.M.P(MD)Nos.6616 & 6617 of 2019.)

8.Sakthivel

(8th Appellant is brought on record as
Legal Heir of the deceased 1st & 4th appellants
vide court order dated 16.09.2021 in C.M.P(MD)No.3395 of 2021)

... Appellants

-VS-

- 1.Chellammal (died)
- 2.Periyasamy
- 3.Chinnathayee
- 4.Latha
- 5.Anu Reshmi
- 6.Yazhini



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(R2 to R6 are brought on record as Legal Heirs of the deceased sole respondent vide court order dated 23.11.2021 made in CMP(MD)Nos.3396/2021)

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree made in A.S.No.34 of 1997 on the file of the Additional District Judge, Dindigul dated 09.02.2000 reversing the Judgment and Decree made in O.S.No.2457 of 1990 on the file of the II Additional District Munsif, Dindigul dated 10.01.1997.

For Appellants ... Mr.S.Ramesh

For Respondents ... No appearance

JUDGMENT

The appellants are the defendants in the suit in O.S.No.2457 of 1990 on the file of the II Additional District Munsif, Dindigul. The original respondent Chellammal filed the said suit against the appellants for declaration and permanent injunction on the ground that she purchased the suit property from the legal heirs of one Kuppa Boyan and therefore, she is entitled to the suit property and the appellants should not have any right over the suit property.



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2. The case of the respondent/plaintiff is that the suit property originally belonged to one Kuppa Boyan, who got two wives, by name, Chellammal and Ramayeeammal. The second wife Ramayeeammal got only two daughters, namely, Chellammal and Valli. The first wife Chellammal got two sons, by name, Chinnasamy and Muthusamy. The Kuppa Boyan died intestate and therefore, Chinnasamy and Muthusamy derived the property and they entitled to the property of Kuppa Boyan. The original respondent/Chellammal purchased the property from the said Chinnasamy and Muthusamy. Thereafter, she is in possession and enjoyment of the same and hence, she is entitled to the property of Kuppa Boyan. Therefore, she has filed the suit for declaration and permanent injunction.

3. The case of the appellants/defendants is that Kuppa Boyan has got two wives, namely, Chellammal and Ramayeeammal. The said Kuppa Boyan has executed a settlement deed in favour of his second wife Ramayeeammal vide registered settlement deed, dated 27.12.1969. Then, the said Ramayeeammal died intestate. Since she got two daughters, namely, Chellammal and Valli, they derived title of the entire



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suit property through the settlement deed, dated 27.12.1969, after the death of Ramayeeammal, Kuppa Boyan's first wife's sons are not entitled to any share. The trial Court had rightly held that the plaintiff may ensure that if at all any share, she can work out her remedy in the manner known to law by filing a suit for partition and as such, the suit for declaration is not maintainable. However, the lower appellate Court failed to appreciate the fact that Kuppa Boyan has executed the settlement deed in favour of his second wife Ramayeeammal. Once the suit property is settled by way of a settlement deed, then, neither Kuppa Boyan nor his first wife Chellammal or their sons Chinnasamy and Muthusamy are entitled to any property. Since the Chinnasamy and Muthusamy have no right and title over the suit property, the original respondent/plaintiff is not entitled to any property. However, the lower appellate Court failed to appreciate and give effect to Ex.P.14 settlement deed. There is a reason assigned for non-accepting the settlement deed. It is further stated that even assuming that the settlement deed is not given effect to and not acted upon and the title vested with Ramayeeammal, since the Kuppa Boyan died intestate and the said Kuppa Boyan had got two daughters through Ramayeeammal and two sons through Chellammal, the legal heirs of Kuppa Boyan,



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Ramayeeammal and Chellammal all are equally entitled to the share in the suit property. Therefore, the lower appellate Court failed to appreciate even in that aspects and simply declared the put forth right in favour of the original respondent/plaintiff, which is erroneous.

4. While admitting the second appeal, this Court, considering the facts and circumstances of the case, formulated the following substantial questions of law:-

“(i) Whether the lower appellate Court is right in rejecting Ex.A.14, the settlement deed, executed by Kuppaboyan in favour of his wife, in the absence of denial of its execution?

(ii) Whether the lower appellate Court is right in rejecting the settlement deed relying upon the revenue records?

(iii) Whether the lower appellate Court had not ignored the elementary principle that a stranger to a document cannot assail the deed?

(iv) Whether Ex.A.14 could be set at naught in the absence of specific denial and whether the lower appellate Court ought not to have held in favour of the appellants particularly when the respondent had established her case of non implementation of the deed by examination of the heirs of Kuppa Boyan?



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5. Once the original respondent/plaintiff has filed the suit for declaration and injunction, she has to prove the title and also possession. Unless she established the title of the entire property, she is not entitled to declaration and permanent injunction. The appellants have taken the defence that in view of the settlement, Ramayeeammal is entitled to the property and after the death of Ramayeeammal, her daughters, namely, Chellammal and Valli alone derived title from the suit property. Therefore, neither Chinnasamy nor Muthusamy was having any title. The sale deed in favour of the plaintiff is not valid and vendor cannot convey the title, which they are not entitled and therefore, the lower appellate Court failed to consider the same.

6. As far as the first substantial question of law is concerned, Ex.A.14 shows that the property belongs to Kuppa Boyan and he said to have executed a settlement deed in favour of his second wife Ramayeeammal in the year 1969. Admittedly, the appellants and respondent have not filed any documents to show that the property was taken over by Ramayeeammal and patta was transferred in the name of Ramayeeammal and the said Ramayeeammal was enjoying the property



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by paying the kist and Adangal stands in the name of Ramayeeammal.

Though the learned counsel for the appellants would submit that Ex.A14 is a title deed, the principle that possession followed by the title, will not be applicable to the case of the agricultural land or the house property and the said principle is only applicable to the vacant cite and either applicable for the agricultural property or the house property. Admittedly, the suit property is the agricultural property. Even though Ex.A.14 said to have executed by Kuppa Boyan in favour of his second wife Ramayeeammal, none of the document has been filed to show that the settlement deed Ex.A14 acted upon and the Ramayeeammal had taken property. In this regard, no patta, Adangal, kist receipts stand in the name of Ramayeeammal have been filed. Therefore, this Court finds that even though Ex.A14 said to have executed by Kuppa Boyan in favour of Ramayeeammal, there is no evidence to show that they acted upon. However, both the Courts below failed to appreciate the said document in the right specifies and settlement deed was also not proved in the manner known to law.

7. The undisputed fact that the suit property belongs to Kuppa Boyan and Kuppa Boyan got two wives and two wives also predeceased



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the said Kuppa Boyan and Kuppa Boyan got two daughters through Ramayeeammal, by name, Chellammal and Valli and two sons through Chellammal, by name, Chinnasamy and Muthusamy. Since Kuppa Boyan died intestate, both the daughters and two sons are equally entitled to the property of Kuppa Boyan.

8. Admittedly, the original respondent in the second appeal/plaintiff purchased the property only from Chinnasamy and Muthusamy, who are the sons of Kuppa Boyan born through the first wife Chellammal. She has purchased only half share in the property and she has not purchased the property from the legal heirs of the Ramayeeammal, namely, Chellammal and Valli. Therefore, the suit filed by the original respondent/plaintiff for declaration is not maintainable. Once the plaintiff filed the suit for declaration, she has to prove the title and possession and she cannot take advantage of the loophole left by the defendants. Therefore, it is bounden duty of the plaintiff to stand on her own leg and not on the weakness of the defendants. Therefore, this Court is of the view that the trial Court has rightly observed that the plaintiff has not established her case for declaration and permanent injunction and dismissed the suit and gave a direction to work out her



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remedy by way of filing partition. However, the first appellate Court failed to consider that the plaintiff purchased the property only from the sons of Kuppa Boyan and not from the daughters of the Kuppa Boyan and the contesting respondents/defendants/appellants purchased the property from one of the daughters of the Ramayeeammal, namely, Valli. She is entitled to only 1/4th share and therefore, the first appellate Court wrongly gave declaration that the original respondent/plaintiff is entitled to 3/4th share. However, the original respondent/plaintiff has not filed any suit for partition or the appellants have not filed counter claim. Therefore, the lower appellate Court failed to consider the fact and erroneously allowed the appeal suit, which warrants interference of this Court.

9. Admittedly, both Valli, who is the vendor of the contesting defendants and Chinnasamy and Muthusamy, who are the vendors of the plaintiff, are legal heirs of Kuppa Boyan and they derived right and title only from Kuppa Boyan. Ex.A14 settlement deed was not proved in the manner known to law and also the appellants have not proved that their settlement deed Ex.A14 not acted upon. Therefore, as directed by the trial Court, the respective parties have to work out their remedy in the



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manner know to law by way of filing partition and not otherwise. The suit for declaration and injunction is not maintainable, since there is no material to show that after the death of Kuppa Boyan, the legal heirs of Ramayeeammal and Chellammal divided their property by way of partition. Therefore, their enjoyment is common. Therefore, no injunction can be granted against co-owner. At any angle, the suit filed by the original respondent/plaintiff for declaration and permanent injunction is not maintainable. However, the lower appellate Court failed to consider the legal position and erroneously held that the respondent/plaintiff is entitled to 3/4th share, the same has to be interfered by this Court.

10. As far as the answer for the first substantial question of law is concerned, though this Court, while admitting the second appeal, formulated four substantial questions of law, a combined reading of these things, this Court finds that there is one substantial question of law is existing, which is whether Ex.A.14 settlement deed acted upon?.

11. From the pleadings, documents and evidence, it is seen that the first appellant, who purchased the property from Valli, has not



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established that Ex.A.14 acted upon and Valli and Chellammal derived title from Ex.A.14 and Valli is entitled to $\frac{1}{2}$ share and Chellammal is entitled to $\frac{1}{2}$ share. Therefore, in the absence of establishing Ex.A.14, this Court finds that there is no evidence to show that Ex.A.14 settlement deed acted upon. Therefore, once Ex.A.14 settlement deed goes out and it has not been acted upon and the property vested with Kuppa Boyan and Kuppa Boyan admittedly, died intestate and leaving behind two daughters and two sons as legal heirs, all the two sons and daughters are entitled to equal share in the suit property. Under these circumstances, this Court finds that Ex.A.14 settlement deed did not come into effect and not acted upon. The suit property is undivided common property of legal heirs of Kuppa Boyan. The legal heirs did not divide the suit property. Therefore, the question of law is answered accordingly. The parties have to work out their remedy in the manner known to law by way of filing suit for partition. Under these circumstances, the Judgment and Decree passed by the first appellate Court is liable to be set aside and the Judgment and Decree passed by the trial Court is liable to be restored.



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12. In the result, the second appeal is **allowed**. No costs.

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NCC : Yes/No

Index : Yes/No

Internet: Yes

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To:

1.The Additional District Judge, Dindigul.

2.The II Additional District Munsif, Dindigul.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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