



S.A.No.613 of 2001

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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1.M.Kanniah (Died)	...Appellant/1 st respondent/Plaintiff
2.K.Jeyalakshmi	
3.K.Palanisamy	...Lrs of the deceased sole appellant

(Appellants 2 and 3 are brought on record as Lrs of the deceased sole appellant vide order dated 16.09.2021 made in M.P(MD).Nos.1 to 3 of 2014 in S.A.No. 613 of 2001)

-Vs-

1.Meenakshi	..1 st Respondent/Appellant/Defendant No.7
2.Ponnammal (Died)	
3.Krishnan	
4.Thiruppathi	
5.Padmanabhan(Died)	
6.Mahendran	
7.Rakkathal	
8.Jeyam	
9.Vellammal	Respondents/Respondents/ Defendants 1 to 6, 8 & 9
10.Devi	
11.Thanaroja	
12.Saratha	
13.Ramkumar	...Lrs of the deceased 5 th respondent



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(Respondents 10 to 13 are brought on record as Lrs of the deceased 5th respondent vide order dated 03.03.2023 made in C.M.P(MD).Nos.966, 967 and 969 of 2023 in S.A.No.613 of 2001)

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 26.02.1996 made in A.S.No.174 of 1994 on the file of the Principal District Court, Madurai, partly reversing the judgment and decree dated 16.09.1994 made in O.S.No.1022 of 1998 on the file of the District Munsif Court, Madurai.

For Appellant : Mr.C.Mahadevan
for Ms.A.L.Gandhimathi
For Respondents : No-appearance

JUDGMENT

The first appellant is the plaintiff, who filed a suit in O.S.No.1022 of 1998 on the file of the District Munsif Court, Madurai for redemption of the suit property. The said suit was decreed and the preliminary decree was passed. Challenging the said judgment and preliminary decree, the seventh defendant filed an appeal before the Principal District Court, Madurai in A.S.No.174 of 1994 and the Appellate Court, after considering the entire materials, allowed the appeal in part and held that the appellant herein is entitled to redeem and recover



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the possession only to 2/3rd share alone and the 7th defendant and her children are entitled to 1/2 share in the suit property. Challenging the said judgment and decree passed by the first Appellate Court, the plaintiff has filed the present second appeal.

2. While admitting the second appeal, this Court has formulated the following substantial questions of law:

1. Whether the Court below is correct in finding that a male heir is co-owner with his mother, when admittedly the property is her absolute property inherited from her mother?

2. Whether the Court below had correctly interpreted Section 15 of Hindu Succession Act?

3. Whether the Court below is correct in dismissing the suit solely on the ground that the defendants husband has jointly executed the othi deed under Ex.A2? And

4. Whether the Court below is correct in finding that the plaintiff's vendor are estopped from stating contrary to Ex.A2?

3. The case of the plaintiff as per the plaint filed before the trial Court is that the plaintiff has purchased the suit property from one Rakkayeammal and her daughter, namely, Anandavalli under a registered sale deed dated 12.05.1988 for a



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valuable consideration. At that time, the vendors of the plaintiff represented that the suit property was mortgaged with possession to one Thannankonar under a registered othi deed dated 01.03.1972 for a sum of Rs.3,500/- for a period of 10 years and the mortgagee was in possession of the suit property. Therefore, the plaintiff was directed by his vendors to pay the mortgage amount and redeem the property. After purchase, the plaintiff came to know that Thannankonar died leaving behind the defendants 1 to 9 as his legal heirs. Since the plaintiff was willing to redeem the property by paying the mortgage amount, he has sent a registered notice dated 03.06.1988 to that effect. But the defendants did not receive the same. Therefore, the present suit was filed for declaration that the plaintiff is entitled to redeem the mortgage and also for recovery of possession.

4. The case of the seventh defendant is that the seventh defendant's husband is Ayyanakonar, who is the son of Rakayeeammal. Rakayeeammal and her daughter executed a registered othi in favour of the father of the seventh defendant, namely, Thannankonar, who in turn leased out the property to the seventh defendant. Therefore, the seventh defendant is now in possession of the property as tenant. The rents were being paid regularly and hence, she has become



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a statutory tenant under the Rent Control Act and her husband, namely, Ayyankonar, was also having a share in the suit property. The share devolved upon the seventh defendant, her sons and daughters. Therefore, the plaintiff is not entitled to get the relief as prayed for. Further, the plaintiff has not impleaded the necessary parties namely, the sons and daughters of the seventh defendant.

5. The case of the fourth respondent is that the plaintiff has not impleaded the legal heirs of Thannankonar and the second defendant is not the legal heir. Therefore, the suit is hit by non-joinder of necessary parties and mis-joinder of parties. Hence, the plaintiff is not entitled for the relief as sought for.

6. On the side of the plaintiff, he was examined as P.W.1 and six documents were marked as Ex.A1 to Ex.A6. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and 12 documents were marked as Ex.B1 to Ex.B12. After considering the materials available on record, the trial Court passed a preliminary decree in favour of the first appellant/plaintiff. Challenging the said preliminary decree, the seventh defendant filed the appeal before the Principal District Court, Madurai. The first Appellate Court allowed



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the appeal in part in respect of 1/3rd share of the suit property. Challenging the same, the plaintiff is before this Court.

7. The learned counsel appearing for the appellants would submit that the suit property originally belonged to the mother of Rakkayeeammal, namely, Veilangal. After the death of her mother, Rakkayeeammal is the absolute owner of the property. During her life time, she also mortgaged the property to one Thannankonar and though Rakkayeeammal is the absolute owner of the property, in order to avoid further complication, her daughters and sons were included in the mortgage (Othi) deed as mortgagees and they executed a registered othi deed dated 01.03.1972 in favour of the said Thannankonar for a sum of Rs.3,500/- and thereafter. Rakkayeeammal and her daughter executed a registered sale deed dated 12.05.1988 in favour of the plaintiff for a valuable consideration and also directed to pay the mortgage amount to Thannankonar and redeem the suit property. After the purchase, the appellants also approached Thannankonar. However, he died leaving behind the defendants 1 to 9 as legal heirs. Thereafter, the plaintiff issued pre-suit notice and on receiving the notice, the defendants have not responded and they admitted the title of the vendors of the appellant.



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Therefore, they have also right to hand over the property by receiving a sum of Rs.3,500/- as mortgage amount. However, the seventh defendant alone has contested the suit and she and her husband have no right in the property, since it is the property of female and as per the Indian Succession Act, only the female heirs are entitled to the property of female and during the lifetime of Rakkayeeammal, she sold the property to the appellant. Therefore, the husband of the 7th defendant, who is the son of Rakkayeeammal has no right and interest over the property. Since Ayyanakonar is included in the mortgage othi, it does not mean that Ayyanakonar has got right over the property and therefore, the trial Court has rightly appreciated the fact and granted the decree. However, the First Appellate Court failed to consider the factual aspects as well as legal position that since the property is of Veilangal, after the death of Veilangal, Rakayeeammal is only entitled to get the property. Since Rakayeeammal sold the property to the appellant and he purchased the property for valuable consideration, he has right to discharge the othi mortgage amount as directed by his vendors and therefore, the judgment of the First Appellate Court is perverse. The appeal has to be allowed and the judgment and decree passed by the First Appellate Court have to be set aside and the judgment and decree passed by the trial Court have to be upheld.



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8. Though sufficient opportunity has been given to the respondents, there is no representation for the respondents.

9. It is the case of the appellants that the suit property belongs to Rakkayeeammal and the appellant purchased the property from Rakkayeeammal under the registered mortgage deed and he has right to discharge the mortgage amount and also is entitled to redeem the property and he got a preliminary decree.

10. A perusal of Ex.A2 would clearly show that Rakayeeammal, her son, namely, Ayyanakonar and her daughter, namely, Anandhavalli, executed a registered othi deed, in which, they stated that they are all having right over the properties. Hence, Ayyanakonar was also one of the mortgagees in the suit property under the registered othi deed and the 7th defendant is admittedly the wife of Ayyanakonar, who is the son of Rakayeeammal. Rakkayeeammal and Anandavalli executed a registered sale deed in favour of Thannankonar who died leaving behind the first respondent and the respondents 3 to 9 are the sons and daughters and one of his sons, namely, Elumalai was not included in the suit.



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Despite in the written statement, the fourth defendant has stated that the second defendant was in no way connected with Thannankonar, he was arrayed as a party in the suit. Further, the seventh defendant has clearly stated that since Ayyanakonar who died leaving behind the 7th defendant as wife, his sons and daughters were one of the mortgagees, they are also necessary parties and they have not been impleaded in the suit. The appellant has not taken any steps to implead them as party. Though the husband of the 7th defendant died, they have not been impleaded either as a party to the suit or witness to the sale deed. Sale deed does not say anything about non-inclusion of any one of the mortgagees. However, the seventh defendant has stated that she was a tenant from Thannankonar and Ex.B1 to Ex.B6 would clearly show that she paid the rent to Thannankonar and that fact was not disputed by the appellant. When the appellants have stated that the suit property belongs to Rakkayeeammal and she derived the title from her mother, it is the duty of the appellants to prove that it is the property originally belonged to Veilangal and Rakkayeeammal is the absolute owner of the property and she sold the property to the appellants. Hence, the 7th defendant has denied the title and it is for the appellants to prove their case and they cannot take advantage of the witnesses of the defendants. Therefore, though



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the trial Court has decreed the suit in favour of the plaintiff, the first Appellate Court has rightly appreciated the oral and documentary evidence and allowed the appeal in part in respect of 1/3rd share. As far as the substantial questions of law are concerned, the appellants have not established that the suit property originally belonged to the mother of Rakkayeeammal and therefore, Rakkayeeammal alone is entitled to the suit property and she derived the title from her mother. Under these circumstances, the appellants have not proved the fact that Rakkayeeammal alone is entitled to the suit property.

11. Though it is a female property and as per Section 15 of the Hindu Succession Act, the female heir alone is entitled, unless the appellants established the fact that the property originally belonged to Veliangal and Veliangal was the absolute owner of the property and Rakkayeeammal as the legal heir of Veliangal has got absolute right over the property, the sale deed would not bind the 7th defendant, her sons and daughters. Therefore, the substantial questions of law 1 and 2 are answered in favour of the respondents and against the appellants.



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12. As far as the substantial question of law Nos.3 and 4 are concerned, admittedly, the husband of the seventh defendant is also party to Ex.A2/Registered mortgage deed, in which, he is also described as one of the co-owners of the property and one of the mortgagees of the property. However, the appellant has not impleaded the legal heirs of Ayyanakonar and hence, the suit is not maintainable and is hit by non-joinder of the legal heirs of Ayyanakonar.

13. Once Ayyanakonar was shown as one of the joint owners of the property and he was jointly enjoying the property along with co-owners, after the death of Ayyanakonar, without impleading or getting concurrence from the legal representatives of Ayyanakonar, the vendors of the appellants alone are not entitled to sell the entire suit property. Therefore, the sale deed would not bind the legal representatives of Ayyanakonar.

14. A perusal of the entire materials show that the appellants have not produced the title of mother of Rakkayeeammal and it is the absolute property of female and therefore, the female heirs are entitled to the suit property of Veilangal. Under these circumstances, the recitals of Ex.A2 would clearly show



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that Ayyanakonar is entitled to the suit property. More so, the appellants have not produced any document to show that Veilangal is having absolute right. In the absence of the same, the appellants are not entitled to get a preliminary decree for the entire suit property. Therefore, the first Appellate Court has rightly held that Rakkayeeammal and her daughter executed a sale deed and they got 2/3rd share in the suit property. Therefore, the appellants are entitled to get the decree only for 2/3rd share and the sale deed will not bind the legal representatives of Ayyanakonar. Hence, this Court does not find any merit in this second appeal and all the substantial questions of law are answered in favour of the respondents and against the appellants.

15. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

26.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Padmanabhapuram
- 2.The Principal District Munsif, Padmanabhapuram
- 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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