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S.A.No.620 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.No.620 of 2021
and CMP.No.12930 of 2021

K.Pugazhendi

... Appellant

Vs.

1.Amirtham

2.N.Manjunathan

3.M.Loganathan

4.M.Thyagarajan

5.Rajakumari

... Respondents

PRAYER:--

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree as made in A.S.No.35 of 2014 dated 19.08.2019, on the file of the Principal Sub-ordinate Court, Kanchipuram, reversing the Judgment and Decree as made in O.S.No.585 of 2007, dated 27.08.2014, on the file of the Principal District Munsif Court, Kanchipuram.

For Appellant : Ms.S.Shivapriya for V.Balamurugane

For Respondents : Mr.Duraikkan S. Philip

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JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree as made in A.S.No.35 of 2014 dated 19.08.2019, on the file of the Principal Sub-ordinate Court, Kanchipuram, reversing the Judgment and Decree as made in O.S.No.585 of 2007, dated 27.08.2014, on the file of the Principal District Munsif Court, Kanchipuram.

2.This Second Appeal arises out of the reversing judgment of the Lower Appellate Court decreeing the suit for partition of the plaintiff's 1/3rd share in the suit property. The fifth defendant in the suit is the appellant in the second appeal. The 1st respondent is the plaintiff in the suit and the respondents 2 to 5 are defendants in the suit.

FACTS:

3.The plaintiff, first defendant and the fourth defendant are children of one Natesan. The second and third defendants are the sons of the first defendant. The suit property originally belonged to the plaintiff's father Natesan and he got the property from the Government by way of an assignment order dated 09.06.1975. The plaintiff's case is that as the suit property was obtained by her father by way of



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Government assignment, it was his separate property. In pursuance of the assignment

the plaintiff's father during his lifetime was in physical possession and enjoyment of the same. The plaintiff's father died in or about 2001 leaving behind the plaintiff, first and fourth defendants as his legal heirs. The plaintiff's mother Muniammal predeceased her husband Natesan. The plaintiff further states that as her father died interstate the property devolved on the plaintiff, first and fourth defendants. The plaintiff states that she alongwith defendants 1 and 4 constituted a Hindu Joint Family. The plaintiff claims 1/3rd share in the suit property since no partition was effected between the plaintiff and the defendants. The plaintiff states that recently on 17.06.2002 she came to know that the defendants 1 to 3 sold the property to the 5th defendant vide registered sale deed dated 17.06.2002. According to the plaintiff, the sale deed was not binding on her 1/3rd share. The plaintiff states that she made several demands for amicable partition, but the defendants refused and therefore she was forced to file the suit for partition.

4.The defendants 1 to 4 remained ex-parte and the suit was contested by the fifth defendant, who is the purchaser of the property from the defendants 1 to 3.



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5.The fifth defendant filed the written statement admitting that the suit property was the separate property of Natesan, who mortgaged the same with the Land Development Bank, Walajabad, under a registered mortgage deed dated 24.11.1994. The fifth defendant states that the first defendant was the only legal heir of Natesan and in order to discharge the mortgage debt of the said Natesan, the first defendant along with defendants 2 and 3 sold the suit property to him vide registered sale deed dated 17.02.2002. Ever since the sale he was in peaceful possession and enjoyment of the property. According to the 5th defendant, the plaintiff was not a legal heir of the said Natesan and therefore the allegation of the plaintiff that the plaintiff and the defendants 1 to 4 constituted a joint Hindu family and were in joint possession of the suit property was untenable. The 5th defendant stated that the plaintiff and the fourth defendant were not the daughters of Natesan and therefore the suit filed by the plaintiff was a vexatious suit.

6.The plaintiff examined herself as PW1 and one T.Murugesan as PW2 and Ex.A1 to Ex.A3 were marked. On the side of the defendants fifth defendant examined himself as DW1 and Ex.B1 and Ex.B2 were marked. The trial Court framed necessary issues and on conspectus of evidence on record dismissed the suit,



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holding that the plaintiff had failed to prove through oral and documentary evidence that she was the daughter of the deceased Natesan.

7.The plaintiff filed an appeal before the Principal Subordinate Court, Kancheepuram in A.S.No.35 of 2014, challenging the Judgment and Decree of the trial Court. The Lower Appellate Court based on Ex.A2 legal heirship certificate produced by the plaintiff and the evidence of the fifth defendant reversed the Judgment and Decree of the trial Court and allowed the suit as prayed for. Aggrieved by the Judgment and Decree of the Lower Appellate Court, the fifth defendant has filed the present second appeal.

8.The learned counsel for the appellant made two fold submissions. The learned counsel firstly submitted that the Lower Appellate Court erred in relying on Ex.A2 overlooking that Ex.A2 was obtained during the pendency of the appeal. The learned counsel for the appellant further submitted that the Lower Appellate Court failed to note that the 1st respondent was not entitled to the relief of partition as she failed to pray for setting aside the sale executed by the respondents 2 to 4 in favour of the appellant.



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9.The learned counsel for the respondents on the other hand submitted that Ex.A2 was a public document and therefore the Lower Appellate Court was justified in relying on Ex.A2 for its finding that the plaintiff was the daughter of the deceased Natesan. The learned counsel on the second submission submitted that in the absence of pleading and an issue in that regard the said submission deserved to be rejected.

10.I have heard both the learned counsels and I have perused the materials on record.

11.The second appeal has not been admitted and on service of notice the respondents have appeared through counsel. As regards objection to Ex.A2 is concerned I find no infirmity in the Judgment and Decree of the Lower Appellate Court. The Lower Appellate Court relying on the said document returned a finding that the 1st respondent was the daughter of Natesan. The said document as rightly pointed out by the Lower Appellate Court is a public document and hence there is a presumption as to its validity. It is further pertinent to note here that the application for Ex.A2 was made by the 2nd respondent and the names of the respondents 1, 2 and 5 were incorporated in the legal heirship certificate as legal heirs of the said Natesan



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at the instance of the 2nd respondent. It is further seen that the respondents 2 and 5 who are the brother and sister of the 1st respondent did not deny the status of the 1st respondent as the daughter of Natesan. The fact that the respondents 2 and 5 did not question the status of the first respondent coupled with the fact that it was the second respondent who obtained the legal heirship certificate in which the name of the first, second and fifth respondents were incorporated would clearly show that the 1st respondent was the daughter of Natesan. The appellant has not filed any evidence to controvert the evidence filed by the 1st respondent. I find no illegality or infirmity in the finding of the Lower Appellate Court in this regard and hence the same is confirmed.

12.As regards the submission relating to setting aside of the sale deed of the appellant is concerned, as rightly contended by the learned counsel for the 1st respondent there is absolutely no plea regarding the same in the written statement of the appellant. In the absence of basic pleading that the first respondent was not entitled to the relief of partition because she failed to pray for setting aside the sale deed in favour of the appellant, the submission cannot be entertained. In the absence of pleading no issue was also framed by the Courts below in this regard. Therefore, the second submission is also rejected.



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13. In view of the above discussions, I find absolutely no inpropriety or illegality in the Judgment and Decree of the Lower Appellate Court. I find that no substantial question of law arises for consideration in the second appeal and hence the second appeal is dismissed.

14. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

11.07.2024

NCC : Yes /No

Index : Yes / No

Speaking Order / Non-speaking order
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To

1. The Principal Sub-ordinate Court,
Kanchipuram.

2. The Principal District Munsif Court,
Kanchipuram.

3. The Section Officer,
Vernacular Records,
High Court,
Madras.



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N.MALA, J.

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