



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.04.2024

PRONOUNCED ON : 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

S.A.No.566 of 2021
and C.M.P.No.12188 of 2021

1. M. Avadi Kumar,
2. A.K. Senthamizhselvan .. Appellants

Vs.

1.Sasikaladevi
2.N.Munusamy Mudaliar (Died) .. Respondents

Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 24.10.2019 made in A.S.No.13 of 2019 on the file of the II Additional District and Session Judge, Poonamallee, confirming the judgment and decree dated 12.04.2018 made in O.S.No.64 of 2013 on the file of the Subordinate Judge, Poonamallee.

For Appellant(s) : Mr.A.V. Arun
(For Ms.R. Nagarani)
For Respondent(s) :Mr. M.V. Seshachari

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 24.10.2019 made in A.S.No.13 of 2019 on the file of the II Additional District and Session Judge, Poonamallee, confirming the judgment and decree dated 12.04.2018 made in O.S.No.64 of 2013 on the file of the Subordinate Judge, Poonamallee.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. The defendants are the appellants herein. The respondent herein is the plaintiff who originally filed the suit in O.S. No.167 of 2007 before the District Munsif Court, Poonamallee, on 01.04.2007 claiming 1/3rd share in the suit schedule property marked as FCDEF in the sketch. The 1st defendant is the father and the 2nd defendant is the brother of the plaintiff and 3rd defendant is the son of the 2nd defendant. The Written Statement was filed by the 2nd defendant and the separate written



statement had been filed by 3rd defendant. As per the plaint in O.S.No.167 of 2007, the property in the alleged sketch ABCFA belonged to their father ie Munusamy Mudaliar which is executed in favour of the brother of the plaintiff -2nd defendant under Ex.A2-Settlement Deed dated 30.12.2005. It is the specific case of the plaintiff in respect of the suit property in the alleged sketch FCDEF which belongs to Pankaja Ammal-Mother of the plaintiff. After death of Pankaja Ammal who died intestate on 06.12.1999, her legal heirs are the 1st defendant(husband), 2nd defendant (son) and the plaintiff (daughter) are entitled to 1/3rd share in the suit property. The 2nd defendant filed the written statement on 24.02.2012 adopted by the 1st defendant wherein it has been stated that the 1st defendant has settled the property under Ex.A2- the settlement deed and also contended that the entire property belongs to his father ie. Munusamy Muthaliar and hence the plaintiff has no share in the suit property.

4. At the same time, the 3rd defendant ie. Senthamizh Selvan, son of the 2nd defendant filed the separate written statement stating that the



suit property has been settled in favour of the 3rd defendant by the 1st defendant who was the absolute owner of the same. Hence, the plaintiff has no manner of right to question the settlement made by the 1st defendant.

5. Originally, the 1st defendant died on 23.05.2012 and hence the plaintiff had filed an application for enlargement of share from 1/3rd to 1/2. Hence, the suit was transferred to O.S. No.64 of 2013 on the file of the Subordinate Court, Poonamallee.

6. Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned Judge, the plaintiff was examined as P.W.1 and marked three documents as Ex.A1 to Ex.A3. The defendants were examined as D.W.1 and D.W.2 and marked nine Documents as Ex.B1 to Ex.B9.

7. The learned trial Judge considering the pleadings, oral and documentary evidence come to the conclusion that the suit property



namely CDEFC belongs to Pankaja Ammal. On death of her, her husband, son and daughter are entitled to 1/3rd share. Pending suit, as 1st defendant-Munusamy Mudaliar died, the plaintiff is entitled to 1/2 share in the suit property and rendered findings that Ex.B9-Settlement Deed executed by the 1st defendant in favour of the 3rd defendant was not proved in the manner known to law.

8. Being aggrieved by the aforesaid order, A.S. No.13 of 2019 was filed by the defendants and the same was dismissed confirming the Judgment of the Trial Court dated 12.04.2018 and hence the present Second Appeal.

9. Heard the learned counsel appearing for the appellants as well as the respondent and perused the materials available on record.

10. On a perusal of Ex.B6-Demand Notice which is issued to the 1st defendant-Munusamy Mudaliar dated 13.09.2007, admittedly after institution of the suit ie. 01.04.2007. Secondly, on perusal of Ex.A1-



House Tax Demand Notice issued by the Avadi Municipality for the house constructed on the suit property to the Pankajam at Door No.9 in the 9th Street.

11(a).The contention was raised on behalf of the defendants/appellants herein that the entire property belongs to the original 1st defendant-Munusamy Mudaliar and reliance placed upon the Ex.B8- Patta which stands in the name of the 1st defendant. However, it is pertinent to note that as per Ex.A2, admittedly, an extent of 2465 Sq.Ft. has been settled in favour of the 2nd defendant by the 1st defendant out of total extent of 4675 Sq.ft said to have been acquired by him under Ex.B8-Patta. However, on perusal of Ex.B8-Patta, it is disclosed that only 0.05 cents only assigned to the 1st defendant father -Munusamy Mudaliar and hence the suit property does not form part of the Ex.B8-Patta so also, does not form part of the Ex.A2-Settlement Deed in favour of the 2nd defendant.

11(b). As observed by both the Courts below the property ABCF is



not a subject matter. The suit property claimed is in CDEF and the same is only covered under the Ex.A1-House Tax receipts issued in favour of Pankaja Ammal who is mother of the parties during the life time of Pankaja Ammal. Therefore, both Courts below rightly appraised the evidence of the Ex.A1 and Ex.A2 and also said in details that Ex.B8 does not cover the suit property.

11(c). Therefore, on combined reading of the evidence of D.W.1 and Ex.A1 and Ex.B8, Ex.B6 which is only a B memo, both the Courts below has rightly come to the conclusion that the suit property CDEF does not belong to the Munusamy Mudaliar and belongs to Pankaja Amma. On her death, the suit property devolves upon legal heirs of Pankaja Ammal. ie. Her husband, son and Daughter.

12(a).The suit was originally filed on 01.04.2007 and Ex.B6 dated is 13.09.2007 which has been subsequently registered. The Written Statement was filed by the brother -2nd Defendant herein on 24.02.2012 wherein there was no pleadings about the aforesaid Ex.B6 and also on



behalf of the defendants/appellants no documents of Title or possession in respect of suit property before filing of the suit was produced to substantiate their claim.

12(b).The 3rd defendant has filed a separate Written Statement on 18.02.2015 wherein he has stated that Munusamy Mudaliar has executed a settlement deed in favour of the 3rd defendant. However, he has not disclosed any details therein.

13(a).At this Juncture, it is relevant to state that the written statement filed by the 2nd defendant on 24.02.2012 does not reflect that the alleged settlement deed said to have been executed by Munusamy Mudaliar in favour of the 3rd defendant though the said settlement deed is projected as registered on 09.03.2010.

13(b).Even in the written statement filed in the year 2012, the alleged settlement deed in favour of the original 3rd defendant said to have been executed by the original 1st defendant -Munusamy Mudaliar



was not disclosed. There was total silence about the alleged settlement deed -Ex.B9 dated 09.03.2010 executed by the 2nd defendant which was adopted by Munusamy Mudaliar and hence in the absence of any averments by Munusamy Mudaliar regarding the alleged execution of Ex.B9-Settlement Deed dated 09.03.2010, it becomes incumbent upon the defendant to prove the said documents.

13(c).Hence the said document is the gift deed as settlement deed which has to prove in the manner known to law as contemplated under Section 122, 123, 126 of the Transfer property Act. For the reasons best known, none in connection with the Ex.B9-Settlement Deed were examined by the defendants. However, for the sake of clarity it has to be stated that the alleged donor Munusamy Mudaliar has not even averred anything with regard to the settlement deed in the adoption memo or in the Written Statement by the D2. Hence, any one of the attesor under Ex.B9 may be examined by the defendant/appellant.

14(a).The defendants stated that one of the attesor is none other



than wife of the 2nd defendant who is the mother of the 3rd defendant.

However, for the reasons best known, the defendants/appellants have not examined any one of the attesor and therefore, in the absence of any averment by donor about Ex.B9 in the written statement and non examination of any one of the attesor under Ex.B9, both the Courts below has rightly come to the conclusion that Ex.B9 was not proved in the manner known to law.

14(b).Hence, on the death of original 1st defendant-Munusamy Mudaliar, only Avadi Kumar and Sasikaladevi are left as the legal heirs after the death of Pankaja Ammal (Mother). Hence, both are entitled to ½ share and hence the said findings of the Trial Court has been confirmed by the First Appellant Court. The reasons assigned by both the Courts below appears to be just and fair and it does not suffer any irregularity or illegality warranting interference in exercise of power of this Court. After perusal of the evidence, I find that both Courts below have rightly decreed the suit on the basis of the admissible evidence and for the reasons stated therein in Ex.B2 is admissible and for marking of Ex.A1,



it is admitted by the defendant does not require being the regular document can be admitted and the plaintiff has successfully discharged the burden upon their shoulder to prove their pleadings whereas the defendants had miserably failed to prove Ex.P9. Accordingly, no Substantial Question of Law have arisen for consideration and appeal is devoid of merits. Hence, the decree passed in O.S. No.64 of 2015 for $\frac{1}{2}$ share in the schedule of the property has been confirmed in A.S. No.13 of 2009 is hereby confirmed.

15.In the result, the Second Appeal is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

29.04.2024

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking
Lbm



12

RMT. TEEKAA RAMAN, J.

Lbm

To

- 1.The II Additional District and Session Judge, Poonamallee.
- 2.The Subordinate Judge, Poonamallee.

S.A.No.566 of 2021
and C.M.P.No.12188 of 2021

29.04.2024