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S.A.No.1063 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1063 of 2013 &

M.P.No.1 of 2013

Yasodhammal

... Appellant

Vs.

1.Padmavathy Ammal (deceased)

2.Sudhakar

3.K.C.Ravi

4.Vasanthammal

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 30.11.2012 made in A.S.No.7 of 2012 on the file of the Subordinate Judge, Tiruttani, reversing the judgment and Decree dated 21.10.2009 made in O.S.No.7 of 2006 on the file of the District Munsif Court, Pallipattu.

For Appellant : Mr.S.Udayakumar

For Respondents : Mr.S.Patrick,
for Mr.K.Sukumaran



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JUDGMENT

The plaintiff, who succeeded in O.S.No.7 of 2006 on the file of the District Munsif Court, Pallipattu and lost before the learned Subordinate Judge, Thiruttani in A.S.No.7 of 2012 dated 30.11.2012 is the Appellant before me.

2. The parties are referred to as their ranks in the suit for the sake of convenience.

3. The suit was presented in O.S.No.7 of 2006 for declaration of title and for permanent injunction. The claim of the plaintiff is that the property originally belonged to one Rama Naidu, who had married the first defendant and that, begotten two sons viz., Vasudeva Naidu / the husband of the plaintiff and Kuppa Naidu. The plaintiff alleged that the suit schedule mentioned property fell to the share of her husband/Vasudeva Naidu and



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from him, a registered settlement deed had been executed on 17.07.1989, by

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which the property came to her possession.

4. I have to add that Vasudeva Naidu had married one Vasantha Ammal, but it was pleaded that Vasudeva Naidu and Vasantha Ammal did not consummate the marriage, which resulted in customary form of divorce. After divorce, the plaintiff/Yasodhammal pleaded that she and Vasudeva Naidu entered into matrimony in a “self-respecting” way in the year 1981. I have to add here that in this suit, I am not concerned with the status of the marriage between Yasodhammal and Vasudeva Naidu.

5. According to the defendants, the property belongs not to the family of Rama Naidu, the husband of Padmavathy Ammal, but it belongs to Raghavalu Naidu, the father of Padmavathy Ammal. The suit schedule mentioned property fell to the share of Padmavathy Ammal by virtue of partition between herself and her brother in document No.811 of 1975 dated



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17.07.1975. Padmavathy Ammal, after having taken possession and enjoyment of the property had settled the property in favour of her nephews namely, the defendants 2 and 3 /Sudhakar and K.C.Ravi, sons of Chengama Naidu.

6. The parties went to trial based on the aforesaid pleadings. The plaintiff examined herself as PW1 and three others as PW2, PW3 & PW4 and marked Ex.A1 to Ex.A7. The second defendant examined himself as DW1 and three others as DW2, DW3 & DW4 and marked Ex.B1 to Ex.B19.

7. After trial, the learned trial judge came to the conclusion that the defendants have not proved the title to the property and decreed the suit on basis of the settlement deed under Ex.A4. Aggrieved by the same, a regular appeal was preferred before the Sub Court, Thiruttani which was allowed and the suit was dismissed, against which the present second appeal has been preferred.



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questions of law:

8. On 23.01.2014, this Court framed the following substantial

“1. Whether the non-consideration of Ex.A1 which is the 'A' Register extract which stands in the name of Rama Naidu and the said Rama Naidu's son Vasudeva Naidu derived title by means of settlement deed dated 17.07.1989 under Ex.A4 and in turn the appellant/plaintiff got title over the schedule properties and the findings rendered by the first Appellate Court is correct in law?

2. Whether Sale Deed under Ex.B8 which is subsequent to Ex.A4 is valid in law and the findings rendered by the first Appellate Court ignoring the evidence given by P.W.2 & P.W.4 is contrary to law?

3. Whether the respondents/defendants failed to establish their title under Ex.B8 dated 28.10.1999 when the burden shifts on them but the findings rendered by the first Appellate Court contrary to trial Court findings is correct in law?



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9. For the sake of convenience and disposal, I heard the parties on all the substantial questions of law, taken up together.

10. To complete the narration on the array of the parties, Padmavathy Ammal passed away on 13.12.2016. It is the case of appellant that she had left behind the Appellant/ Yasodhammal and the fourth defendant/Vasantha Ammal as her legal heirs. Therefore, the learned counsel filed a memo dated 27.12.2016 praying that the legal representatives of the first respondent may be recorded. Acceding the request, the memo is ordered.

11. Apart from this fact, it is not in dispute that Padmavathy Ammal had executed a settlement deed in favour of the second and third defendants for the very same suit schedule mentioned property. Consequently, Ravi and Sudhakar, being the beneficiaries under Ex.B2 settlement deed, can be treated as legal representatives of the deceased Padmavathy Ammal. All the necessary parties, being already on record, there



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is no requirement to take steps.

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12. The specific case of the plaintiff/Appellant is that the property fell to the share of Vasudeva Naidu, her husband by virtue of a partition that had been entered in the year 1985 between Vasudeva Naidu, Kuppa Naidu (the plaintiff's brother-in-law) and her mother-in-law Padmavathy Ammal. In order to prove the partition and the pre-existing title of Vasudeva Naidu or his father Rama Naidu to the property, no documents were filed before the Court.

13. Mr.S.Udayakumar, learned counsel of the Appellant would draw my attention to the A-Register extract under Ex.A1, in order to argue that the property belongs to Rama Naidu. A-Register is a revenue record, on which much reliance cannot be taken, especially in a suit for title.

14. Per contra, the learned counsel for the respondents invited my



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attention to the partition deed of the year 1975 in document No.811 of 1975.

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15. A perusal of the said partition deed dated 17.07.1975 would show that as early as on that date, the suit schedule mentioned property had been shown as A schedule mentioned property to the partition deed and had been allotted to Padmavathy Ammal. It is pertinent to point out that Vasudeva Naidu and Kuppa Naidu, the two children of Padmavathy Ammal had signed as witnesses to the said document.

16. I am not pinning the case on estoppel by attestation, but to the fact that as early as in the year 1975, the parties have understood that the property belonged to Raghavalu Naidu and since he was no more, the property were divided among his legal heirs. Apart from that, the settlement deed under Ex.B2 dated 15.12.1981 reads that Padmavathy Ammal, out of natural love and affection had executed the said document, thereby transferring her title in favour of the defendants 2 and 3 namely Sudhakar and



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17. Apart from the settlement deed, no other document has been produced by Yasodhammal in order to substantiate, Vasudeva Naidu had title to the property. In fact, there is no document that has been filed in order to show Rama Naidu had any right to the property. On the contrary, reading of Ex.B1 and Ex.B2 leads me to the conclusion that the property originally belonged to Raghavalu Naidu and thereafter, by virtue of the partition deed, fell to the share of Padmavathy Ammal and from her by virtue of Ex.B2, the property went to the defendants 2 and 3.

18. The trial court had misdirected itself by coming to the conclusion that since the defendants/respondents had not proved their case, the plaintiff is entitled to a decree. It is well settled that in a suit for declaration of title, the plaintiff has to stand or fall on her case and from the analysis of the evidence that has been laid before me, by way of registered



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documents, I have to come to the conclusion that the plaintiff had miserably

failed to prove her case.

19. The weakness of the defendants' case will not aid the plaintiff

to obtain a decree, unless the plaintiff has substantiated that Vasudeva Naidu

had pre-existing title to the suit property. That not having been done, I am not

in a position to come to the rescue of the plaintiff.

20. Consequently, the substantial questions of law are answered

against the plaintiff and in favour of the defendants. I am left with no other

option other than to confirm the judgment and decree in A.S.No.7 of 2012 on

the file of the Subordinate Judge, Tiruttani dated 30.11.2012.

21. In fine, the second appeal is dismissed. The judgment of the

lower appellate court stands confirmed. Since the parties are closely related,



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I am not inclined to impose cost in this appeal. Consequently, connected

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miscellaneous petition is closed.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1.The Subordinate Judge, Tiruttani

2.The District Munsif Court, Pallipattu.



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V.LAKSHMINARAYANAN,J.

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