



S.A.No.1080 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1080 of 2013 &
M.P.No.1 of 2013

Anandammal

... Appellant/Plaintiff

-Versus-

1.Krishnaveni

2.Vijayakrishnan(Died)

3.Ramakrishnan

4.The Sub Registrar,
Kurinjipadi,
Bhuvanagiri Road,
Kurinjipadi & Taluk.

5.Praveen Kumar

6.Arun Kumar

7.Santhosh

8.Karthik

9.Bargavi

... Respondents/Defendants

(Respondents 5 to 9 impleaded as legal representatives of the deceased second respondent vide order of this Court dated 20.03.2024 in CMP.Nos.6634, 6637 & 6638 of 2024)

Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 19.07.2013 made in A.S.No.77 of 2011 made in I Additional Sub-Judge, Cuddalore modifying the Judgment and Decree dated 27.06.2011 in



S.A.No.1080 of 2013

O.S.No.20 of 2004 on the file of the Additional District Munsif, Cuddalore.

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For Appellant : Mr.P.Dinesh Kumar

*For Respondents : Mr.R.Gururaj
1, 3 & 5 to 9*

*For Respondent 4 : Mr.B.Tamilnidhi,
Additional Government Pleader*

JUDGEMENT

The present second appeal arises out of the judgment and decree of the court of Ist Additional Subordinate Judge, Cuddalore in A.S.No.77 of 2011 dated 19.07.2013 in modifying the judgment and decree of the court of Additional District Munsif at Cuddalore in O.S.No.20 of 2004 dated 27.06.2011.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. The plaintiff presented O.S.No.20 of 2004 for the purpose of declaration of her title to the property and for permanent injunction not to interfere with her possession and also not to alienate or register document with respect to the suit properties.

4. The suit properties are three in number and they are located in



S.A.No.1080 of 2013

S.No.59/13, S.No.60/2 and S.No.60/12 of Rasakuppam Village, Cuddalore

District. Insofar as S.No.59/13 and S.No.60/2 are concerned, there is no dispute.

The entire dispute arises only with respect to S.No.60/12.

5. According to the plaintiff, the disputed property had been purchased by one, Krishnamoorthy Nadar, who is her husband. She would state that Krishnamoorthy Nadar out of the natural love and affection, had executed a registered settlement deed in her favour on 19.12.2002. Krishnamoorthy Nadar passed away after the execution of the settlement deed. It is admitted by the plaintiff that Krishnamoorthy Nadar had a first wife by name Parvathy Ammal through whom he begot three children, namely Krishnaveni, Vijayakrishnan and Ramakrishnan. They are none else than the defendants 1 to 3 in the suit. The plaintiff further pleaded that since the defendants attempted to interfere with her possession and sought to create records over the property by registering certain documents, she came forward with the aforesaid suit.

6. The second defendant filed a written statement, which was adopted by defendants 1 and 3. According to them, S.No.60/12 to an extent of 1 acre 18 cents never belonged to Krishnamoorthy Nadar, but it belonged to their mother Parvathy Ammal, who passed away in 1980. They would state that on the death



S.A.No.1080 of 2013

of Parvathy Ammal, Section 15 of the Hindu Succession Act came into operation and therefore the property devolved on them, the defendants, being the legal heirs. Therefore, they pleaded that the plaintiff is not entitled to any share in the same. Therefore, by virtue of the operation of Section 6 and Section 8 of the Act 30 of 1956, the defendants have become the absolute owners of the property.

7. An additional written statement was presented by the second defendant. He would take a stand that none of the properties belonged to Krishnamoorthy Nadar and the mere issuance of a patta would not confer any right over him. He would state that the plaintiff never married Krishnamoorthy Nadar nor was there a marriage of any form. He would state that after the death of Parvathy Ammal, the mother of the defendants 1 to 3, Krishnamoorthy Nadar was living an adulterous life with one Muthulakshmi wife of Kuttakalai. Krishnamoorthy Nadar and Muthulakshmi are said to have begotten six children. Later on, Krishnamoorthy Nadar came into a relationship with the plaintiff, who is the wife of Ayyakani. The relationship between Krishnamoorthy Nadar and the plaintiff is illicit and illegal and by no stretch of imagination, it can be treated as elevating her legal status. He would take the stand that the plaintiff had overpowered Krishnamoorthy Nadar and obtained a



S.A.No.1080 of 2013

settlement deed perhaps without knowing that he had no title to the property. At the same time, he would take the defence that the settlement deed is a result of forgery and impersonation.

8. The fourth defendant filed the written statement stating that he is a formal party to the proceedings and if any issue arises with respect to registration, he will follow that Act and Rules laid thereunder.

9. On the basis of these pleadings, the trial judge framed the following issues:

“1. Whether the suit property originally belongs to Krishnamoorthy Nadar?

2. Whether the settlement deed dated 19.12.2002 is true and valid?

3. Whether the plaintiff is in possession of the suit property?

4. Whether the plaintiff is entitled to the relief of declaration and permanent injunction?

5. To what relief the plaintiff is entitled to?”

10. On the side of the plaintiff, Anandammal examined herself as PW1.

She also examined the attesting witness to the settlement deed dated



S.A.No.1080 of 2013

19.12.2002 namely Singarayar as PW3. Apart from that, she examined two other witnesses viz., Kannan and Paramasivam as PW2 and PW4. She marked Ex.A1 to Ex.A19. On the side of the defendants, the first defendant examined himself as DW1 and also examined three other witnesses. The registration copy of the sale deed executed by one Abdul Saibu for himself and for his minor son Seethakadi in favour of Parvathy Ammal was marked as Ex.B1.

11. On the basis of these evidence and the arguments placed before him, the learned Trial Judge dismissed the suit with cost.

12. Aggrieved by the same, a regular appeal was preferred before the learned Ist Additional Subordinate Judge, Cuddalore. The learned Ist Additional Subordinate Judge in and by way of her judgment dated 19.07.2013 modified the decree as she allowed the appeal and granted a decree for declaration with respect to all the items of the property excepting S.No.60/12. Insofar as other items are concerned, the suit was decreed. She further held that the settlement deed executed by Krishnamoorthy Nadar in favour of the plaintiff is invalid. Consequently, the present second appeal has arisen before this court.

13. This Court did not admit the appeal but ordered notice regarding



S.A.No.1080 of 2013

admission on 14.11.2013.

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14. On notice Mr.R.Gururaj, the learned counsel appeared for the respondents 1, 3 and 5 to 9 and Mr.Tamil Nidhi, learned Additional Government Pleader appeared on behalf of the fourth respondent.

15. I heard this appeal on the following substantial questions of law:

“1. Whether the lower appellate court was correct in confirming the decree of the trial court with respect to S.No.60/12 when the legal heir of Parvathyammal viz., Krishnamoorthy Nadar had executed a document in favour of the plaintiff on 19.12.2002?

2. Whether the lower appellate court was correct in holding that the alienation by Krishnamoorthy Nadar in favour of the plaintiff was with respect to the property which he never owned?”

16. Both the substantial questions of law being interconnected with each other, I heard Mr.P.Dinesh Kumar, R.Gururaj and Tamilnidhi for the respective parties on all the points together.



S.A.No.1080 of 2013

17. The facts are simple and straight forward. The plaintiff claimed the suit schedule mentioned property by virtue of a settlement deed executed by one Krishnamoorthy Nadar on 19.12.2002. It matters not whether Krishnamoorthy Nadar had married the plaintiff or was only having a friendly and sexual relationship with her without marriage.

18. Parvathy Ammal is the owner of the property. She had purchased the same under Ex.B1. Therefore, from the year 1969 till her death in the year 1980, she had exercised all the rights of an owner of the property. On her death, Hindu Succession Act comes into operation with respect to the rights of her legal heirs. Krishnamoorthy Nadar and Parvathy Ammal had three children namely Krishnaveni, Vijayakrishnan and Ramakrishnan. They are the defendants 1 to 3 in the suit. It is admitted by both sides that Krishnamoorthy Nadar is no more.

19. Krishnamoorthy Nadar had alienated the entire property in S.No.60/12 in favour of the plaintiff. All that he would have done was alienate his share of the property in favour of the plaintiff. The settlement deed having been proved by examination of PW3, the attesting witness, the requirement of Section 68 of Indian Evidence Act stands satisfied. The lower appellate court



S.A.No.1080 of 2013

had held that as Krishnamoorthy Nadar had no right over the property, he could not have executed the document on 19.12.2002.

20. Law permits a person to alienate his share in the property. Krishnamoorthy Nadar could have alienated the property in favour of his “friend” or in favour of any person of his choice. He chose his “friend”. The plea that as Krishnamoorthy Nadar was not married to Anandammal, she is not entitled to succeed does not appeal to me for a simple reason as pointed out above. Having succeeded in the undivided estate of Parvathy Ammal, he was entitled to alienate that estate in favour of any other party or relative. He had chosen the plaintiff. Therefore, whatever share Krishnamoorthy Nadar had in and over the property, went to the plaintiff.

21. Therefore, I come to the conclusion that the lower appellate court had rightly dismissed the suit stating that the plaintiff does not have right and title over the property, but had erred in dismissing the suit in entirety. When a litigant comes before the court for the higher relief, the court will always be entitled to grant a lesser relief. When I pointed out this to Mr.R.Gururaj, he would vehemently contend as follows:

(i). There are no pleadings with respect to partition.



S.A.No.1080 of 2013

(ii). The plaintiff having pleaded that the property absolutely belonged to Krishnamoorthy Nadar, cannot now abandon that case and make a claim for partition. Consequently, she has not come to the court with clean hands.

(iii). In case a partition decree is granted, they will lose their valuable right of claiming adverse possession over the property.

22. Let me deal with these objections one by one.

23. The power under Order VII Rule 7 of the Code of Civil Procedure enables a court to grant lesser relief when the party claims higher relief. A decree for partition is lesser relief than the relief of declaration and therefore, the court possess the power to grant the said relief. The necessary pleadings are available in the form of averments made in the plaint stating that Krishnamoorthy Nadar is the owner. Denying that statement the plea taken was the property belongs to Parvathy Ammal.

24. Apart from that, in the original written statement filed by the defendants 1 to 3, they themselves admitted to the fact that Parvathy Ammal had died intestate and hence, Sections 15 and 16 of the Hindu Succession Act would operate. If the aforesaid sections are applied and Parvathy Ammal having



S.A.No.1080 of 2013

died intestate, I only have to see whether there are any other legal heirs who have not been impleaded as parties to the suit. It is the admitted case that Krishnamoorthy Nadar is no more and from the marriage between Krishnamoorthy Nadar and Parvathy Ammal, the defendants 1 to 3 were born. In other words, all the parties who are entitled to make a claim with respect to the property are before me. Therefore, the lack of pleadings seeking partition does not prevent the court from granting relief to a person who is otherwise entitled to it.

25. I have also taken note of the fact that the plaintiff, when she presented the suit, was 60 years old and today she is an octogenarian. Court should not force a litigant to file a fresh suit when the parties are available before it and it is empowered to grant a decree under the Code of Civil Procedure read with Hindu Succession Act.

26. Insofar as the plea of adverse possession is concerned, it is admitted that Krishnamoorthy Nadar was alive till 19.12.2002 and the suit was presented before the learned District Munsif at Cuddalore on 12.01.2004. Krishnamoorthy Nadar had expired in the meantime between 19.12.2002 and 12.01.2004, which was the cause of action for the suit. Between the co-owners, the question of



S.A.No.1080 of 2013

pleading adverse possession would not arise and it is only an issue of ouster. No evidence had been let in by the defendants in order to show that they had ousted Krishnamoorthy Nadar from possession from 1980 till he executed the document in favour of the plaintiff on 19.12.2002.

27. Ouster and adverse possession are the defences that are easily taken but seldom proved. In this particular case, the defendants had in fact conceded that Parvathy Ammal had died intestate and that Section 14(1) of the Hindu Succession Act would operate (see, paragraph 5 of the written statement). Therefore, the defendants in the written statement had conceded that Krishnamoorthy Nadar had a share in the property. Hence, the question of adverse possession, having arisen between 19.11.2002 to 12.11.2004, is a plea which has raised only for the purpose of its rejection.

28. On the plea that the plaintiff has come to the court with unclean hands, I am dealing with a case which has arisen out of as interplay between Hindu Succession Act, Transfer of Property Act and Indian Evidence Act. When the law is governed by the black-letter law, the question of applying equity jurisdiction to a suit for partition should not arise for a moment's consideration. Let us even assume that the party utters a lie in a suit for



S.A.No.1080 of 2013

partition, it does not mean that for having uttered the lie, the share which the party otherwise is entitled to must be denied. The principle that the person who comes to the court with unclean hands will not be granted any remedy is the principle which applies in equity jurisdiction and not in matters covered by black-letter jurisdiction.

29. Therefore, I am constrained to deny the last plea of Mr.R.Gururaj that as the plaintiff has pleaded that the property is the absolute property of the Krishnamoorthy Nadar, she cannot ride-along on the plea of the defendant that it belonged to Anandammal.

30. A careful reading of the plaint shows that the plaintiff had claimed whatever property Krishnamoorthy Nadar had written in her favour. Krishnamoorthy Nadar no doubt did not have any right to alienate the entire share, which Parvathy Ammal possessed by virtue of Ex.B1. At the same time, it cannot be denied that Krishnamoorthy Nadar had 1/4th share in the property on the death of Parvathy Ammal in the year 1980. Therefore Ex.A1 has to be read as having transferred only 1/4th share in the property to which Krishnamoorthy Nadar succeeded on the death of his wife Parvathy ammal. This 1/4th share, by virtue of document dated 19.12.2002 stands transferred in



S.A.No.1080 of 2013

favour of “friend or wife”, as the case may be, i.e., the plaintiff.

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31. In fine, the substantial questions of law framed by this Court are answered in favour of the Appellant and as against the respondents. The decree of the lower appellate court will stand modified with respect to S.No.60/12 of Rasakuppam Village, Cuddalore District to an extent of 1.18 acres. The plaintiff will be entitled to a preliminary decree for partition of 1/4th share in the suit property.

32. Accordingly, this second appeal is partly allowed. The trial court is requested not to wait for the parties to file an application for final decree. Following the verdict of the Supreme Court in ***Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689***, the trial court is directed to initiate final decree proceedings immediately on receipt of a copy of the order. The court shall issue notice to the parties to appear before the court for passing of final decree. It shall appoint an Advocate Commissioner to suggest the mode of division of the properties and pass final decree within a period of nine months from the date of receipt of a copy of this Judgment. I am fixing the time limit as the plaintiff is a super senior citizen aged about 81 years. The trial court is requested to take this into consideration and proceed in accordance with law. As



S.A.No.1080 of 2013

the appellant succeeds on the technical point, I am not inclined to impose cost

on the respondents. Consequently, connected miscellaneous petition is closed.

25.03.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The I Additional Sub-Judge, Cuddalore

2.The Additional District Munsif, Cuddalore



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S.A.No.1080 of 2013

V.LAKSHMINARAYANAN, J.
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S.A.No.1080 of 2013

25.03.2024