



Second Appeal No.373 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.373 of 2013

Rajan

.... Appellant

-Vs-

1.Sellammal
2.sundaram
3.Rani
4.Sumathi
5.Munuswamy
6.Chinnamari
7.Matharani
8.Malar
9.Rajathi
10.Pownammal
11.Shantha
12.A.M.Muniappan
13.Annamalai
14.Muniraj

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 31.08.2012 made in A.S.No.47 of 2010 on the file of the learned Subordinate Judge, Dharmapuri confirming the judgment and decree dated 27.09.2010 made in O.S.No.43 of 2006 on the file of the learned District Munsif, Palacode.

For Appellant	: Mr.S.P.Ravishankar for M/s.A.S.Balaji
For Respondents	: RR 1,3,4,6 to 9, 11 & 12 - Refused RR 2,5,10,13,14-Served, No appearance RR 1,3,4,6 to 9, 11 & 12 - Refused R4 - Not ready in Notice



Second Appeal No.373 of 2013

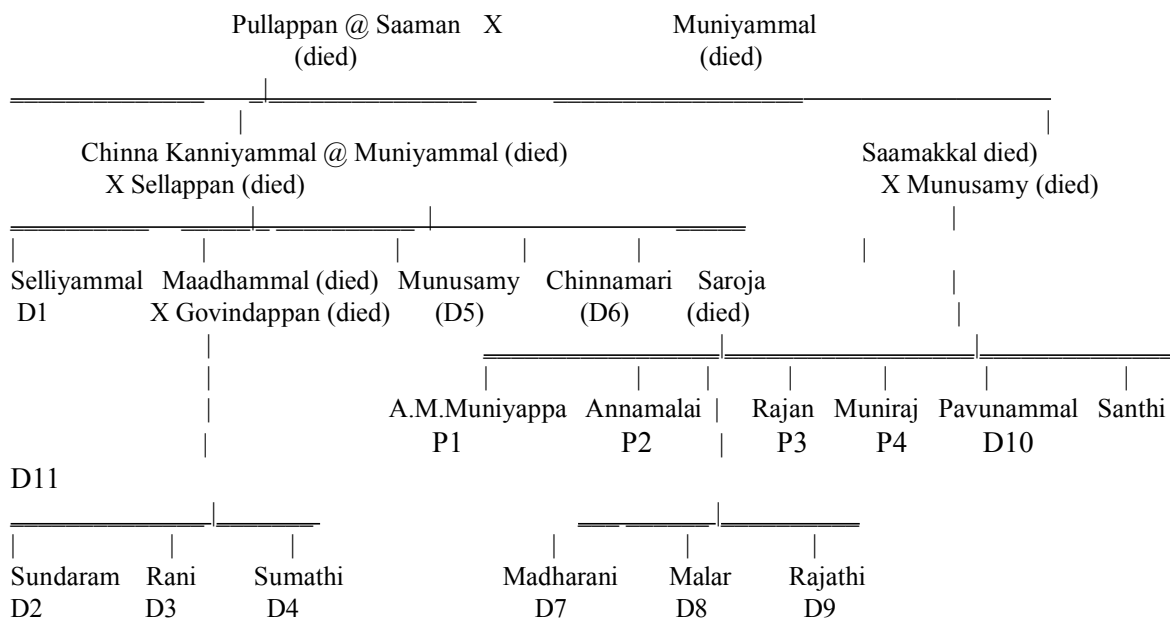
J U D G M E N T

WEB COPY

The present Second Appeal arises out of the judgment and decree of the learned Subordinate Judge at Dharmapuri in A.S.No.47 of 2010 dated 31.08.2012 in confirming the judgment and decree of the learned District Munsif at Palacode in A.S.No.43 of 2006 dated 27.09.2010. For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The claim of the plaintiff is that, there was one Pullappan @ Saaman, who is his maternal grandfather. He had only two daughters by name Chinna Kanni Ammal @ Muniyammal and Saamakkal. For the understanding of the case, the genealogical chart is set forth hereunder:

GENEALOGICAL TREE





Second Appeal No.373 of 2013

3. The case of the plaintiff is that the suit schedule mentioned properties are the ancestral properties of his grandfather Saaman and therefore he could not have settled the properties which vested in him in favour of his daughter Chinna Kanni Ammal and such a settlement does not bind him. There are 12 items of the property. The learned trial Judge as well as the lower appellate Court came to the conclusion that there is no proof that items 1 to 3 had belonged to Saaman. Insofar as the 4th item of the property is concerned, it was a personal acquisition of Munusamy, the fifth defendant, the cousin of the plaintiff. Item 12 was purchased by Munusamy's wife Kalarani and therefore it is not within the scope of being partitioned as being the property of Saaman. This leaves out Item Nos.5 to 11. Insofar as item No.5 is concerned, it was the property which was given to Chinna Kanni Ammal through a gift. Item Nos.6,9, 10 and 11 were given to her by way of a gift deed and the remaining are self acquisitions of the said Chinna Kanni Ammal by virtue of a sale deed dated 30.08.1958. The 7th item of the property is also the self acquisition of Chinna Kanni Amal which she obtained by virtue of a sale deed dated 25.08.1953. The remaining 8th item and other properties were also covered under a gift deed dated 25.08.1954.



Second Appeal No.373 of 2013

4. Based on the pleadings, the trial Judge framed the following issues :

- 1. Whether this Court has no pecuniary jurisdiction?*
- 2. Whether the plaintiffs prove that all the suit properties are joint family properties?*
- 3. Whether the plaintiffs are entitled for 40/120 share in the suit properties?*
- 4. To what other relief plaintiffs entitled to ?*

5. On the side of the plaintiff, two witnesses were examined, but no documents were marked. On the side of the defendants, the 5th defendant examined himself as D.W.1 and marked 11 documents. The learned trial Judge, on the basis of the oral and documentary evidence let in before her, came to the conclusion that the plaintiff has not proved his case and therefore dismissed the suit. Aggrieved by the same, appeal was preferred before the learned Subordinate Judge, Dharmapuri in A.S.No.47 of 2010, which was also dismissed on 31.08.2012. Against the concurrent findings, the present Second Appeal is presented before me.

6. This Court did not admit the appeal, but had ordered notice regarding admission on 08.07.2013.

7. Mr.S.P.Ravishankar argued the appeal for admission today. He would



Second Appeal No.373 of 2013

vehemently contend that the father could not have sold the property to the daughter under Exs.B1 and B5 because Chinna Kanni Ammal happened to be a destitute widow as is clear from Ex.B2. He would state that when Ex.B2 states the deceased Chinna Kanni Ammal was abandoned by her husband's family and she did not have sufficient funds, it is unimaginable that one year prior to the said gift deed, she would have purchased the property from the grandfather Saaman and his brother for a valuable consideration of Rs.700/-. He would state that, Saaman could not have alienated the ancestral properties to the detriment of the other co-parceners.

8. I have carefully considered the arguments of Mr.Ravishankar. In order to have a joint family property, prior to the amendment made to the Hindu Succession Act, 2005, a co-parcenary must consist of male heir. A co-parcener through a female heir, prior to 2005, is unknown to Hindu Law. It is admitted that Saaman and Muniyammal viz., the grandparents of the present plaintiffs did not have any son. Therefore, the claim that a daughter's son is entitled to have a claim in the co-parcenary is one which is illusory and therefore, the entire suit does not have any cause of action.

9. Apart from that, the sale deed and settlement deed had not been challenged in the suit. If a party has to succeed to a share only after setting



Second Appeal No.373 of 2013

aside a document, it is necessary that the party must challenge the same in a manner known to law. In any event, the plaintiffs have not put forth any documentary evidence to substantiate their case. Only on the basis of the oral evidence of two witnesses on the side of the plaintiffs, the Court cannot come to a conclusion that the party has a right over the property. This is especially so, when I have pointed out that a co-parcenary through female heir is unknown to law.

9. I do not find any question of law, much less substantial question of law involved in this appeal. The Second Appeal is not admitted. It is dismissed. Since the respondents have not entered appearance to oppose the appeal, I am not ordering any costs.

11.03.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The Subordinate Judge, Dharmapuri.
- 2.The District Munsif, Palacode.



WEB COPY



Second Appeal No.373 of 2013

V.LAKSHMINARAYANAN, J.

KST

S.A.No.373 of 2013

11.03.2024