



S.A.Nos.86 & 87 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.Nos.86 & 87 of 2018

and

C.M.P.No.1893 of 2018

S.A. No.86 of 2018

B.Jaya Mary (Deceased)

1.Harit Arokiya Mary

2.Irudayanathan

3.Samson Christy

(Appellants 1 to 3 brought on record

as LR's of the sole Appellant vide order

dated 20.11.2017 made in CMP. No.5954

of 2017 & CMP. No.19574 & 19575 of 2017

in S.A.SR. No.26030 of 2016)

...Appellants

Vs.

1.Jasinth

2.Sagayamary

3.Josephine

...Respondents

PRAYER in S.A. No.86 of 2018: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree passed by the First Appellate Court in A.S. No.139 of 2013 dated 11.09.2015 on the file of the II Additional City Civil Court, Chennai and prays to confirm the Judgment and Decree passed by the trial Court in O.S. No.1919 of 1989 dated 30.03.2012 on the file of the V Assistant City Civil Court, Chennai.



S.A.Nos.86 & 87 of 2018

S.A. No.87 of 2018

B.Jaya Mary (Deceased)

1.Harit Arokiya Mary

2.Irudayanathan

3.Samson Christy

(Appellants 1 to 3 brought on record
as LR's of the sole Appellant vide order
dated 20.11.2017 made in CMP. No.5955
of 2017 & CMP. No.19576 & 19577 of 2017
in S.A.SR. No.26031 of 2016)

...Appellants

Vs.

1.Jasintha

2.Sagayamary

3.Josephine

4.Deivasigamani

5.Newton

6.Johnson

...Respondents

PRAYER in S.A. No.87 of 2018: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree passed by the First Appellate Court in A.S. No.421 of 2013 dated 11.09.2015 on the file of the II Additional City Civil Court, Chennai and prays to confirm the Judgment and Decree passed by the trial Court in O.S. No.11302 of 1996 dated 30.03.2012 on the file of the V Assistant City Civil Court, Chennai.

For Appellants : Mr.S.Sureshkumar in both SAs

For Respondents : Mr.R.Thiayarajan in both SAs



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S.A.Nos.86 & 87 of 2019

COMMON JUDGMENT

The plaintiff in O.S. No.1919 of 1989 and first defendant in O.S. No.11302 of 1996 is the appellant herein.

2. The suit in O.S. No.1919 of 1989 was filed seeking recovery of possession and damages. The suit in O.S. No.11302 of 2019 was filed for partition.

3. The parties are described as per the rank in O.S. No.1919 of 1989. The brief facts for which necessary for deciding these appeals are as hereunder:

(i) The plaintiff, claiming that she is the absolute owner of the Western portion of the property bearing D.No.12, Model School Road, Thousand Lights, Chennai -6 and that the second defendant viz., Sagayamary, trespassed into the said portion, in or about August 1984, claiming to be a legal heir of Arokianathan, brother of the plaintiff's husband Bakkiyanathan and Deivasigamani and that even after the demise of Arokianathan on 30.09.1984, the second defendant continued to remain in possession of the suit property and subsequently, the defendants 1 and 3



were also brought inside the suit property in October 1984. Since all the defendants were having no right to remain in possession of the suit property, the plaintiff issued a lawyer's notice on 17.03.1988, to which, there was a reply notice and further exchange of notices.

(ii) It is the further case of the plaintiff that there was an oral partition between her brother-in-law Deivasigamani and the plaintiff, under which the western portion of the suit property was allotted to the plaintiff. Another lawyer's notice was issued on 03.06.1988, terminating the permission to occupy the suit property by 30.06.1988, to which also, there was further exchange of notices. As the defendants did not vacate and hand over vacant possession as claimed by her, the suit for recovery of possession and damages for past occupation as well as future occupation was prayed for in the suit.

4. The said suit was resisted by the defendants by filing a common written statement stating that they were the daughters of Arokianathan and therefore, they had a right in the suit property. In fact, in order to declare their share, the other suit in O.S. No.11302 of 1996 was filed seeking partition. The defendants claimed that their father Arokianathan, absolutely



owned the suit property and had put up the superstructure and constructed the same out of his own funds and that the alleged oral partition claimed by the plaintiff was not true and the suit was not maintainable.

5. In the partition suit in O.S. No.11302 of 1996, the defendants in O.S. No.1919 of 1989, claiming that they had one fourth share in the suit property and on the strength of the very same allegations made in the written statement in O.S. No.1919 of 1989, instituted the suit for partition.

6. The plaintiff in O.S. No.1919 of 1989 filed a written statement reiterating the averments and allegations in the plaint in O.S. No.1919 of 1989 and also stating that Arokianathan had no right in the suit property and further, the persons claiming to be daughters of said Arokianathan were not the daughters of Arokianathan, as he died without any issues and his legally wedded wife, one Agnes was very much alive. The claim for partition was also resisted on the ground that Arokianathan was permitted to reside in the suit property only out of sympathy, considering his ill health and not on the ground that he had any right, title or interest in the suit property.



7. The trial Court tried both the suits jointly. The plaintiff examined herself as P.W.1 and one Mr.D.S.Michael as P.W.2. Exhibits A1 to A19 was marked on her side. On the side of the defendants, the second defendant, Sagayamary was examined as D.W.1 and third defendant was examined as D.W.2 and Exhibits B1 to B12 were marked.

8. The trial Court decreed the suit for recovery of possession and dismissed the suit for partition vide order dated 30.03.2012.

9. The defendants preferred an Appeal in A.S. No.139 of 2013 as against the decree for recovery of possession in O.S. No.1919 of 1989 and A.S. No.421 of 2013, as against the dismissal of the suit for partition. The First Appellate Court reversed the findings of the trial Court and dismissed the suit for recovery of possession and decreed the suit for partition vide order dated 11.09.2015.

10. As against the reversing findings in both the suits, the legal heirs of the plaintiff, Jayamary have preferred the present Second Appeal.



11. At the time of admitting the above Second Appeals, the following substantial question of law has been framed on 27.11.2023:

"Whether the finding of the First Appellate Court that the respondents 1 to 3 are legal heirs of deceased Arokianathan is based on no evidence and hence, vitiated by perversity?."

12. I have heard Mr.S.Sureshkumar, learned counsel for the appellants and Mr.R.Thiyagarajan, learned counsel for the respondents on the said substantial question of law framed by this Court.

13. The learned counsel for the appellants, Mr.Sureshkumar, would invite my attention to the evidence adduced by the parties before the trial Court and also refer to Exhibits A14 and A16, with regard to the right and ownership of the appellants to the suit property. He would also attack the findings of the lower Appellate Court on the ground that the respondents having filed a suit for partition, ought not to have denied the relationship of the plaintiff to the family and in fact, the defendants have not let in any satisfactory evidence with regard to their relationship to/with Arokianathan viz., daughters.



14. He would also refer to the Exhibits that have been marked on the side of the respondents and contend that none of the Exhibits which have been filed by the respondents proved that they were daughters of Arokianathan and even the documents filed by the defendants themselves were not lending any support to their contentions. In this regard, he would take me through the Baptism Certificates issued in respect of all the defendants. The learned counsel for the Appellants would also state that no evidentiary value can be attached to these documents, since they have not been procured from proper custody and further, they are all documents which have emanated after the filing of the suit for recovery of possession. Further, the learned counsel for the appellants would also state that if really, the defendants were daughters of Arokianathan and they have denied the oral partition, then the suit for partition should have been filed in respect of entire property to an extent of 1200 sq.ft. However, the defendants have restricted their claim in respect of only 600 sq.ft, for which the suit for recovery of possession has been filed. He would thus contend that the suit for partition is only an after thought and filed thinking that attack is the best form of defence.



15. Per contra, Mr.R.Thiagarajan, would submit that by production of public records, the defendants have established that they are the daughters of Arokianathan. The learned counsel would also state that despite the death of Arokianathan on 30.09.1984, the plaintiff did not take any steps to recovery of possession for five long years and the suit came to be instituted only in 1989. He would also state that the wife of Arokianathan, had two names viz., Agnes and Arokiamary and therefore, the Baptism Certificates cannot be doubted on that score.

16. He would also place reliance on Ex.B2, legal heirship certificate issued by the Tahsildar for late Arokianathan, Ex.B10 being the proceedings of the Deputy Director of Collegiate Education and Ex.B12 being a Sanction letter issued by the Committee of Management of Pachaiyappa's Trust, addressed to the Management of Deputy Director, Collegiate Education and contended that all these documents are not self serving documents and the First Appellate Court had rightly relied on these relevant documentary evidence to reverse the incorrect findings of the trial Court. Therefore, the learned counsel for the respondent, prayed for dismissal of the Second Appeals.



17. Adverting to the substantial question of law framed by this Court, the short question that requires an answer is as to whether the respondents have satisfied the legal requirements insofar as their status as daughters of late Arokianathan or not. If the respondents have established that they are the daughters of late Arokianathan, then the suit for recovery of possession would have to necessarily go and the claim for partition may have to be upheld, subject to the description of the property in which the partition relief has been sought for.

18. The specific case of the plaintiff was that the defendants are not daughters of late Arokianathan. In fact, the pleadings as well as the evidence adduced before the trial Court was only that Arokianathan was married to one Agnes, who was very much alive at that point of time and residing separately and that the said Arokianathan and Agnes, did not have any issues. Further, it has been claimed by the plaintiff that the second defendant entered the property under the guise of looking after the health of Arokianathan and thereafter, she also brought in her sisters viz., defendants 1 and 3 in the suit property and continued to remain there, even after the demise of Arokianathan. The burden of proving that the defendants are the



legal heirs of of late Arokianathan is certainly on the defendants.

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19. Examining the documentary evidence produced by the defendants, Ex.B2 legal heirship certificate, though in states that the defendants are the daughters of late Arokianathan, the said legal heirship certificate does not have any evidentiary value in a Court of law. In fact, even the Certificate issued clearly contains a disclaimer in this regard. Further, the legal heirship certificate is issued purely based on the self serving statements of the persons claiming to be the legal heirs and therefore, the said legal heirship certificate would not bind the Appellants in any manner.

20. Coming to the Baptism Certificates, the said Baptism Certificates are produced by the defendants themselves and they have not chosen to examine the Church Authorities who have issued the said certificates. Further, it is the specific case of the defendants that their mother Arokiamary, was the wife of Arokianathan. However, though two of the Baptism Certificates contain the name of Arokiamary, the third Baptism Certificate contains the name, Agnes. However, it is not the case of the defendants themselves that Agnes is the lawfully wedded wife of



Arokianathan.

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21. Though a feeble argument has been raised by Mr.R.Thiyagarajan, learned counsel for the respondents, both Agnes and Arokiamary are one and the same person, I do not find any pleadings or evidence adduced by the defendants in this regard. In fact, in the pre-suit exchange of notices, there is a categoric denial that Agnes is not the wife of Arokianathan, but it was only Arokiamary, mother of the defendants who is the lawfully wedded wife of late Arokianathan. In this regard, evidence of D.W.2 also assumes significance. In cross examination of D.W.2, she admitted the fact that Arokianathan and Agnes were married to each other at Therasa Church and that D.W.2 viz., Josephine, the third defendant was aware of the same. Thus there is a good amount of cloud over the Baptism Certificates produced on the side of the defendants.

22. One another circumstance which cannot be totally ignored is that in the pre-suit notices, especially one of the notices that emanated from the defendants, the mother's name Arokiyamary is written in ink, at all the places where her name is referred in the said notice. The entire contents of



the said notice are typed. This throws certain amount of suspicion on the genuineness of the claims made by the defendants. The fact that the name has been written in ink subsequently, though before issuance of notices, only appears to give a picture that the defendants were not certain of the name of the wife of Arokianathan and they were still, even at that point of time, searching for a name to be given to the wife of Arokianathan, who according to the defendants was none else than their mother. Though this may not loom large when read in isolation, however, while looking at the over all scenario, this factor cannot be brushed aside lightly for the simple reason that in the pre-suit notices, the plaintiff who is none else than the wife of one of the brothers of Arokianathan, is alleged to be a total stranger by the defendants and at the same time, while claiming to be the daughters of Arokianathan, the defendants in their notice have not even been able to assert their mother's name i.e., the name of the alleged wife of Arokianathan. Further, the defendants went to the extent of claiming that the plaintiff was a total stranger to the family, but when it came to protect their possession, they have filed a suit for partition only against the plaintiff. The defendants have thus blown hot and cold.

23. Moreover, the defendants have denied any oral partition between



the brothers as claimed by the plaintiff. However, when it came to filing of suit for partition, the defendants have chosen to seek for partition only in respect of the western portion of the property which is under their occupation and not the entire 1200 sq.ft. This again only goes to show that the defendants had no specific case to canvass before the Court and they were indulging in taking all defences available to them in order to defeat the claim of the plaintiff for seeking recovery of possession of the property. The plaintiff has established through Exhibits A16, Sale Deed dated 06.10.1987 and also Exhibits A14 and A15, rental receipts evidencing payment of rent to the original land owner that the plaintiff is entitled to the suit property.

24. Per contra, the defendants have not been able to establish by producing satisfactory oral and documentary evidence that they are the legal representatives viz., the daughters of late Arokianathan and the said Arokiamary, the alleged wife of Arokianathan. The trial Court has considered the oral and documentary evidence adduced by the parties in a judicious manner and proper perspective and rightly came to the conclusion that the plaintiff was entitled to a decree for recovery of possession and that the defendants failed to establish that they are the legal heirs of



Arokianathan. However, the first Appellate Court, on erroneous appreciation of the oral and documentary evidence and disregarding the vital admissions of D.W.2, proceeded to believe the Baptism Certificates and also relied on Exhibits B10 and B12, in fact, which were marked only subject to the objections raised by the plaintiff even during the trial and reverse the well considered findings of the trial Court. The defendants who are respondents herein, have not succeeded in discharging the burden of proof with regard to the factum of establishing that they the daughters of late Arokianathan and none of the documentary evidences that have been exhibited by them before the trial Court would lend any credence to their claims in that regard. Much reliance cannot be placed on Ex.B10 & Ex.B12, which are only pursuant to the legal-heirship certificate being procured by the defendants and no independent material has been placed to establish that the defendants are the daughters of Arokianathan.

25. The First Appellate Court failed to see that though even at the stage of pre-suit exchange of notices, the defendants did not admit the sale deed in favour of the plaintiff and had expressed their intention to challenge the same, the defendants never chose to challenge the said sale deed and



further the plaintiffs have also examined P.W.2, the son of the other brother, to establish the ownership of the plaintiff over the suit property. Further as already discussed, if at all, the defendants had any iota of right, title or interest in the suit property and they were obliged to seek partition of the same, they ought to have sought for partition in respect of 1200 sq.ft and not merely 600 sqft in respect of which the suit for recovery of possession had been laid against them. This again goes to show that the suit for partition was nothing but a counter blast to the suit for recovery of possession.

26. In view of the foregoing, the substantial question of law is answered in favour of the appellant and the judgement and decree of the First Appellate Court in A.S. Nos.139 of 2013 and 421 of 2013 are set aside and the judgment and decree of the trial Court in O.S. No.1919 of 1989 and 11302 of 1996 are restored. The defendants/respondents shall vacate and hand over the vacant possession of the suit property on or before 30.04.2024.

27. With the above directions, the Second Appeals are allowed.



S.A.Nos.86 & 87 of 2016

Consequently, connected Miscellaneous Petition is closed. No costs.

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31.01.2024

Index : Yes/No

Internet : Yes/No

rkp

To

1. The II Additional City Civil Judge,
Chennai.
2. The V Assistant City Civil Judge,
Chennai.



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S.A.Nos.86 & 87 of 2018

P.B.BALAJI, J.

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Pre-delivery Judgment in

S.A.Nos.86 & 87 of 2018

and

C.M.P.No.1893 of 2018

31.01.2024