



S.A.No.269 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

S.A.No.269 of 2021 and
C.M.P.Nos.5381 of 2021

Judgment reserved on 10.04.2024	Judgment pronounced on .06.2024
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Baby ... Appellant

Vs.

1.M.Krishnasamy

2.The Tahsildhar
Uthiramerur Taluk Office,
Uthiramerur Town and Taluk,
Kancheepuram District.

3.The District Collector,
Kancheepuram District
Kancheepuram Town and Taluk,
Kancheepuram District.

...

Respondents

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 19.11.2019 passed in A.S.No.8 of 2016 on the file of the Additional Subordinate Judge, Kancheepuram



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modifying the judgment and decree dated 19.11.2015 passed in O.S.No.109 of 2009 before the District Munsif cum Judicial Magistrate at Uthiramerur.

For Appellant : Mr.T.Pushkin Rajkumar

For Respondents : Mr.M.Santhanaraman for R1
Mr.M.Muthusamy,
Govt. Advocate (C.S) for R2 & R3

JUDGMENT

Parties are referred to as per their ranking before the Trial Court, for the sake of convenience.

2. The unsuccessful plaintiff is the appellant herein. She filed the suit in O.S.No.109 of 2009 seeking the prayer to declare the plaintiff as the Class II legal heir of the deceased Sundar Reddiar and his wife Chandrammal and for permanent injunction restraining the official defendants not to grant patta in respect of the suit property in favour of the first defendant.

3. After trial, the suit was decreed and on appeal in A.S.No.8 of 2016, the same was allowed and the suit was dismissed. Hence, the present Second Appeal.



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4. The brief facts leading to filing of the Second Appeal are as under -

4(a) The suit property originally belongs to Sundar Reddiar who is the plaintiff's paternal uncle. The suit property is the ancestral property of Sundar Reddiar. The said Sundar Reddiar died on 18.08.2009 and the wife of the said Sundar Reddiar pre-deceased him on 22.04.2005. Sundar Reddiar and his wife Chandrammal have no issues and hence left behind the plaintiff as Class II legal heir of deceased Sundar Reddiar. The plaintiff's father Kesava Reddiar died on 02.01.1992 and her mother Rajammal died on 15.10.1990 leaving behind the plaintiff and her sisters namely Kottammal and Varalakshmi as legal heirs.

4(b) Section 8 of the Hindu Succession Act clearly states that in the absence of Class I legal heirs, the Class II legal heirs are entitled. Hence, the plaintiff is the Class II legal heir of the deceased Sundar Reddiar and hence she applied for legal heirship certificate before the 2nd defendant. But the 2nd defendant issued a reply dated 25.09.2009 to the plaintiff stating that one Krishnasamy who is the 1st defendant, claims himself as fostered son of the



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deceased Sundar Reddiar and in view of the objection, the plaintiff's claim is returned.

5(a) The first defendant filed written statement alleging that the suit property belongs to Sundar Reddiar as self-acquired property. The said Sundar Reddiar in sound state of mind and body, executed his last will and testament dated 20.01.2006 duly registered on the same date 20.01.2006 bequeathing the suit property to the first defendant. The said registered Will dated 20.01.2006 was duly executed, attested and registered. The attestors are G.Raghupathy s/o Gurusamy, M.Mani s/o Muthikrishna Naicker and A.M.Rangasamy s/o Muthikrishna Reddy. The wife of Rangasamy Reddiar, the 3rd attestor is Andal. The mother of Andal is Kottammal. The plaintiff is the younger sister of Kottammal. Sundar Reddiar died on 10.08.2009 and after his death, the said Will of Sundar Reddiar dated 20.01.2006 bequeathing the suit properties to first defendant was duly acted upon and came into force. From the date of death of Sundar Reddiar, the first defendant is in possession of the suit property as owner thereof.



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5(b) The elder brother of Sundar Reddiar was Kesava Reddiar. He died during the year 1992 and pre-deceased Sundar Reddiar. Hence, on the date of death of Sundar Reddiar, Kamatchi Ammal, his younger sister alone was Class II legal heir. Hence, the plaintiff cannot claim herself as Class II legal heir of Sundar Reddiar, as his sister Kamatchi Ammal was alive on the date of death of Sundar Reddiar.

5(c) The plaintiff, the daughter of Kesava Reddiar, who pre-deceased Sundar Reddiar, will come only as Class II, Entry IV heir but she is excluded by Kamatchi Ammal, the sister who is Class II, Entry II heir on the date of death of Sundar Reddiar. When Kamatchi Ammal, the younger sister of Sundar Reddiar was alive, the plaintiff cannot claim herself as heir of Sundar Reddiar, as her father Kesava Reddiar pre-deceased Sundar Reddiar.

6. During the Trial, the plaintiff examined herself as PW1 and one Lakshmi Narayanan was examined as PW2. Exs.P1 to P5 were marked. On the side of the defendants, DW1 to DW3 were examined and Exs.R1 to R9 were marked.



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7. On consideration of oral and documentary evidence, the Trial Court decreed the suit on 19.11.2015 and on appeal by the first defendant, the Lower Appellate Court has allowed the appeal. Hence, this Second Appeal.

8. The learned counsel appearing for the appellant/plaintiff would contend that the alleged Will dated 20.01.2006 executed with respect to the suit property under serious suspicious circumstances is null and void in the eye of the law and the plaintiff have a share in the ancestral property of Sundar Reddiar, being one of the coparceners of the joint family property ?

9. Heard the learned counsel appearing for the appellant/plaintiff as well as respondents/defendants and perused the materials available on record.

10(a) Though the appellant/plaintiff has alleged that the suit property is the ancestral property of Sundar Reddiar, while first defendant has denied the same and contended that it is a self-acquired property of the said person. None of the parties have filed any document or evidence to show the same



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and hence it is concluded that the suit property belongs to Sundar Reddiar and he is the title owner of the property.

10(b) On facts, both Sundar Reddiar and his wife Chandrammal died issueless. The plaintiff and the first defendant had claimed right of succession upon the property of Sundar Reddiar. As per the plaint, the plaintiff claims herself to be the Class II legal heir of the deceased Sundar Reddiar. The first defendant has claimed three ways to claim title to the property, that is, he is the foster son and a registered Will was executed by Sundar Reddiar while he was in sound and peaceful state of mind in the year 2016 and by virtue of the Will also, he claims the same. Both the learned counsel for the parties was advised to file the genealogy tree.

11(a) On the date of death, the schedule property was the property of Sundar Reddiar and his wife Chandrammal pre-deceased him on 22.04.2005. On the death of Sundar Reddiar, he was survived by his brother Kesava Reddiar and Kamatchiammal. After the death of his wife, Sundar Reddiar lived with his brother Kesava Reddiar. Kesava Reddiar also pre-deceased



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Sundar Reddiar on 02.01.1992. Subsequently, Sundar Reddiar died on 18.08.2009 and hence on the date of death of Sundar Reddiar, his sister Kamatchiammal appears to have been alive. Exs.A1 & B2 are the death certificates of Sundar Reddiar. Ex.B5 appears to be the death certificate of Chandrammal, w/o Sundar Reddiar and hence, on a combined reading of Exs.A1, B2 and B5, the Lower Appellate Court has rightly come to the conclusion that Chandrammal w/o Sundar Reddiar died on 22.04.2005 even prior to the death of Sundar Reddiar and the fact that the plaintiff's father Kesava Reddiar pre-deceased Sundar Reddiar is admitted by both the parties. Plaintiff's father Kesava Reddiar is the brother of Sundar Reddiar. Kamatchiammal is the sister of Sundar Reddiar.

11(b) After the death of Sundar Reddiar, his sister Kamatchiammal died on 11.12.2009 on which date the suit has already been filed. Thus, the Lower Appellate Court has rightly come to the conclusion that on the date of death of Sundar Reddiar, his sister Kamatchi Ammal was alive. Plaintiff is the daughter of Kesava Reddiar, who is the brother of Sundar Reddiar. Section 8 of the Hindu Succession Act defines the general rules of succession



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in case of males Hindu dying intestate shall devolve firstly upon the heirs being the relatives specified in the schedule. Thus, Class I & II legal heirs has been described.

11(c) The plaintiff who is the daughter of the brother of Sundar Reddiar comes within the Class II Entry IV sub division III of the Schedule. While Kamatchiammal, sister of Sundar Reddiar falls within Class II Entry II sub division IV of the Schedule. On a reading of Section 9 of the Hindu Succession Act, makes it clear that the schedules in Class I shall take simultaneously and to the exclusion of all other heirs those in the first entry. Class II shall be preferred to those in the third entry and so on in succession. So also persons who are relatives that are mentioned in the second entry shall have preference to the third entry.

11(d) On a reading of Section 9 of the Hindu Succession Act, the legal heir who falls within the purview of Class II Entry IV could not supersede the legal heirs in Class II entry II of the schedule. Therefore, on a combined reading of Section 8, 9 & 10 of the Hindu Succession Act, the plaintiff, who



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is the daughter of pre-deceased brother cannot be placed ahead of place of sister of the deceased Sundar Reddiar. Though plaintiff is a legal heir, she cannot succeed the property of Sundar Reddiar. Therefore, the Lower Appellate Court, on consideration of the genealogy, has rightly appreciated the relevant provisions of Section 9 of The Hindu Succession Act. The said finding of the Lower Appellate Court does not suffer from any illegality or irregularity .

12. The first defendant has come forward with another case that during the lifetime of Sundar Reddiar, he had bequeathed the property by way of Ex.B1 – Will. In connection therewith, attesting witnesses of the Will were examined as DW2 & DW3. The Lower Appellate Court has rightly appreciated the evidence of DW2 & DW3 and come to the conclusion that the Will was proved in the manner known to law, having satisfied with the criteria fixed under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act and the reasons also have been properly assigned.

13. It is also seen that under Ex.B9, the first defendant had executed a



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sale deed in favour of his wife and the said Ex.B9 – sale deed was attested by none other than Kamatchiammal and her son Mayakrishnan also attested the same. The said Kamatchiammal is none other than the sister of the original property owner Sundar Reddiar. Hence, the Lower Appellate Court has rightly come to the conclusion that the Will is proved in the manner known to law and the sale deed executed by the first defendant in favour of his wife is true and valid and based upon Exs.B3, B4, B6 & B7, the first defendant's family has been in possession of the property from the year 2009 and dismissed the suit by allowing the appeal.

14. Thus, this Court finds that the plaintiff is only a Class II Entry IV legal heir of the deceased Sundar Reddiar while Sundar Reddiar's sister Kamatchiammal is a Class II Entry II legal heir. Kamatchiammal succeeded to the property of the deceased Sundar Reddiar upon his demise. The plaintiff cannot supersede the right of succession of Kamatchiammal. The plaintiff, as a Class II Entry IV legal heir of Sundar Reddiar is not entitled for succession of his property. Sundar Reddiar, during his life time, out of free Will and conscious mind, had executed Ex.B1-Will in favour of first



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defendant. Execution of the said Ex.B1-Will is duly proved through attesting witnesses. Therefore, the first defendant is entitled for the title of the suit property. The first defendant subsequently had alienated the suit property in favour of his wife Saroja. Hence, I find no reason to interfere with the well considered judgment of the Lower Appellate Court in this regard and I find no merits in this appeal.

15. In the result, **the Second Appeal is dismissed** confirming the judgment and decree dated 19.11.2019 passed in A.S.No.8 of 2016 on the file of the Additional Subordinate Judge, Kancheepuram modifying the judgment and decree dated 19.11.2015 passed in O.S.No.109 of 2009 before the District Munsif cum Judicial Magistrate at Uthiramerur. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.06.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

- 1.The Additional Subordinate Judge,
Kancheepuram
- 2.The District Munsif cum Judicial Magistrate
Uthiramerur.
- 3.The Section Officer
VR Section, High Court
Madras.



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RMT.TEEKAA RAMAN, J.

(rgr)

**Judgment in
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