



2BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1073 OF 2007

Kaliammal

:Appellant/Appellant/Plaintiff

.vs.

1.Muniyasamy

2.Kandhasamy @ Nagoorgani

3.Balakrishnan @ Usman

4.Sankar

:Respondents/Respondents
Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.96 of 2006, dated 15.6.2007, on the file of Sub-Court, Ramanathapuram confirming the judgment and decree made in O.S.No.88 of 2001, dated 7.9.2006, on the file of District Munsif Court, Ramanathapuram.

For Appellant

:Mr.M.Mohamed Ibran Saibu
for M/s.Ajmal Associates

For Respodnents
1, 2 and 4

:Mr.PT.S.Narendra Vasan

Respondent-3

:Died

**JUDGMENT**

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This Second Appeal is directed against the judgment and decree made in A.S.No.96 of 2006, dated 15.06.2007, on the file of Sub-Court, Ramanathapuram confirming the judgment and decree made in O.S.No.88 of 2001, dated 7.9.2006, on the file of District Munsif Court, Ramanathapuram.

2.The Plaintiff in the suit is the appellant. The appellant filed the suit for declaration of title and for recovery of possession. The suit was dismissed by the trial Court. Aggrieved by the same, the plaintiff has preferred a first appeal and the First Appellate Court affirmed the findings of the trial Court

3.According to the plaintiff, the suit property was originally assigned in favour of her mother Aundichi and she executed a 'Will' in favour of the plaintiff in the year 1963 bequeathing the suit property in favour of the plaintiff. It was claimed by the plaintiff that the defendant's father Arumugam, who happens to be her own brother, was permitted to reside in the portion of the suit property. Thereafter, in the year 1998, the defendant vacated the suit property and handed over the same to the plaintiff. During March 1999, the defendant attempted to interfere with the possession of the plaintiff and hence a legal notice was issued asserting the right



of the plaintiff. The defendants came up with a false reply and trespassed into the suit property. Therefore the present suit was laid for declaration of title and for recovery of possession,

4.The suit was resisted by the defendants by denying the various averments made by the plaintiff claiming title and recovery of possession over the suit property. The 'Will' relied on by the plaintiff was specifically denied by the defendants in their written statement. It was also claimed by the defendants that the suit property belonged to the family and the assignment was made by the Government in the name of mother of the plaintiff and defendants namely, Aundichi for the benefit of the family and therefore, the said Aundichi had no right to execute a 'Will' in favour of the plaintiff alone. On these pleadings, the defendants sought for dismissal of the suit.

5.Before the trial Court, the plaintiff was examined as P.W.1 and on behalf of the plaintiff, eight documents were marked as Ex.A1 to Ex.A8. On behalf of the defendants, the first defendant was examined as D.W.1 and four documents were marked as Ex.B1 to Ex.B4.

6.The trial Court, on appreciation of oral and documentary



evidence available on record, came to the conclusion that the plaintiff failed to prove her exclusive title over the suit property and consequently dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.96 of 2006, on the file of Sub-Court, Ramanathapuram and the First Appellate Court affirmed the findings reached by the trial Court. Aggrieved by the cocurrent findings of the Courts below, the Plaintiff has come forward with this Second Appeal.

7.The learned counsel for the appellant submitted that the document produced by the plaintiff clearly establish that the suit property was assigned by the Government in favour of the plainfiff's mother Aundichi and therefore, the Courts below ought not have dismissed the suit in its entirety, when the plaintiff is entitled to have a share in the suit property as a legal heir of Aundichi.

8.The plaintiff filed the suit for declaration of title and for recovery of possession. The defendants are none other than the legal heirs of plaintiff's own brother Arumugam. As per the plaint averments, the plaintiff claims exclusive title over the suit property under the 'Will' executed by the original assignee namely, the mother of the parties under Ex.A5, dated 19.1.21960. The



execution of the 'Will' was denied by the defendants in the written statement. However, the plaintiff failed to take steps to examine the attestors of the 'Will' to prove the same in accordance with Section 68 of the Indian Evidence Act. The 'Will', dated 9.12.1960 allegedly executed by the original assignee Aundichi in favour of the plaintiff was not at all proved. Therefore the plaintiff failed to prove her exclusive title over the suit property. Hence the Courts below rightly came to the conclusion that the suit for declaration of title and recovery of possession deserves to be dismissed and accordingly, dismissed the suit. I do not find any error in the findings reached by the Courts below.

9. The learned counsel for the appellant submitted that even assuming that the 'Will' relied on by the plaintiff was not proved, as heir of Aundichi, the plaintiff is entitled to have a share in the suit property and Courts below ought not have dismissed the suit in its entirety. The plaintiff filed the suit for declaration of title and recovery of possession from the legal heirs of her brother. The plaintiff failed to establish the title over the suit property. Therefore, the Courts below are justified in dismissing the suit. If the plaintiff's case is that she has share in the suit property, then it is open to her to file appropriate suit for partition and work out her remedy in the manner known to law.



10. With the above observation, the Second Appeal stands dismissed. No cost.

29.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Sub-Judge,
Ramanathapuram.
2. The District Munsif,
Ramanathapuram.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.1073 OF 2007

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