



S.A.(MD) No.1026 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.1026 of 2009

Vembu @ Krishnammal

... Appellant

-VS-

R.Arunachalam

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 22.04.2009, passed in A.S.No.8 of 2009 on the file of I Additional Sub-Court, Tirunelveli, setting aside the judgment and decree, dated 06.11.2008, passed in O.S.No.655 of 2004 on the file of II Additional District Munsif Court, Tirunelveli.

For Appellant : Mr.K.Mahendran

For Respondent : Mr.V.Meenakshi Sundaram



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S.A.(MD) No.1026 of 2009

JUDGMENT

The defendant in the suit is the appellant. The respondent herein filed a suit for declaration of title and recovery of possession in respect of the suit second schedule property. The trial Court partly decreed the suit, by granting declaration in respect of 1/3 share in favour of the plaintiff. The plaintiff was also given liberty to file a suit for partition. Aggrieved by the same, the plaintiff preferred an appeal. The first appellate Court reversed the findings of the trial Court and granted the decree as prayed for. Aggrieved by the same, the defendant has come by way of this Second Appeal.

2. According to the respondent/plaintiff, the suit property was the ancestral property of his family and the same was allotted to his father's share in the partition with his brother. The plaintiff's father – Ramalingam died in the year 1974, leaving behind his wife – Gomathi Ammal, the plaintiff, the defendant and another daughter – Amugathammal. It was pleaded by the plaintiff that the defendant got married in the year 1962 without getting concurrence of her parents and hence she executed a release deed on 29.11.1962, releasing her right, if any, in the family properties. After the



S.A.(MD) No.1026 of 2009

WEB COPY

death of Ramalingam, his wife - Gomathi Ammal made a family arrangement in the presence of elders and the suit property was gifted in favour of the plaintiff, by a settlement deed, dated, 13.10.1976. The agricultural lands of the family were bequeathed to the defendant and her sister by a Will, executed by their mother on 13.10.1976. The said Will was acted upon and the defendant sold the agricultural properties, bequeathed to her, to third parties. Thus, from the year 1976 onwards, the defendant and her sister Amugathammal had no right over the suit property. At the time of execution of the Gift Deed, Gomathi Ammal reserved life estate in respect of the second item of the suit property and she had been living in the second item. The defendant, taking advantage of her relationship, entered the second item and refused to hand over the possession after the death of the mother of the parties. Under these circumstances, the plaintiff was constrained to file a suit for declaration of title and recovery of possession.

3. The defendant filed a written statement, denying the title as well as the exclusive possession over the suit property. The Settlement Deed, relied on by the plaintiff, dated 13.10.1976, executed by mother – Gomathi Ammal was specifically denied in the written statement. It was claimed by the defendant that the suit property consisted of three portions and the defendant



S.A.(MD) No.1026 of 2009

WEB COPY

had been in possession and enjoyment of the front portion. The middle portion was let out to third parties. The back portion had been in possession and enjoyment of Amugathammal. It was also claimed that the plaintiff was residing at Tenkasi in connection with his work. The defendant also claimed that mother – Gomathi Ammal executed a registered Will, dated 27.02.1997, bequeathing the suit properties to all of her children. Thus, the defendant claimed 1/3 share in the suit property and sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and two other witnesses were examined as P.Ws.2 and 3. On behalf of the plaintiff, 14 documents were marked as Exs.A-1 to A-14. The defendant was examined as D.W.1 and yet another witness was examined as D.W.2. On behalf of the defendant, 3 documents were marked as Exs.B-1 to B-3.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that after the death of Ramalingam, all of his children were entitled to 1/3 share and declared the said right. The trial Court also granted liberty to the plaintiff to file a regular suit for partition. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.8 of 2009 and the first appellate Court came to the conclusion that in



S.A.(MD) No.1026 of 2009

WEB COPY

the year 1976, there was a family arrangement under Exs.A-1 and A-2 and hence declared the title of the plaintiff, by taking into consideration Exs.A-1 and A-2. The first appellate Court also granted the decree for consequential relief of possession. Aggrieved by the same, the defendant has come by way of this Second Appeal.

6. The learned counsel, appearing for the appellant, submitted that the conclusion reached by the Courts below based on Exs.A-1 and A-2 was not sustainable in law in the absence of proof of the said documents in the manner known to law. The learned counsel also contended that Exs.A-1 and A-2 were disputed by the defendant and the same had not been proved by examining the attestors to the documents.

7. On the basis of the submissions made by the learned counsel for the parties, the following substantial question of law arises for consideration in the Second Appeal :

Whether the conclusion reached by the first appellate court with regard to the family arrangement based on Ex.A-1 – Settlement Deed and A-2 – Will was sustainable in law, when both the documents were not proved by examining the attestors ?



S.A.(MD) No.1026 of 2009

WEB COPY

8. The learned counsel for the respondent is heard on the above question of law.

9. The learned counsel for the respondent submitted that Ex.A-2 – Will was acted upon by the defendant in the sense she sold the property given to her under Ex.A-14 and, therefore, the Courts below, by taking into consideration the subsequent conduct of the parties in selling the properties allotted to them in family arrangement, rightly came to the conclusion that the family arrangement, pleaded by the plaintiff, was proved and hence the said conclusion need not be disturbed.

10. The plaintiff claimed absolute right over the suit property under the family arrangement that had taken place in the family in the year 1976. According to the plaintiff, as per the family arrangement, the suit property was gifted to him by the settlement deed, executed by his mother, on 13.10.1976 and the said document was marked as Ex.A-1. It was case of the plaintiff that as per the family arrangement, the agricultural lands of the family were given to the defendant and her sister, by a Will, executed by their mother, dated 13.10.1976. The Will had been marked as Ex.A-2.



S.A.(MD) No.1026 of 2009

WEB COPY

11. It is seen from the records that Ex.A-1 – Settlement Deed had been attested by one Arumugathammal, wife of Sankaralingam, son of Pachaimuthu. Likewise, Ex.A-2 – Will was attested by one Sankaralingam Pillai, son of Pachaimuthu Pillai and one Sudalaikannu, son of Gurunathan Pillai. The attestors to both the documents have not been examined. The Settlement Deed and the Will, relied upon by the plaintiff, have not been proved in accordance with Section 68 of the Indian Evidence Act. In fact, the defendant disputed the execution of the Settlement Deed and the Will. Therefore, examination of attestors to the documents is mandatory to prove the same in accordance with law. When Exs.A-1 and A-2 were not proved by examination of the attestors, the first appellate Court ought not have arrived at the conclusion that the family arrangement pleaded by the plaintiff was proved. Therefore, the final conclusion reached by the first appellate Court was vitiated by serious error of law.

12. The learned counsel for the respondent vehemently contended that under Ex.A-14, Sale Deed, the defendant sold the properties allotted to her under the family arrangement to third parties. A perusal of Exs.A-14 would suggest that the defendant claimed right over the subject matter of the



S.A.(MD) No.1026 of 2009

WEB COPY

sale deed under a gift deed, allegedly executed by her mother in the year 1986.

There is no reference in Ex.A-14 about the above said documents, namely, Exs.A-1 and A-2. Therefore, the said submission of the respondent is also not acceptable to this Court.

13. In view of the discussion made above, the substantial question of law, taken up for consideration, is answered in favour of the appellant. Accordingly, the Second Appeal is allowed, by setting aside the judgment and the decree passed by the Courts below. The suit for declaration and possession filed by the plaintiff stands dismissed. However, the plaintiff is given liberty to work out his remedy by filing a suit for partition in the manner known to law. No costs. Consequently, the connected M.P.(MD) No.2 of 2009 is closed.

18.07.2024

NCC : Yes / No
Index : Yes / No
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S.A.(MD) No.1026 of 2009

To:

- 1.I Additional Subordinate Judge,
Tirunelveli.
- 2.II Additional District Munsif,
Tirunelveli.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.A.(MD) No.1026 of 2009

S.SOUNTHAR, J.

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S.A.(MD) No.1026 of 2009

18.07.2024