



S.A.(MD)No.378 of 2009

BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 02.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.378 of 2009

1.Mariappan
2.A.Sivaperumal
3.A.Manickam

... Appellants

Vs

Sundari

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.72 of 2007 on the file of the learned Additional Subordinate Judge, Tirunelveli dated 20.10.2008 confirming the judgment and decree passed in O.S.No.628 of 2004 on the file of 1st Additional District Munsif Court, Tirunelveli dated 09.02.2007.

For Appellants : Mr.R.T.Arivukumar for
Mr.K.Karthik

For Respondent : Ms.K.Shwathini for
Mr.G.Prabhu Rajadurai



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S.A.(MD)No.378 of 2009

JUDGMENT

The plaintiffs in the suit are the appellants. They filed a suit for declaration and possession. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.

2. According to the appellants/plaintiffs, the suit property originally belonged to the deceased first plaintiff's elder brother Muniyasamy. The said Muniyasamy married one Vellaiammal and they got three children and all of them died within a year from the date of birth. Muniyasamy during his life time, executed a Will dated 09.08.1988, giving life estate to his wife Vellaiammal and absolute estate to a Pentecostal Mission, located at Sampantha Moorthi Street, Tirunelveli Town. Muniyasamy died on 20.10.1989 and the life estate holder Vellaiammal died on 17.07.1991. Therefore, the Will came into effect and the property was enjoyed by the Pentecostal Mission, after the death of Vellaiammal. The first plaintiff purchased the suit property from Pentecostal Mission by sale deed dated 12.08.1997. Thus, he got title



S.A.(MD)No.378 of 2009

and possession over the suit property. The defendant claiming herself as a foster daughter of Muniyasamy tried to lay claiming over the suit property by issuing a notice. The defendant is the daughter of Vellaiammal's sister and she was not entitled to succeed to the estate of Muniyasamy. It was also claimed that in the suit property, the defendant had no manner of right and hence, the suit was laid for declaration of title and other reliefs.

3. The defendant filed a written statement and resisted the suit by denying the averments made in the plaint. It was claimed by the defendant that both Muniyasamy and Vellaiammal were Christians and the Will relied on by the plaintiffs was a concocted document. The defendant also denied the right of Pentecostal Church and the sale deed in favour of the first plaintiff. The defendant also claimed that she was a foster daughter of Muniyasamy and Velliyammal. It was also claimed by the defendant that after the death of Muniyasamy and Velliyammal, she had been in possession and enjoyment of the suit property as foster daughter and paying necessary tax to the Government. The defendant also denied the claim of the first plaintiff that he was the heir of Muniyasamy and Vellaaiyammal. The defendant also raised a plea of non-



S.A.(MD)No.378 of 2009

joinder of necessary parties viz., all the heirs of Muniysamy and Vellaiyammal. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the trial Court, the son of the deceased first plaintiff viz., second plaintiff was examined as P.W.1 and 4 other witnesses were examined as P.W.2 to P.W.5. On behalf of the plaintiffs, 15 documents were marked as Ex.A1 to Ex.A15. The defendant was examined as D.W.1 and three persons were examined as D.W.2 to D.W.4. On behalf of the defendants, 13 documents were marked as Ex.B1 to Ex.B13. Three exhibits were marked as third party document under Ex.X1 to Ex.X3.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that Ex.A1 sale deed in favour of first plaintiff was not executed by a competent person representing Pentecostal Mission. The trial Court also found that the claim made by the plaintiffs based on succession law cannot be adjudicated in the absence of other siblings of Muniyasamy and hence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.72 of 2007 on the file of the Additional Sub Court,



S.A.(MD)No.378 of 2009

Tirunelveli. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the plaintiffs are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by an order dated 09.09.2009:

“Whether the Courts below are right in holding that the defendant has better title than the plaintiff proved the adoption as against a “Will” in which, the vendor of the plaintiff had perfect a title as a legaty after the death of the limited estate owner?”

7. The learned counsel for the appellants, at the time of argument not pressed the question of law framed at the time of admission and submitted that even if the Will executed in favour of plaintiffs' vendor was not proved, as a brother of Muniyasamy, the first plaintiff was entitled to the suit property and the Courts below committed a serious error in it's failure to take into consideration the right of first plaintiff Arumugam by operation of Hindu Law of Succession.

8. Based on the submission made by the learned counsel for the appellants, the following substantial question of law is arising for consideration:



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S.A.(MD)No.378 of 2009

“Whether the judgments of the Courts below are vitiated by non-consideration of the claim of the first plaintiff to the suit property in his capacity as Class-II legal heir of deceased Muniyasamy?”

9. The learned counsel appearing for the respondent was heard on the substantial question of law arising for consideration.

10. The learned counsel for the respondent submitted that both Muniyasamy and Vellaiammal were Christians and hence, Hindu Law of Succession is not applicable to them. She further submitted that if the Hindu Law of Succession is applicable, the other siblings of Muniyasamy were not impleaded in the suit and hence, both the Courts below non-suited the plaintiffs on the ground of non-joinder of necessary party and the said findings need not be disturbed in this Second Appeal.

11. The first plaintiff claimed right over the suit property under Ex.A1 sale deed executed by Pentecostal Mission in his favour. It is the case of the plaintiffs that Muniyasamy executed a Will giving absolute estate in favour of Pentecostal Mission and the certified copy of the said



S.A.(MD)No.378 of 2009

Will has been marked as Ex.A10. The original of the Will has not been marked and no steps have been taken to examine the attesor of the witnesses. Therefore, the Will executed by Muniyasamy in favour of Pentecostal Mission was not proved. Further Ex.A1 was executed by one Pastor and there is no evidence available on record to show that he was competent to execute a sale deed in favour of the first plaintiff on behalf of the Pentecostal Mission, who was the legatee under the Will. In such circumstances, both the Courts below rightly came to the conclusion that the plaintiffs failed to prove their right over the suit property under Ex.A1 and the Will executed by Muniyasamy marked as Ex.A10.

12. The learned counsel for the appellants submitted that even if the Will executed by Muniyasamy fails, as a class-II legal heir of Muniyasamy, the first plaintiff Arumugam is entitled to the suit property and hence, the present suit is maintainable.

13. The second plaintiff, who was examined as P.W.1, during the course of his evidence, clearly admitted that Muniyasamy had a sister by name Manickam and she was also his heir. It is also seen from his evidence that Muniyasamy had also a brother by name Lakshmanan, who



S.A.(MD)No.378 of 2009

died leaving behind 9 children. However, it is not known whether Lakshmanan predeceased Muniyasamy or died after the death of Muniyasamy. The fact remains that as per evidence of P.W.1, one of the sister of Muniyasamy viz., Manickam is alive and she has not been impleaded as party in the suit. The heirs of children of Muniyasamy's brother Lakshmanan were also not impleaded. Therefore, the first plaintiff Arumugam cannot claim himself as a sole heir of Muniyasamy's Estate when Muniyasamy's sister is also alive. Based on the admission of P.W.1, the Courts below came to the conclusion that suit for declaration sought for by the plaintiffs cannot be granted in the absence of other heirs of Muniyasamy viz., Sister. When P.W.1 clearly admitted about the existence of other Class-II heirs of Muniyasamy, the suit for declaration of plaintiffs' exclusive title over the suit is not maintainable. Further such declaration can be granted only in the presence of other heirs. Hence, the conclusion reached by the Courts below on the question of non-joinder of necessary parties is correct and the same is confirmed by this Court. The question of law framed for consideration is answered accordingly against the appellants and in favour of the respondent.



S.A.(MD)No.378 of 2009

14. In view of the answer to the question of law, the judgment and decree passed by the Courts below are confirmed and the Second Appeal stands dismissed. There shall be no order as to costs.

02.07.2024

NCC : Yes / No
Index : Yes / No

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To

- 1.The Additional Subordinate Judge, Tirunelveli.
- 2.1st Additional District Munsif Court, Tirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.378 of 2009

S.SOUNTHAR, J.

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S.A.(MD)No.378 of 2009

02.07.2024