



S.A.No.1266 of 1992

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD).No.1266 of 1992

Ramasubbu alias Rajendran

... Appellant

Vs.

1.N.Chinna Subba Naicker (died)

2.K.Muniammal

3.Mahalakshmi

4.Sakunthala

5.Guruvammal

6.Alagammal

7.Gurusamy

RR3 to 7 are recorded as LR's
of the deceased 1st respondent
vide order of Court dated 28.11.2003
made in C.M.P.No.10257 of 2003.

Second Appeal dismissed as against R2
by order dated 14.12.2023.

... Respondents



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PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.70 of 1989 on the file of Subordinate Judge, Srivilliputhur, dated 24.07.1991, in confirming the judgment and decree in O.S.No.419 of 1983 on the file of Additional District Munsif Court, Srivilliputhur, dated 16.08.1989.

For Appellant : Mr.B.Prahalad Ravi
for Mr.V.P.Venkataraman
For R3 to R7 : Mr.N.Rahamadhullah
: R1 died
: R2 dismissed vide Court order
dated 14.12.2023

J U D G M E N T

The plaintiff is the appellant. He filed a suit for declaration of title and permanent injunction. The suit as well as the first appeal filed by the appellant/plaintiff got dismissed. Aggrieved by the concurrent findings, he is before this Court.



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2. According to the appellant/plaintiff, the suit property originally belonged to one Iyappa Naicker. He sold the suit property to his wife Subbammal by way of registered sale deed dated 11.12.1933. The said Subbammal had two daughters viz., Achammal and Lakshmiammal. They married the brothers viz., Periya Subba Naicker and Chinna Subba Naicker respectively. The above said Lakshmiammal pre-deceased Subbammal had died on 21.04.1947 without any issues. The said Subbammal died on 10.01.1966, leaving behind her husband Iyappa Naicker and surviving daughter Achammal. Subsequently, Iyappa Naicker died in the year 1976. Thus, the entire suit property became the absolute property of Achammal by operation of law of succession. In the mean time, Achammal executed a settlement deed in favour of her grandson through her only daughter Ramasubbu viz., Rajendran, the plaintiff herein. It is the case of the plaintiff that he has been in possession and enjoyment of the suit property from the date of settlement by paying kist. It was further claimed by the plaintiff in the plaint that Lakshmi Ammal viz., the wife of first defendant, pre-deceased her mother Subbammal and hence, the first defendant had no right over the suit property. The first defendant sold portion of the suit property to the second defendant and attempted to



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interfere with the right of plaintiff and hence, the above said suit was laid for declaration of title and permanent injunction.

3. The defendants filed a written statement and resisted the suit on the ground that the sale deed executed by Iyappa Naicker in favour of his wife Subbammal was a nominal one and hence, no title was passed on to Subbammal. It was also claimed that the suit property and other properties were administered by the first defendant. The averment in the plaint as if Subbammal acquired title over the suit property by virtue of sale deed executed by Iyappa Naicker was specifically denied by the defendants. It was also claimed by the defendants that the Lakshmiammal died only subsequent to the death of Subbammal and hence, the averment of the plaintiff that after the death of Subbammal, Achammal got the entire suit property was also denied. The defendants also raised a plea that the suit properties were enjoyed by Periya Subba Naicker and his brother, first defendant by paying land tax etc., for more than statutory period and hence, the first defendant acquired prescriptive right over the suit property. The defendants also denied the settlement deed allegedly executed by Achammal on 24.06.1967, in favour of the plaintiff. The first defendant also claimed that he was entitled to ½



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share in the suit property and the same was conveyed to the second defendant. It was also stated that the second defendant was a *bona fide* purchaser for value without notice of plaintiff's right. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial Court, the plaintiff Rajendran was examined as P.W.1. His paternal grandfather Uthirappa Naicker was examined as P.W.2. His father Veerasamy Naicker was examined as P.W.3 and one Subbiah Thevar, who attested the settlement deed relied on by the plaintiff dated 24.06.1967, was examined as P.W.4. On behalf of the plaintiff, 22 documents were marked as Exs.A1 to A22. The first defendant Chinna Subba Naicker was examined as D.W.1 and one Arumugam was examined as D.W.2. On behalf of the defendants, 33 documents were marked as Exs.B1 to B33.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to establish the title and possession over the suit property and consequently dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.70 of 1989 on the



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file of Sub Court, Srivilliputhur and the first appellate Court also affirmed the findings of the trial Court. Aggrieved by the same, the plaintiff is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law, by order dated 14.09.1992.

(i) Whether the judgment of the lower appellate Court is vitiated for not considering the Exhibits A2 to A8 which has clearly established the title of Subbammal, the predecessor in title of the appellant?

(ii) Whether the direction in the Gift deed under Ex.A14 directing the appellant/donee to discharge the existing mortgage is onerous and not valid?

(iii) Whether the gift deed Ex.A14 was not proved in accordance with law?

(iv) Whether the judgment of the lower appellate Court is vitiated for non-compliance of the mandatory requirements as provided under Order 41 Rule 31 of C.P.C?

7. The learned counsel appearing for the appellant/plaintiff submitted that the plaintiff clearly established that Lakshmiammal viz., the wife of first



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defendant, pre-deceased her mother Subbammal and hence, the first defendant has no right over the suit property. The original owner of the suit property Iyappa Naicker sold the suit property to his wife Subbammal under registered sale deed dated 11.12.1933, which is marked as Ex.A2 and though the defendants raised a plea that said document is nominal one, there is no evidence to support the plea. Therefore, Subbammal acquired absolute right over the suit property under Ex.A2 and after her death, her only surviving daughter Achammal executed a settlement deed in favour of the appellant under Ex.A14, dated 24.06.1967 and hence, the title of the appellant/plaintiff over the suit property was properly proved by Ex.A2, sale deed in favour of Subbammal, Ex.A10 dated 21.04.1944, the death certificate of Lakshmiammal, Ex.A11 dated 12.01.1966, death certificate of Subbammal and Ex.A14 dated 24.06.1967, settlement deed executed by Achammal in favour of the plaintiff Rajendran, who was minor at that point of time, represented by his father Veerasamy Naicker. The learned counsel for the appellant further submitted that execution of Ex.A14 has been proved by examination of one of the attester to the document and hence, title over the suit property was proved beyond any doubt. The learned counsel for the appellant also submitted that the Courts below, without taking into consideration the exhibits



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referred above in a proper perspective, negated the prayer for declaration and consequential injunction and accordingly, the judgment and decree passed by the Courts below are liable to be set aside.

8. The learned counsel appearing for the respondents by taking this Court to the evidence of P.W.4 submitted that the document of the appellant viz., Ex.A14 has not been proved in the manner known to law and therefore, the Courts below were justified in non-suiting the plaintiff. The learned counsel for the respondents further submitted that the Courts below taking into consideration the admissions of P.Ws. and the documents marked on the side of the plaintiff, rightly came to the conclusion that the plaintiff failed to establish his exclusive possession over the suit property and dismissed the suit.

9. Answer to the questions of law 1, 2 and 3:-

The first document relied on by the appellant while tracing the title is Ex.A2, sale deed executed by Iyappa Naicker in favour of plaintiff's grand mother. Ex.A2 is the registered document for a consideration of Rs.600/- executed by Iyappa Naicker in favour of his wife Subbammal. It is an admitted



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fact that the suit property originally belonged to Iyappa Naicker. However, it was claimed by the defendants that Iyappa Naicker in order to save the suit property from his creditors, executed nominal sale deed in favour of Subbammal and therefore, Ex.A2 would not convey any title to Subbammal. Though plea of nominal sale deed was raised by the respondents/defendants, absolutely there is no evidence available on record to support the said plea. Therefore, the Courts below rightly came to the conclusion that Ex.A2 will convey title to Subbammal. The defendants also raised a plea that the second daughter of Subbammal viz., Lakshmiammal, wife of first defendant died, subsequent to the death of her mother Subbammal. However, Ex.A10, death certificate of Lakshmiammal marked by plaintiff would indicate that Lakshmiammal died on 21.04.1944, even prior to death of her mother Subbammal. Therefore, it is clear that Subbammal died on 12.01.1966 as evidenced by the death certificate marked as Ex.A11. On the date of her death, she had two surviving heirs viz., Achammal, her elder daughter and Iyappa Naicker, her husband. The said Iyappa Naicker also subsequently died. Therefore, we can safely come to the conclusion based on the exhibits referred above that Achammal succeeded to half share in the suit property by operation of law of succession. But, Subbammal's husband Iyappa



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Naicker died only in the year 1976. However, the settlement deed executed by Achammal was dated 24.06.1967. Therefore, on the date of execution of settlement deed, Achammal was not the full owner of the property and she could convey only $\frac{1}{2}$ share in favour of the settlee viz., plaintiff. The settlement deed relied on by the plaintiff to prove his title was denied by the defendants in the written statement. In order to prove the settlement, the attesor to the document was examined as P.W.4. A perusal of his evidence would suggest that he has not seen the settlor signing the document and he went to the place after the execution of the document and simply signed as a witness. Therefore, the evidence of P.W.4 is not at all useful to prove due attestation of Ex.A14 settlement deed. The settlement deed is a document which requires attestation and hence, it has to be proved, as per Section 68 of the Evidence Act by calling one of the attestors. As mentioned earlier, the evidence of attestor is not useful to prove due execution of the settlement deed. Therefore, this Court comes to the conclusion that the plaintiff failed to prove Ex.A14 settlement deed.



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10. In view of the discussions made earlier, the questions of law 1 to 3 are answered against the appellant and in favour of the respondents.

11. **Answer to question of law No.4:-** the learned counsel for the appellant contended that the first appellate Court failed to frame proper points for determination and hence, violated the mandate under Order 41 Rule 31 of C.P.C. Though the point for determination framed by the first appellate Court is very vague and general, the main issues arising for consideration were addressed by proper appreciation of entire evidence available on record. Therefore, I hold the mandate under Order 41 Rule 31 of C.P.C., is substantially complied with by the first appellate Court and hence, question of law No.4 is also answered against the appellant and also in favour of the respondents.

12. The learned counsel for the appellant submitted that Achammal, who executed a settlement deed in favour of the plaintiff, died subsequent to the suit and pending second appeal and on death of Achammal as a grandson of Achammal, the plaintiff is entitled to succeed to the suit property by operation of



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law. The learned counsel requested the Court to take into consideration the subsequent event and mould the relief in his favour. On the other hand, the learned counsel for the respondents submitted that the portion of the suit property was sold by first defendant in favour of second defendant Muniammal and the second appeal was already dismissed against the second defendant Muniammal, who is arrayed as second respondent in the second appeal, by order dated 14.12.2023, for failure of appellant to take steps to bring on record the LRs. of the second respondent, who died pending second appeal.

13. The Courts below dismissed the suit for declaration of title and permanent injunction against the respondents on the ground that the appellant failed to establish his title over the suit property as a settlee under the settlement deed executed by Achammal. The said finding rendered by the Courts below has become final against the second respondent/second defendant. Therefore, this Court is not inclined to take into consideration the subsequent event and mould the relief in favour of the appellant, in the absence of legal representative of the second respondent. The death of Achammal and the succession to the estate of Achammal by the plaintiff by operation of law is the subsequent event, which had



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taken place pending second appeal. It is always open to the appellant/plaintiff to seek declaration of his right over the suit property by claiming under different title [i.e. as legal heir of deceased Achammal]. Therefore, this Court is inclined to grant liberty to the appellant to file a fresh suit for declaration of title, based on the subsequent event and seek appropriate consequential relief. With this liberty, the Second Appeal stands dismissed. No costs.

10.04.2024

NCC : Yes
Index : Yes
Internet : Yes

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To

- 1.The Subordinate Judge,
Srivilliputhur.
- 2.The Additional District Munsif Court,
Srivilliputhur.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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