



S.A.No.183 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.183 of 2018 and
C.M.P. No.4495 of 2021

E. Sathishkumar,
S/o. Elumalai,
Residing at Nedimozhiyanur Village,
Tindivanam Taluk, Villupuram District.

...Appellant

Vs.

1. Thulukkanam, S/o. Govindharasu
2. Ramesh, S/o. Thulukkanam
3. Sellappan, S/o. Late Duraisamy Kounder
4. Ramanujam, S/. Late Duraisamy Kounder
5. Jeyalakshmi, W/o. Veerasamy Kounder.

All residing at Nedimozhiyanur Village,
Tindivanam Taluk, Villupuram District.

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 12.10.2017 in A.S. No.40 of 2016, on the file of the Additional Subordinate Court, Tindivanam, reversing the decree and judgment dated 15.07.2016 in O.S.No.326 of 2006, on the file of the Additional District Munsif Court, Tindivanam.



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For Appellant : Mr.R. Agilesh
For R2 : Mrs. V. Srimathi
R1, 3 to 5 : No appearance.

JUDGMENT

The appellant is the plaintiff in O.S. No.326/2006 on the file of the Additional District Munsif Court, Tindivanam. He filed the said suit for (i) declaration of his title to the suit properties, (ii) declaration that the settlement deed dated 07.09.2006 is null and void and (iii) for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties. The suit properties as described in the plaint are in survey numbers 262/1 and 262/9 of Nedimozhiyanur Village, Mayilam Taluk, Tindivanam Registration District.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



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3.The case of the plaintiff in a nutshell is as follows :

3.1. The suit properties originally belonged to one Kannammal.

Kannammal is the wife of one Govindasamy Gounder. Govindasamy Gounder died during the year 1977 and after his death Kannammal married one Perumal Gounder. They did not have any issues. Perumal Gounder was in possession and enjoyment of the suit properties.

3.2. On 14.04.2006 Kannammal died. Elumalai is the only son of Perumal Gounder and his first wife Karupayee Ammal. Perumal Gounder executed a settlement deed (Ex.A4) in favour of his grandson (plaintiff) on 27.04.2006 in respect of the properties belonging to Kannammal (suit properties) and ever since the date of the settlement deed, the plaintiff is in possession and enjoyment of the same. In fact, Perumal Gounder was cultivating sugarcane in the suit properties with the consent of Kannammal. The first defendant, who is the brother of Kannammal, was never in possession and enjoyment of the suit properties. However, he executed a settlement deed dated 07.09.2006 (Ex.B2) in favour of the sixth defendant. According to the plaintiff, this



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settlement deed is null and void. Therefore, he filed the suit for the reliefs of declaration and injunction as stated above.

4. The suit was resisted by the defendants on the following grounds:

- i. It is false to contend that Perumal Gounder has been in possession and enjoyment of the suit properties for the past 30 years.
- ii. Kannammal was married to Govindasamy Gounder and constructed a house in the suit properties. Govindasamy was employed in Railways and after his death Kannammal was receiving Family Pension till her death.
- iii. The plaintiff has not specifically stated in the plaint as to when Perumal Gounder married Kannammal.
- iv. On 10.03.2006 Kannammal executed a Will (Ex.B1) in favour of the first defendant. Subsequently, the first defendant executed a settlement deed dated 07.09.2006 (Ex.B2) in favour of the sixth defendant and handed over the possession of the entire suit properties in his favour. Hence, the suit filed by the plaintiff is



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5. On the basis of the above pleadings, the trial Court framed the following issues:

- 1) *"Whether Kannammal married Perumal Gounder as a second husband?*
- 2) *Whether Perumal Gounder is entitled to execute a settlement deed?*
- 3) *Whether Kannammal had executed a Will dated 10.03.2006 in favour of the first defendant?*
- 4) *Whether the settlement deed dated 07.09.2006 executed by the first defendant in favour of the sixth defendant is valid?*
- 5) *To what relief the plaintiff is entitled?"*

6. The plaintiff examined three witnesses and marked Ex.A1 to Ex.A13. The first defendant examined himself and five other witnesses and marked Ex.B1 to Ex.B8.



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7. The learned trial court judge on considering the evidence on record decreed the suit in favour of the plaintiff vide his decree and judgment dated 15.07.2016 on the following grounds:

- 1) The first defendant in his evidence admitted that Elumalai (father of the plaintiff) was cultivating crops in the suit properties and that Kannammal married Perumal Gounder after the death of her husband Govindasamy Gounder and was living with him.
- 2) The first defendant has not proved the execution of the Will dated 10.03.2006 allegedly executed by Kannammal in his favour.

8. Aggrieved over the decree and judgment passed by the trial court judge, the defendants filed an appeal in A.S.No.40/2016, before the Additional Subordinate Court, Tindivanam. The learned Additional Subordinate Judge, Tindivanam, after analysing the oral and documentary evidence on record, vide his decree and judgment dated 12.10.2017, reversed the findings recorded by the trial court and allowed the appeal on the following grounds:



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- i. The plaintiff has not proved that Kannammal married Perumal Gounder.
- ii. Kannammal, as the wife of Govindasamy Gounder, has been receiving Family Pension till her death.
- iii. Even in the electoral roll (Ex.B6), one Karupayee was shown as wife of Perumal Gounder and Kannammal was not shown as his wife.
- iv. Though the defendants have not proved the execution of the Will (Ex.B1) in the manner known to law, he can still execute a settlement deed as a class II legal heir of late Kannammal.
- v. The plaintiff has not proved the relationship between his grand father Perumal Gounder and Kannammal.

9. Aggrieved over the decree and judgment passed by the first appellate court, the present second appeal is filed by the plaintiff.

10. Notice of motion was issued to the respondents and the case is posted for hearing today.



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11. Heard Mr.R. Agilesh, learned counsel appearing for the appellant and Mrs.V. Srimathi, learned counsel appearing for the second respondent. There is no representation on behalf of the respondents 1 and 3 to 5.

12. Mr.R. Agilesh, learned counsel appearing for the appellant contended that Perumal Gounder was in possession and enjoyment of the suit properties with the consent of Kannammal and thus he had acquired right over the suit properties by adverse possession and prescription. It is also his contention that both the courts below had concurrently held that the first defendant has not proved the Will dated 10.03.2006 (Ex.B1) executed by Kannammal in his favour. He also drew the attention of this Court to Section 15 of the Hindu Succession Act and contended that after the death of Kannammal, the properties would devolve upon the legal heirs of her husband and not on the first defendant, who is the brother of Kannammal. He would therefore contend that the first defendant is not entitled to the suit properties and the settlement deed executed by him in favour of the sixth defendant is null and void.



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13. Per contra, Mrs. V. Srimathi, learned counsel appearing for the second respondent would contend that there is no evidence to show that Kannammal married Perumal Gounder after the death of her husband Govindasamy Gounder. In fact the plaintiff himself admitted that Karupayee Ammal is the wife of Perumal Gounder and that she is still alive. Therefore, the marriage between Kannammal and Perumal Gounder is not valid in the eye of law. It is her further submission that Kannammal was receiving family pension till her death as Govindasamy Gounder was working in Railways. She therefore would contend that the first appellate court was right in dismissing the suit filed by the plaintiff.

14. The plaintiff in the instant case is the grandson of Perumal Gounder. In the plaint it is contended that Perumal Gounder married Kannammal while his first marriage with Karupayee Ammal was in subsistence. It was also specifically averred in the plaint that Perumal Gounder, Kannammal and Karupayee were all living in the same house. It is pertinent to point out that when Karupayee Ammal is alive, the alleged marriage between Perumal Gounder and Kannammal is not a



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valid one. Though it was contended by the learned counsel for the appellant that Perumal Gounder was managing the properties of Kannammal with her consent, the same cannot be construed that Perumal Gounder was enjoying the properties exclusively. The trial court, merely based on the house tax and property tax receipts (Ex.A5 to Ex.A10), had held that Perumal Gounder was the owner of the properties. The trial court has also further held that even in the death extract of Kannammal (Ex.A11), her husband's name is indicted as Perumal Gounder. These documents would not be of any help to the plaintiff to prove his contention especially when there cannot be any valid marriage between Kannammal and Perumal Gounder. It is also pertinent to point out that the plaintiff has not pleaded that Perumal Gounder has prescribed title over the suit properties by way of adverse possession and prescription.

15. Thus the appellant/plaintiff has not proved that he is entitled for a declaration of title to the suit properties. The first appellate court had held that though the first defendant has not proved the execution of the Will dated 10.03.2006 (Ex.B1) by Kannammal in his



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favour, yet he is entitled to execute a settlement deed (Ex.B2) in respect of the suit properties as he is the class II legal heir of Kannammal. It is relevant to extract Section 15 of the Hindu Succession Act.

"15. General rules of succession in the case of female Hindus.

(1)The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a)firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
- (b)secondly, upon the heirs of the husband;*
- (c)thirdly, upon the mother and father;*
- (d)fourthly, upon the heirs of the father; and*
- (e)lastly, upon the heirs of the mother.*

(2)Notwithstanding anything contained in sub-section (1),—

(a)any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b)any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence



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16. In the instant case, the properties stand in the name of Kannammal and she was the absolute owner of the entire suit properties. There was no proof that her husband purchased all these properties in the name of Kannammal. In the circumstances, it cannot be stated that the properties would devolve upon the legal heirs of her husband. In any event, the first defendant has not adduced any evidence to show that he is the only class II legal heir of late Kannammal. However, this is not the issue which has to be decided in the instant case. The plaintiff and his father Perumal Gounder are total strangers to the family of Kannammal and therefore, they cannot claim any right over the suit properties. Hence the second appeal deserves to be dismissed.



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17. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.
- ii. the decree and judgment dated 12.10.2017 passed in A.S. No.40 of 2016, on the file of the Additional Subordinate Court, Tindivanam, is upheld.
- iii. the decree and judgment dated 15.07.2016 passed in O.S.No.326 of 2006, on the file of the Additional District Munsif Court, Tindivanam, is set aside.
- iv. The suit in O.S.No.326 of 2006, on the file of the Additional District Munsif Court, Tindivanam, is dismissed with costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Additional Subordinate Judge, Tindivanam

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2. The Additional District Munsif Court, Tindivanam.
3. The Section Officer, VR Section, High Court, Madras.



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