



SA(MD)No.226 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.226 of 2019

and

C.M.P(MD)No.4429 of 2019

Seevalamuthammal @ Muthulakshmi

... Appellant / Appellant / Defendant

Vs

Gomathiammal

... Respondent / Respondent/ Plaintiff

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree passed in A.S.No.78 of 2015 on the file of the Sub Court, Sankarankovil, dated 11.02.2019 confirming the judgment and decree in O.S.No.408 of 2013 on the file of the Additional District Munsif Court, Sankarankovil, dated 20.07.2015.

For Appellant : Mr.G.R.Sathish

For Respondent : Mr.S.Ramesh @ Ramiah



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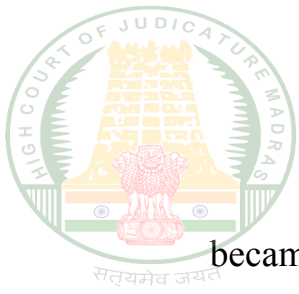
JUDGMENT

The defendant is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree dated 11.02.2019, in A.S.No.78 of 2015 on the file of the Sub Court, Sankarankovil, confirming the judgment and decree dated 20.07.2015 in O.S.No.408 of 2013 on the file of the Additional District Munsif Court, Sankarankovil.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4. It is the case of the plaintiff that the suit property belong to his father Kotti Servai ancestrally. He had executed a settlement deed on 22.11.1983 in favour of his wife and two daughters. Pursuant to the death of the plaintiff's mother Guruvammal, there was an oral partition between the sisters and Guruvammal had executed a settlement deed on 17.04.2013 in favour of the plaintiff. Pursuant to which the plaintiff



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became the absolute owner of the suit property. The defendant had made a claim in respect to the suit property and filed a suit in O.S.No.160 of 1985 seeking for recovery of possession which came to be dismissed on 06.10.1989. Even while, the defendant was silent for some time, had started to interfere in the possession of the plaintiff, as such the plaintiff had given a police complaint on 04.08.2013 and had come up with the suit for bare injunction.

5. The defendant resisted the suit by contending that the properties originally belong to one Late. Lakshmana Servai. Lakshmana Servai had two sons. Mahalingam and Kotti Servai. Kotti Servai had executed a sale deed on 30.08.1956 for himself, his minor daughters and in favour of the defendant's father and based on which the defendant's father had executed a settlement in their favour on 03.09.1958. It is the further stand of the defendant that the settlement executed by the defendant's father is valid and the dismissal of the suit filed by them in O.S.No.160 of 1985 will not affect the rights of the defendant in view of the earlier decree granted in O.S.No.106 of 1990. Thereby sought for dismissal of the suit.



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6. During trial, the plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A9. On the file of the defendant, the defendant examined herself as D.W.1 and marked documents in Ex.B1 to Ex.B6. The trial Court on analyzing the evidences, came to the conclusion that when admittedly there had been a partition suit in O.S.No.53 of 1957 between the two brothers in which the suit property is also one item, the claim made by the defendant that the defendant's father had purchased the property in 1956 itself, will not give any right to her. The trial Court concluded that in view of the partition decree, plaintiff's father got the suit property and further had relied on two suits one in O.S.No.106 of 1990 filed by the second wife of the defendant's father wherein the suit property is not a subject matter and the other suit in O.S.No.160 of 1985, which the defendant lost as against the plaintiff and had decreed the suit. On appeal, the lower appellate Court also considering the partition decree and the subsequent judgment passed in the two suits, confirmed the judgment and decree of the trial Court and dismissed the appeal. Assailing the concurrent finding of fact, the defendant had preferred the above appeal.



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7. The appeal has not been admitted and this Court by order dated 27.04.2019, had only issued notice to the respondent.

8. Learned counsel appearing for the appellant argued that when the defendant's father had purchased the suit property in the year 1956, he became the owner through purchase and therefore, it has been rightfully settled in favour of the defendant. It is his further contention that ignoring the sale deed in Ex.B5, the Courts below had erroneously made reliance on the suit filed by the second wife of the defendant's father which is no way concerned with the present claim and also the suit that was lost by the defendant and had decreed the suit. Learned counsel further contended that when the plaintiff had come up with the suit, the onus was on them to prove their right and title and also prove that on the date of filing of the suit, the plaintiff was in possession of the suit property. But however, the Courts below on finding weaknesses in the case of the defendant, decreed the suit which are erroneous, perverse and sought for interference of this Court.



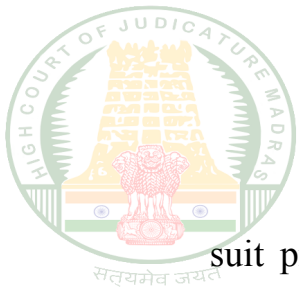
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9. Contending contra, the learned counsel for the respondent submitted that when admittedly there is a partition decree between the parties executed in the year 1957 in which compromise was entered into by the defendant's father himself including the suit property, the claim made based on the documents in the year 1956 cannot be sustained. Further contended that in view of the other subsequent decrees passed in two suits, the Courts below had rightly arrived at a conclusion in decreeing the suit and thereby submitted that the same needs no interference and sought for dismissal.

10. Heard the rival submissions and perused the materials available on record.

11. The plaintiff had come up with the claim seeking for injunction in respect of the suit property. In this regard, the plaintiff claims right through the decree passed in the partition suit in O.S.No.53 of 1957 in which a compromise decree was passed between the plaintiff's father and the defendant's father. The suit property was also one of the item of the



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suit properties therein and the suit property came to be allotted to the share of the plaintiff's father. In view of the share being granted to the plaintiff's father, he had executed the settlement deed in favour of his wife and the daughters including the plaintiff in Ex.A1 on 22.01.1983. After the death of the plaintiff's mother, the other sister had executed a further settlement deed on 17.04.2013 in Ex.A2 in favour of the plaintiff. Since the plaintiff became the absolute owner of the suit properties, she had been in possession and had filed documents in Ex.A3, Ex.A7 to Ex.A9, the tax receipts evidencing the payments of tax in respect of the suit property.

12. The defendant only disputes the claim on the ground that the defendant's father had purchased the property in the year 1956. It is to be noted that there had been a partition suit between the plaintiff's father and the defendant's father and in the partition suit, a compromise decree came to be passed in O.S.No.53 of 1957. When admittedly, both the plaintiff's father and the defendant's father had instituted a partition suit and in which a decree came to be passed allotting the suit property in favour of the plaintiff's father, the claim made by the defendant that she



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has right since there was a purchase by the defendant's father in the year 1956, which is prior to the partition decree cannot be accepted.

13. Further it could be seen that in view of the decree granted in favour of the plaintiff's father, he had acted upon and the subsequent deeds in Ex.A1 and Ex.A2, came to be registered. The defendant who claimed right over the suit properties only placing reliance on the sale in the year 1956, is not able to file any document to show that subsequent to the decree in the year 1957, the defendant's father had any right in the suit properties. In this regard, a suit also in O.S.No.106 of 1990 came to be filed by the second wife of the defendant's father. In this suit, the suit property has not been included and the suit has been laid for partition by showing the suit property as the boundaries in respect to the claim made in that suit. The perusal of the decree passed in O.S.No.106 of 1990 makes it clear that the defendant's father was not having any right in the suit property and even the claim made by the second wife was in respect of the other property which was granted to the defendant's father through the compromise decree.



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14. It is also to be noted that in fact, the defendant herself had filed a suit in O.S.No.160 of 1985 as against the plaintiff and the decree passed in the suit is filed as Ex.A4. The suit has been instituted by the defendant seeking for recovery of possession. Even after the suit came to be dismissed against her, the defendant had not contested further. As such from the decree in Ex.A4, it is clear, that the defendant sought for recovery of possession claiming title and also admitting the possession of the plaintiff and having lost the suit, did not choose to contest thereafter. In view of the document in Ex.A4, the defendant is not having any title in the suit property and further the possession of the plaintiff also stands established.

15. From the above, it is clear that the plaintiff is the absolute owner having established title and also the possession over the suit property. Further also taking note of the fact that the defendant had already lost the claim made in respect of the suit property in the suit filed in the year 1985 itself, the Courts below has rightly appraised the evidences and rendered the concurrent finding of fact, in decreeing the suit. This Court does not find any illegality or perversity in the findings



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arrived at by the Courts below. No substantial question of law arise for consideration in this Second appeal.

16. In view of the above, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

17.07.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

1. The Sub Court, Sankarankovil.
2. The Additional District Munsif Court, Sankarankovil.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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G.ARUL MURUGAN, J.

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