

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:27-06-2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1541 of 1996

1.Kaliammal (died)

2.Chidambaram

3.Dhanalakshmi

4.Rathinam

5.Govindasamy

(Appellants 2 to 5 are brought on records as Lrs of the deceased sole appellant vide order of the Court dated 22.11.2004 made in C.M.P.No.7343 of 2004)

... Appellants[Plaintiff].

Versus

1.K.Periasamy

2.Palaniswamy

3.Sornayal

4.Muthusamy

5.lakshmiammal

... Respondents[Defendants].

Appeal against the judgment and decree, dated 21.02.1995, made in A.S.No.184 of 1993, on the file of the Additional Sub Court, Erode, confirming the judgment and decree of the Principal District Munsif Court, Erode, made in O.S.No.1133 of 1990, dated 22.10.1992.

For Appellants : Mr.M.M.Sundaresh

For Respondents : No Appearance (R1 and R2)
Mr.N.Manoharan (R4)

J U D G E M E N T

The second appeal has been filed against the judgment and decree, dated 21.02.1995, made in A.S.No.184 of 1993, on the file of the Court of Sub Judge, Periyar District at Erode, confirming the judgment and decree, dated 27.10.1992, made in O.S.No.1133 of 1990, on the file of the Court of Principal District Munsif, Erode.

2. The plaintiff in the suit O.S.No.1133 of 1990 is the appellant herein. The legal heirs of the plaintiff have been brought on record after her death. The suit had been filed by the plaintiff praying for a decree of:

a) directing the defendants 1 to 3 not to execute any sale deed either in favour of the defendants 4 and 5, or in favour of other persons, violating the provisions of Section 22 of the Hindu Succession Act.

b) directing the defendants to execute such a sale deed in favour of the plaintiff for a price fixed by the Court under Section 22 of the Hindu Succession Act.

c) directing the defendants their men and agents from in any manner interfering with the peaceful possession and enjoyment of the plaintiff's schedule properties by means of a permanent injunction.

d) directing the defendants to pay the costs of the suit to the plaintiff.

3. It has been stated in the plaint that the plaintiff is the eldest daughter of one Kudimikara Karuppana Gounder, who was owning the suit properties along with certain other properties, as his separate property. The said Kudimikkara Karuppana Gounder had a wife by name Palaniammal. The plaintiff's younger sister Sornayal is the 3rd defendant. The plaintiff had two brothers, namely, Periyasamy and Palanisamy, who are the first and second defendants respectively. Kudimikkara Karuppana Gounder had died intestate in the year 1983 leaving his wife, two daughters, namely, the plaintiff and the 3rd defendant and two sons, who are the first and second defendants in the suit. Since the sons of Kudimikkara Karuppana Gounder had become addicted to drinks and were incapable of paying the debts incurred by them, their mother Palaniammal, had to discharge their debts. In such circumstances, Palaniammal and her sons, namely, Periyasamy and Palanisamy had sold the eastern portion of the house properties in Thiru. Vee. Ka. Street at Veerappan Chattiram, that had originally belonged to Kudimikkara Karuppana Gounder, to the 4th and 5th defendants in the suit. The claim of the plaintiff in the suit is only with regard to Door No.6 of Thiru. Vee. Ka. Street at Veerappan Chattiram having a measurement of 1038 Sq.Ft, which is the western portion of the said property. Palaniammal, the mother of the plaintiff, had died intestate in the year 1989. As per the Hindu Succession Act, 1956, the plaintiff becomes a Class I heir of her mother's 1/3rd share of the properties. The plaintiff has been living in the said property at Veerappan Chattiram along with her daughter Easwari.

4. It has been stated by the plaintiff that even if it is held that there was no partition of the property at Veerappan Chattiram by metes and bounds and even if it is held that she had already executed the release deed with regard to her share in the properties, that had belonged to her father, she would be entitled to the relief of pre-emption, as provided under Section 22 of the Hindu Succession Act, 1956, regarding her mother's share. Hence, the plaintiff had filed the suit in O.S.No.1133 of 1990 on

the file of the Principal District Munsif Court, Erode.

5. In the written statement filed by the 4th defendant, it has been stated that the claims made by the plaintiff in the suit in O.S.No.1133 of 1990 is false, frivolous and not maintainable, either in law or on facts. It has been stated that the contention of the plaintiff that the suit property is a separate property of the deceased Kudimikkara Karuppana Gounder is false. In fact, it is his ancestral property. The suit property has always been enjoyed and treated as a joint family property of Kudimikkara Karuppana Gounder and his sons Periyasamy and Palanisamy, who are the first and second defendants in the suit. It was also incorrect to state that the first and second defendants were addicted to drinks and that they were sick and unable to earn.

6. It is also incorrect to state that there were avyavaharaka debts incurred by the first and second defendants and that their mother Palaniammal had discharged such debts. The plaintiff and the 3rd defendant had willingly and voluntarily released their entire rights and title in the joint family properties for valid consideration on 30.12.1986 . In I.A.No.1788 of 1990, filed before the Principal Court Erode, the plaintiff had admitted in clear terms that the suit properties were ancestral properties. In the release deed, dated 13.12.1986, the plaintiff and the 3rd defendant have clearly admitted that the suit properties are the ancestral joint family properties. In view of the said admission, the plaintiff is estopped from contending that the suit properties are the separate properties of Kudimikkara Karuppana Gounder. In the sale deeds executed in favour of the 4th and 5th defendants over the eastern portion of the joint family property, Palaniammal had also signed. The plaintiff and the 3rd defendant were aware of the sale deeds, but they had not questioned them. In such circumstances, the plaintiff had no right or title in the suit property and even if she had any share in it, she is estopped by her conduct from claiming any right by prescription.

7. It has also been stated that it is false to allege that the plaintiff is in possession and enjoyment of the suit property and that she is living in the suit property along with her daughter. On 12.09.1989, the first and second defendants had divided their remaining joint family properties under a registered partition deed. On 18.04.1990, the first defendant had sold 12,105 sq.ft of the property situated on the western end to one Annadurai and his wife Thulasimani. On 30.08.1990 the second defendant had sold his 1038 sq.ft of the property to the 4th defendant and had also delivered vacant possession of the same. There was no building in the portion that was sold to the 4th defendant. Only after the purchase of the property, the 4th defendant had put up a compound wall on the southern side of the property purchased by him. On the northern side there is a compound wall belonging to the owner of the adjacent property. The 4th defendant is in possession and enjoyment of the property purchased by him. Since the plaintiff had released her rights by way of a release deed, she cannot claim any share in the said properties. Even if she had certain

rights, she had waived them. The suit is not maintainable as the plaintiff had not paid the prescribed Court fees relating to the reliefs prayed for by her. The suit had been filed with the mala fide motive of coercing the defendants to come to the terms prescribed by the plaintiff. Therefore, the plaintiff is not entitled to the reliefs prayed for in the suit. Hence, the suit is liable to be dismissed.

8. Based on the rival contentions raised on behalf of the plaintiff as well as the defendants, the trial Court had framed the following issues for consideration:

i) Whether the plaintiff is entitled to the relief of pre-emption and permanent injunction as prayed for:

ii) What other reliefs she is entitled to .

9. With regard to the issues framed the trial Court had found that the reliefs prayed for by the plaintiff in the suit cannot be granted, since the plaintiff had released her rights by way of a release deed, dated 30.12.1986, marked as Ex.B-1. However, the plaintiff had not objected the sale of the suit property made in favour of the 4th defendant. Therefore, the plaintiff cannot claim the right of pre-emption, or a decree for permanent injunction as prayed for in the suit in O.S.No.1133 of 1990.

10. Aggrieved by the judgment and decree of the trial Court, dated 22.10.1992, in O.S.No.1133 of 1990, the plaintiff had filed an appeal in A.S.No.184 of 1993, on the file of the Additional Sub Court, Erode.

11. After analysing the contentions raised on behalf of the parties concerned and based on the evidence on record, the lower Appellate Court had framed the following points for consideration:

i) Whether the appellant/plaintiff is entitled to the right of pre-emption and relief of permanent injunction as prayed for in the suit.

ii) What other reliefs the plaintiff is entitled to.

12. The lower Appellate Court had come to the conclusion that the trial Court was right in dismissing the suit filed by the plaintiff. The lower Appellate Court had found that the plaintiff, having released her rights in the suit property, had no right to claim pre-emption with regard to the said properties. Further, it was found that the plaintiff had admitted that she did not have the means to purchase the property in question. Further, the lower Appellate Court had found that the plaintiff had not proved her claim that she was living in the suit property, either by documentary or oral evidence. Therefore, she was not entitled to the relief of interim injunction as claimed by her. In such circumstances, the lower Appellate Court had dismissed the appeal, by its judgment and decree, dated 21.02.1995, made in A.S.No.184 of 1993, confirming the judgment and decree of the trial Court, dated 22.10.1992, made in O.S.No.1133 of 1990. Hence the present second appeal.

13. The plaintiff in O.S.No.1133 of 1990 had filed the present second appeal, on the various grounds stated in the memorandum of grounds of appeal. The substantial questions of law raised by the appellants are as follows:

"(a) Have not both the Courts below committed in error of law in misunderstanding the scope of Section 22 of Hindu Succession Act and disentitling the Appellant/plaintiff.

(b) Is the first Appellate Court committed the error of law in holding appellant/plaintiff has waived her right on the entry by the third party.

(c) Is the first Appellate Court entitled to consider the plea of waiver for the first time in the absence of pleading and issue."

14. The learned counsel appearing on behalf of the appellants submitted that Palaniammal, mother of the plaintiff, had died intestate in the year 1989. As per the Hindu Succession Act, 1956, the plaintiff is a Class I heir, having the right over her mother's 1/3rd share of the properties in question. It has also been contended that a tiled house has been put up in the suit property and the plaintiff is living in the said house, thereby having the possession and enjoyment of the property in question. In such circumstances, the plaintiff is entitled to the right of pre-emption, as prayed for under Section 22 of the Hindu Succession Act, 1956.

15. The learned counsel appearing on behalf of the 4th respondent had submitted that the plaintiff had no right over the suit property since she had relinquished her rights in the suit property by way of a release deed, dated 30.12.1986. Further, the plaintiff had not questioned the sale of the properties effected earlier. Further, her claim regarding the right of pre-emption cannot be considered, as the plaintiff could not show sufficient means to purchase the property in question. The Courts below have concurrently held that the claims made by the plaintiff have not been sufficiently proved and therefore, they cannot be sustained in the eye of law.

16. The Courts below had found that the claim of the plaintiff that she was living in the suit property has not been proved by the plaintiff. It was also held that there was no proof to show that the plaintiff had the means to purchase the property in question by exercising a right of pre-emption, under Section 22 of the Hindu Succession Act, 1956. It has also been seen that the plaintiff had relinquished her rights by a release deed, dated 30.12.1986, marked as Ex.B-1.

17. In such circumstances, the lower Appellate Court, by its judgment and decree dated 21.2.1995 made in A.S.No.184 of 1993 had confirmed the judgment and decree of the trial Court, dated 27.10.1992, made in O.S.No.1133 of 1990, dismissing the suit filed by the plaintiff, who is the appellant in the present second appeal.

18. On analysing the rival contentions raised on behalf of the plaintiff as well as the defendants and on analysing the judgment and decree of the Courts below and the evidence available on record, this Court is of the considered view that no sufficient reason or cause has been shown by the appellant in the present second appeal to set aside the judgment and decree of the Courts below.

19. In view of the findings of the trial Court, as well as the lower Appellate Court, holding that the plaintiff was not entitled to the right of pre-emption, under Section 22 of the Hindu Succession Act, 1956, the substantial questions of law raised in the present second appeal are answered in favour of the defendants, who are the respondents in the present second appeal. In such view of the matter, the second appeal stands dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Csh

To

1. The Additional Sub Judge, Erode,
2. The Principal District Munsif, Erode.
3. The Section Officer, VR Section,
High Court, Madras.

+ 1 CC To Mr. N.Manokaran, Advocate SR NO.38388

Second Appeal No.1541 of 1996

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