

(2007) 03 MAD CK 0271
In the Madras High Court
Case No : Second Appeal No. 455 of 1995

Amirthammal

APPELLANT

Vs

Karunesa Mudaliar, Kanniappa Mudaliar, Selvaraj @ Raju and
Nagappan

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Citation : (2007) 03 MAD CK 0271

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S.D. Balaji, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The plaintiff in the suit is the appellant. The sfiled by her for a declaration and permanent injunction against the respondents in respect of seven items of Nanja land situated at Perungudi Village, Cheyyar Taluk, Thiruvathipuram District at North Arcot District, was decreed by the trial Court. However, the first appellate Court dismissed the suit, by allowing the appeal in A.S.No. 42 of 1985 filed at the instance of defendants 1 to 3. It is as against the said judgment of the first appellate Court, the present second appeal is filed.

2. While admitting the second appeal, the following substantial questions of law were framed for consideration:

(i)Whether the lower Court is right in dismissing the suit when the title of Chinnammal is asserted by the respondents ?

(ii)Whether the learned Judge is right in dismissing the suit even assuming without admitting that Chinnammal was the owner when the appellant has succeeded to the property as her only daughter ?

(iii)Whether the learned Judge is right in dismissing the suit assuming without admitting that Chinnammal was the owner when the appellant succeed to the

property as Sridhana she being the only daughter to the exclusion of sons ?

3. It is seen that the second appeal was dismissed as against the first respondent by order dated 04.07.2006. The third respondent died and no steps have been taken and therefore, the appeal as against the third respondent abated. Even though respondents 2 and 4 were served, there is no appearance on behalf them.

4. Heard the Learned Counsel for the appellant.

5. The case of the appellant, who was the plaintiff in the suit was that admittedly, the suit property was purchased in the name of her mother Chinnammal by a sale deed dated 20.07.1944, the registration copy of which was filed on behalf of the plaintiff as Ex.A.1, while the defendants have filed the original of Ex.A.1, which was marked as Ex.B.2. It is the case of the plaintiff that Chinnammal, who was originally married to the plaintiff's father Thulukkanam, had subsequently lived with one Sriraman, after the death of Thulukkanam and through him, the third and fourth defendants were born to Chinnammal in 1936 and 1939 respectively and the said Sriraman also died in 1941. After the death of the said Sriraman, since the third and fourth defendants have deserted their mother, she had lived with the plaintiff and from and out of her savings, the suit properties were purchased by the plaintiff, however in the name of her mother Chinnammal as benami. The further case of the plaintiff is that at the time of purchasing the suit properties, the plaintiff's husband Gopal was working as a Carpenter in Simpson and Limited and hence, she had sufficient income to purchase the suit properties.

6. On the other hand, it was the case of the defendants denying the allegation of benami in respect of the sale deed dated 20.07.1944 and stating that the suit properties were in possession of Chinnammal and third and fourth defendants and in fact, the third and fourth defendants mortgaged the properties to one Muniammal and subsequently, they have sold the same to the first defendant under a registered sale deed dated 02.11.1981, which was marked as Ex.B.3 and it is the first respondent, who has been in possession and enjoyment of the suit properties. It is also the case of the defendants that the plaintiff had no means at all to purchase the properties since admittedly the husband of the plaintiff was a coolie and Chinnammal had never lived with the plaintiff.

7. Even though, the trial Court has decreed the suit holding that the suit properties were purchased by the plaintiff in the name of Chinnammal under Ex.B.2 as benami, the first appellate Court, on analysis of the entire evidence and on facts, found that the plea of benami by the plaintiff has not been proved and it was on that basis, the suit was dismissed by the first appellate Court.

8. As it is correctly found by the first appellate Court, when the property was admittedly standing in the name of Chinnammal and the original document of which has been produced by the defendants, the plaintiff produced only registration copy of the same stating that when the plaintiff was at Bangalore, the original document was missing and in such circumstances, when the plaintiff

prays for title in respect of the suit properties based on the allegation of benami transaction, the burden is on the plaintiff to prove with credible evidence that on the date of purchase, the plaintiff was having sufficient means and income to purchase the suit properties. On analysis of the evidence, the first appellate Court has come to a conclusion that P.W.2, the witness examined on the side of the plaintiff, who is stated to have been Nattanmai of the village, has chosen to give contrary evidence. At one place, P.W.1 has deposed that the husband of the plaintiff was plying rickshaw and in another place, he has stated that he was working as a Carpenter in Simpson and Limited. Therefore, the learned first appellate Judge has correctly come to the conclusion that the plaintiff has not proved her case that she had independent source of income at the time of purchase of the suit properties under Ex.B.2. Further, the case of the plaintiff that she had lost the original document in Bangalore itself is falsified by the very fact that the defendants have produced the original document, which was marked as Ex.B.2. It is also relevant at this stage to point out that even though her husband Gopal was alive, he has not been examined as a witness. In such circumstances, there is absolutely no evidence on the side of the plaintiff to show that she had means at the time when the suit properties are said to have been purchased by her in the name of her mother Chinnammal as benami in 1944 under Ex.B.2. The learned first appellate Judge has also relied upon the admission of plaintiff in her evidence as P.W.1 that Ex.B.1 mortgage deed dated 27.02.1961 was executed by the third defendant in favour of one Muniammal in respect of the suit property and it is also admitted that the mother of the plaintiff Chinnammal had married the father of defendants 3 and 4 viz. Sriraman. In such circumstances, the claim of the plaintiff that she purchased the suit properties in the name of her mother as benami in 1944 has been proved to be an improbable one. Therefore, on an analysis of the entire evidence, the first appellate Court has correctly come to the conclusion that the plea of benami has not been proved by the plaintiff and in view of the same, the suit was dismissed. In such circumstances, as the title of Chinnammal is asserted, it does not automatically ensure the plaintiff that she is the absolute owner of the suit properties, since it is an admitted case of the plaintiff herself that defendants 3 and 4 were born to Chinnammal, of course through Sriraman, not the plaintiff's father Thulukkanam. In such circumstances, there was no question of plaintiff alone inherited the property of Chellamman as the daughter. It is not even the case of the plaintiff in the pleading that she succeeded the suit property as Sridhana. On the other hand, it is her specific case that the suit properties were purchased by her from and out of her own funds, however in the name of her mother as benami and therefore, the plea of Sridhana was never pleaded by her. In view of the above said circumstances, there is absolutely no question of law involved in this case, much less any substantial question of law and therefore, the second appeal fails and the same is dismissed. No costs.