
(2014) 08 MAD CK 0255

In the Madras High Court

Case No : Second Appeal (MD) No. 124 of 2009 and Miscellaneous Petition (MD) No. 2 of 2009

Varadharaja Perumal

APPELLANT

Vs

K. Pichai Thevar

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0255

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Judgement

A. Selvam, J.—This second appeal has been directed against the concurrent Judgments and decrees passed in Original Suit No. 528 of 2000 by the Second Additional District Munsif Court, Dindigul and in Appeal Suit No. 56 of 2003 by the Principal Sub Court, Dindigul.

2. The appellant herein as plaintiff has instituted Original Suit No. 528 of 2000 on the file of the trial Court for the reliefs of declaration and perpetual injunction, wherein the present respondent has been shown as sole defendant.

3. In the plaint it is averred that the suit property is originally belonged to one Kevudu Gounder and he married three wives namely Sundari @ Nagammal, Nagammal and Kamakkal. The plaintiff has purchased the suit property from the third wife by name Kamakkal and her children by virtue of sale deed dated 13.10.1999 and since then he is in possession and enjoyment of the same. The defendant is not having any right, title and interest over the suit property and since the defendant has tried to interfere with the peaceful possession and enjoyment of the plaintiff over the suit property by way of denying his title, the present suit has been instituted for the reliefs sought for in the plaint.

4. In the written statement filed on the side of the defendant, it is averred that suit Survey No. 542/4 measuring 0.52 cents of land is originally belonged to Kevudu Gounder and out of 0.52 cents, he has sold 0.13 cents of land to his son-

in-law by name Thonna Gounder. It is false to aver that after his demise his third wife Kamakkal and her children have had enjoyed the remaining portion of land. It is also equally false to say that the plaintiff has purchased the suit property by virtue of sale deed dated 13.10.1999. The defendant has purchased 0.52 cents of land from the children born through first and second wives of Kevudu Gounder by virtue of sale deed dated 21.07.2000 and since then he is in possession and enjoyment of the same. There is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence has dismissed the suit. Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred Appeal Suit No. 56 of 2003 on the file of the first appellate Court.

6. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has dismissed the appeal and thereby confirmed the Judgment and decree passed by the trial Court. Against the concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the plaintiff as appellant.

7. As agreed by the learned counsel appearing for both sides, the present second appeal is disposed of on merits at the stage of admission.

8. On the side of the appellant/plaintiff, the following substantial questions of law have been raised for consideration:

a) Whether the plaintiff has purchased the suit property an extent of 39 cents from Kamakkal and her children those right to the suit property had been declaring eastern proceedings?

b) Whether the defendants are barred by res-judicata from questining the title of Kamakkal?

c) Whether the Courts below ought to have rejected the defendant's case that he purchased the entire 52 cents in Survey No. 542/4 when only 39 cents remained after the sale of 13 cents to Thonna Gounder?

9. Before analysing the rival submissions made on either side, the Court has to narrate the following admitted facts.

10. It is an admitted fact that the suit property is comprised in Survey No. 542/4 and its total extent is 0.52 cents and the same is originally belonged to one Kevudu Gounder and he sold 0.13 cents of land to his son-in- law by name Thonna Gounder.

11. The consistent case putforth on the side of the plaintiff is that the original owner of the suit property by name Kevudu Gounder has married three wives namely Sundari @ Nagammal, Nagammal and Kamakkal and after his demise his third wife by name Kamakkal has succeeded the suit property and thereafter the

said Kamakkal and her children have jointly sold the suit property in favour of the plaintiff by virtue of sale deed dated 13.10.1999.

12. The defence putforth on the side of the respondent/defendant is that the said Kamakkal is not the third wife of Kevudu Gounder and the defendant has purchased 0.52 cents of land by virtue of sale deed dated 21.07.2000 from the children born through the first and second wives of Kevudu Gounder and therefore the plaintiff is not entitled to get the reliefs sought for in the plaint.

13. The Courts below have concurrently rejected the contentions putforth on the side of the appellant/plaintiff.

14. The learned counsel appearing for the appellant/plaintiff has repeatedly contended that the suit property and its adjoining property are originally belonged to one Kevudu Gounder and he married three wives namely Sundari @ Nagammal, Nagammal and Kamakkal and after his demise the said Kamakkal has got the suit property and after some time she and her children sold the same in favour of the plaintiff and under the said circumstances the plaintiff has instituted the present suit for the reliefs sought for in the plaint, but the Courts below have failed to consider the contentions putforth on the side of the appellant/plaintiff and therefore the concurrent Judgments and decrees passed by the Courts below are liable to be interfered with.

15. Per contra, the learned counsel appearing for the respondent/defendant has contended that one of the vendors of the plaintiff by name Kamakkal is not the wife of Kevudu Gounder and he married only two wives namely Sundari @ Nagammal and Nagammal and the defendant has purchased 0.52 cents of land from the children born through first and second wives of Kevudu Gounder and therefore the reliefs sought for in the plaint cannot be granted and in fact the plaintiff has not derived any valid title to the suit property by virtue of the sale deed stands in his name and the Courts below after considering the vital infirmities found in the case of the plaintiff have rightly non-suited him and therefore the concurrent Judgments and decrees passed by the Courts below are not liable to be interfered with.

16. Apart from the substantial questions of law raised in the present second appeal on the side of the appellant/plaintiff, the main point that has to be decided is as to whether the original owner of the suit property viz., Kevudu Gounder has married two wives or three wives?

17. The consistent case of the plaintiff is that the said Kamakkal is the third wife of Kevudu Gounder. But on the side of the defendant, it is contended to the effect that the said Kevudu Gounder has married two wives namely Sundari @ Nagammal and Nagammal.

18. It is an admitted fact that the vendors of the plaintiff as plaintiffs have instituted Original Suit No. 257 of 1984 for the reliefs of partition and separate possession of their shares, wherein the contesting defendant has filed a written

statement and in the said written statement it is specifically averred to the effect that for the purpose of giving maintenance Kevudu Gounder has settled some properties in favour of his wife Kamakkal (first plaintiff therein). Since in Original Suit No. 257 of 1984, a clear admission has been made to the effect that the first plaintiff therein is also one of the wives of Kevudu Gounder, the Court cannot deny the contentions put forth on the side of the appellant/plaintiff. Therefore, it is quite clear that the said Kevudu Gounder has married three wives namely Sundari @ Nagammal, Nagammal and Kamakkal.

19. In the instant case, the sale deed which stands in the name of the plaintiff has been marked as Ex.A.5 and the sale deed which stands in the name of the defendant has been marked as Ex.B.8. Under Ex.B.8, the defendant has purchased 0.52 cents. Since the plaintiff has purchased the suit property from the said Kamakkal and her children and since the defendant has purchased the said 0.52 cents of land from the children born through first and second wives of Kevudu Gounder, the Court cannot simply reject the case of the plaintiff. But unfortunately in the plaint as well as in the written statement necessary particulars are not available with regard to date of death of Kevudu Gounder as well as date of marriage of his three wives. Unless the said aspect is clear or established, it is not possible to decide the rival title claimed by both the plaintiff and defendant. Since with regard to the above aspect necessary evidence is not at all available, it is highly impossible to decide that the plaintiff is having title to the suit property by virtue of Ex.A.5 and it is also impossible to decide that the defendant is having absolute right, title and interest over 0.52 cents of land by virtue of Ex.B.8. Therefore for giving quietus and also in the interest of justice, this Court is of the view that the concurrent Judgments and decrees passed by the Courts below are liable to be set aside and the matter is liable to be remitted to the file of the trial Court. Since the matter is liable to be remitted to the file of the trial Court, the substantial questions of law raised on the side of the appellant/plaintiff need not be decided.

20. In fine, this second appeal is allowed without costs at the stage of admission and the concurrent Judgments and decrees passed by the Courts below are set aside and Original Suit No. 528 of 2000 is remitted to the file of the Second Additional District Munsif Court, Dindigul. Both parties are at liberty to put forth additional pleadings and they are also entitled to adduce additional evidence. The trial Court is directed to dispose of Original Suit No. 528 of 2000 before the end of November, 2014. The Court fee paid on the appeal memorandum is ordered to be refunded to the appellant/plaintiff forthwith. Consequently, connected Miscellaneous Petition is closed.