

Settu Vs. Ponnarumbu

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Court : Chennai

Decided On : Jun-25-2014

Judge : M.Duraiswamy

Appellant : Settu

Respondent : Ponnarumbu

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

25. 06.2014 CORAM: THE HON'BLE MR. JUSTICE M.DURAISWAMY
S.A.No.1032 of 2011 Settu .. Appellant v 1.Ponnarumbu 2.Vellachi 3.Kullapattu
4.Varadharaju .. Respondents SECOND APPEAL filed under Section 100 of the
Code of Civil Procedure against the judgment and decree dated 17.03.2008 made
in A.S.No.21 of 2007 on the file of Subordinate Court, Panruti confirming the
judgment and decree dated 12.01.2007 made in O.S.No.170 of 1999 on the file of
District Munsif Court, Panruti. For Appellant : Ms.Veda Vallikumar For
Respondents : Mr.D.S.Thirumavalavan for R1 to R3 No appearance for R4

JUDGMENT

The above Second Appeal arises against the judgment and decree passed in
A.S.No.21 of 2007 on the file of Subordinate Court, Panruti confirming the
judgment and decree passed in O.S.No.170 of 1999 on the file of District Munsif

Court, Panruti.

2. The first defendant is the appellant, respondents 1 to 3 were the plaintiffs and the 4th respondent was the second defendant in the suit.

3. The plaintiff filed the suit in O.S.No.170 of 1999 for declaration and recovery of possession.

4. The brief case of the plaintiffs are as follows:- According to the plaintiffs, the defendants are their brothers and the suit properties originally belonged to their father Damodara Gounder. The said Damodara Gounder had executed a registered Will on 30.03.1989 in respect of his properties and died in the year 1995 leaving behind the plaintiffs and the defendants as his legal heirs. After the death of Damodara Gounder, the Will executed by him came into effect. As per the Will, 'A' schedule property was allotted in favour of the plaintiffs i.e., his daughters and 'B' schedule property was allotted to the defendants i.e., his sons. Pursuant to the Will executed by Damodara Gounder, the plaintiffs demanded possession of the suit properties from the defendants. But, the defendants were not willing to hand over possession of the properties, therefore, on 4.5.1999 the plaintiffs issued a legal notice demanding possession of the 'A' schedule properties from the defendants. The first defendant sent reply stating that there was oral partition during the life time of Damodara Gounder. In these circumstances, plaintiffs have filed the suit.

5. The brief case of the first defendant is as follows:- According to the first defendant, their father Damodara Gounder did not execute the Will dated 30.03.1989 and bequeathed the suit properties to the plaintiffs. The properties were purchased by the Damodara Gounder from and out of the joint family income and hence, the properties standing in the name of Damodara Gounder are joint family properties and not his self acquired properties. During the life time of Damodara Gounder, he orally partitioned the joint family properties in the year 1987 allotting the properties equally to his sons viz., the defendants. The plaintiffs were not given any property, since their marriages were celebrated by their father Damodara Gounder. The said Damodara Gounder did not retain any property towards his share. The present suit filed by the plaintiffs at the ill-advice of the

second defendant. In these circumstances, the first defendant prayed for dismissal of the suit.

6. Before the trial court, on the side the plaintiffs, 3 witnesses were examined and 3 documents Exs. A1 to A3 were marked and on the side of the defendants, D.W.1 was examined and 6 documents Exs. B1 to B6 were marked.

7. The Trial Court after taking into consideration, the oral and documentary evidences of both sides, decreed the suit. Aggrieved over the judgment and decree of the Trial Court, the first defendant preferred an appeal in A.S.No.21 of 2007 on the file of Subordinate Court, Panruti and the Lower Appellate Court also confirmed the judgment and decree of the Trial Court and dismissed the appeal. Aggrieved over the judgments and decrees of the courts below the first defendant has filed the above second appeal.

8. Heard Ms.Veda Vallikumar, learned Counsel appearing for the appellant and Mr.D.S.Thirumavalavan, learned Counsel appearing for the respondents 1 to 3.

9. At the time of admission of the above second appeal, the following substantial question of law arose for consideration:- ".(i) Whether a prayer for surrendering vacant possession is maintainable when the suit is filed for declaration of joint right and title over the suit property ? .".

10. Apart from the above substantial question of law, the learned counsel appearing on behalf of the appellant also raised the following additional substantial questions of law :- (i) Whether the Courts below had erred in granting more relief than what was prayed for?. (ii) Whether a prayer for surrendering vacant possession is maintainable when the suit is filed for declaration of joint right and title over the suit property?. 11. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the plaintiffs are the sisters of the defendants and their father is Damodara Gounder. According to the plaintiffs, their father Damodara Gounder executed Ex.A1 registered Will dated 30.3.1989 bequeathing his properties in favour of his children. As per the Will, 'A' schedule properties were given to the plaintiffs and 'B' schedule properties were given to the defendants.

The suit properties are the 'A' schedule properties mentioned in Ex.A1 Will.

12. The appellant/first defendant contended that the properties are not the self acquired properties of their father Damodara Gounder and the properties are joint family properties. In the year 1987, when Damodara Gounder was alive, he orally partitioned the joint family properties and allotted the properties equally to his sons viz., the defendants. Further, according to the first defendant, since their father Damodara Gounder celebrated the marriages of his daughters, viz., the plaintiffs, he did not allot any property in their favour.

13. It is not in dispute that Damodara Gounder had died in the year 1995. In order to prove the due execution of the Will, the plaintiffs examined the scribe of Ex.A1 Will as P.W.2 and attester as P.W.3. On a reading of the evidence of P.W.3, who is a close friend of the testator Damodara Gounder, it is clear that his evidence is very categorical and specific about the due execution of the Will. The scribe of Ex.A1 Will also deposed the due execution of the Will.

14. The learned counsel appearing for the appellant submitted that there are contradictions between the evidences of P.W.2 and P.W.3, therefore, the Will executed by Damodara Gounder cannot be construed as true and genuine. But, the Courts below rightly came to the conclusion that P.Ws. 2 and 3 have specifically and categorically stated that Damodara Gounder had executed the Will voluntarily without any undue influence or coercion. Taking into consideration the evidences let in by P.W.2 and P.W.3, the Courts below rightly came to the conclusion that Ex.A1 Will executed by Damodara Gounder is true and genuine.

15. So far as the contention raised by the appellant/first defendant that the suit properties are joint family properties is concerned, the appellant/first defendant failed to establish the said contention by any acceptable evidence. In his evidence, he has stated that some of the properties were sold by his father during his life time which itself would establish that the properties are self acquired properties of Damodara Gounder. On the side of the defendants, except the evidence of appellant/first defendant, no other independent witness was examined to speak about the oral partition in the year 1987. Further, if there was oral partition, the appellant/first defendant should have proved the said contention by acceptable

evidence. But, he miserably failed to prove the same by any acceptable evidence. The Courts below rightly rejected the contention raised by the first defendant. Taking into consideration all these aspects, the courts below rightly decreed the suit 16. In these circumstances, I find no ground much less any substantial question of law to interfere with the concurrent findings of the courts below. The Second Appeal is liable to be dismissed. Accordingly, the Second Appeal is dismissed. However, there shall be no order as to costs. 25.06.2014 Index : No Internet: No rj To 1. The Subordinate Court, Panruti.

2. The District Munsif Court, Panruti. M.DURAISWAMY, J.

rj S.A.No.1032 of 2011 25.06.2014

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