

Chinnammal Vs. Subbathal

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Court : Chennai

Decided On : Jan-24-2014

Judge : The Honourable Mrs. Justice Pushpa Sathyanarayana

Appellant : Chinnammal

Respondent : Subbathal

Advocate for Def. : Mr. V. Manohar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

24. 01 2014 Coram The Honourable Mrs. JUSTICE PUSHPA SATHYANARAYANA Second Appeal No.1407 of 2007 and M.P. Nos. 2 of 2007 and 1 of 2013 1. Chinnammal 2. P. Sivanandam ... Appellants Vs.

1. Subbathal (deceased) 2. Murugesan 3. Angathal 4. Jeevanantham 5. Velathal 6. Rangathal ... Respondents Appeal is preferred under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.26 of 2004 dated 17.6.2005 on the file of the Principal Sub Court, Coimbatore, confirming the judgment and decree in O.S.No.841 of 1997 dated 09.02.2004 on the file of District Munsif Court, Coimbatore. For Appellants : Mr. N. Anand Venkatesh For RR1to 3 : Mr. V. Manohar For RR4and 5 : No appearance

JUDGMENT

This second appeal is preferred against the judgment and decree in A.S.No.26 of 2004 dated 17.6.2005 on the file of the Principal Sub Court, Coimbatore, confirming the judgment and decree in O.S.No.841 of 1997 dated 09.02.2004 on the file of District Munsif Court, Coimbatore.

2. Defendants 1 and 4 in O.S.No.831 of 1997 are the appellants herein. The Original Suit was filed for partition of the suit properties into five equal shares by metes and bounds and allot one share to the plaintiffs and put them into exclusive possession of that 1/5th share.

3. The brief facts necessary for disposal of this second appeal as could be seen from the Plaint are as follows: (a) One Palani Goundar is the father of first plaintiff and respondents 2, 3 and 5. He married one Palaniammal as his first wife and she died in the year 1936. The first plaintiff Subbathal is the only daughter born to the said deceased Palani Goundar and Palaniammal. As the first plaintiff died during pendency of the suit, her sons and daughter were impleaded as plaintiffs 2 to 4. (b) After the demise of the first wife Palaniammal, the deceased Palani Goundar married one Nanjakkal as second wife in 1936. The said Nanjakkal died without any issues. After that, Palani Goundar married the first defendant Chinnammal as third wife. Defendants 2 to 4 viz., Velathal, Rangathal and Sivanandam are the daughters and son, born to Palani Goundar and Chinnammal. (c) The said Palani Goundar, husband of the 1st defendant and father of 1st plaintiff and defendants 2 to 4 died in the year 1965 without leaving any Will in respect of the suit property. Hence the first plaintiff and defendants 1 to 4 are equally entitled to the suit property, each 1/5th share. As the first plaintiff Subbathal died during pendency of the Original Suit, her sons and daughter viz., plaintiffs 2 to 4 are entitled to 1/5th share. (d) It is the specific case of the plaintiffs that they and defendants are joint owners of the suit property and they are in joint possession and enjoyment of the suit property. As there is an attempt to defeat the rights of the plaintiffs, the suit was filed for partition.

4. Defendants 1 and 4 have filed written statement stoutly denying the averments made in the plaint, contending that the suit is filed with ulterior motive. The status of the first plaintiff that she is the daughter of the deceased Palani Goundar and

that Palaniammal and Nanjakkal are first and second wife of the deceased Palani Gounder, are denied by the defendants. It is the specific case of the defendants that the first defendant Chinnammal is the only wife of the deceased Palani Goundar. As the first plaintiff is not the daughter of the Palani Goundar, the plaintiffs cannot claim any right in the suit property against the defendants, who are the original owners of the suit property. It is also specifically denied that the plaintiffs had never in possession and enjoyment of the suit property at any point of time. According to the defendants, there is no cause of action for filing the suit and the cause of action alleged in the plaint is false. Hence the defendants prayed for dismissal of the suit with costs.

5. Based on the above averments and counter averments, the Trial Court framed two issues for consideration. On the side of the plaintiffs, two witnesses were examined as Pws. 1 and 2 and eight documents were marked as Ex. A-1 to A-8. On the side of the defendants, five witnesses were examined as Dws.1 to 5 and four documents were marked as Exs. B-1 to B-4. Apart from that, Exs.X-1 to X-4 were also marked through witnesses.

6. Considering the evidence and documents placed before it, by judgment dated 09.02.2004, the Trial court passed a preliminary decree in favour of the plaintiffs to divide the suit property into five equal shares by metes and bounds and to allot one such share to the plaintiffs 2 to 4 and put them in exclusive possession.

7. Against the said judgment and decree of the Trial Court dated 9.2.2004, defendants 1 and 4 filed first appeal in A.S.No.26 of 2004 on the file of Principal Sub Court, Coimbatore. The First Appellate Court confirmed the judgment and decree of the Trial Court by its judgment dated 17.6.2005. It is against the said judgment and decree of the First Appellate Court, this second appeal is preferred by defendants 1 and 4.

8. The grounds raised in this second appeal are that the courts below failed to appreciate the oral and documentary evidence in proper perspective; that though the Trial Court categorically held that the Legal Heir Certificate and the Death Certificates produced by the plaintiffs as Exs. A1 to A3 are forged, ought not to have decreed the suit; that the Courts below failed to appreciate the settled

proposition of law that the plaintiff would be entitled to the relief sought for only if they establish their case and they cannot stand on the case of the defendants; that the attempt of the plaintiffs to prove that Palaniammal is the first wife of deceased Palani Goundar proved to be futile since Exs.A1 to A3 were found as forged documents; that the Revenue Authorities produced relevant registers and also deposed that there were no such entries as found in Exs. A1 to A3; that the plaintiffs have no proof to claim a share in the suit property as legal heirs of Palani Goundar; that the Courts below failed to appreciate the fact that in a partition suit, unless the plaintiffs establish their legal right, relief of partition cannot be granted; that the burden of proof is on the plaintiffs; and that there is no evidence to prove the relationship of PW-2 with the deceased Palani Goundar.

9. At the time of admission of this Second Appeal, the following substantial questions of law were for consideration: (i) Whether a decree for partition can be granted when the Legal Heirship Certificate and other documents have been held to be forged documents?. (ii) Whether the plaintiffs are entitled to a relief of partition without adducing any evidence to prove their legal heirship to the deceased?.

10. Heard Mr. N. Anand Venkatesh, learned counsel appearing for the appellants and Mr. V. Manohar, learned counsel for the Respondents 1 to 3 and perused the records.

11. From the a perusal of the records, it is seen that both the appellants and the respondents claim their right under one Palani Gounder. The first plaintiff claims to be the daughter of Palani Gounder through one Palaniammal, the first wife of Palani Gounder. To prove her claim that she is the daughter of the said Palaniammal, the deceased first plaintiff had filed Ex. A.1, which is the Death Certificate of Palaniammal and Ex. A.2 which is the Death Certificate of Palani Gounder. The deceased first plaintiff had filed Ex.A.3, which is the Legal Heir Certificate obtained by her from the Tahsildar, Palladam. These are the three documents filed by the first plaintiff to establish that she is the daughter and legal heir of deceased Palani Gounder and that she is entitled to the 1/5th share of the properties of deceased Palani Gounder. The defendants / appellants herein have

challenged the veracity of the above said documents Exs. A.1 to A.3. Their further claim is that they are the legal heirs born to Palani Gounder through the first defendant Chinnammal. The second plaintiff / son of first plaintiff Subbathal, had examined himself as P.W.1 and when it was suggested in the cross-examination that Exs. A.1 to A.3 were forged documents, P.W.1 has deposed to the following effect:- "..... gHdpak;khs; 1938y; ,we;Jtpl;ljh f brhy;yp th/rh/M/1 Mtzj;ij jhf;fy; bra;jpUe;njd;/ mJ cz;ikahd Mtzk; ,y;iy....".

12. To confirm that Exs. A.1 to A.3 are not genuine documents, the defendants had examined one Shahjahan, Assistant in the Office of the Sub-Registrar of Gandhipuram as D.W.4, who has deposed that there is no entry in the Death Register regarding the death of Palaniammal on the specified date, viz., 11.01.1938 and the said Death Register is marked as Ex. C.3. During the examination, he has deposed as follows:- ".ehd; fhe;jpg[uk; rhh;gjpthsh; mYtyfj;jpy; cjtpahsuhf gzpg[hpfpnwd;/ 1938k; tUlk; \$dthp khjj;jpw;Fz;lhd ,wg;g[gjpntl;il ghh;f;Fk;nghJ gHdpak;khs; vd;gth; 11/01/1938y; gjpt[bra;ag;gl;ljh f ve;jtpj Fwpg;g[k; me;j gjpntl;oy; ,y;iy/ me;j gjpntl;oy; b\$uhf;!; efy; vf;!;/ 3/ gjpntl;od;go th/rh/M/1 v';fs; mYtyfj;jhy; tH';fg;gltpy;iy/".

13. D.W.4 has stated that the alleged Ex.A.1 was not issued by the Sub-Registrar Office, Gandhipuram. From this, it is clear that though Ex.A.1 contains the signature of the Sub-Registrar, it is proved beyond doubt that the same is prepared for the purpose of this case.

14. Similarly, Ex.A.2 Death Certificate of Palani Gounder, also has been proved to be a forged document through D.W.2, Record Clerk of Coimbatore Corporation, who has deposed in the following words:- ".khefuhl;rp Mtz fhg;ghsuhf gzpg[hpfpnwd;/ 30/4/1965y; gHdpr;rhkpft[z;lh; ,wg;g[rhd;wpjH; bfhLj;jpUf;fpnwhk;/ mth; jilaplhjJ kUj;Jtkidapy; ,we;jjh f ehd; bfhLj;j ,wg;g[rhd;wpjH; fz;Ls;sJ/ ,wg;g[gjpntl;od; b\$uhf;!; efy; jhf;fy; bra;fpnwhk;/ mJ vf;!;/1 v';fs; khefuhl;rpapd; bfhLj;j gHdprhkp ft[z;lh; ,wg;g[rhd;wpjH; gp/rh/M/3 jhd;/ th/rh/M/2 eh';fs; bfhLj;j Mtzk; ,y;iy/ th/rh/M/2y; cs;s gjpt[vz;zpy; ,we;jth; bgah; knehfud; vd;W v';fs; ,wg;g[gjpntl;oy; fh;l;lg;gl;Ls;sJ/ v';fisg; bghWj;jtiu th/rh/M/2 bgha;ahd Mtzk;/". In Ex.C.1, xerox copy of Death Register, which was marked through D.W.2, there is no entry regarding

the death of Palani Gounder.

15. Now, the veracity of Ex.A.3, Legal Heir Certificate issued by the Tahsildar, Palladam, filed by the plaintiff to establish her case that she was born to Palani Gounder through Palaniammal, has to be tested. The issuance of Ex.A.3 by the Revenue Tahsildar, Palladam, is disproved by the defendants by examining D.W.5. D.W.5 has stated that Ex.A.3 Legal Heir Certificate was not issued by the Office of Tahsildar, Palladam and that the seal of Tahsildar, Coimbatore, found on Ex.A.3 is forgery. It is also stated by D.W.5 that it is recommended to take action against the concerned authorities as per Ex.C.4.

16. Therefore, it is clear from the above that the documents produced by the plaintiffs are all false and forged one created for the purpose of the case and the Courts below also held that these documents are forged one. When it is disputed by the defendants that the first plaintiff is not born to Palani Gounder, even presuming that the above said documents are true, they cannot go to prove that the first plaintiff is the legal heir of the deceased Palani Gounder. It is to be seen that a person coming to Court seeking a specific relief has to come with clean hands. Though the second plaintiff as P.W.1 has deposed that one Natarajan had helped him in obtaining the above said documents, it is only at the instance of the plaintiffs he has obtained the same.

17. More over, besides Exs. A.1 to A.3 which have been proved to be forged documents, the plaintiffs have marked Exs. A.7 and A.8 which are alleged to be the Death Certificates of one Palaniakkal and one Nanjakkal, who is said to be the second wife of the Palani Gounder respectively. But it is the clear case of the first plaintiff that she is the daughter born to Palaniammal, who is the first wife of Palani Gounder. Though there is a difference in the names, that is, Palaniakkal instead of Palaniammal, it has been stated by the plaintiffs that Palaniammal has been addressed as Palaniakkal during her lifetime. The said reason is only imaginery and the same is not convincing. Besides, one cannot prove the factum of marriage through the Death Certificate whereas the appellants / defendants have produced Legal Heir certificate, Ex.B.4 which is issued to them by the Tahsildar, Coimbatore North. In Ex.A.6 also, which is the patta issued by the Revenue authorities, the

first defendants name Chinnammal is shown as wife of Palani Gounder. When the plaintiffs claim to be the heirs of Palani Gounder through Palaniammal and the same is disputed by the defendants, it is incumbent upon the plaintiffs to prove the same beyond doubt. In such effort, the documents marked by them under Exs. A.1 to A.3 are proved to be forged ones. Therefore, it can be seen that there is no bona fide in the claim of the plaintiffs and they are prepared to stoop to any level to achieve what they want.

18. It is shocking and surprising to see that the Courts below though have held that the documents under which the plaintiffs make their claim are forged ones, still have believed the claim of the plaintiffs on mere surmises and conjectures. The Courts cannot come to a definite conclusion based on presumptions and assumptions. The fact that the first defendant Chinnammal, who is the wife of Palani Gounder had not gone to the witness box, cannot be put against the defendants as the plaintiffs have to fall or succeed on their own premises.

19. In this regard, reliance is placed on the decision of this Court in V. Manakkam v. Veera Perumal [1998 (II) CTC157 wherein in paragraph 18, it has been held as follows:- ".The lower appellate Court has made yet another serious mistake and that is it has proceeded to hold that the plaintiff had proved his title by producing Ex.A-1 title deed and that the transferor did not come to Court and dispute the title and more than that, even according to the defendants, Lakshmanan was in possession for atleast 10 years with the permission of defendants 1 to 3 and this they had not established, and therefore, the plaintiffs case should be accepted. To say the least, this has faulty reasoning and the conclusion based on this cannot be allowed to stand. It is settled law that a plaintiff should stand or fail on the strength of his own case and not rely on the alleged weakness of the defendant's case.".

20. In these circumstances, the concurrent finding of the Courts below that the first plaintiff is the daughter of Palani Gounder based on the oral evidence and comparison of age of the witnesses, is unacceptable. When there is no clear evidence that the plaintiffs are the legal heir of deceased Palani Gounder, the decree granted by the Courts below cannot be sustained. In fact, the plaintiffs had been disputing the fact that the defendants are the legal heirs of the deceased

Palani Gounder. Such being the case, when the plaintiffs themselves admit that the defendants are the legal heirs of Palani Gounder, the finding of the First Appellate Court that the Legal Heirship Certificate produced by the defendants is of no evidentiary value, is unsustainable. The Courts below though failed to appreciate the oral evidence of the Revenue authorities, who have got no interest in the case, have stated that the documents relied on by the plaintiffs are all forged ones. In view of the above discussion, the questions of law are answered in favour of the defendants. The Second Appeal is allowed setting aside the judgment and decree dated 17.6.2005 passed by the Principal Sub Court, Coimbatore, in A.S.No.26 of 2004. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed. 24 01 2014 Index : Yes / No Internet : Yes / No gri To 1. Principal Sub Court Coimbatore 2. District Munsif Court Coimbatore 3. The Record Clerk V.R. Section High Court Chennai PUSHPA SATHYANARAYANA, J.

gri Pre-Delivery Judgment in S.A. No.1407 of 2007 Delivered on 24 01 2014

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