

Subramaniam and ors. Vs. Periyasami and ors.

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Court : Chennai

Decided On : Jan-22-2011

Judge : R.S.Ramanathan, J.

Appeal No. : S.A. No. 892 of 1998 and C.M.P.No.8560 of 1998

Appellant : Subramaniam and ors.

Respondent : Periyasami and ors.

Advocate for Def. : M/s. Sarvabhauman, Adv.

Advocate for Pet/Ap. : Mr. V. Raghavachari, Adv.

Judgement :

J U D G E M E N T

1. The Legal Representatives of the 3rd defendant and 4th defendant who lost in both the Courts are the appellants.

2. 1st respondent/ plaintiff filed the suit for declaration and injunction and for damages. The case of the 1st respondent/ plaintiff was that the suit property and other properties originally belonged to one Panjan and his Pankalis and in the oral partition that took place 30 years before, the suit properties were allotted to the share of Panjan and the plaintiff is the brother's son of Panjan. According to the plaintiff/ 1st respondent, Panjan had a wife by name Thangammal and she is the only wife of Panjan and Panjan died 20 years leaving behind his widow

Thangammal as his legal heir. As the plaintiff was the brother's son of Panjan, the plaintiff was brought up by Thangammal and she executed a document Ex.A3 dated 31.8.1976 in favour of the plaintiff in respect of the suit property and therefore the plaintiff became the absolute owner of the property and the appellants or any other persons can not claim any right over the same. It is further stated that Panjan had not married one Mulavi Ammal and through her the 2nd defendant and one Akilandammal were not born and as Mulavi Ammal was not the legally wedded wife of Panjan, the 2nd defendant and Akilandammal can not claim any right to the Panjan's property and therefore the suit is filed for declaration.

3. The 3rd and 4th defendants contested the suit and other defendants remained exparte. The contention of the 3rd and 4th defendants who are the appellants herein was that Panjan married Thangammal and also married Mulavi Ammal as his second wife and through Mulavi Ammal the 2nd defendant and Akilandammal were born and the 1st defendant and 5th defendant are the children born to Akilandammal. Panjan died in the year 1950 intestate and after his death the 3rd defendant was looking after the property and Thangammal the first wife of Panjan was never enjoyed the property. Even assuming that Thangammal executed the sale deed in favour of the plaintiff under Ex.A3 the plaintiff was never in possession and enjoyment of the property and the defendants 1 and 2 executed the sale deed Ex.A9 in favour of the 3rd and 4th defendants on 24.8.1976 and since then the 3rd and 4th defendants are enjoying the property and therefore the plaintiff is not entitled to any relief as prayed for.

4. The trial Court decreed the suit holding that the document Ex.A3 in favour of the plaintiff was a valid document and as per the document, the plaintiff is enjoying the property and Ex.A8 also proves the possession of the property by the plaintiff and the defendants have not proved that Panjan married Mulavi Ammal and as Mulavi Ammal was not the legally wedded wife of Panjan and the defendants 1,2 and 5 cannot claim any right over the property, the suit is not barred by time. Aggrieved by the same, the legal representatives of the 3rd defendant and 4th defendant filed an appeal in A.S.No.8 of 1994 on the file of the Subordinate Court, Virudhachalam and the learned first appellate Judge also after analyzing the evidence both oral and document held that Thangammal, the wife of Panjan was in enjoyment of the

property and under Ex.A2 she mortgaged the property to the plaintiff and thereafter she sold the property under Ex.A3 to the plaintiff and therefore the plaintiff is entitled to the relief as prayed for and the defendants also failed to prove that Mulavi Ammal was the wife of Panjan and Thangammal is the only wife of Panjan. Hence, the Second Appeal is filed.

5. The following substantial questions of law were framed at the time of admission of the Second Appeal:

(1) Whether the Courts below are right in ignoring the best evidence available before it and should it not have held that the non-examination of his vendor or person connected with Ex.A3 is fatal to his case

(2) Whether the Courts below are right in holding that Thangammal is the exclusive owner of the property particularly when the evidence on record establishes that Panjan is survived by his children through his second wife ?

6. It is contended by the learned counsel for the appellants Mr. V.Raghavachari, submitted that both the Courts below erred in holding that Mulavi Ammal was not the legally wedded wife of Panjan and it is proved by the evidence that Panjan left the children and therefore the marriage between Panjan and Mulavi Ammal can be presumed and without appreciating the same both the Courts below held that Thangammal was the only wife of Panjan. He further submitted that the plaintiff has not examined the attesting witnesses to prove Ex.A3 and therefore it cannot be contended that the plaintiff has got title to the suit property under Ex.A3.

7. It is admitted that under Ex.A1 Panjan mortgaged the property to one Murugan and after the death of Panjan his wife Thangammal mortgaged the property to the plaintiff. When the property was sold under Ex.A3 to the plaintiff, the mortgage created under Ex.A2 was mentioned and the mortgage amount was adjusted towards sale consideration. Further, the competent persons to speak about the marriage between Panjan and Mulavi Ammal are the relatives and none of them were examined. The appellants are not competent to speak about the same. The 1st defendant was examined as D.W3 and he is not the competent person to speak about the marriage between Panjan and Mulavi Ammal as he claimed to be

the son of Mulavi Ammal. The appellants have not examined any person from the village to prove the factum of marriage between Mulavi Ammal and Panjan and considering all these aspects, both the Courts concurrently held that the appellants failed to prove the marriage between Panjan and Mulavi Ammal and during the lawful wedlock the 2nd defendant and Akilandammal were born and in the absence of proof of marriage even assuming that the 2nd defendant and Akilandammal were born to Mulavi Ammal they cannot claim any share in the property. As both the Courts below concurrently held that Mulavi Ammal was not the legally wedded wife of Panjan and Thangammal was admittedly the wife of Panjan, the property devolved on Thangammal after the death of Panjan and as per Ex.A3 she executed the sale deed in favour of the plaintiff/ 1st respondent and therefore the plaintiff obtained valid document and entitled to the suit property. Hence, the substantial questions of law are answered against the appellants and the Second Appeal is dismissed and the Judgement and Decree of the both the Courts below are confirmed.

8. In the result, the Second Appeal is dismissed. No costs.

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