

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4245 / 2014
[Arising out of Special Leave Petition (Civil) No. 259 of 2012]**

Gowri Appellant (s)

Versus

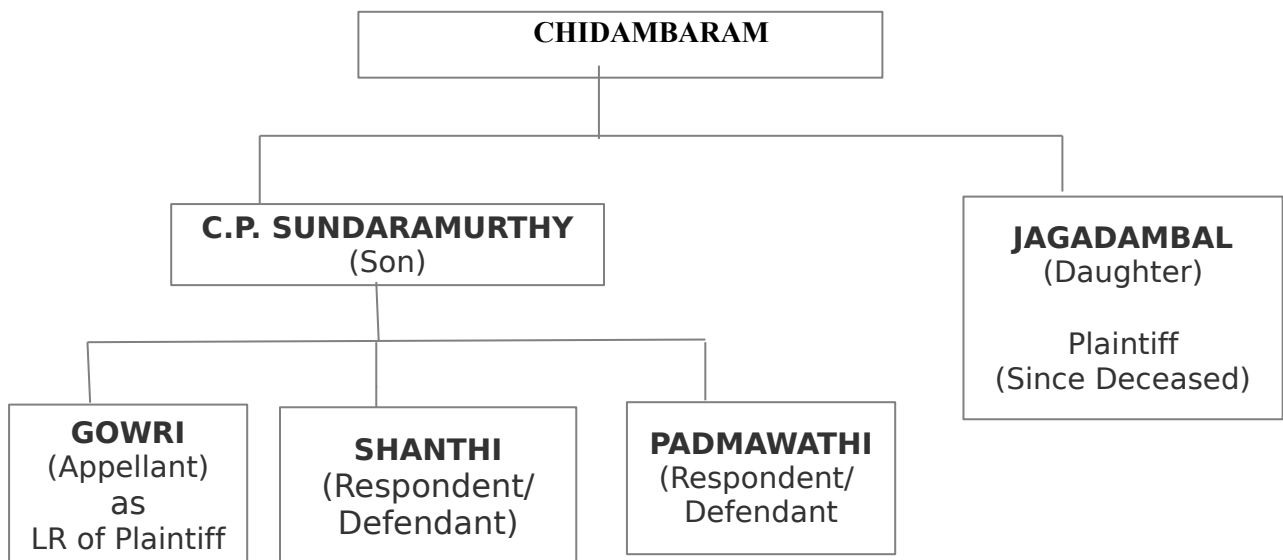
Shanthi and Anr.Respondent (s)

J U D G M E N T

A.K. SIKRI, J.

1.Leave granted.

2.Before we narrate the facts, we trace out below the relationship between the parties that would make it easier to understand the dispute which has arisen between them and is the subject matter of the present appeal.



3.As is clear from the above, Chidambaram was the grandfather of the appellant and the two respondents. The appellant and the two respondents i.e. all three of them are the daughters of Mr. C.P. Sundaramurthy.

4.Chidambaram had one son, viz. Sundaramurthy and one daughter namely Jagdambal. Admittedly, Chidambaram was having leasehold rights over one property situated in Door No. 11(Old No. 10) Karaneeswarar Koil Garden, 2nd Street, Saidapet, Chennai (hereinafter referred to as the 'Suit Property'). The owner of the said property was one Trust, managing a temple, which had given the suit land on lease. However, Mr. Chidambaram had constructed superstructure thereupon with his own funds and was the owner thereof. He died much before year 1956 and as per the Hindu Law succession prevalent at that time, on his death the superstructure along with leasehold rights over the suit property vested with his son Mr. Sundaramurthy.

5.According to the appellant, Sundaramurthy executed a Settlement Deed so as to transfer the superstructure along with the lease hold rights over the property in favour of his sister Jagadambal (the original plaintiff). Subsequently, Jagadambal purchased the suit property from the temple authorities thereby becoming the undisputed owner of the said property. Jagadambal, being an old widow and without any issues, permitted the respondents, who were daughters of Sundaramurthy, to reside in the front portion of the suit property. Prior to this, the

respondents were living in their respective matrimonial homes. The behaviour of the respondents changed subsequent to moving into the suit property and they began to interfere and quarrel with the tenants, apart from abusing Jagadambal, as a result of which Jagadambal was forced to move out and stay with the appellant herein.

6.Finally, being fed up with the behaviour of the respondents, Jagadambal called upon the respondents to vacate the suit property with all their belongings, vide legal notice dated 9.11.1995. The respondents replied to the said legal notice refuting the claim of Jagadambal.

7.On the aforesaid averments, Jagadambal filed mandatory injunction suit for possession i.e. O.S. No. 15814 of 1996 against the respondents before the City Civil Court, Chennai.

8.This suit was contested by the respondents on the ground that they had inherited 2/3rd of the suit property, being legal heirs of Sundaramurthy and the so called Settlement Deed executed by Sundaramurthy to transfer the suit property in favour of his sister was a sham document. During the pendency of the aforesaid suit, the respondents also filed suit for partition (i.e. O.S. No. 8637 of 1998) before the City Civil Court, Chennai stating that the suit property was ancestral property of their father Sundaramurthy and as legal heirs they had one-third share each in this property and the other one third belonged to the appellant, being the third daughter.

9.Both the suits were decided by the Trial Court vide judgments dated 10.11.2003. The Trial Court was pleased to decree O.S. NO. 15814 of 1996 in favour of Jagadambal entitling her to the relief of mandatory injunction to evict the respondents from the suit property. It was, inter alia, held that the entire right in respect of the suit property devolved on Jagadambal through the Settlement Deed dated 25.4.1949 and the sale deed dated 31.3.1950; that the suit property is owned by Jagadambal alone; that the respondents were staying in the front portion as per the permission given by Jagadambal and due to differences that arose between them, notice was sent to the respondents revoking the permission and, therefore, the respondents were liable to vacate the suit property.

10.In so far as Suit Property O.S. No. 8637 of 1988 filed by the respondents is concerned, this was dismissed by the Trial Court. The Trial Court did not accept the contention of the respondents herein that the Settlement Deed was a sham document. Holding the said settlement deed to be a genuine document executed by Sundaramurthy, the Trial Court returned the finding that Jagadambal was the absolute owner of the property and, therefore, there was no question of partition of the suit property and giving the respondents 2/3rd share therein.

11.Aggrieved by the dismissal of O.S. No. 8637 of 1998, the respondents herein preferred A.S. No. 1173 of 2004. Aggrieved by the judgment and decree passed in O.S. NO. 15814 of 1996, the respondents herein preferred A.S. No. 1175 of 2004.

During the pendency of the aforesaid appeals, Jagadambal died. The respondents herein filed a memo stating that the appellant herein alone is the legal heir of Jagadambal. On the application of the respondents, the High Court was pleased to implead the appellant herein as the sole legal heir of the deceased Jagadambal. Both these appeals came up for consideration before the High Court and were heard together. After hearing the parties A.S. No. 1173/2004 was dismissed by the High Court vide judgment dated 24.8.2011, inter alia, holding that Ex. B6 sale deed which had been executed by the temple authorities in favour of Jagadambal on 31.3.1950 would make it clear that the property had been purchased by Jagadambal after the settlement deed. The High Court also affirmed the finding of the Trial Court that it had been clearly proved that the property in question, after the Settlement Deed, was in possession and enjoyment of Jagadambal.

12.The second appeal i.e. A.S. NO. 1175 of 2004 filed by the respondents against the decree passed by the Trial Court in the suit filed by Jagadambal has been partly allowed by the High Court vide judgment dated 25.8.2011. Two appeals are decided by the same judge of the High Court in quick succession. In the second appeal preferred by the respondent which is allowed partly, the High Court has held that there was no specific evidence to show that the property was given only as permissive occupation and the same has been revoked by the respondent on a particular day and that since there is a dispute over the title, it is for the parties

concerned to file appropriate suit and in the event of succeeding in that suit only, the appellant herein has a right to evict the respondents herein. It becomes clear from the reading of this judgment that in making such observations, the High Court went into the issue of the rights inter-se between the parties, as sister.

13.It is the submission of the appellant that the High Court has lost sight of the fact that the appellant herein was not claiming any independent right of her own and was impleaded as the sole legal heir of the deceased Jagadambal. In view of the fact that the title of Jagadambal has been upheld by the learned Trial Court as well as the High Court in its judgment in A.S. No. 1173 of 2004 and in view of the admission of the respondents herein that the appellant herein is the sole legal heir of the deceased Jagadambal, the appeal filed by the respondents herein ought to have been dismissed. There was no further dispute regarding the title as the same had been decided in the parallel proceedings by the High Court itself. While so, the direction of the High Court to the appellant to file a fresh suit and re-establish the admitted and already established right of the appellant herein is erroneous and unsustainable. Further, there is also a categorical finding of the learned trial court that the respondents were permitted to occupy the suit property and that the said permission was revoked by Jagadambal based on the material on record. Therefore, the finding of the High Court that there was no specific evidence to show that the property was given only as permissive occupation and terminated on a particular

day, that too without any discussion of the material on record or contentions in this regard, is totally erroneous and contrary to the material on record and, therefore, liable to be set aside. In support of this submission learned Counsel for the appellant referred to the following portion of judgment dated 24.8.20911 passed by the High Court in A.S. NO. 1173/2004.:

“10. The points that arises for consideration in the appeal are as follows:

1. Whether Ex. A12 has been issued in favour of the plaintiff or not?
2. Whether the second defendant had got the title over the suit property in term of Ex. A1?

It is not in dispute that Chidambaram has one son and one daughter namely the plaintiff's father Sundaramurthy and the second defendant. The suit property is the ancestral property which has been evident from Ex. A1, settlement deed executed by the Sundaramurthy in favour of the second defendant. It is also clear that the Sundaramurthy executed a lease deed at first and on that basis became the owner of the property and hence, the superstructure alone belongs to the plaintiff's father and in turn he has executed a settlement deed in favour of the second defendant. Ex. B6, sale deed which has been executed by the temple authorities in favour of the second defendant on 31.3.1950 would made clear that the property has been purchased by the second defendant after the settlement deed. The subsequent payment of rist and receipts would show that she has been continuously enjoying the property on her own. As rightly contented by the learned Counsel for the respondents, it is evident from Exs. B7, 15, 16 and 20 that the property has been mortgaged by the second defendant and she has subsequently discharged the same. Hence, the second defendant has exercised the right over the suit property. Therefore, from these documents it has been clearly proved that the property in question after the settlement deed was in possession and enjoyment of the

second defendant. Therefore, I am of the view that the contention raised by the appellant in this regard has to be rejected”.

14. Even after the service of the notice upon the respondent twice in this case none has appeared on their behalf. In these circumstances we had no option but to hear the Counsel for the appellant only. We have also perused the record.

15. From the narration of events and the findings of the Court as noted above, the admitted position which emerges on record is that Settlement Deed dated 25.4.1949 executed by Sundaramurthy in favour of his sister Jagadambal is found to be genuine. The Courts have rejected the challenge of the respondents to the said settlement deed. This finding has become final. Another finding which has attained finality is that Jagadambal had subsequently purchased the leasehold property from the temple authorities and had become the absolute and exclusive owner of the suit property. There is thus, no question of inheritance of this property by the respondents as daughters of Sundaramurthy. Since Jagadambal was found to be the absolute owner of the property, the possession of the part of this property with the respondents has to be permissive as rightly found by the Trial Court. It is not their case that they were inducted as tenants or in any other capacity which would confer upon them any right to stay therein. On the contrary, the case put up by them was that they are entitled to inherit one-third share each in the said property by virtue of succession which is found to be a baseless scheme. On these facts, we are of the opinion that the trial court was right in passing the decree of mandatory injunction

in a suit which was filed by Jagadambal. The lis was between Jagadambal and the respondents. It is only when during the pendency of the appeal Jagadambal died, the present appellant was brought on record in substitution of the deceased as her legal heir. In the appeal the High Court was concerned with the validity of the judgment and decree passed by the Trial Court wherein Jagadambal was the plaintiff. After dismissal of appeal i.e. A.S. No. 1173 of 2004 on 24.8.2011, the High Court should have dismissed other appeal i.e. A.S. No. 1175 of 2004 as well. Inter se rights of the appellant herein as the respondents as sisters was neither an issue before the High Court nor could it be dealt with. Notwithstanding the above, we find that the High Court has relegated parties to fresh proceedings on the premise that there is a dispute over the title and that needs to be determined for which appropriate suit needs to be filed. These observations of the High Court that there is a dispute over the title is clearly erroneous.

16. So far so good. It would mean that the suit which was decreed by the Trial Court in favour of Jagadambal was rightly decreed and the High Court could not have upset the decree, more particularly when it had dismissed another appeal of the respondents i.e. A.S. No. 1173 of 2004 vide judgment dated 24.8.2011 holding that sale deed which had been executed by the temple authorities in favour of Jagadambal on 31.3.1950 was valid and Jagadambal had become the absolute owner of the property. Thus, she had a right to file suit for mandatory injunction

seeking to evict the respondents herein who were in permissive possession. However, Jagadambal has since passed away and the question of inheritance of the property of Jagadambal is at large and has not been decided in the instant proceedings. No doubt, on the death of Jagadambal appellant herein was impleaded as her LR. However, that may be because of the reason that the respondents who are also neices of Jagadambal, were already on record.

17. Even when no fresh suit is required, the issue will still be as to whether the appellant has a right to execute the decree passed in favour of deceased Jagadambal. It would depend on the other related question viz. who are the successor-in-interest of the deceased and whether the respondents also get share in the property as LR of the deceased. The appellant is claiming to be the sole successor in interest, who has inherited the property on the basis of some will executed by Jagadambal in her favour. Here, the High Court has observed in the impugned judgment that the deceased had admittedly written three wills under different circumstances which require scrutiny of the Court. Nobody, has filed any suit for relief of declaration. This is the reason which has prompted the High Court to direct the parties to file fresh suit with regard to title over the suit property. However, we are of the view that for this reason appeal should not have been allowed as mentioned above. The decree passed in favour of Jagadambal by the Trial Court was justified and the appeal of the respondent should have been

dismissed affirming that decree. At the same time, High Court could clarify that whether the appellant can get the fruits of the said decree and is competent to file the execution or not would depend upon her proving that she has inherited the suit property and is the sole owner thereof. This can be claimed in the execution or by filing the fresh suit with regard to title over the said property, more so when there are three wills purportedly executed by the deceased Jagadambal which has surfaced.

18. In view of our aforesaid discussion, we set aside that part of the judgment vide which appeal has been allowed partly and the parties are directed to file fresh suit with regard to the title over the suit property as stated in Paras 14 to 16 of the said impugned judgment. While setting aside that portion, we substitute it by the following directions:

19. The Appeal No. 1175/2004 filed by the respondents before the High Court stands dismissed. At the same time the question as to who is the successor in interest of the deceased Jagadambal is left open as that was not the scope of the proceedings. It would be open to the appellant to claim that she has inherited the entire property, by filing execution of the said decree or by filing fresh suit, which ever is permissible in law. In those proceedings or independently it would be open to the respondents also to stake their claim of inheritance on the basis of succession or otherwise. Needless to mention, since there are three wills of the deceased

Jagadambal, it would be for the court in appropriate proceedings, to determine as to which will is genuine and determine the rights of the person as per the will found to be genuine.

20. The appeal is allowed in the aforesaid terms. No costs.

.....J.
[SURINDER SINGH NIJJAR]

.....J.
[A.K. SIKRI]

New Delhi
March 31, 2014

ITEM NO.1B

COURT NO.6

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.4245 Of 2014

@ Petition(s) for Special Leave to Appeal (Civil) No(s).259/2012

GOWRI

Petitioner(s)

VERSUS

SHANTHI AND ANR.

Respondent(s)

Date: 31/03/2014 This Appeal was called on for pronouncement of judgment today.

For Petitioner(s)

Mr.Senthil Jagadeesan, Adv.

For Respondent(s)

Hon'ble Mr. Justice A. K. Sikri pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Surinder Singh Nijjar and His Lordship.

Leave granted.

The appeal is allowed in terms of the signed non-reportable judgment.

[Nidhi Ahuja]
Court Master

[Indu Bala Kapur]
Court Master

[Signed non-reportable judgment is placed on the file.]