



WEB COPY



S.A. No.8 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.8 of 2006

and

C.M.P.Nos. 133 of 2006 & 18379 of 2024

1. Mani @ Kondappan

Pachiappan @ Mani

3. Deivanai

Karthikeyan (died)

5. Janaki K.P.

6. Nithya S.

7. Suganya S.

8. Kathirvel P

(Appellants 5 to 8 brought on record
as LRs of deceased A2 viz.,
Pachiappan @ Mani vide court order
dated 09.07.2024 made in CMP Nos.
10363, 10366, 10385, 10388, 10471
and 10474 of 2023)



S.A. No.8 of 2006

WEB COPY

9. Parvathavarthini K.

10. Vipin Vikram (minor)
rep. by Parvathavarthini K.

(Appellants 9 and 10 brought on record
as LR's of deceased A4 viz.,
Karthikeyan vide court order
dated 09.07.2024 made in CMP Nos.
10363, 10366, 10385, 10388, 10471
and 10474 of 2023)

... Appellants

Vs.

1. Murugesan

2. Rathinam @ Rathinayal

Kuppa Suppanna Gounder (died)

Kunjaan (died)

3. Kaali Chettiar

4. Ramana Chettiar

5. M.P.Sivaraman

Rasa Gounder (died)

7. Kaunda Gounder



S.A. No.8 of 2006

8. Chevamppayal

9. Vadambal

10. Savithiri

11. Radhamani

12. Parasakthi

13. Kasthuri

14. Minor Poorani

rep. by next friend and mother
Radhamani

(Respondents 10 to 14 are brought on record as LRs of deceased 6th respondent viz., Karupanna gounder vide court order dated 21.04.2021 made in CMP Nos. 794, 795, 796 of 2012)

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree made in A.S.No.7 of 2003 dated 31.01.2005 on the file of Addl. District Court and Fast Track Court No.1, Erode reversing the judgment and decree passed in O.S.No. 78 of 1993 dated 17.08.2001 on the file of Principal Subordinate Court, Gobichettipalayam.



S.A. No.8 of 2006

WEB COPY

For Appellants : Mr.S.Parthasarathy
Senior Advocate
for Ms. P.T.Ramadevi

For Respondents : Mr.Dhanasekaran for R1
Mr. P.Rubin for
Mr.R.N.Amarnath for R2

R3 to R14 – given up

JUDGMENT

The appellants herein are the defendants 3 and 13 to 15 in the suit in O.S.No.78 of 1993 on the file of Principal Sub-Court, Gobichettipalayam filed by the 1st respondent/plaintiff claiming delivery of possession of item no.1 of suit property and also claiming for declaration as well as permanent injunction. On hearing both sides, the trial judge dismissed the suit. Against which, the 1st respondent/plaintiff preferred an appeal in A.S.No. 7 of 2003, wherein the first appellate judge on analysing the facts and evidence on record, allowed the appeal by setting aside the findings of trial judge. Challenging the reversal findings of the first appellate court, the defendants 3 and 13 to 15 have preferred this Second Appeal.



S.A. No.8 of 2006

WEB COPY

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff Murugesan claiming himself as a minor represented by his maternal grandmother Kaliammal filed the suit against his mother Rathinam @ Rathinayal and 12 defendants seeking for the relief of (i) delivery of possession of item No.1 of the suit property, (ii) declaring that the decree in O.S.No. 55 of 1982 dated 13.11.1982 on the file of Sub-Court, Gobichettipalayam is null and void against the plaintiff, (iii) declaring the plaintiff's title over the half share in item 2 and 3/4th right in item No.III to IX of the suit properties, (iv) granting permanent injunction restraining the 2nd defendant from alienating the suit properties to the 3rd defendant, (iv) directing the division of item 2 into two equal shares and for allotment of one such divided share to the plaintiff and directing division of suit properties in items 3 to 9 into 4 equal shares by metes and bounds and (v) directing delivery of possession by the defendants 1, 2 and 4 the divided share to the plaintiff.



S.A. No.8 of 2006

WEB COPY

4. The said suit was contested by 2nd and 12th defendants and they have filed their written statements. Before the trial court, on the side of plaintiff, witnesses P.W.1 to P.W.4 were examined and the documents Ex.A1 to Ex.A43 were marked. On the side of defendants, witnesses D.W.1 and 2 were examined and documents Ex.B1 to Ex.B23 were marked. On the side of court, the Commissioner report and plan were marked as Ex. C1 and C2.

5. Considering the evidence on record, the trial judge had framed 10 issues and on analysing evidence on record, the trial judge finally held that minor plaintiff Murugesan not proved that his mother Rathinam @ Rathinayal/1st defendant was the legally wedded wife of Kandhappa Gounder. So also, he was born as a legitimate child of the said Kandhappa Gounder and also held that the earlier compromise decree held in O.S.No.55 of 1982 has not been set aside, to that effect, no relief was also been claimed. On the other hand, the prayer sought by the plaintiff declaring that the said decree passed in O.S.No.55 of 1982 is null and void



S.A. No.8 of 2006

as such is not maintainable nor plaintiff entitled to claim any share in the suit properties, on the other hand, the 2nd defendant benefited the properties of Kandhappa Gounder as per the Will executed by him dated 04.04.1981 Ex.B8 is true and valid and the same was proved through the evidence of D.W.2, thereby the 2nd defendant is the beneficiary of the said Will. Subsequently, as per compromise decree passed in O.S.No.55 of 1982, minor plaintiff was represented by his mother Rathinam @ Rathinayal/1st defendant and so also, considering the welfare of minor plaintiff, some of the properties were allotted as per panchayat held in the village, thereby the said compromise decree was acted upon and the plaintiff's mother also benefited with the property as per the compromise decree, thereby both plaintiff and his mother enjoyed the property. While so, at the instigation of 1st defendant, again the minor plaintiff on the guardianship of grandmother, filed the present suit, in fact, only at the instigation of his mother, the present suit came into force. On hearing both sides, the trial judge held that the plaintiff is not entitled for the claim of partition as well as relief of declaration as claimed in the plaint and dismissed the suit. Against which, the plaintiff preferred an appeal in A.S.No.7 of 2003 before the Addl.



S.A. No.8 of 2006

District Court cum Fast Track Court No.1, Erode, wherein the first appellate judge on analysing the evidence on record as well as facts, framed four issues and finally held that the 2nd defendant has not proved the Will said to be executed by Kandhappa gounder dated 04.04.1981, on the other hand, as per the customary practice, Kandhappa gounder, alleged father of minor plaintiff, married his mother/1st defendant while the subsistence of earlier marriage is acceptable one, thereby the plaintiff is legal heir of Kandhappa Gounder and he is entitled for share in the suit properties as he prayed for. The first appellate judge also held that in respect of first item of suit property assigned as Dharma to the temple, both parties have no individual right. Accordingly, the first appeal was allowed by setting aside the findings of trial judge. Pending suit, 2nd defendant died.

6. Challenging the said reversal findings of the first appellate court, the 3rd defendant as well as defendants 13 to 15 have preferred this Second Appeal praying to set aside the same by raising the following grounds:-

- (a) The lower appellate court has failed to appreciate that the 1st respondent has not proved the factum of marriage of the 1st defendant with the deceased Kandhappa Gounder.



S.A. No.8 of 2006

- (b) The lower appellate court has failed to appreciate that the factum of the birth of the 1st respondent has born to the deceased Kandhappa gounder has not been proved and hence, the suit ought to have been dismissed.
- (c) The lower appellate court has failed to appreciate that the very suit itself has been filed in collusion with the 1st defendant and hence, the same ought to have been dismissed.
- (d) The lower appellate court has failed to appreciate that the decree in O.S.No.55 of 1982 is genuine and hence, in the absence of any fraud or acting against the interest of the plaintiff, the same cannot be set aside.
- (e) The lower appellate court has failed to appreciate that as per the decree in O.S.No. 55 of 1982 both the plaintiff and the 1st defendant has been given properties and hence, the settlement made by the 1st defendant in favour of her husband Sivaraman cannot be construed as against the interest of the plaintiff.
- (f) The lower appellate court has failed to appreciate that in view of the admission made by P.W.2 that the plaintiff and the



S.A. No.8 of 2006

1st defendant are living together, the suit ought to have been dismissed.

(g) The lower appellate court has failed to appreciate that in as much as Ex.B8 has not been challenged, the same cannot be found to be not genuine.

(h) The lower appellate court has failed to appreciate that without reverse findings and reasoning given by the trial court, the same cannot be set aside by the lower appellate court.

7. Considering the facts and circumstances, this Second Appeal was admitted on the following substantial question of law:-

“(1) Has not the lower appellate court committed an error of law in not holding that the plaintiff has not established the fact of marriage between the 1st defendant and Kandhappa gounder as well as the plaintiff being the son of Kandhappa gounder.

(2) Has not the lower appellate court committed an error of law in not considering the various exhibits filed by the defendants including Ex.B19 to Ex.B22.



S.A. No.8 of 2006

(3) Has not the lower appellate court committed an error of law in not holding that the judgment and decree in O.S.No. 55 of 1982 is genuine and holding on the plaintiff and same has been passed taking into consideration the interest of the plaintiff as well as 1st defendant.

(4) Has not the lower appellate court committed an error of law in not holding that Ex.B22 has been executed by the 1st defendant from the properties allotted to her and the judgment and decree in O.S.No. 55 of 1982 has been acted upon.

(5) Has not the lower appellate court committed an error of law in not holding that without setting aside the same and setting the Will in favour of the deceased Kuppusubanna gounder, the suit is not maintainable.

(6) Has not the lower appellate court committed an error of law in not holding that the Will in favour of the 2nd defendant is genuine and the plaintiff is estopped from challenging the decree in O.S.No. 55 of 1982.



S.A. No.8 of 2006

WEB COPY

8. Brief facts of the case is as follows :-

Before the trial court, the plaintiff filed a suit seeking for the relief of partition, declaration and other consequential relief in O.S.No.78 of 1993 before the Sub-Court, Gobi. At that time, he was a minor aged about 14 years stated that he was under the care and custody of his maternal grandmother Kaliammal, since his mother/1st defendant Rathinam @ Rathinayal acting against his interest, so he was under the custody of his grandmother and filed the present suit. According to plaintiff, one Kandhappa Gounder was married to one Periamarakkal @ Sellammal, who got no issues and again he married her sister Chinna Marakkal, who also not got any issues. Thereafter, second wife died. While the first wife was alive, in the year of 1976, Kandhappa Gounder married Rathinam @ Rathinayal/1st defendant and begotten the plaintiff as their child. Thereafter his father Kandhappa gounder died intestate in the year 1982 leaving behind himself and his mother as his legal heirs. The suit properties in item Nos. 2 to 9 are ancestral properties of the plaintiff and the first item of property belong to Kandhappa Gounder's uncle Palani gounder, who

12/29



S.A. No.8 of 2006

bequeathed the item nos. 1 and 2 through the Will dated 06.05.1946. Based on that, the first item was given to perform religious poojas and not given any individual right. However, not to grab the entire property, the plaintiff, who is brother's son of Kandhappa Gounder filed a suit in O.S.No.55 of 1982 before the Sub-Court, Gobi against his mother shown as 1st defendant representing minor plaintiff herein and one Devakkal, sister of Kandhappa Gounder for declaration and permanent injunction claiming that based on the Will executed by Kandhappa gounder, he is entitled for entire suit property, wherein there was a compromise held between the parties and the compromise was effected with the collusion between his mother and 2nd defendant and not for the benefit and interest of minor Murugesan, plaintiff herein. Therefore, the compromise decree passed in the said suit is void ab initio and not bind the plaintiff and it is a fraudulent decree obtained by 2nd defendant as against law, but he come forward with the said decree. Further, he would content that the 2nd defendant is in possession of certain item of property and item No.1 is in possession of 2nd defendant, which is not for legal purpose, so as a legal heir of Kandhappa gounder, the plaintiff is entitled to recover the said first item from the 2nd defendant and the alleged



S.A. No.8 of 2006

Will dated 04.04.1981 relied on by the 2nd defendant is not true and valid, thereby the plaintiff is claiming share in the entire suit property and also prayed for the relief of partition as well as declaration to declare the compromise decree would not bind on him as it is null and void.

9. The 1st defendant, mother of minor child has not filed written statement. The 2nd defendant through written statement raised objections stating that minor plaintiff is not in custody of his grandmother Kaliammal. He is residing along with his mother permanently at Ramana Gounder Street, Pudukadu, Veerapandi village, Gobichettipalayam taluk. As per the compromise decree passed in O.S.No.55 of 1982, the properties are allotted to plaintiff's mother Rathinam @ Rathinayal, since she was married by Kandhappa Gounder, as absolute owner, for herself and for the welfare of minor. But, with an ulterior motive in order to grab the entire property, at her instigation, the present suit was filed. Furthermore, the plaintiff is not a legitimate son of Kandhappa gounder nor Kandhappa gounder was the father of minor plaintiff. During the life time of Kandhappa gounder, he has not married the 1st defendant and she was a servant-maid appointed in the



S.A. No.8 of 2006

house to look after Kandhappa gounder's first wife, after her demise, she was sent out. Thereafter, she claimed herself as wife of Kandhappa gounder and also claimed declaration to declare that plaintiff Murugesan was born to Kandhappa gounder, thereby causing all sorts of interference to Kandhappa Gounder during his life time. Therefore, he filed a separate suit in O.S.No.169 of 1981 in which Kandhappa gounder also contested the suit and obtained an order of injunction. Subsequently, the said suit was dismissed for default. Therefore, no cordial relationship between Kandhappa gounder and the 1st defendant. Kandhappa gounder died in the year 1982, before that in the year 1981, he executed a Will dated 04.04.1981 as his last Will, based on that, entire property was executed in favour of 2nd defendant. Therefore, he filed a suit for declaration in O.S.No.55 of 1982 against minor plaintiff, his mother, who caused interference and Kandhappa gounder's sister. Pending suit, at the advise of elders, compromise was entered, wherein the 1st defendant agreed that she would not claim any declaration to declare relationship as she is wife of Kandhappa gounder and child was born to him, however in that compromise, out of the suit properties, she was allotted with item No.5 to 8



S.A. No.8 of 2006

and the 6th defendant was allotted item nos. 1 to 4 and 9, thereafter, both of them enjoyed the properties as per the terms of compromise. In respect of item no.1 already H.R. & C.E. department initiated proceedings, that apart, 6th defendant rest with the item allotted to him, as a absolute owner, he entered into sale agreement with the 3rd defendant, but the possession was not given to him. Accordingly, he prayed to dismiss the suit stating that the plaintiff is not a legal heir of Kandhappa Gounder nor entitled to claim any share.

10. Furthermore, in the said compromise decree, item no.4 was allotted to Kandhappa Gounder's sister. Now, her legal heirs have contested the suit. The learned counsel for appellants would submit that the plaintiff not proved that he was born to Kandhappa gounder and he is legally wedded child of Kandhappa gounder and first defendant Rathinam @ Rathinayal nor any proof that a valid marriage held between Rathinam @ Rathinayal and Kandhappa gounder, without which by relying birth certificate on the side of plaintiff, the first appellate court held that he is legitimate son of Kandhappa gounder as such is totally erroneous. To that



S.A. No.8 of 2006

effect, he relied on the ratio laid down in the following authority reported in **2007 (2) L.W. 663** in the case of **Pandurangan vs. Annammal**, wherein this Court held as follows :-

“(Indian) Evidence Act, Sections 35, 114/Presumption whether can be drawn from entries in Birth Certificate as to relationship of a person as a daughter, in the absence of details, evidence and pleadings, Adverse Possession/claim of adverse possession as commencing from the date of entering into possession pursuant to the agreement for sale preceding the transaction of sale, whether sustainable – Held : When the plaintiff's vendor' status as the daughter of T was challenged in the written statement, that too when the plaintiff had chosen to file reply statement, the plaintiff ought to have pleaded in detail about the paternity and maternity of her vendor and on that basis, she should have let in evidence; then only that evidence would be admissible to fix the status, not otherwise.”

11. By way of reply, the learned counsel for 1st respondent/plaintiff argues that during the life time of Kandhappa gounder, he filed a suit through his mother Rathinam @ Rathinayal/1st defendant filed a suit in O.S.No.169 of 1981 against Kandhappa Gounder, who had also appeared in



S.A. No.8 of 2006

the suit and not disputed the paternity of child. Furthermore, in respect of Kandhappa gounder's property, there was a compromise decree passed in O.S.No.55 of 1982, wherein minor plaintiff was represented by his mother was one of the party and some of the properties belong to Kandhappa Gounder was allotted to him, which itself shows that they accepted the plaintiff as a legal heir of Kandhappa gounder. Therefore, apart from birth certificate, the earlier compromise proceedings itself proves that minor plaintiff was accepted as a legitimate son of Kandhappa gounder and the same was rightly appreciated by the first appellate court, which needs no interference. Hence, he prayed to dismiss this Second Appeal.

12. Encountering the same, learned counsel for appellants argue that when the marriage between Kandhappa gounder and Rathinam @ Rathinayal is under challenge, the burden is casted upon the plaintiff as well as 1st defendant to establish that there was a valid marriage performed with the Kandhappa gounder. According to plaintiff, his grandmother informed to him that at the Palani Murugan temple, marriage was held between Kandhappa gounder and Rathinam @ Rathinayal in the year 1961,



S.A. No.8 of 2006

thereby he himself admits that at the time of alleged marriage, the first wife of Kandhappa gounder was alive and also contended that his mother was the third wife of Kandhappa gounder, but except the oral testimony, there is no proof or any receipt produced on the side of plaintiff to establish that the marriage was performed at Palani Murugan temple. Admittedly, Kandhappa gounder was died in the year 1982 at the most, he was aged about 82 to 85 years old at that stage. Even assuming that in the year 1970, at the time of alleged marriage, he would have been aged about more than 75 years old. Hence, at the age of 75 years, one could not have expected to have a child. Therefore, the burden is heavily casted upon the plaintiff and the 1st defendant that the plaintiff was born to Kandhappa gounder. Except the oral testimony of plaintiff, there is no other material evidence to establish that the plaintiff was born to Kandhappa gounder and Rathinam @ Rathinayal. Furthermore, at the time of alleged marriage, first wife was alive and plaintiff himself admits that his mother is third wife. Therefore, there is no valid legal marriage between Kandhappa gounder and Rathinam @ Rathinayal, which was established by the plaintiff himself. Furthermore, in the compromise decree, as per the evidence of D.W.2 after the demise of

19/29



S.A. No.8 of 2006

Kandhappa gounder, at the instigation of some legal personalities of Rathinam @ Rathinayal, he caused interference in the enjoyment of suit property, which was bequeathed to him through the Will executed by Kandhappa gounder. As per the compromise decree passed in O.S.No. 55 of 1982, according to 2nd defendant, this defendant was appointed as a servant-maid to look after Kandhappa gounder's wife. Therefore, the village people elders have also claimed that minor plaintiff was born to him. In the interest of village elders advise, to put an end to such a controversy, they have suggested for compromise, but even on seeing the cause title of the suit in O.S.No.55 of 1982, Rathinam @ Rathinayal and minor plaintiff Murugesan was not mentioned as wife and son of Kandhappa gounder. As per the terms of compromise marked as Ex.A4, it reveals that Rathinam @ Rathinayal, for herself and on behalf of her minor son agreed not to claim any relationship as wife and son of Kandhappa gounder in future and agreed to receive item Nos. 5 to 8 of the suit properties for herself and on behalf of minor. The compromise decree annexed with the typed set of papers was perused and it reveals that it was recorded in the open court in Ex.A4 and possession was also handed over

20/29



S.A. No.8 of 2006

to them, thereby the valuable properties were given to them as per the said compromise decree, which was witnessed by village panchayatars, wherein they have also affixed their signatures. The 1st defendant also affixed her thumb impression and her husband also signed in that compromise and all the parties were represented through their counsel before the court. Hence as per the terms of compromise, the 1st defendant herself agreed not to claim any status with the Kandhappa gounder and not to claim any further claim in the property belongs to them, except the items allotted to her. The said compromise was entered on 30.09.1982, thereafter, nearly about 10 years later, in the year 1993, the present minor plaintiff filed the present suit as if the compromise was entered against his interest and he was only under the care of his grandmother, but in the year 1981, the 1st defendant filed a suit against Kandhappa gounder for herself and on behalf of minor plaintiff Murugesan for the relief of declaration, which itself shows that minor plaintiff was under the care of his mother. Furthermore, during the cross-examination of P.W.1 (minor Murugesan attained majority and gave evidence as P.W.1) wherein he admits that his mother has joined him in the school certain documents were given by his mother, however, nor he



S.A. No.8 of 2006

produced any relevant document to show that he is under the care and custody of his grandmother Kaliasammal.

13. On considering objections of 2nd defendant, the foremost objection is that at the instigation of 1st defendant, the present suit was filed by minor plaintiff. Therefore, the burden is heavily casted upon the plaintiff to establish that he was under the care of grandmother Kaliasammal at the time of filing the suit, but there is no material evidence to prove the same. Therefore, the conduct of plaintiff would probabilise that at the instigation of 1st defendant/his mother, the present suit came into force in order to grab the property allotted to the 2nd defendant as he suggested in the written statement. The trial judge has elaborately discussed with all these facts and rightly held that the plaintiff is not the legitimate son born through Kandhappa gounder and 1st defendant nor there is any valid marriage between them. But, the first appellate judge has erroneously held that though first wife of Kandhappa gounder was alive, at that time minor plaintiff was born to Kandhappa gounder and 1st defendant and he is a only legal heir, since Kandhappa gounder has not got any children through first and second wife as he has no legal heir. By relying the ratio laid down in



S.A. No.8 of 2006

the authority reported in ***AIR 1992 A.P. Page 291***, wherein it has been held as follows :-

“Hindu Marriage Act – Child born of marriage, which is void under the Act – Right of such child to property of the parents – Property which such a child can claim must be separate property of the parents and not the coparcenary property.”

the findings of first appellate judge to that effect as such is totally erroneous one and liable to be set aside. Accordingly, the question of law (1) is answered.

14. The compromise decree was acted upon. Moreover, the 2nd defendant is enjoying the alleged items of suit property. So also, the mother of plaintiff gifted portion of the property to one Sivaraman claimed him as her husband. But the plaintiff has not challenged the said settlement deed for the reason best known to him, which itself shows that the 1st defendant filed the present suit in the name of minor plaintiff. Therefore, the alleged settlement deed executed by her in favour of Sivaraman not put into challenge as argued by the appellant is acceptable one. Furthermore, the



S.A. No.8 of 2006

contesting defendants filed documents Ex.B19, Ex.B20, Ex.B21, ExB22, which proves that the 1st defendant was married to one Sivaraman and living with him. She also gave paper publication for herself and on behalf of minor Murugesan marked as Ex.B21 dated 06.04.1993 reveals that minor Murugesan was not under the care of maternal grandmother at the time of filing suit and he was under her care and not with the care of grandmother Kaliammal, but the first appellate court failed to appreciate all those documents properly and erroneously granted the relief in favour of plaintiff as such is perverse and liable to be set aside. Accordingly, question of law (2) is answered.

15. In respect of compromise decree passed in O.S.No. 55 of 1982, the first appellate judge has held that the property was allotted to 1st defendant only to manage the welfare of minor plaintiff, since because the plaintiff was the son born to Kandhappa gounder, but the first appellate judge failed to appreciate entire terms of compromise. As rightly pointed out by the appellant's counsel, it reveals that Rathinam @ Rathinayal herself admits that she would not claim any share with the Kandhappa



S.A. No.8 of 2006

gounder, apart from that, the plaintiff admits that during the subsistence of earlier marriage, Kandhappa gounder performed the marriage with his mother, but as discussed above, to that effect also, not proved. Furthermore, there is no prayer to set aside the compromise decree, if it is illegal and fraudulently obtained as alleged by minor plaintiff in the present suit. Moreover, no reason offered for nearly about 10 years later, minor plaintiff approached the court after passing of compromise decree, besides mother of minor plaintiff/1st defendant sold the portion of property and executed a settlement deed in favour of one Sivaraman as if she is the wife of said Sivaraman, thereby the compromise decree was acted upon, but the plaintiff not included the said property covered under settlement deed. But the first appellate court failed to take note of those facts and circumstances and erroneously held that the compromise decree would not bind the plaintiff, as such is perverse and liable to be set aside. Accordingly, the question of law (3) and (4) are answered.

16. The 2nd defendant claiming right over the suit property based on the Will executed by Kandhappa gounder dated 04.04.1981 marked as



S.A. No.8 of 2006

Ex.B8, but the first appellate judge held that Will was not proved with proper witnesses and evidence of D.W.2 attestor also sufficient to hold that Will is true and valid one and it was executed by Kandhappa gounder with sound state of mind. However, as rightly pointed out by the appellants' counsel, the said Will was executed by Kandhappa Gounder was admitted in the said compromise decree. On perusal of compromise decree Ex.A4, there is a recital found that the Will executed by Kandhappa gounder, which proves that it is true and valid one and they have also admitted that they would not raise any objection in future. Now, the plaintiff challenged the said Will against the terms of compromise, however, the 1st defendant remained exparte not entered into witness box. If really, she was forced to sign in the compromise decree, she would have entered into witness box to deny the other allegations. Considering that, this Court is entitled to draw adverse interest against her. Therefore, the Will was already declared as true and valid one in O.S.No.55 of 1982. Now, the plaintiff contended that a compromise was entered into by his mother against his interest, he ought to have filed a suit for declaration to declare the compromise decree passed in the said suit as illegal and liable to be set aside. But, no prayer was



S.A. No.8 of 2006

claimed in the present suit nor any separate suit was filed. Therefore, the plaintiff also bound by the terms of compromise, apart from that, the 2nd defendant examined one of the attestor as D.W.2 and his evidence clearly reveals that he saw the signature affixed by the testator in the presence of witnesses and Will also been drafted at the instance of testator Kandhappa gounder, which is more sufficient to hold that Will is true and valid one, which was rightly appreciated by the trial judge. But the first appellate judge erroneously held that Will was not proved is total misconception on law and on facts and the same is liable to be set aside. Therefore, the plaintiff is also estopped from challenging the Will as well as compromise decree passed in O.S.No.855 of 1981. Accordingly , question of law (5) and (6) are answered.

17. So far as item no.4 is concerned, it was allotted to the share of Devakkal, who was sister of Kandappa gounder in a compromise decree passed in O.S.No.55 of 1982. Eversince, item no.4 of suit property became her absolute property, in which the plaintiff has no right and title at any cost. Accordingly, this Second Appeal is allowed and the findings rendered

27/29



S.A. No.8 of 2006

by the first appellate court in A.S.No.7 of 2003 is set aside. Consequently, the trial judge has elaborately discussed the facts and circumstances while discussing the issues framed, which needs no interference. Accordingly, the findings of trial judge is confirmed and consequently suit is dismissed as no merit. No costs. Consequently, the connected Miscellaneous Petitions are closed.

19.11.2024

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

1. Addl. District Court and Fast Track Court No.1, Erode.
2. Principal Subordinate Court, Gobichettipalayam.
3. Section Officer, VR Section, Madras High Court.



WEB COPY



S.A. No.8 of 2006

T.V.THAMILSELVI, J.

rpp

S.A. No.8 of 2006

19.11.2024