



S.A. No.517 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

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

S.A.No.517 of 2009

and

M.P.No.1 of 2009

Gunasekaran

... Appellant / plaintiff

Vs

1.Pethayammal

2.Pethayamman

... Respondents / defendants

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 11.09.2007 made in A.S.No.65 of 2006 on the file of the Additional District Court, Fast Track Court No.IV, Bhavani, which confirming the Judgement and decree dated 07.04.2004 made in O.S.No.190 of 2003 on the file of the I Additional District Munsif Court, Bhavani.



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For Appellant : Mr.Ma.P.Thangavel
For R1 : Mr.Kaithamalai Kumaran
For R2 : Given up

JUDGMENT

The appellant has filed this Second Appeal against the judgment and decree of the learned Additional District Judge, Fast Track Court No. IV, Bhavani, passed in A.S. No. 65 of 2006, dated 11.09.2007, which confirmed the judgment and decree of the I Additional District Munsif, Bhavani, passed in O.S. No. 190 of 2003, dated 07.04.2004.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The appellant herein is the plaintiff in O.S. No. 190 of 2003 before the learned I Additional District Munsif, Bhavani. Challenging the concurrent findings of the courts below, the plaintiff/appellant has filed this appeal. Before the trial court, he filed a suit seeking a declaration to declare



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the suit property, described in the plaint schedule as an extent of 122 sq. meters in S. No. 445/3, and for a permanent injunction along with other consequential reliefs.

4. According to the plaintiff, the suit property originally belonged to P.K. Gurusamy Gounder, who had one brother named Muthusamy. The plaintiff, who claims to be the foster son of P.K. Gurusamy Gounder, filed the present suit against the 1st defendant, the estranged wife of P.K. Gurusamy Gounder, and the 2nd defendant, who is the son of Muthusamy.

5. During the lifetime of P.K. Gurusamy Gounder, there was no cordial relationship between him and his wife, the 1st defendant, Pethayammal. Due to their strained relationship, they separated. Subsequently, Pethayammal, the 1st defendant, filed a suit, O.S.No.909 of 1981, claiming maintenance of Rs.150 per month. This suit, which was pending before the High Court of Madras, was eventually settled by P.K. Gurusamy Gounder through a settlement deed dated 07.09.1990. As per the settlement, Pethayammal was given 1.5 acres of garden land and Rs.22,000/- in cash as consideration for releasing all her rights in her



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husband's properties, both present and future.

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6. P.K. Gurusamy Gounder passed away on 02.06.2003. After the separation from his wife, P.K. Gurusamy Gounder developed a relationship with Guruvayammal, who was the plaintiff's mother. During his lifetime, P.K. Gurusamy Gounder executed a will on 15.01.2000 in favor of the plaintiff, who is his brother's son and who took care of him as a foster son. After the death of P.K. Gurusamy Gounder, the plaintiff enjoyed the property. However, the 1st defendant, allegedly at the instigation of the 2nd defendant (a Village Administrative Officer by profession), attempted to trespass on the property. Consequently, the plaintiff filed the present suit for a declaration and permanent injunction.

7. The 1st defendant contested the suit, stating that the plaintiff is not the foster son of **P.K. Gurusamy Gounder** and that the will relied upon by the plaintiff is fabricated in order to grab the property. She further argued that as the wife and legal heir of **P.K. Gurusamy Gounder**, she alone is entitled to enjoy the suit property, thereby the 1st defendant, prayed for the



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dismissal of the suit with exemplary costs.

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8. The 2nd defendant, a Village Administrative Officer by profession, remained ex parte.

9. Before the trial court, both parties presented oral and documentary evidence. On the plaintiff's side, **Ex.A1 to Ex.A26** documents were marked, and the plaintiff was examined as **P.W.1**, while three others were examined as **P.W.2 to P.W.4**. On the defendants' side, **D.W.1** and **D.W.2** were examined, and **Ex.B1 to Ex.B4** documents were produced. Additionally, court documents **Ex.X1** and **Ex.X2** were marked.

10. Considering the evidence on record, the learned Trial Judge framed three issues. The foremost issue was "whether the plaintiff is entitled to have rights over the suit property and to the relief of declaration? While deciding the first issue, the learned Trial Judge, as discussed, about the execution of the Will marked as Ex.A2, said to have been executed by P.K. Gurusamy Gounder in favor of the plaintiff.



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11. The learned Trial Judge did not accept the Will, holding that the evidence of the witnesses failed to prove that the testator, P.K. Gurusamy Gounder, was in a sound state of mind at the time of execution. Furthermore, the Judge observed that there was a registered release deed (marked as Ex.A1) executed by the first defendant in favor of P.K. Gurusamy Gounder. In light of this, the unregistered Will (Ex.A2) appeared unbelievable. The Judge also noted that the witnesses to the Will were relatives of PW1, raising questions about their credibility.

12. Considering these circumstances, the learned Trial Judge concluded that the Will was shrouded in suspicious circumstances. Additionally, the forensic report (marked as CW.2) on the thumb impression found on the alleged Will (Ex.A2) was compared with the admitted document, the release deed (Ex.A1). The report concluded that the thumb impressions did not tally. Based on these findings, the Trial Judge dismissed the Will, holding that it was created with an ulterior motive. Consequently, the suit was dismissed, with the ruling that the plaintiff had no right over the property based on the Will.



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13. Aggrieved by this decision, the plaintiff preferred an appeal, A.S.No.65 of 2006, before the learned Additional District Judge, Fast Track Court No.IV, Bhavani. The First Appellate Judge analyzed the evidence on record and relied on the findings of the Trial Court. The learned appellate Judge confirmed the Trial Court's findings and dismissed the appeal. Challenging these findings, the appellant/plaintiff has now preferred this Second Appeal.

14. The learned counsel for the appellant argued that the judgments of the Courts below are flawed as they failed to properly appreciate the evidence supporting the genuineness of the will (Ex. A2). The appellant, being the foster son and sole caretaker of Gurusamy Gounder, was the natural beneficiary, particularly since the first respondent, the estranged wife, had been separated for over 35 years. The will's reference to a sale agreement dated 19-8-1999 further attests to its authenticity, as such detailed mentions are uncommon in wills. Moreover, the appellant's inability to produce the agreement mentioned in the will should not attract



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an adverse inference. The Courts also erred in disregarding the secrecy surrounding the will's execution, necessitated by the testator's strained relationship with the first respondent.

15. The Courts failed to appreciate that Gurusamy Gounder had already provided permanent alimony to the first respondent through a registered release deed and had no obligation to allocate further property to her. The evidence of the document writer (PW4) sufficiently proved the execution of the will, making the typist's testimony unnecessary. Additionally, the reliance on a smudged fingerprint specimen for expert opinion was improper. The appellant demonstrated possession of the property through tax receipts, whereas the first respondent provided no such evidence. The Courts' refusal to decree the suit on these grounds is legally unsustainable.

16. The learned counsel for the appellant submitted that the Courts below failed to analyze the release deed executed by the first defendant then



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(wife of P.K. Gurusamy Gounder) in favor of her husband during his lifetime, which is marked as Ex.A1. Without providing any findings regarding this document, the learned Trial Judge dismissed the suit erroneously, and Ex.A2 (the Will) was invalidated without sufficient grounds.

17. The appellant further contended that after executing the release deed (Ex.A1), the first defendant had no right or claim over the suit property of P.K. Gurusamy Gounder. However, she contested the suit at the instigation of the second defendant, who is the Village Administrative Officer (VAO) by profession and another brother's son of P.K. Gurusamy Gounder. The second defendant contested the suit without proper consideration of Ex.A1. The appellant argued that the Courts below dismissal of the suit based on the Will was illegal and liable to be set aside.

18. The appellant also submitted that even if the Will is deemed invalid, as a foster son who cared for P.K. Gurusamy Gounder throughout his lifetime, is entitled to ownership of the property.



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19. This Second Appeal was admitted by this Court on 25.06.2009, on the following substantial questions of law:

"(a) Whether the courts below erred in dismissing the suit without considering the release deed executed by the first defendant, marked as Ex.A1, and whether the same is valid under law?

(b) Whether the courts below were justified in rejecting the evidence of the attestors, even though the appellants claimed to have proved the Will as per the law?

(c) Whether the courts below were correct in refusing to grant a permanent injunction?

(d) Whether the appellant is entitled to declaratory relief?"

20. By way of reply, the learned counsel for the respondents submitted that the plaintiff failed to establish that he is the foster son of P.K. Gurusamy Gounder, nor did he prove the will, which was rightly appreciated by the courts below and requires no interference. Furthermore, he submitted that even after the execution of the release and settlement



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deeds, the 1st defendant, as the legal heir of P.K. Gurusamy Gounder (being his wife), became the absolute owner of the suit property after his demise, the property was left by P.K. Gurusamy Gounder intestate and was subsequently sold to third parties who have since put up construction on the suit property. Therefore, he prayed to dismiss the appeal for lack of merits.

21. Considering the submissions on both sides, this Court acknowledged the following: It is an admitted fact that the 1st defendant is the estranged wife of P.K. Gurusamy Gounder. It is also undisputed that the plaintiff is the brother's son of P.K. Gurusamy Gounder. During his lifetime, there was a dispute regarding maintenance and other reliefs, leading the 1st defendant to file a suit against her husband in O.S. No. 909 of 1981. While the matter was pending before the High Court of Madras, a settlement was reached between the parties. Under the terms of this settlement, the 1st defendant received Rs.22,500/- from her husband as consideration for releasing her rights over any property belonging to him. The recitals of the documents state as follows:



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"நான் உமக்கு இருக்கும் இதர சொத்துக்கள் மீது ஏதாவது உரிமைகொண்டாடினால் என்ன செய்வது என்று நீங்கள் சந்தேகப்படுவதால் அதற்காக நான் கீழ்க்கண்ட சாட்சிகள் முன்பாக உங்களிடமிருந்து ரூபாய் 22,500- இருபத்தி இரண்டாயிரத்தி ஐநூறு மட்டும் ரொக்கமாகப் பெற்றுக் கொண்டு என் ஆயுட்காலம் முடியும்வரை உங்களுக்கு இப்போது இருக்கும் சொத்துக்களிலும், இனிமேல் நீங்கள் ஏதாவது சொத்துக்கள் வாங்கினாலும் அந்த சொத்துக்களிலும்கூட இனிமேல் நான் எந்தவிதமான உரிமையும் பாராட்டுகிறதில்லை என்றும் அப்படி உரிமை பாராட்டினாலும் அது எக்காரணம் கொண்டும் செல்லத்தக்கதல்ல என்றும்இ தவிற என் ஜீவனாம்பத்திற்காக நான் உங்கள் மீது கொடுத்துள்ள எல்லா வழக்குகளையும் வாபஸ் பெற்றுக் கொள்ளுகிறேன் என்றும் உறுதிபூறு என் மனப்பூர்வமாய் சம்மதித்து இந்த விடுதலைப்பத்திரம் எழுதிக்கொடுத்திருக்கிறேன். கைவிடும் உரிமையின் மதிப்பு ரூபாய் 22,500-."

22. As per the panchayat, an extent of 1 acre and 50 cents of agricultural land was given to the 1st defendant as permanent alimony. The relevant recitals in the documents confirm this arrangement.

23. During the Chief examination, the 1st defendant, who was examined as D.W.1, admitted to executing the release deed in favour of her husband. She also confirmed receiving 1.5 acres of land and Rs.22,500/- in cash from him. However, the Courts below failed to properly consider the Ex.A1 document.



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24. According to the 1st defendant, as a wife, she had a right to the property belonging to her husband, P.K. Gurusamy Gounder. Foremost issue is whether the 1st defendant is entitled to claim rights over the property also remains unresolved. The courts below failed to adjudicate on these issues and did not consider the Ex.A1 release deed. On the defendants' side, the same document was marked as Ex.B1, however, the 1st defendant admitted the execution of the release deed in favour of her erstwhile husband P.K.Gurusamy Gounder. The recitals in the document confirmed that she relinquished her rights in respect of the immovable property belonging to her husband, P.K. Gurusamy Gounder, at present and in the future by receiving cash and landed property as her permanent alimony.

25. Moreover, the 1st defendant's evidence indicates that she left her matrimonial home and lived with her brother's family for 10 to 15 years. During cross-examination, she claimed to have lived with her husband but failed to produce any evidence or make any pleadings to that effect. Without appropriate pleadings, such evidence is inadmissible. Therefore, it



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is clear that the 1st defendant left the matrimonial home and relinquished her rights in respect of her husband's property by receiving cash on permanent alimony as well as landed property. The courts below failed to properly appreciate Ex.B1 = Ex.A1.

26. Eventually, plaintiff claimed based upon Will executed by P.K.Gurusamy Gounder. However, the will was not proved according to the courts below, which relied on the forensic report marked as Ex.C2. The report, dated 07.09.1990 (Book No.1, Vol. 1008, Regd. No. 1348), stated that two thumb impressions on the will did not match. Consequently, the will was viewed with suspicion.

27. A closer examination of Ex.C2 reveals that the forensic report was prepared by one C.V. Jeyadevi, who was an advocate by profession. It is admitted that this report was not obtained from a Government official. During cross-examination, D.W.2 (the advocate) herself admitted that she lacked the expertise to compare the thumb impressions and failed to provide valid reasons for her conclusions. Furthermore, she admitted that



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she was not an authorized Government forensic expert.

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28. Thus, the forensic report Ex.C2 cannot be relied upon. The trial court erred in relying on this unauthenticated report to conclude that the will was not proved as such is erroneous and unsupported by reliable evidence.

29. To support the appellant's contention, the following authorities were relied upon in (1996) 4 SCC 596, S.Gopal Reddy Vs. State of A.P., in which stated as follows:

"28. Thus, the evidence of PW 3 is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking independent and reliable corroboration. In Magan Bihari Lal v. State of Punjab, while dealing with the evidence of a handwriting expert, this Court opined: (SCC pp. 213-14, para 7)

"... We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none



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*so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P.⁶ that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Misra v. Mohd. Isa that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in **Shashi Kumar Banerjee v. Subodh Kumar Banerjees** where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in **Fakhruddin v. State of M.P.**⁹ and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.”*

30. The learned counsel for the appellant argues that the alleged Ex.C2 report is not a reliable document, as it was obtained from a private handwriting expert. Considering the said proposition and the qualifications of the person who prepared the report, this Court concludes that it is unsafe



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to rely on Ex.C2 regarding the thumb impression of P.K. Gurusamy Gounder. Specifically, the person who prepared the report is not an authenticated handwriting expert; she is an advocate by profession. The report was provided as a private opinion, not as part of her professional expertise. Despite this, the lower courts erroneously relied on the contents of the said report.

31. Furthermore, her evidence is indefinite in nature, and she failed to provide proper and satisfactory reasoning to substantiate her conclusions. Thus, both Ex.C2 and the evidence of DW.2 were relied upon by the Courts below in concluding that the thumb impression on the will was not valid, which is a totally erroneous finding.

32. To prove the will, the plaintiff presented P.W.2 and P.W.3 as attestors, and P.W.4 as the scribe. During cross-examination, these witnesses stated that one Rajamanikkam purchased the stamp papers, and the draft will was prepared. They confirmed that P.K. Gurusamy Gounder affixed his thumb impression and signed the document in their presence.



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Both attestors affirmed that they saw P.K. Gurusamy Gounder affixing his signature and thumb impression. There is no contradiction in their statements, and they attested the signatures and thumb impressions after witnessing the testator. The Gazetted Officer also signed the document, confirming its authenticity.

33. The witnesses further testified that P.K. Gurusamy Gounder executed the will, and during the process, he introduced himself. He also stated that they were unaware of the specifics of how the stamp papers were purchased. The scribe confirmed that he drafted the will, and no contradictions were found in his evidence. He deposed as follows:

"உயிலில் குருசாமிக் கவுண்டர் கையெழுத்துப் போட்டதும் ரேகைகள் வைத்ததும் எனக்கு நேரில் தெரியும். உயிலில் உள்ள கையெழுத்துக்களும் ரேகைகளும் குருசாமிக் கவுண்டருடையது அல்ல என்பது சரியல்ல. உயில் படித்துக் காண்பிக்கப்பட்டு அதைப் புரிந்து கொண்டு தான் குருசாமிக் கவுண்டர் கையெழுத்துக்களும் ரேகைகளும் போட்டார். நானும் தங்கராஜ் ஆகியோர் சாட்சிக் கையெழுத்துப் போட்டதையும் குருசாமிக் கவுண்டர் பார்த்தார்."



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34. Therefore, all the witnesses categorically deposed in support of execution of the will. However, the Courts below failed to appreciate the entirety of the evidence and instead relied entirely on the expert opinion, which is unauthenticated and unsubstantiated. The attestors and witnesses sufficiently proved the will, and the findings of the Courts below are, therefore, liable to be set aside. Normally findings rendered by the Courts below would not be interfered and if it is not properly considered, per vers, this Court interfere with findings of Courts below.

35. Accordingly, the question of law, a and b are answered. After the execution of the release deed, the first defendant has no right to claim right and title of P.K. Gurusamy Gounder's property, as she had already left the family with permanent alimony and her share of cash as well as landed property. Besides the will relied by the appellant is proved as per manner known to law. Thus, findings rendered by the Courts below are set aside.

36. Hence, for the reason stated above, the Judgment and decree of



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the First appellate Court and also the Judgment and decree of the trial Court are hereby set aside. The original suit shall stand decreed as prayed for.

37. With the above observations, this Second appeal is allowed.

Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

17.10.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Additional District Judge,
Fast Track Court No.IV, Bhavani,
2. The I Additional District Munsif, Bhavani.
3. The Section Officer, VR Section, High Court of Madras.

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