



S.A.No.560 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.560 of 2002

Veeramalai

-Vs-

...Appellant

1.Palaniyandi

2.Ponnayee

3.Murugesan

4.Minor.Kunjammal

Represented by Father Guardian
first respondent Palaniyandi

5.Ponnambalam (died)

6.Mahamuni

7.Peryakkal

8.Sannasi

9.Saroja

10.Kailasam(died)

(Respondents 8 to 10 are brought on record as LR's of the
Deceased R5 vide Court order dated 24.02.2021 made in
C.M.P(MD) Nos.3237 to 3239 of 2020)

11.Manickam



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WEB CORN 12.Selvi

13.M.Raja

14.Revathi

... Respondents

(Respondents 11 to 14 are brought on record as LR's of the deceased 10th Respondent vide Court order dated 14.06.2023 made in C.M.P(MD) No.1128 of 2022)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 27.03.2000 made in A.S.No.66 of 1995 on the file of the Subordinate Judge, Kulithalai, confirming the judgment and decree made in O.S.No.61 of 1988, dated 23.02.1990, on the file of the Additional District Munsif, Kulithalai.

For Appellant : Mr.K.Govindarajan
for M/s.Sarvabhauman Associates

For R1 & R4 : Mr.T.Selvam

For R6 & R7 : No appearance

JUDGMENT

The third defendant in the suit is the appellant. The predecessor of the respondents 1 to 4 filed a suit for partition claiming 1/5th share in the suit property. The suit was decreed by the trial Court and the judgment and decree



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passed by the trial Court were confirmed by the first appellate Court. Aggrieved by the concurrent findings, the third defendant has come by way of this second appeal.

2. According to the plaintiff, the suit property originally belongs to the father of the parties Sangapillai. The plaintiff and the fourth defendant are the daughters of Sangapillai. The defendants 1 to 3 are his sons. It was claimed by the plaintiff that the father of the parties died three years prior to the suit and inspite of the demand made by the plaintiff, the defendants failed to accede to the request of the plaintiff for amicable partition and hence, the plaintiff was constrained to file a suit for partition. Pending suit, the sole plaintiff, died and her legal representatives were brought on record, as plaintiffs 2 to 5.

3.The third defendant alone filed a written statement and resisted the suit on the ground that Sangapillai executed a registered Will dated 19.07.1974 bequeathing the suit property in favour of his wife with life estate and vested remainder in favour of male heirs of the defendants 2 and 3. The other defendants remained ex parte.



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4.Before,the trial Court, the husband of the deceased sole plaintiff was examined as P.W.1 and four documents were marked on the side of the plaintiff as Ex.A1 to Ex.A.4. The appellant/third defendant was examined as D.W.1 and one of the attestors to the Will relied on by the third defendant, was examined as D.W.2. The Will was marked as Ex.B1 through D.W.2.

5.The trial Court, an appreciation of evidence available on record, came to the conclusion that the evidence of D.W.2 was not sufficient to prove the Will and accordingly, granted a decree for partition as prayed for. Aggrieved by the same, the third defendant filed an appeal in A.S.No.66 of 1995 on the file of Sub Court, Kulithalai. The first appellate Court concurred with the findings of the trial Court. Aggrieved by the concurrent findings, the third defendant is before this Court.

6.The learned counsel appearing for the appellant by taking this Court to the chief examination of D.W.2 submitted that the attestor to the Will clearly deposed about the attestation in his chief examination and the said witness was won over by the plaintiff and hence, he deposed against the case of the third



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defendant in his cross examination. The learned counsel further submitted that the Courts below, by taking into consideration the clear evidence of D.W.2 regarding due execution of the Will, ought to have upheld the defence raised by the third defendant and dismissed the suit.

7.A perusal of the evidence of attesor to the Will, who was examined as D.W.2 would suggest that in chief examination, he deposed as if he had seen the testator and other attesting witnesses signing the testamentary document, however, in the cross examination, he deposed as follows:-

உயில் எழுதப்பட்டு எத்தனை வருடம் ஆகியிருக்கும் என்பது நினைவில்லை. அந்த உயில் எழுதப்பட்ட பொழுது யார் யார் இருந்தார்கள் என்று என்னால் கூற முடியாது. மணத்தட்டையிலிருந்து வந்து கொண்டு இருந்த என்னிடம் ஒரு கையெழுத்து போடுமாறு கேட்டார்கள். நான் போய் போட்டேன். அப்படி கூப்பிட்டது யார் என்று எனக்கு ஞாபகம் இல்லை. நான் கையெழுத்து போட்டுவிட்டு போய் விட்டேன். நான் கையெழுத்து போடும் பொழுது பத்திரம் எழுதப்பட்டு பூர்த்தியாகி இருந்தது. பதிவாளர் அலுவலகத்திற்குள் போனேன். சாட்சி கையெழுத்து போடச் சொன்னார்கள். போட்டேன். பத்திரத்தில் என்ன எழுதப்பட்டுள்ளது என்ற விபரம் எனக்கு நேரில் தெரியாது. என்னைத் தவிர மற்றவர்கள் கையெழுத்துப் போட்டதை நான்



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பார்க்கவில்லை. நான் கையெழுத்து போட்டது மட்டும் எனக்குத் தெரியும். எ.வா.சா.ஆ.1 உயிலை என்னிடம் படித்துக் காட்டவில்லை. படித்தும் நான் பார்க்கவில்லை. அதில் யார் யார் கையெழுத்து போட்டுள்ளார்கள் என்ற விபரம் எனக்குத் தெரியாது. எ.வா.சா.ஆ.1ல் நான் கையெழுத்து போட்டது தவிர வேறு ஏதும் எனக்குத் தெரியாது. அதை யார் எழுதினார்கள் என்ற விபரம் எனக்குத் தெரியாது.

8. Therefore, the evidence of D.W.2 in his chief examination, has been shattered in his cross examination. The learned counsel submitted that D.W.2 has been won over by the plaintiffs' side and hence, he deposed against the case of the third defendant in his cross examination. However, it is seen that D.W.2 was cross-examined immediately after chief examination on the same day and there was no time gap between the chief examination and cross examination. In such circumstances, the submission made by the learned counsel for the appellant that D.W.2 was won over by the plaintiffs' side is not acceptable to this Court. Though D.W.2 deposed in chief examination as if he had seen the testator and other attester to the testamentary document signing the same, in his cross examination, had deposed that he has not seen any other person signing the testamentary document. He was also unable to recollect who are all the persons present at the



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time of execution of document. He had also gone to the extent of saying that when he was signing the document, the execution of the entire document was completed. Therefore, his evidence in chief examination was completely shattered by his answer in the cross examination. Based on the evidence of D.W. 2, we cannot safely come to the conclusion that testamentary document relied on by the third respondent was proved. Both the Courts below rightly discarded the evidence of D.W.2 and came to the conclusion that the Will was not proved. The appellant who is the propounder of the Will also failed to lead any other evidence as contemplated under Section 71 of Evidence Act. Therefore, I do not find anything to interfere with the said factual conclusion reached by the Courts below. Accordingly, this Second Appeal is dismissed as devoid of any substantial question of law. No costs.

16.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge,
Kulithalai.
- 2.The Additional District Munsif,
Kulithalai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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