

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1297 of 2014
and
M.P.No.1 of 2014

Jayachandran ...Appellant/1st Defendant

Vs

1.Venkatesan
2.Rani
3.Latha
4.Ganesan

...Respondents/Plaintiffs 1 to 3 &
2nd Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree in A.S.No.37 of 2013 dated 02.08.2014 on the file of the learned Principal Subordinate Judge, Myladuthurai against dated 11.02.2013 in O.S.NO. 100 of 2007 on the file of the learned Principal District Munsif, Mayiladuthurai.

For Appellant : Mr.K.M. Vijayan (SC)
for M/s.K.M.Vijayan Associates

JUDGEMENT

The first defendant in O.S.No.100 of 2007 on the file of the learned Principal District Munsif, Mayiladuthurai is the appellant herein. The respondents 1 to 3 are the plaintiffs in the suit and the fourth respondent herein is the second defendant in the suit. The plaintiffs have filed the suit for a declaration that the plaintiffs are the legal representatives of one Mrs.Renganayagi, the sole daughter of one Mr.Pakiripillai and that the defendants have got nothing to do with the suit property and they should not disturb the peaceful possession and enjoyment of the plaintiffs over the suit property. According to the plaintiffs they have obtained the suit property by means of inheritance on the demise of Mrs.Renganayagi.

2.The appellant/first defendant took a plea that it is true that the suit property was originally owned by Mr.Pakiripillai and Mr.Pakiripillai's wife was one Mrs.Thangammal and they had a daughter by name Ms.Renganayagi. But, Mrs.Renganayagi pre-deceased them. The first plaintiff is the son of Mrs.Rengajayagi. Now,

according to the first defendant, Mrs.Thangammal, while in sound state of mind, had executed a last Will in favour of him on 19.04.1989. Mrs.Thangammal died on 24.04.1989. On account of the demise of Mrs.Thangammal, the first defendant has become the absolute owner of the suit property and he is in possession of the same. Therefore, according to the appellant/first defendant, the suit filed by the plaintiffs deserves to be dismissed.

3.The trial Court framed appropriate issues on the above pleadings. On considering both oral as well as documentary evidences let in by the parties, the trial Court by decree and judgement dated 26.08.2008 decreed the suit to the effect that the plaintiffs are the legal heirs of Mrs.Renganayagi but, granted decree of permanent injunction only in respect of the undivided half share in the suit property. As against the same, an appeal in A.S.No.31 of 2010 was filed by the plaintiff before the learned Principal Subordinate Judge, Mayiladuthurai. The learned Principal Subordinate Judge set aside the decree and judgement and remanded the matter back to the trial Court for fresh disposal in accordance with law. Accordingly, the trial Court allowed the parties to let in further evidence. Having considered the same, the learned Principal District Munsif, Mayiladuthurai by decree and judgement dated 11.02.2013 decreed the suit in full as prayed for. The trial Court held that the Will upon which the first defendant claims title (Exhibit B.1) cannot be true. As against the same, the appellant/first defendant filed an appeal in A.S.No.37 of 2013 before the learned Principal Subordinate Judge, Mayiladuthurai and by judgement and decree dated 02.08.2014, the learned Principal Subordinate Judge dismissed the appeal thereby confirming the decree and judgement of the trial Court. Aggrieved over the same, the appellant/ first defendant is before this Court with this second appeal.

4.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

5.The learned counsel for the appellant would submit that Mrs.Renganayagi died long prior to the death of Mr.Pakkiripillai and his wife Mrs.Thangammal, in suspicious circumstances. Therefore, Mrs.Thangammal and Mr.Pakkiripillai had no intention to give the property to the legal heirs of Mrs.Renganayagi. Since, they were maintained by the first defendant, Mrs.Thangammal executed the Will (Ex.B.1) out of her own volition and in sound state of mind. The learned counsel would submit that this fact has been clearly established by the first defendant by examining the Attester of the document also.

6.In my considered opinion, having considered the evidence of the Attester of the disputed document and all the other surrounding circumstances, based on the oral as well as documentary evidences, both the Courts have held that, Exhibit B.1 (Will)

cannot be a genuine document. According to the trial Court, hardly within four days of the demise of Mr.Pakkiripillai, Mrs.Thangammal, at that old age, on her own, could not have gone to the Registrar's Office voluntarily to execute the Will and register the same viz., Will (Exhibit - B.1). The Courts below have also noticed the fact that she was an illiterate woman and she could not have gone to the Registrar's Office without the help of the first defendant. The Courts below have held that in normal circumstances, within 4 days of the demise of Mr.Pakkiripillai, Mrs.Thangammal, such an old woman could not have gone to the Registrar's Office. There were doubts in the mind of the Courts below because, the Will was executed by Mrs.Thangammal, hardly within four days of the death of Mr.Pakkiripillai and further, within six days after the execution of the said Will, Mrs.Thangammal died. It is also in evidence that she was suffering from cancer. Having regard to all the surrounding circumstances, two Courts, on facts, have come to the conclusion that the Will (Ex.B.1) is not true and genuine and thus, the case of the first defendant has been negated by the Courts below. These findings are essential on facts.

7.The learned counsel for the appellant is not in a position to make out any case for framing substantial question of law. Thus, I do not find any merit at all in this appeal warranting admission.

8.In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Myladuthurai.

2.The Principal District Munsif,
Myladuthurai.

1 CC to M/s.K.M.Vijayan Associates, Advocate SR.No. 949

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TEJ (CO)

PST (02/02/2015)

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