

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.10.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.260 and 261 of 2014
and
M.P.No.1 of 2014

S.Palanisamy (died)

1. P.Selvasornam

2. P.Divya

3. P.Deepika

...Appellants in S.A.No.260 of 2014/
2 to 4 and LRs of deceased 1st Appellant

1 to 3 wife and daughters of
S.Palanisamy - 1st defendant
in O.S.No.373 of 99, II A.S.J,
Coimbatore and the appellants
2 to 4 in A.S.No.24/08
I A.D.J, Coimbatore.

Dinesh

...Appellant in S.A.No.261 of 2014/
7th Defendant

1. S.Sundaram

2. Valliammal

3. Annapurani

4. Muthulakshmi

5. Parvatham

6. Samburnam

7. Dinesh

...Respondents in S.A.No.260 of 2014/
Defendant

1. S.Sundaram

2. Valliammal

3. Annapurani
4. Muthulakshmi
5. Parvatham
6. Samburnam
7. P.Selvasornam
8. Diviya
9. Deepika

...Respondents in S.A.No.261 of 2014/
Plaintiff and 2 to 6, LRS of the
deceased 2nd Respondent

Prayer in S.A.Nos.260 and 261 of 2014:-

Appeals under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.24 of 2008 and 16 of 2009 respectively (Out of common judgment A.S.No.24 of 2008 and A.S.No.16 of 2009) on the file of the learned First Additional District Judge, Coimbatore, dated 06.02.2013, confirming the decree and judgment of the II Additional Subordinate Judge, Coimbatore, dated 21.02.2007 passed in O.S.No.373 of 1999.

For Appellants : Mr.M.Kalyanasundaram,
Senior Counsel for
Mr.J.R.Robert
in S.A.Nos.260 and 261 of 2014

For Respondent 1 : Mr.J.Ramakrishnan
in both SAs

For Respondents 2 to 6 : Mr.S.Parthasarathy,
Senior Counsel
for C.Veeraraghavan
in both SAs

For Respondent 7 : No Appearance
in S.A.No.260 of 2014

For Respondents 7 to 9 : No Appearance
in S.A.No.261 of 2014

C O M M O N J U D G M E N T

The above two appeals arise out of common judgment rendered in A.S.Nos.24 of 2008 and 16 of 2009, which were appealed against judgment in O.S.No.373 of 1999 on the file of the II Additional Sub Judge, Coimbatore.

2. The suit is filed for partition by one of the sons of Subbe Gounder. The said Subbe Gounder had two sons and four daughters and certain properties were inherited by him and also by self-acquisition. Out of the suit properties, 'A' schedule properties are said to be the separate properties of the said Subbe Gounder and 'B' schedule properties were the co-parcernal properties comprising himself, the plaintiff and the first defendant. Admittedly, there was a partition in the family on 25.03.1960 between the said Subbe Gounder and his two sons, which was also registered and marked as Ex.A1. The second defendant Valliammal is the elder daughter of the said Subbe Gounder and she was given certain properties under two settlement deeds dated 20.04.1970 and 05.05.1970, which are marked as Exs.B6 and B7.

3. From the date of the settlement deeds, the second defendant is said to be in possession and enjoyment of the said properties. However, the plaintiff alleged that the settlement deeds were only nominal and never intended to be acted upon, as the second defendant was only a name lender to the same. So far as the 'B' schedule properties are concerned, the plaintiff claimed 1/3 share in the same, being ancestral properties and equal share from his father's 1/3 along with other heirs, in all, the plaintiff claimed 8/21 share. As the first defendant was enjoying the properties on behalf of the plaintiff also and had not been co-operating in dividing the properties, the suit had been filed for partition.

4. Denying the facts supporting the cause of action in the plaint, the first defendant (since deceased) had alleged that on 25.03.1990, the father Subbe Gounder had executed a Will-Ex.B5 when he was sound and disposing state of mind. As per the bequest, the plaintiff was not given any property. Item No.2 of 'A' schedule properties was allotted to the seventh defendant in the said Will. The seventh defendant is the son of the deceased first defendant.

5. The second defendant had filed separate written statement, contending that the two settlement deeds, dated 20.04.1970 and 05.05.1970 (Exs.B6 and B7) were executed in her favour by the father and ever since, she has been in possession and enjoyment of the properties in absolute ownership. The said settlement deeds were duly acted upon. Hence, the plaintiff is not entitled to claim any share in the properties covered under the settlement deeds.

6. The trial Court, after elaborate consideration of the facts and evidence, held that Ex.B5 Will was not genuine and the same was not established in the manner known to law. However the settlement deeds under Exs.B6 and B7 in favour of the second defendant were upheld as the same were acted upon. Challenging the said decision, the seventh defendant had filed an appeal in A.S.No.16 of 2009 and the heirs of the deceased first defendant filed an appeal in A.S.No.24 of 2008. The said appeals were tried and heard in common, and the judgment and decree of the trial Court were confirmed. Challenging the same, S.A.No.261 of 2014 is filed by seventh defendant and S.A.No.260 of 2014 is filed by the legal heirs of the deceased first defendant.

7. The dispute is between the siblings of Subbe Gounder and the question that arises for consideration in these Second Appeals is as to whether the Will under Ex.B5 is genuine and whether the settlement deeds-Exs.B6 and B7 are acted upon.

8. It is rudimentary that the admitted facts need not be proved. The parties to the appeals admitted the execution of the settlement deeds under Exs.B6 and B7. The settlement deeds were executed in the year 1970 in favour of the second defendant, with respect to 20.38 acres out of 43.42 acres in item No.3 of the plaint 'A' schedule properties. Neither the plaintiff nor the other defendants disputed the execution of the document. The said settlement deeds were executed by the father during the time when there was Tamil Nadu Land Ceilings Act was introduced and the father Subbe Gounder thought in his wisdom to execute these two sale deeds in favour of the daughter.

9. The plaintiff who originally sought a share in the properties covered under the settlement deeds, said to have given up his challenge regarding Exs.B6 and B7-Settlement deeds during the course of the first Appeals. Only the appellants herein are challenging the validity of the settlement deeds. Even their challenge is not with respect to the fact that the

said settlement deeds were obtained by coercion or undue influence. As stated supra, the parties have admitted the execution of the said settlement deeds. The settlement deeds themselves contain a clause that they are irrevocable. Besides that when the irrevocable settlement deeds were executed, even the settlor cannot revoke the same and the settlement deeds come into force immediately on execution. The settlement deeds cover the properties that are their father's self-acquired ones. If the father had conveyed the undivided co-parcenary properties under the settlement deeds, it may lead to a suspicion, whereas, it is only his self acquired properties that were given away under Exs.B6 and B7(Settlement deeds) and the settlement deeds were executed in the year 1970. The father died in the year 1990, after nearly two decades and during the lifetime of the father, though the first defendant had knowledge about the settlement deeds, had never cared to challenge the same or cancel them. Hence, the contention of the appellants that the settlement deeds were executed to circumvent the Land Ceilings Act is only an invented story for the purpose of the case. Therefore, the settlement deeds under Exs.B6 and B7 are held to be true and genuine as found by the Courts below.

10. So far as Ex.B5-Will is concerned, the same was executed on 25.03.1990 and within a week thereafter, the father died. Therefore, the burden is on the propounder of Ex.B5-Will to prove that it was a true and genuine document. The plaintiff who has sought for partition, has been totally ignored and excluded in the Will and there is no reason as to why the plaintiff is excluded by the father. In fact, the plaintiff is the eldest son of the testator (Subbe Gounder). The proof of Will and its actual execution have to be proved in the manner known to law. As stated earlier, the testator seemed to have died after a week of the execution of the said Will. Though the said Subbe Gounder could write and sign as it had been done in Exs.B6 and B7-Settlement deeds, only his left thumb impression was affixed in Ex.B5-Will.

11. The learned counsel appearing for the appellants fairly conceded that the trial Court as well as the appellate Court had considered the execution and proof of the Will in threadbare and found that Ex.B5-Will is not genuine. Hence, the heirs of the deceased first defendant and the seventh defendant, who claim their right under the said Will, failed in their attempt to prove the same.

12. Having held that the settlement deeds executed by the father in favour of the second defendant, are true and genuine and the said Will under which the seventh defendant and the other heirs of the deceased first defendant made their claim failed, the plaintiff is not entitled to a decree as prayed before the Courts below. This Court does not find any merit in the contentions of the appellants in both the Second Appeals, as no question of law, much less, substantial question of law arises for consideration in the above factual matrix of the case.

13. In the result, both the Second Appeal Nos.260 and 261 of 2014 are dismissed, confirming the judgment and decree of the Courts below. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srn

To

1. The First Additional District Judge,
Coimbatore

2. The II Additional Subordinate Judge,
Coimbatore

3. The Record Keeper,
V.R.Section, High Court, सत्यमेव जयते
Chennai.

2 CCs to Mr.C.Veeraraghavan, Advocate SR.No. 57063

S.A.Nos.260 and 261 of 2014

NM (CO)
PSI (04.11.2015)