

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.115 of 2015 and
M.P.No.1 of 2015

Lakshmi

... Appellant/ Plaintiff

Vs.

1.Marappan
2.Saravanabhava
@ Saravanabhavan

3.Indian Overseas Bank,
Rep. By its Branch Manager,
Kavindapadi, Bhavani Taluk,
Erode District.

4.The Karur Vysys Bank Ltd.,
Rep. By its Manager,
Kavindapadi, Bhavani Taluk,
Erode District.

... Respondents/ Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 20.08.2014 made in A.S.No.105 of 2013 on the file of the learned Principal District Judge, Erode confirming the judgement and decree dated 23.08.2013 made in O.S.No.97 of 2010 on the file of the learned Subordinate Judge, Bhavani (Transferred O.S.No.37 of 2009 - District Court, Erode & Transferred O.S.No.21 of 2002 Sub Court, Bhavani).

For Appellant : Mr.N.Manokaran

JUDGEMENT

The plaintiff in O.S.No.97 of 2010 on the file of the learned Subordinate Judge, Bhavani is the appellant herein. The respondents are the defendants in the suit. It is a suit for partition claiming half share in the suit properties. This suit was originally filed before the learned Subordinate Judge, Bhavani and numbered as O.S.No.21 of 2002. On transfer to the learned District Judge, Erode, it was numbered as O.S.No.37 of 2009. Again on re-transfer to the learned Subordinate Judge, Bhavani it was re-numbered as O.S.No.97 of 2010. The trial Court by decree and judgement dated 23.08.2013, dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.105 of 2013 on the file of the learned Principal District Judge, Erode. By decree and judgement dated 20.08.2014, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. As against the same, the appellant is before this Court with this second appeal.

2.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.

3.The case of the plaintiff is that the suit properties are ancestral properties of one Mr.A.V.Masa Gounder. The plaintiff and the first defendant are the daughter and son respectively of Mr.A.V.Masa Gounder. Mr.A.V.Masa Gounder died on 25.12.2001. His wife pre-deceased him. According to the plaintiff, since, the deceased died intestate, she is entitled for share in the properties left behind by Mr.A.V.Masa Gounder. The suit was filed in respect of both movable and immovable properties in the name of Mr.A.V.Masa Gounder.

4.The second defendant in the suit is the son of the first defendant. According to these defendants, Mr.A.V.Masa Gounder while in sound state of mind and out of his own volition and free will, had executed a registered Will on 20.02.1995 thereby bequeathing the entire immovable properties (suit properties) to the second defendant. Thus, according to the defendants, the second defendant had become the absolute owner of the suit properties. So far as the movable properties are concerned, the second defendant was a nominee to operate the bank locker and other accounts maintained by Mr.A.V.Masa Gounder. Except the above, there is no movable property available for partition, it was contended.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, she was examined as P.W.1 and five documents were exhibited. On the side of the defendants, six witnesses were examined and five documents were exhibited. An Advocate Commissioner was appointed by the Court to take inventories on the suit properties and the Commissioner's report was marked under Ex.C.1.

6.Having considered the above, the trial Court dismissed the suit and the First Appellate Court has also confirmed the same. That is how the appellant is before this Court with this second appeal.

7.In this second appeal, it is contended that the Courts below were not right in upholding the validity of the Will namely Ex.B.6. Ex.B.5 is the registration copy of Ex.B.6. D.Ws.2 and 3 are the witnesses to the said Will and D.W.4 is the scribe of the said Will. The learned counsel for the appellant would submit that the attestors namely D.Ws.2 and 3 are close friends of the Testator in whom the Testator would have reposed confidence and hence, the evidence of said witnesses ought not to have been given much weightage by the Courts below, inasmuch as, they are interested witnesses. The learned counsel would submit that the Courts below ought not to have relied on the evidence of D.Ws.2 and 3 to hold that the Will is valid. In my considered opinion, the said contention deserves to be rejected for the simple reason that as required under the Indian Evidence Act, Ex.B.6 has been duly proved by examining D.Ws.2 and 3 who are Attestors to the Will and also by examining D.W.4, the Scribe of the document. Absolutely, there is

no material to disbelieve these three witnesses. The only argument to assail the evidence of these witnesses is that according to Ex.B.6, there are three Attestors whereas, Ex.B.5 shows only two Attestors. This discrepancy is sought to be blown out of proportion by the plaintiff. However, the Courts below have considered the above aspect and have come to the conclusion that so far as the contents of Ex.B.6 and B.5 are concerned, absolutely, there is no discrepancy.

8.Ex.B.6 is a registered document which was registered in the year 1995. Had it been true that the deceased had no intention to give away the properties to his grand son namely the second defendant, during his life time, he would have raised some kind of protest in respect of the said documents though he was alive for more than 6 ½ years after the said registered Will. During his life time, the deceased did not raise his little finger against the said document. All these aspects have been considered by the Courts below and they have rightly held that Ex.B.6 is a genuine document upon which, reliance has been placed as the same has been duly proved. This is essentially a finding on facts and there is no legal question involved in that.

9.The learned counsel for the appellant would submit that assuming that Ex.B.6 is a genuine document that would not convey the entire property to the second defendant because, Mr.A.V.Masa Gounder namely the Attestor would have had only half share which remained undivided. This contention has also been considered by the Courts below. The Courts have held that the Will Ex.B.6 will convey title only in respect of the undivided half share of Mr.A.V.Masa Gounder and the rest will go naturally to the first defendant.

10.At any rate, the plaintiff shall not get any share in the suit properties. That is what has been rightly held by the Courts below. Regarding the movable properties also, absolutely, there is no evidence that the same is available for partition. Thus, in my considered opinion, the questions raised before this Court are all pure and simple questions on fact and there is no question of law more particularly, substantial questions of law warranting admission of this second appeal. Thus, the second appeal deserves only to be dismissed.

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

Sd/-

Asst.Registrar (CS III)

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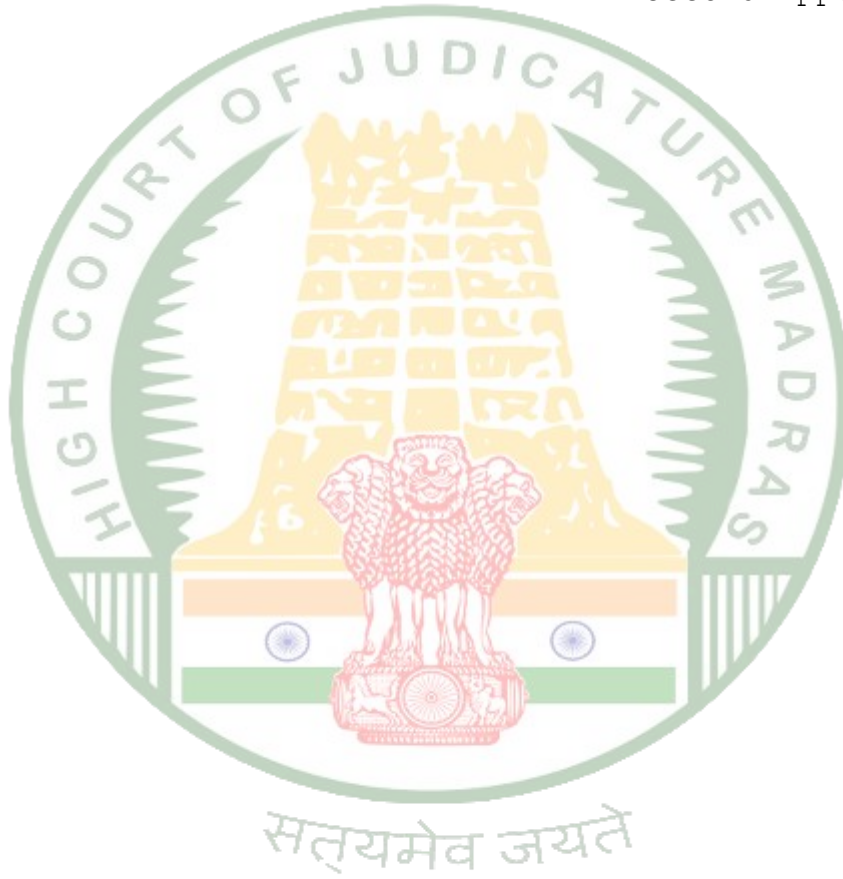
To
1.The Principal District Judge,
Erode.

2.The Subordinate Judge,
Bhavani.

1 cc to Mr.N. Manokaran, advocate, sr. 12085

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