

In the High Court of Judicature at Madras

Dated : 20.10.2016

Coram

The Honourable Mr. Justice K.RAVICHANDRABAABU

Second Appeal No.381 OF 2015

and

M.P.Nos.1 and 2 of 2015

1.Samidurai (Deceased)

2.Ramachandran

3.Tmt.Malarkodi

4.Tmt.Susila

5.Tmt.Sudha

... Appellants/

Defendants and LRS of deceased D1

(This Court by order dated 13.04.2015 in M.P.Nos.1 to 3 of 2015 in SA.SR.No.110367 of 2010, the appellants 3 to 5 brought on record as LRS of the deceased first appellant).

...vs...

Annappattu

... Respondent/ Plaintiff

This Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.10.2009 passed in A.S.No.48 of 2008 on the file of the learned Principal District Judge, Perambalur, confirming the Judgment and Decree dated 23.11.2007 made in O.S.No.98 of 1999 on the file of the Sub Court, Ariyalur.

For Appellants : Mrs.G.Devi

For Respondent : Mr.R.Venkatesulu

J U D G M E N T

This appeal is filed as against the judgment and decree dated 30.10.2009 passed in A.S.No.48 of 2008 on the file of the learned Principal District Judge, Perambalur, confirming the Judgment and Decree dated 23.11.2007 made in O.S.No.98 of 1999 on the file of the learned Subordinate Judge, Ariyalur.

2. The appellants are the defendants in suit for partition filed by the respondent herein. One Tharmalinga Padaiachi is the father of the plaintiff and the first defendant. The plaintiff was born through the first wife while the first defendant was born through the second wife of

Tharmalinga Padaiachi. The plaintiff, based on such relationship, claimed 1/4th share in the suit properties. The Defendants contested the suit. Their specific objection is that there was an oral partition between Tharmalinga Padaiachi and the first defendant and pursuant to such oral partition, Tharmalinga Padaiachi bequeathed his ½ share in favour of the second defendant who is none other than the son of the first defendant by way of executing a Will dated 05.01.1999, under Ex.B1. Therefore, it is contended by the defendants that the plaintiff cannot seek any claim or share over the suit property.

3. The trial Court, after considering the rival pleadings of the parties and the evidence let in by them, decreed the suit as prayed for. The appeal preferred by the defendants came to be dismissed thereby confirming the judgment and decree of the trial Court. Challenging the said concurrent findings, the appellants filed this appeal before this Court.

4. At the time of admitting the Second Appeal, the following substantial questions of law were raised.

a) Whether the Courts below are correct in not considering that even unregistered Will are having same legal force and weight as per registered Will Subject to the proof of execution through proper evidence?

b) Whether the Courts below are correct in giving findings on mere presumption and assumption without considering the case as per law, but only posing trust arbitrarily on the respondent's/plaintiff's case in unreasonable way?

c) Whether the courts below are correct in disbelieving the oral partition dated 20.10.1998 which was also acted upon by the parties?

5. Heard the learned counsel appearing for the appellants and learned counsel appearing for the respondent and perused the materials placed before this Court.

6. It is not in dispute that the suit properties were owned and enjoyed by Tharmalinga Padaiachi, the father of the plaintiff and first defendant. However, the case of the defendants claiming exclusive title and right over the suit property is vesting of two events alleged to have taken place, namely, an oral partition between Tharmalinga Padaiachi and first defendant and a Will executed by the said Tharmalinga Padaiachi under Ex.B1 in favour of the second defendant. Both the Courts below, on considering the rival pleadings of the parties and the evidence let in by them, have categorically found that the defendants failed to establish the plea of oral partition between Tharmalinga Padaiachi and the first defendant.

Therefore, once an oral partition is not proved, the plaintiff being the daughter of Tharmalinga Padaiachi cannot be denied her legitimate share. It is also not made clear as to how the Tharmalinga Padaiachi enjoyed the properties, whether as his self acquisition or otherwise. In any event, the defendants who pleaded the execution of Will by the said Tharmalinga Padaiachi in favour of the second defendant should prove the same in the manner known to law. Both the Courts below, on appreciation of the evidence let in by parties, have found that the defendants have failed to prove the Will. It is found that there are serious contradictions between the witnesses deposed on the side of the defendants insofar as the the execution of the said Will. When there are suspicious circumstances, the defendants have to disprove the same by letting clear and cogent evidence proving such execution. In this case, both the Courts below pointed out that the defendants failed to discharge such onus. When such being the categorical findings rendered by both the courts below, based on the facts and circumstances and appreciation of evidence and more particularly when this Court does not find any perversity in such findings, I do not think that there is any need for interference with such concurrent findings rendered by the Courts below. After all, the plaintiff being the daughter of the said Tharmalinga Padaiachi sought for only 1/4th share and both the courts below have concurrently found in favour of the plaintiff and granted decree in respect of the suit property consisting of 31 items. It is not that the defendants are left without properties. On the other hand, they being the father and son are enjoying 3/4th share of suit properties while the plaintiff is given only 1/4th share.

7. Considering all these aspects, I find that the present Second Appeal does not merit consideration. Accordingly, the questions of law raised in this appeal are answered against the appellants.

8. In the result, the second appeal is dismissed and the Judgment and decree passed by both the Courts below are hereby confirmed. Consequently, the connected M.Ps. are closed. There is no order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rrg

To

1.The Principal District Judge,
Perambalur.

2.The Subordinate Judge,
Ariyalur.

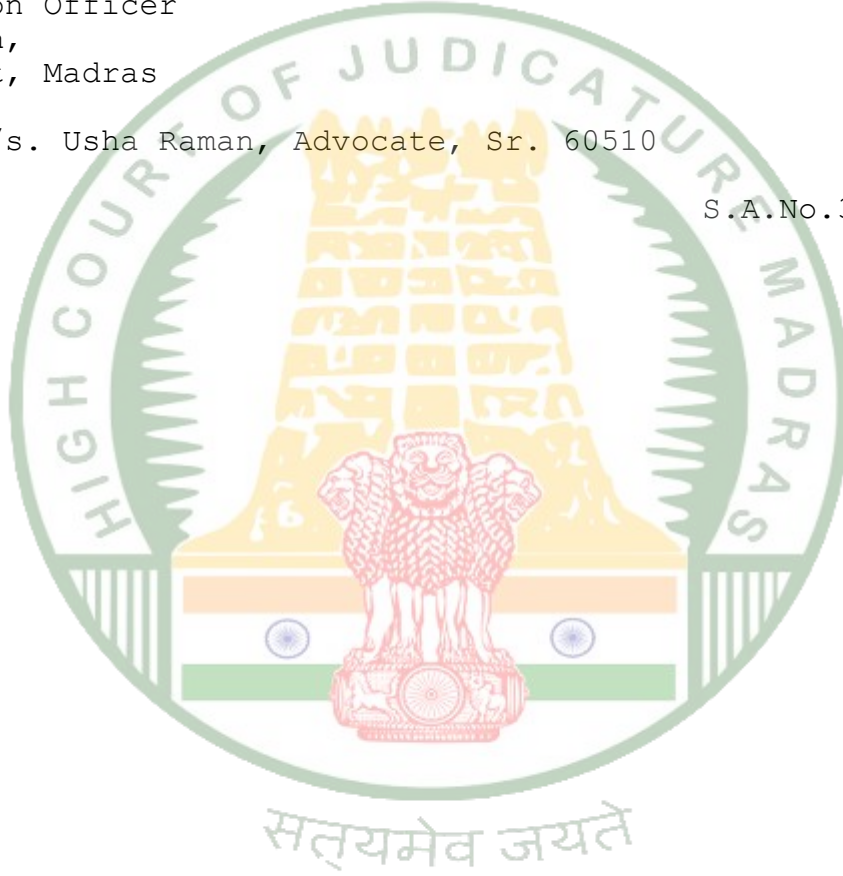
Copy to

The Section Officer
VR Section,
High Court, Madras

1 cc to M/s. Usha Raman, Advocate, Sr. 60510

S.A.No.381 of 2015

SAI (CO)
kk 30/11



WEB COPY