

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.408 of 2004

Ponnusamy

.. Appellant/Defendant

vs.

Pappu @ Palaniammal

.. Respondent/Plaintiff

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 10.07.2003 in A.S.No.157 of 1999 on the file of the learned Subordinate Judge, Namakkal confirming the judgment and decree dated 29.10.1999 made in O.S.No.609 of 1997 on the file of the learned Principal District Munsif, Namakkal.

For Appellant : Mr.T.Dhanya Kumar

For Respondent : Set exparte by this Court on 08.01.2016

JUDGMENT

The defendant in O.S.No.609 of 1997 on the file of the learned Principal District Munsif, Namakkal is the appellant herein. The respondent is the plaintiff in the suit. The said suit was filed for maintenance @ Rs.750/- per month and also to create a charge over the suit properties. The trial Court by decree and judgment dated 29.10.1999 decreed the suit, in part, thereby granting a decree, directing the defendant to pay a sum of Rs.450/- per month to the plaintiff and creating charge over the suit properties in favour of the plaintiff. As against the same, the appellant/defendant filed an appeal in A.S.No.157/1999 on the file of the learned Subordinate Judge, Namakkal. By decree and judgment dated 10.07.2003, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. That is how the appellant/ defendant is before this Court with this second appeal.

2.The case of the plaintiff in brief is as follows:-

The plaintiff's husband was one Mr.Veerapa Gounder. The plaintiff and Mr.Veerapa Gounder had a son by name Mr. Balasubramanian. Mr.Veerapa Gounder had deserted the plaintiff and her son. Her son Mr.Balasubramanian had filed a

suit for partition against his own father in O.S.No.1215 of 1974 on the file of the learned District Munsif, Namakkal. In the said suit, the suit properties in the present suit were all allotted to the share of Mr.Veerapa Gounder. Thus, Mr.Veerapa Gounder is the absolute owner of the suit properties. During his life time, Mr.Veerapa Gounder did not maintain the plaintiff at all, though, he had a legal obligation to maintain her. During his life time, Mr.Veerapa Gounder executed a Will dated 12.07.1996, in favour of the defendant thereby bequeathing the suit properties to him. The defendant is the sister's son of Mr.Veerapa Gounder. Mr.Veerapa Gounder died on 04.06.1997. After his demise, the Will has taken effect and thus, the defendant has become the absolute owner of the suit properties. But, there was no provision made in respect of the maintenance of the plaintiff in the said Will. The plaintiff had no source of income to maintain herself. Therefore, she filed the present suit against the defendant for maintenance @ Rs.750/- per month and also for a charge over the suit properties.

3.The defendant took the plea that he is not liable to pay maintenance to the plaintiff at all. According to him, out of love and affection, Mr.Veerapa Gounder executed a registered Will in his favour and thus, he has become the absolute owner of the suit properties. It is his further case that there is no provision made in the Will for payment of maintenance by the defendant to the plaintiff, out of the income derived from the suit properties. Thus, according to the defendant, he is the absolute owner of the suit properties, by virtue of the Will and he has got no legal obligation to pay any amount to the plaintiff towards maintenance.

4.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, she herself was examined as P.W.1 and three documents were exhibited. On the side of the defendant, he himself was examined as D.W.1 and as many as three documents were exhibited.

5.Having considered all the above, the trial Court decreed the suit, in part, which was confirmed by the First Appellate Court. That is how the appellant/ defendant is before this Court with this second appeal.

6.This second appeal originally came up for admission before this Court on 12.03.2004. The matter was adjourned to 19.03.2004. On that day, notice of motion returnable by four weeks was ordered. Accordingly, on service of notice, the respondent made appearance through her counsel. Thereafter, the matter came up for hearing atleast for 27 occasions. When the matter finally came up for hearing today, the respondent has not made appearance and there has been no representation on behalf of her. On the earlier hearing dates also, there was no representation for the respondent. Therefore, the respondent is set exparte.

7. In this second appeal, I find the following substantial question of law:-

"Whether the defendant is legally bound to maintain the plaintiff when there is no provision made in the Will executed by the plaintiff's husband Mr. Veerapa Gounder?"

8. The learned counsel for the appellant would submit that, in law, the defendant is not liable to pay any amount of maintenance to the plaintiff. I find every force in the argument of the learned counsel. Had there been any provision made in the Will executed by Mr. Veerapa Gounder in favour of the defendant, in respect of maintenance to be paid to the plaintiff, then only, the plaintiff could enforce the same.

9. Here, in the instant case, during the life time of Mr. Veerapa Gounder, the plaintiff did not choose to make any claim for maintenance. It is only after his demise, the plaintiff has filed the present suit for maintenance and for charge over the suit properties. In law, the appellant/defendant is not liable to maintain the plaintiff. As I have already mentioned, the defendant is only the sister's son of Mr. Veerapa Gounder. Thus, neither there is any personal legal obligation to maintain the plaintiff, nor out of the suit properties, for want of any such provision made in the Will. Thus, in my considered view, the Courts below were not right in granting the decree directing the defendant to pay maintenance and also creating charge over the suit properties. In such view of the matter, I answer the substantial question of law in favour of the appellant/defendant. Accordingly, I am inclined to set aside the decrees and judgments of the trial Court as well as the First Appellate Court.

10. In the result, the second appeal is allowed and the decrees and judgments of the trial Court as well as the First Appellate Court are set aside and the suit in O.S.No.609 of 1997 is dismissed. There shall be no order as to cost.

sd/-
Assistant Registrar (CO)

/TRUE COPY/

Sub-Assistant Registrar

jbm

To

1. The Subordinate Judge,
Namakkal District.

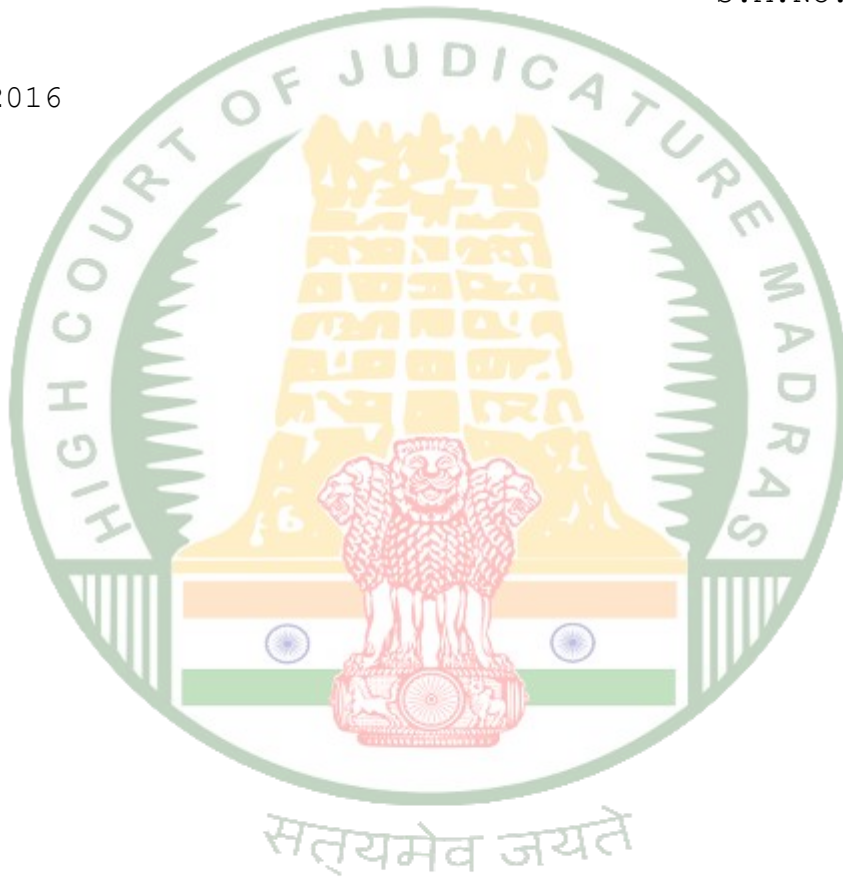
2.The Principal District Munsif,
Namakkal District.

Copy to:
The Section Officer,
VR Section, High Court, Madras

+1 CC to MR.T.Dhanya Kumar Advocate. SR.NO. 1735

S.A.No.408 of 2004

CO-AK
JD 02/02/2016



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