

In the High Court of Judicature at Madras
Dated: 02.11.2016
Coram
The Honourable Mr.JUSTICE K.RAVICHANDRABAABU
Second Appeal No.320 of 2016
and
C.M.P.No.5930 of 2016

Annamalai

.... Appellant/Plaintiff

Vs.

1. Palaniammal
2. Anjalaammal
3. Sivagamam

.... Respondents/Defendants

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.197 of 2008 dated 11.12.2014 on the file of the Additional District and Session Court cum Chief Judicial Magistrate, Ariyalur, confirming the judgment and decree of the Additional District Munsif, Ariyalur made in O.S.No.4 of 2002 dated 29.03.2004.

For Appellant : Ms.V.J.Latha

For Respondents : Mr.P.Valliappan
for R2

For R1 & R3 : NA

J U D G M E N T

The appellant is the plaintiff in a suit for declaration and for recovery of possession. The plaintiff's father by name P.Rathinam and one Duraisamy are brothers. They owned and enjoyed a property jointly and divided the same equally later. Accordingly, both of them have got their half share in the said property. The said Duraisamy's wife is the first defendant and the daughters are the second and third defendants. According to the plaintiff, after dividing the property, the said Duraisamy executed a Will on 04.04.1973 in favour of his brother namely P.Rathinam who is the father of the plaintiff and that the said Duraisamy died in the year 1983. Therefore, it is contended by the plaintiff that after the death of the said Duraisamy, the Will came into existence and consequently, the plaintiff, after the death of his father is entitled to the property covered in the said Will which is the subject matter of the present suit. The defendants denied the claim of the plaintiff and disputed the Will said to have been executed by Duraisamy. Both the Courts below, on appreciation of the pleadings of the respective parties and the evidence let in by them, rejected the claim of

the plaintiff and dismissed the suit. Challenging such concurrent finding, the present Second Appeal is filed before this Court.

2. After ordering notice to the respondents before admission, the matter is listed today for further hearing. Thus, this Court has to see as to whether any substantial question of law arises for consideration to entertain the Appeal.

3. Heard the learned counsel appearing for the appellant, learned counsel appearing for the respondents and perused the materials placed before this Court.

4. The plaintiff claims title to the suit property based on an unregistered Will said to have been executed by one Duraisamy on 04.04.1973 in favour of the plaintiff's father. Admittedly, the said Will was not produced before the Court, for which, the plaintiff sought to explain as though the same was stolen and a criminal complaint given before the police is still pending. The plaintiff also sought to rely on some revenue documents, namely, grant of patta in respect of the suit property in favour of the plaintiff to substantiate his claim for title to the suit property. Needless to say that patta cannot be a document of title and therefore, it is for the plaintiff to establish his claim by adducing material evidence, more particularly, in this case, the Will dated 04.04.1973. In the absence of the said Will before the Court, the Courts below have rightly found against the plaintiff and rejected the claim. Moreover, even according to the plaintiff, the said Duraisamy died in the year 1983 and however, the suit came to be filed only in the year 2001. Therefore, even on the question of limitation, though not raised before the Courts below, this Court is of the view that the plaintiff is not entitled to the relief. Even otherwise as it is seen that the property was originally divided between the brothers and the said Duraisamy is having his wife and two daughters, the claim of the plaintiff based on a Will which was not produced before the Court cannot be accepted and the Courts below have rightly rejected such claim. I find no reason to interfere with the concurrent findings of the Courts below as I do not find any substantial question of law also for consideration in this Second Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Additional District and Session Court
cum Chief Judicial Magistrate, Ariyalur,

2. The Additional District Munsif, Ariyalur.

3. The Section Officer
VR Section High Court Madras

+1 cc to Mr.P.Valliappan Advocate sr 62359

+1 cc ot Ms.V.J.Latha Advocate sr 62062

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