

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.68 of 2016

and

C.M.P.No.1812 of 2016

1.Panneerselvam

2.Baby

3.Vijayalakshmi

4.Santhalakshmi

... Appellants/Plaintiffs

Vs

Arumugam

... Respondent/Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 07.11.2002 passed in A.S.No.38 of 2002 on the file of the Additional District Judge (Fast Track Court No.I), Tindivanam, partly allowing the judgment and decree dated 28.11.1997 made in O.S.No.562 of 1993 on the file of the District Munsif, Tindivanam.

For Appellants .. Ms.N.Mala

For Respondent .. Mr.A.K.Kumarasamy

JUDGMENT

The unsuccessful legal heirs of the plaintiff are the appellants herein. The lower appellate Court has reversed the judgment and decree of the Trial Court by upholding the Will relied upon by the respondent executed by the wife of Samikannu by name Sinthamani Ammal. The appellants are the legal heirs of the brother in law of Sinthamani Ammal, by name Rajamanickam, who was the original plaintiff.

2.Admittedly, the properties were joint family properties of the two brothers viz., Rajamanickam and Samikannu. Samikannu died in the year 1968 leaving behind his wife Sinthamani Ammal. She did not have any issue. She was living with her sister's son pursuant to the death of her husband. As she was not given the share of her husband, she filed a suit earlier for partition

against the original plaintiff in the present suit. On contest, the suit filed by her was decreed and accordingly, she got rightful share of her husband.

3. Thereafter, she sold the properties acquired by her through her husband except the present suit properties, which is an extent of about one acre of land with house.

4. After executing the registered Will in favour of the defendant/respondent on 23.11.1988, Sinthamani Ammal died in the year 1990. Claiming reversion to the property covered by the Will, the brother-in-law of the deceased Sinthamani Ammal viz., Rajamanickam, being the plaintiff filed the present suit. The trial Court decreed the suit, after finding certain discrepancy in the evidence of the defendant. The lower appellate Court reversed the judgment and decree of the trial Court on the premise that there is no dispute on the fact that the deceased Sinthamani Ammal was living with her sister's son viz., the respondent. The Will is registered one executed in the year 1988 and the evidence of the defendant will have to be seen as a whole. Challenging the said judgment rendered by the lower appellate Court, the present appeal has been filed, by framing the following substantial questions of law:

(i) Whether the judgment and decree of the lower appellate Court in the well considered judgment and decree of the trial Court is vitiated for misconception, misappreciation of the evidence on record?

(ii) Whether the lower appellate Court was right in law in thinking that the defendant - the propounder of the Will Ex.B1 had sufficiently discharged the burden of proving the execution, attestation and registration of the Will in terms of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act?

(iii) Whether the Courts below were right in law in thinking that this was a fit case where the non-examination of the other attesting witness to the Will, he being very much alive and available be dispensed with?

(iv) Whether the lower appellate Court was right in law in overlooking the following suspicious circumstances shrouding the execution of the Will?

(a) The active participation of the respondent/propounder in the execution of the Will, taking utmost advantage of his fiduciary relationship with the testatrix.

(b) The admission of the respondent/propounder that as the testatrix had fallen down and broken her leg, she was in fear and in anticipation of death and as such she expressed her desire to execute the Will.

(c) That the testatrix was not in sound and disposing state of mind and health as per the evidence of the respondent's own witnesses.

(d) There was no explanation by the respondent/propounder of the Will to justify the deprivation of the right of the appellant to the suit properties as the nearer heir to the testatrix.

(e) The affixture of the thumb impression of the testatrix to the Will, when even according to the respondent she was a literate lady and that she was in the habit of signing her name in documents.

(v) Whether the reasoning given by the lower appellate Court in para 18 of the judgment to deny this appellant the relief of injunction is erroneous in law?

5. Learned counsel for the appellant submits that in view of the discrepancies as found by the trial Court, a suspicion has been created over the Will relied upon by the respondent/defendant. A registration per se will not give legitimacy to the Will under Ex.B1. Therefore, the judgment and decree of the lower appellate Court will have to be reversed.

6. Learned counsel appearing for the respondent submits that inasmuch as the findings rendered by the lower appellate Court are not bordering on perversity, no interference is required, especially in the teeth of the admission made by P.W.1 that the deceased was living with the respondent. The deceased was admittedly suffering from a fracture and taken care of by the respondent. P.Ws.2 and 3 have also acknowledged the above said fact. Hence it is submitted that there is no question of law involved and therefore, the appeal will have to be dismissed.

7.A testamentary Court is not a Court of suspicion. As rightly held by the lower appellate Court, there is no suspicious circumstance involved in this case. Even as per the evidence let in on behalf of the appellants, the deceased was living with the respondent. The fact that the deceased was forced to file a suit against the original plaintiff in the present suit and thereafter, got her rightful share is not in dispute. The relationship between the deceased and the respondent is also not in dispute. The lower appellate Court has rightly found that there is no discrepancy in the evidence of P.Ws.2 and 3. A factual finding has been given that the deceased Sinthamani Ammal was hale and healthy and executed Ex.B1 in a sound and disposing state of mind. She has disposed all other properties except the suit property. P.W.1 did not know as to whether who performed the last rites of the deceased Sinthamani Ammal. In fact, P.W.1 did not even know the death of the deceased Sinthamani Ammal immediately. P.Ws.2 and 3 also accepted the fact that the deceased was living with the respondent.

8.Though the registration of the Will cannot be a sole factor, it does require due consideration. The evidence on behalf of the respondent will have to be seen as a whole. The evidence is to the effect that the deceased Sinthamani Ammal was suffering from fracture and she was unable to sign. There is a presumption under the Indian Evidence Act regarding due registration. The fact governing on the side of the deceased testatrix has to be seen in its own context as rightly held by the lower appellate Court. It is not as if she is totally blind but the fact remains that she was unable to sign the registered Will Ex.B1. When once the evidence of the plaintiff itself is to the effect that the deceased was in disposing state of mind at the time of execution of Ex.B1, the suspicion, if any, surrounding it, would get vanished. The lower appellate Court has considered the evidence of both sides for reversing the judgment and decree of the trial Court and there is no perversity involved. Thus this Court does not find any substantial question of law involved in the present appeal.

9.In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional District Judge,
Fast Track Court No.I, Tindivanam.

2.The District Munsif,
Tindivanam.

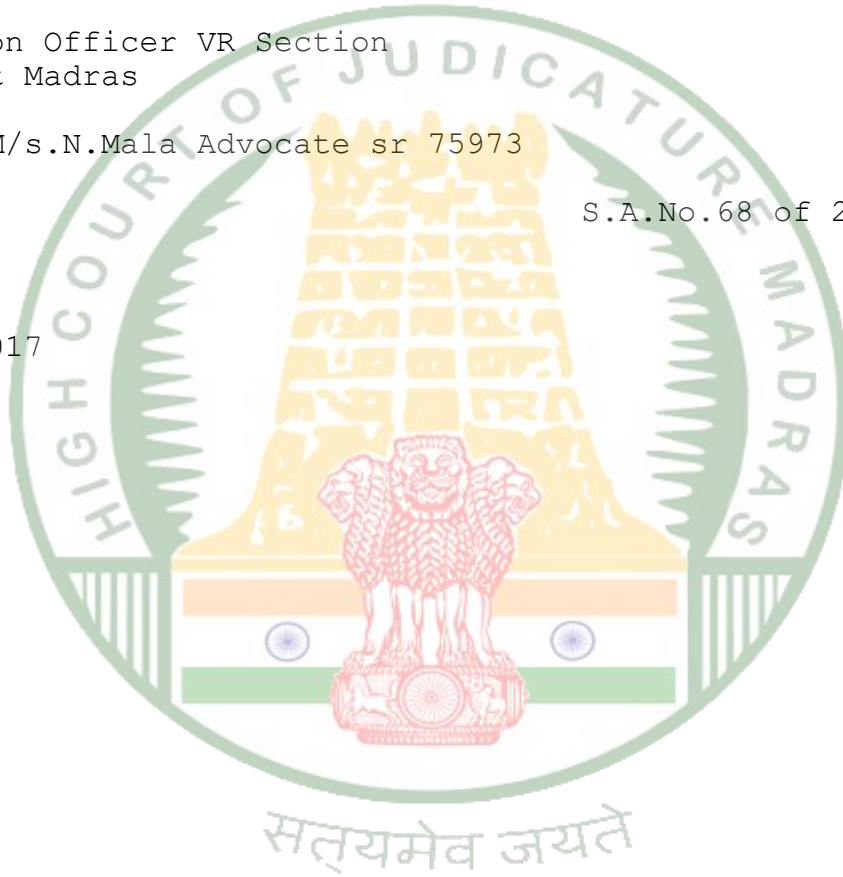
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The Section Officer VR Section
High Court Madras

+1 cc to M/s.N.Mala Advocate sr 75973

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