

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

Coram

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

Second Appeal No.856 of 2000

1.Kolanda Gounder

2.Kaveri

.. Appellants

(minor appellants 2 and 3 are rep. By  
their father and guardian 1<sup>st</sup> appellant)

Vs

Ayyankutty Gounder

.. Respondent

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 16.07.1998 passed in A.S.No.299 of 1997 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 10.06.1997 passed in O.S.No.299 of 1996 on the file of the Sub Court, Bhavani.

For Appellants .. Mr.T.Murugamanickam

For Respondent .. Mr.A.K.Kumarasamy

JUDGMENT

The defendants, who lost before the Courts below in a suit filed for declaration and permanent injunction, are the appellants herein and seeking to reverse the judgment and decree rendered by the Courts below, they have filed the present second appeal.

2.At the time of admission, the following substantial questions of law have been framed:

(i)When the plaintiff has not challenged the trial Court decree declining to grant the declaratory relief, whether such a relief can be granted in the defendant's appeal?

(ii)When the plaintiff has been directed to file a suit for partition, whether decree for permanent injunction can be granted against the defendant?

(iii)Whether the plaintiff is entitled to any decree when the trial Court has held that the plaintiff and the first defendant are co-owners?

3.The suit has been laid by the plaintiff based upon Ex.A1, which is a registered partition deed dated 20.05.1967. The defence taken by the appellants before the trial Court is that the suit property was bequeathed in favour of the appellants by the father of the plaintiff. Thus, the said Will having been executed much prior to Ex.A1 as early as 05.01.1966, it was prayed that the suit will have to be dismissed.

4.The Courts below have held that the appellants, being the defendants, have not filed the original copy of the Will relied upon by them. Secondly, even the grandfather of the plaintiff has signed Ex.A1. Ex.A1 is the registered document. Hence, on that premise, the suit has been decreed.

5.Learned counsel appearing for the appellants submits that in view of the Will, which is well in point of time i.e. before the execution of partition deed, as evident from Ex.A1, the Courts below have committed an error and therefore, the judgment and decree rendered have to be reversed.

6.Learned counsel appearing for the respondent/plaintiff submits that in view of the concurrent finding rendered by the Courts below, no interference is required.

7. It is the appellants, who relied upon the alleged Will, said to have been executed on 05.01.1966. The Courts below have concurrently held that the said Will has not been proved in the manner known to law. Apart from the same, the original copy of the Will has not been marked. It is settled law that the beneficiary of the Will is duty bound to prove it in the manner known to law, especially with reference to Hindu Succession Act and Indian Evidence Act. The nature of the property is not in dispute, as rightly held by the Courts below. Ex.A1 is also not in dispute. Ex.A1, being a registered partition deed, has been signed by the grandfather of the plaintiff and the parties are related to each other.

8.In such view of the matter, this Court does not find any substantial question of law, warranting interference. The second appeal is therefore dismissed. No costs.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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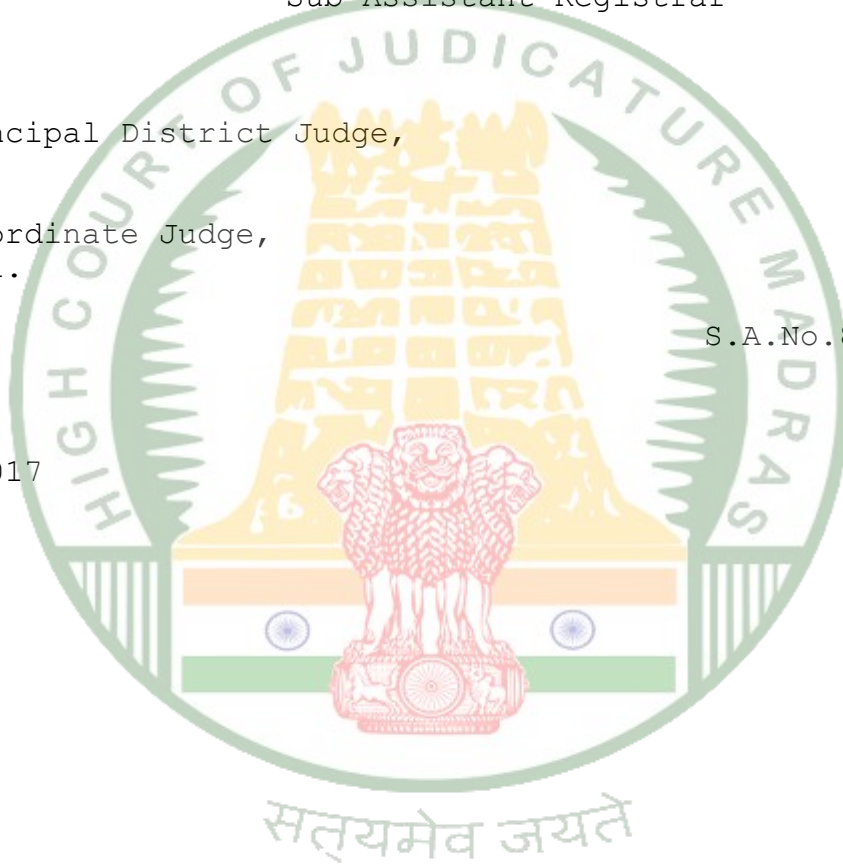
To

1.The Principal District Judge,  
Erode.

2.The Subordinate Judge,  
Bhavani.

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