

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2016

Pronounced on: 02.01.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A. No.1040 of 2009

and

M.P.No.1 of 2009

S.N.Muralidharan

... Appellant/Appellant/Plaintiff

Vs.

1. Chandra Bai

2. Sarawathi

3. Srihari

4. S.Udayasank

... Respondents/Respondent/
Defendants

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.06.2005, made in AS No.3 of 2005, passed by the learned Principal District Judge, Salem, confirming the Judgment and Decree dated 31.03.2004 passed in O.S.No.485 of 1997 on the file of the Principal Subordinate Judge, Salem.

For Appellant : Mr.G.Thangavel

For Respondent : Mr.R.Nalliyappan
for RR2 and 4
RR1 and 3 dismissed

J U D G M E N T

The plaintiff is the appellant before this Court. The suit for partition based on the Will purported to be executed by one Parimala on 26.01.1996. The brief facts of the case is as hereunder :-

The suit property was purchased by one R.V.Srinivasulu Naidu in the year 1960. He died intestate leaving behind his wife Padmavathi Ammal, son S.S.Ramakoti and 3 daughters viz., Chandra bai, Saraswathi and Jothi in the year 1970. The portion of the property purchased by Srinivasulu Naidu was sold to the third parties jointly by the legal heirs of Srinivasulu Naidu. Another portion of the property was sold by them in the year

1986. In the year 1987, Ramkoti died issueless leaving behind his wife Parimala. Padmavathiammal died in the year 1993 and Parimala wife of Ramakoti died on 25.05.1996. The plaintiff is the brother of Parimala and he has filed the present suit based on the Will said to have been executed on 26.01.1996, wherein, he allegedly bequeathed the eastern portion of the property to the plaintiff and western portion of the property to the defendant to be shared equally. Since the defendants refused to make amicable partition, the suit is filed for partition in respect of separate possession of the eastern portion of the said property.

2. The defendant contested the claim of the plaintiff on the ground that Parimala has no right to execute the Will regarding the suit property since the property is not the absolute property of Ramakoti, but it is the self acquired property of their father Srinivasulu Naidu, purchased under Ex.B1. Further the alleged Will of Parimala was denied and questioned by the defendant.

3. The trial Court after considering the evidence let in by the parties has held that Parimala absolutely have no right to the property and the Will is shrouded with suspicion. The deposition of attesting witnesses is contradictory and does not inspire confidence. For these reasons, the trial Court dismissed the suit and on appeal the appellate Court has confirmed the trial Court judgment. Aggrieved by the name, plaintiff has preferred the appeal raising several grounds questioning the legality of the judgment rendered by the Courts below.

4. This Court, before admitting the case, ordered notice of motion to hear the respondents to find out whether there is any substantial question of law to be decided in this case.

5. The contention of the appellant counsel is that Parimala has inherited the property through her husband Ramakoti and she has every right to bequeath the property through the Will. However, it is not substantiated by the plaintiff that how Parimala wife of Ramakoti has acquired right over the property, when Ex.B1 sale deed in favour of Srinivasulu Naidu stare at her eyes, besides Ex.B7 and B8 sale deed in which Ramakoti is one of the vendors along with his sisters in respect of the properties devolved upon them from their father Srinivasulu Naidu.

6. The plaintiff claimed right over the property through a Will executed by Parimala, whereas the defendant claimed right over the property by way of succession on the death of their father and their brother Ramakoti. The deposition of the witnesses is that the suit property is not the property of Ramakoti but self acquired property of his father Srinivasulu

Naidu. It is an admitted fact that Srinivasulu Naidu died leaving behind her wife and four children. Therefore, the property devolves upon them at the first instance. It is borne by record that after alienating the two items of property devolved upon them through their father Srinivasulu Naidu, the remaining properties are the suit scheduled properties. On the demise of Ramakoti in the year 1987, if the property is notionally devolved, the 1/5th share of Ramakoti is to be shared between his mother Padmavathiammal, and his wife Parimala. At that time itself the right over the suit scheduled property for Parimala it could be only 1/10th share, which she could have got from his deceased husband and not the entire property as claimed by the plaintiff. If at all Parimala had executed any Will in favour of the plaintiff in respect of the suit property it could be restricted only to 1/10th share. If there is no Will or Will is found to be ingenuine, then the share of Parimala has to revert back to the legal heirs of her husband as per Section 15 (2) (b) of the Hindu Succession Act.

7. In this case both the Courts have concurrently held that the Will said to have been executed by Parimala on 26.01.1996 was not proved in the manner known to law. The averment of the plaintiff is that the suit property was purchased by Ramakoti in his father's name and a portion of the property was sold by Ex. B7 and B8. The sale consideration was taken by Ramakoti in toto for and on behalf of his sisters were not believed by the court below. After executing the Will, within five months, Parimala expired. The plaintiff evidence in support of the Will could not establish the genuineness of the Will. The Court below has pointed out that the evidence of the person who is the beneficiary to the Will, namely Muralidharan is contradicted by the attesting witnesses PW2, which throws the plaintiff deposition doubtful. The plaintiff examined himself as PW 1 and admitted his presence at the time of execution of will. The attested witnesses PW2 say that PW1 was not present at the time of execution of the Will. In addition, the trial Court has pointed out several other suspicion circumstances surrounding the will marked as Ex.A1. This Court has no second opinion on the judgment of the Courts below regarding the genuineness of the Will marked as Ex.A1. Therefore, this Court holds that there is no substantial question of law involved to entertain this case against the concurrent findings of the Courts below. Second Appeal dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Salem.

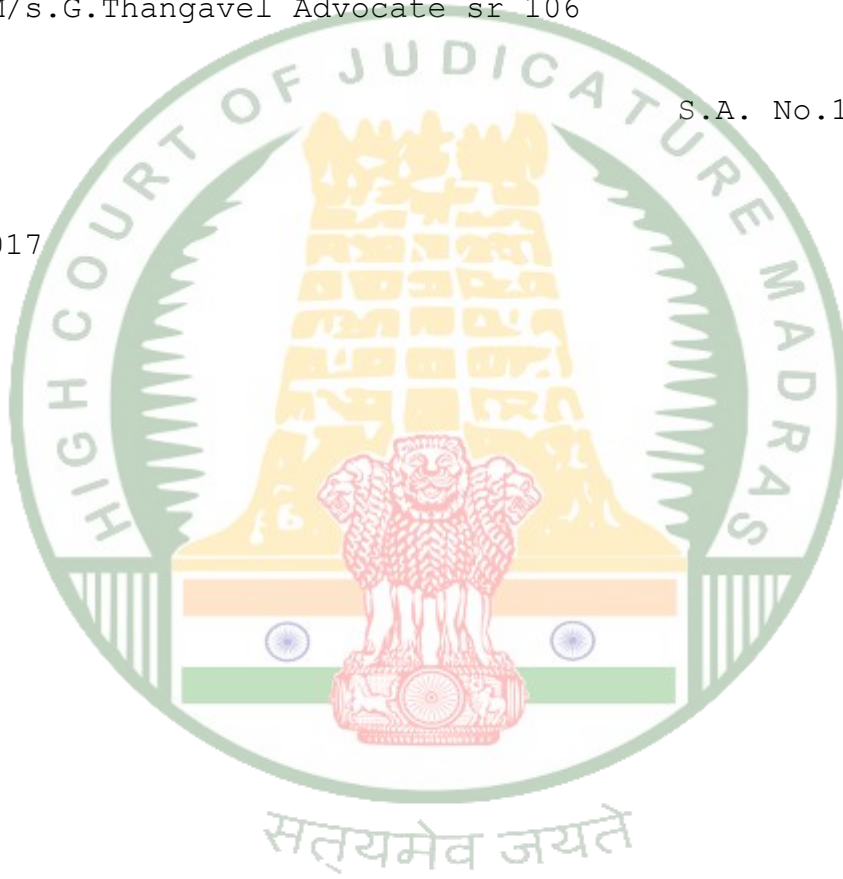
2. The Principal Subordinate Judge,
Salem.

3. The Section Officer
VR Section High Court Madras

+1 cc to M/s.G.Thangavel Advocate sr 106

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