

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date :18.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Appeal Suit No.884 of 2012
and M.P.No.1 of 2012

Joseph Nodier, France, rep. by his
Power of Attorney
Edison Rogarar Appellant/Defendant

Vs.

Jeanette Nodier Respondent/Plaintiff

PRAYER: Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of Civil Procedure Code against the judgment and decree dated 06.02.2012 made in O.S.No.16 of 2009 on the file of the Court of District Judge, Karaikal.

For Appellant : Mr. N.Manohar

For Respondent : Ms.S.Suseela Devi

J U D G E M E N T

The defendant in O.S.No.16 of 2009, who suffered a preliminary decree for partition and separate possession of half share at the instance of the plaintiff is the appellant.

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

The property subject matter of O.S.No.16 of 2009 was purchased by one Thomas Arul Nodier on 19.03.1957 under Ex.A.1. The said Thomas Arul Nodier died on 15.02.1963 leaving behind his widow Kulanthai Savari Muthammal alias C.S.Nodier, two sons namely Joseph Nodier, Jeannot Nodier and a daughter Jeanette Nodier. On 05.02.1976, the plaintiff relinquished her rights in the property in favour of other three heirs namely her mother and two brothers under Ex.A.4. The elder brother Jeannot Nodier relinquished his 1/3rd share in favour of his mother and the other brother Joseph Nodier/defendant on 12.03.1976. Thus the mother C.S.Nodier and the defendant Joseph Nodier become entitled for half share each in the suit property. According to the plaintiff, her mother C.S.Nodier executed a Will on 27.06.1992, which was registered on 30.06.1992. In and by the

said Will, mother had bequeathed her half share in favour of the plaintiff. Mrs.C.S.Nodier died on 06.05.2001 and the suit came to be filed on 29.12.2008 claiming half share in the property.

3.The suit is resisted by the defendant contending that the plaintiff having released her 1/4th share under Ex.A.4 is not entitled to claim partition. He also contended that the Will dated 27.06.1992 projected by the plaintiff is not true and valid and therefore, the plaintiff is not entitled to any share in the property. The Trial Court upon consideration of the above pleadings framed the following issues:

- (1)Whether the plaintiff is entitled to get a preliminary decree of half share in the suit property?
- (2)Whether the Will dated 27.06.1992 is true and genuine?
- (3)Whether the plaintiff is entitled to get mesne profit as claimed in the plaint?
- (4)To what relief the plaintiff is entitled to?

4.In the Trial Court, P.Ws.1 to 4 were examined on the side of the plaintiff and Ex.A.1 to A.12 were marked. On the side of the defendant, the power agent of defendant was examined as DW.1 and Ex.B1 to B4 were marked. Another witnesses namely the Manager, UCO Bank, Karaikal, was examined as DW.2 and through him Exs.X1 and X2 were marked.

5.The Trial Court rejected the first defence that in view of the release deed dated 05.02.1976, the plaintiff cannot claim a share on the ground that the plaintiff is not claiming a share as the heir of Thomas Arul Nodier, but she has claimed a share as a legatee under a Will executed by Mrs.C.S.Nodier, who was certainly entitled to half share of the property at the time of her death. The Trial Court also upheld the Will propounded by the defendant relying on the evidence of D.W.2 and D.W.3, who are attesting witnesses to the said document. However, a faint attempt was made by the defendant to show that the signature of Mrs.C.S.Nodier in the Will differs from her admitted signatures by producing Ex.X.1 and X.2 from UCO Bank, Karaikal. But, the said attempt was also not successful as the Trial Court found both the signatures tally with each other. On the above findings, the Trial Court decreed the suit as prayed for. Aggrieved, the defendant has come forward with this appeal.

6.I have heard Mr.N.Manohar, learned counsel appearing for the appellant and Ms.S.Susheela Devi, learned counsel appearing for the respondent.

7.Mr.N.Manohar, learned counsel appearing for the appellant would contend that the evidence of P.Ws.2 and 3, the

attestors is far from satisfactory and a reading of their evidence would show that they have been tutored to give evidence in a particular fashion as dictated by the plaintiff. He also contended that the Trial Court erred in comparing signatures in Exs.X.1 and X.2 with those admitted signatures in Exs.B.3 and B.4. It is also the contention of the learned counsel for the appellant that the delay in registration of the Will was completely overlooked by the Trial Court and therefore, the Trial Court has erred in decreeing the suit.

8.Per Contra, Ms.Susheela Devi, learned counsel appearing for the respondent would contend that the requirements of Section 68 of the Evidence Act had been satisfied by examining the attestors of the Will and evidence of the attestors namely P.Ws.2 and 3 has not been discredited in any manner so as to make it unreliable.

9.From the above contentions, the following points arise for determination:

- 1.Whether the Trial Court was right in holding that the plaintiff is entitled to get a share on the basis of the Will executed by her mother, after having relinquished her interest in the property by the release deed dated 05.02.1976?
- 2.Whether the plaintiff has proved the execution and due attestation of the Will Ex.A.12 dated 27.06.1992?

10.Point:1: It is an admitted case that the plaintiff had relinquished her rights in her father's property namely her 1/4th share under a registered deed on 05.02.1976. The elder brother namely Jeannot Nodier had also relinquished his 1/3rd share in favour of his mother and brother on 12.03.1976. However, the present claim of the plaintiff is based on the Will executed by her mother on 27.06.1992. Therefore, the Trial Court is right in rejecting the plea of the defendant that the relinquishment/release of rights by plaintiff in her father's property on 05.02.1976 will stand in the way of her present claim for partition.

11.Point:2: As regards the genuineness of the Will dated 27.06.1992, the plaintiff had examined P.Ws.2 and 3, who are attesting witnesses to the said documents. Both P.Ws.2 and 3 have spoken about the execution of the Will by Mrs.C.S.Nodier on 27.06.1992 and her state of mind. They had also clearly deposed that she was aware of the contents of the Will and it was on her instructions, the Will was written by P.W.4. Suggestions to the effect that the testator did not have the capacity to understand the contents of the Will had been promptly denied by both the witnesses. The contention of Mr.N.Manohar is that both the witnesses have been directed to repeat whatever has been told to them cannot be accepted for the

simple reason that the proof affidavits are prepared by the counsel and signed by the witnesses. If the statements therein are to be disbelieved, it has to be done by extracting contradictions. I must immediately point out that such an exercise has not been undertaken. The cross examination has resulted only positive answers in favour of the plaintiffs. Therefore, I do not think that the evidence of P.Ws.2 and 3 can be disbelieved.

12.No doubt true, that the Will was registered on 30.06.1992 i.e., three days after its execution. Mr.Manohar, learned counsel for the appellant would point out that there is no explanation for the delay. It was admittedly executed on Saturday i.e., 27.06.1992, the next day happens to be a Sunday i.e., 28.06.1992 and the Will was registered on 30.06.1992, which was a Tuesday. I do not think that the registration of the Will, which is after one working day can be put against the plaintiff so as to make the Will unbelievable. A faint attempt has been made by the defendant to show that the signature of the testator in the Will did not tally with her admitted signature by producing her signature from UCO Bank, Karaikal by examination of DW.2, Bank Manager. The Trial Court had taken the effort of comparing the signature in Ex.X1 and X2 with Ex.B3 and Ex.B4, which are the letters admittedly written by the testator and has come to the conclusion that signatures tally. I find that the plaintiff has discharged the burden of proving the Will as a propounder. The Will itself recites the reasons for the mother bequeathing her share of property in favour of the daughter. Admittedly both her sons were away in France and she was living with her daughter, who has taken care of her and there is nothing unusual or unreasonable for a mother to bequeath her property to her daughter, who is taking care during her old age, that too when her sons residing at France. Therefore, both the points raised in the appeal are answered as against the appellant and I find no reason to interfere with the findings of the Trial Court based on valid and cogent evidence.

13.In view of the above, this appeal fails and it is dismissed confirming the decree and judgment of the Trial Court. However, considering the relationship between the parties, there will be no order as to costs in this Appeal. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The District Judge,
Karaikal.

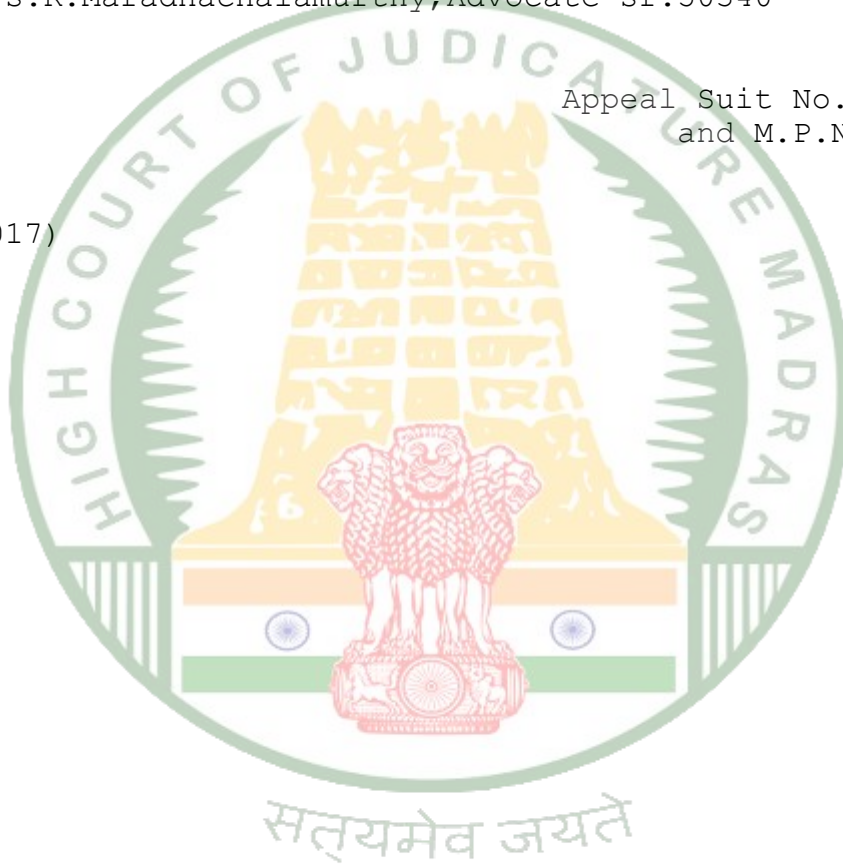
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High Court, Madras.

+1cc to M/s.S.Suseela Devi, Advocate sr.50291

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ppa (co)
ss(22/8/2017)



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