

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.Nos.514 & 515 of 2011  
and  
M.P.Nos.1 & 1 of 2011

S.A.No.514 of 2011

Balambal

... Petitioner

Versus

1. Suseela
2. Panchalai
3. Sivagami

... Respondents

S.A.No.515 of 2011

Balambal

... Petitioner

Versus

1. Suseela Ammal
2. Panchalai
3. Sivagami
4. Arunachala Gounder

... Respondents

Prayer in SA.No.514 of 2011:- The Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.04.2010 passed in A.S.No.1 of 2003 on the file of the District Judge, Tiruvannamalai confirming the decree and judgment dated 28.06.2002 passed in O.S.No.166 of 1988 on the file of Additional Subordinate Judge, Tiruvannamalai.

Prayer in SA.No.515 of 2011:- The Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.04.2010 passed in A.S.No.27 of 2009 on the file of District Judge, Tiruvannamalai confirming the decree and judgment dated 28.06.2002 passed in O.S.No.238 of 1997 on the file of Additional Subordinate Judge, Tiruvannamalai.

For Petitioner : Mr.K.Govi Ganesan Both Appeals

For Respondents: Mr.T.Dhanasekaran

For RR1 to 3 in both Second Appeals  
No Appearance

For R4 in SA.No.515 of 2011

C O M M O N O R D E R

Rajamanickam Gounder having successfully married four ladies, left behind a legal battle between the daughter, born to the first wife Jagadhambal and the fourth wife and the children, who are the parties to the Suit in O.S.No.166 of 1988 and O.S.No.238 of 1997. The daughter born to Jagadhambal and Rajamanickam Gounder filed O.S.No.166 of 1988, seeking partition in the property of a father, who died in 1988 by contending that three children were born to her parents, who died and that the property has devolved upon the mother of the plaintiff in O.S.No.166 of 1988 and after her demise, she is entitled to the share of the property in the father's share equally along with the fourth wife of Rajamanickam Gounder and the children born to him through the fourth wife. The defendants in O.S.No.166 of 1988 have also filed a suit in O.S.No.238 of 1997 seeking for declaration and injunction based on a Will executed by the father of the plaintiff in O.S.No.166 of 1988 bequeathing the entire property to the fourth wife and two daughters, who are the plaintiff in O.S.No.238 of 1997. Both the suits have been taken up together and tried. Accepting the contention of the plaintiff in O.S.No.238 of 1997 and that the Will is proved to be genuine, O.S.No.166 of 1988 was dismissed O.S.No.238 of 1997 was decreed based on the Will, as it has been proved to be genuine.

2. Aggrieved by the common judgment and decree dated 29.04.2010 in O.S.Nos.166 of 1988 and 238 of 1997, the present appellant has preferred the appeal suit in A.S.No.1 of 2003 against the judgment and decree in O.S.No.166 of 1988 and another appeal suit A.S.No.27 of 2009. Both the appeals have been taken up together and by judgment and decree, the trial Court's verdict had been confirmed and Appeal Suits were dismissed. Aggrieved by the same, the present Second Appeal has been preferred by the plaintiff and the first defendant respectively.

3. The learned counsel for the appellant has raised the following substantial question of law in the memorandum of grounds of appeal:-

(i) When admittedly the suit properties are joint family properties of the deceased Rajamanickam whether he is entitled to execute Ex.B1 Will for the entire properties?

(ii) When Ex.A1 to A4 are Public Documents relating to the year 1958 and 1959, its genuineness has to be presumed as per Sec.79 and 90 of Indian Evidence Act or not?

4. It is not in dispute that the appellant's father had four wives and after the demise of the first wife, he married two other persons and as they did not beget any children,

he married the fourth wife Suseela, who is one of the respondents in the present appeal along with two other daughters, who are also parties to the present second appeals. The contention of the learned counsel for the appellants is that the first wife of Rajamanickam Gounder had three male children, which was not proved and the contention that as a legal heir, the appellant would succeed to the mother's share viz., 2/3 and that subsequently Rajamanickam Gounder died in the year 1988 and on his death, the appellant would be entitled to 1/3 of the share equally along with the defendants in O.S.No.166 of 1988. The trial Court as well as the first Appellate Court did not believe the version of the appellant herein and based on the evidence, came to the conclusion that the property, which is in dispute in the suit, is the self acquired property of Rajamanickam Gounder and as the Will has been proved to be genuine and that the testator's execution of the Will has been accepted on proof through PW-2, who was examined on behalf of the appellant herein, held that the appellant would not be entitled to any relief sought for in the first suit filed by the appellant and that the lower Appellate Court confirming the order of the lower Court in second suit in O.S.No.238 of 1997, granting relief to the respondent herein, is perfectly correct.

5. Since the finding had been rendered based on the evidence let in by both the parties and taking note of the evidence of PW-2 viz., the evidence let in on behalf of the appellant, the Will had been proved. As PW-2 has admitted the execution of the Will and he is the witness to the Will and that DW-2 has proved the genuineness of the Will, which was been accepted by both the Courts below. This Court finds that there is no need to interfere with the judgment and decree of the trial Court.

6. There is no question of law much less substantial question of law involved in the Second Appeals. Hence, the Second Appeals are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The District Court,  
Tiruvannamalai.

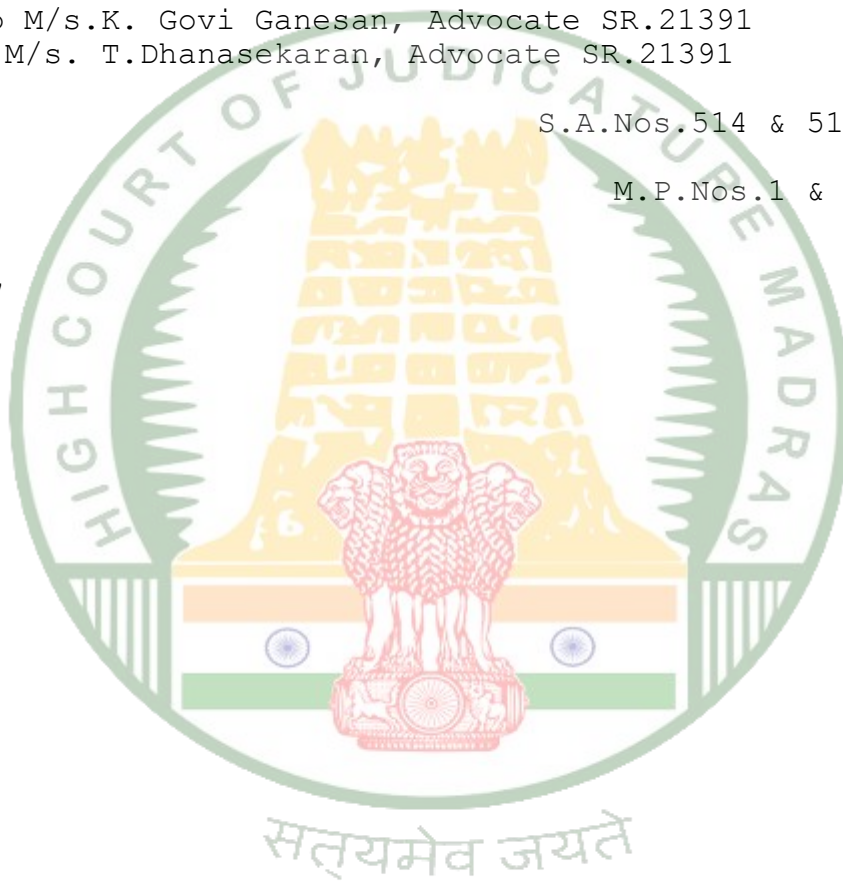
2. The Additional Subordinate Judge,  
Tiruvannamalai.

+ 2 ccs to M/s.K. Govi Ganesan, Advocate SR.21391

+ 1 cc to M/s. T.Dhanasekaran, Advocate SR.21391

S.A.Nos.514 & 515 of 2011  
and  
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RK(CO)  
EU 29.5.17



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