

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03-01-2017

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Second Appeal No.735 of 2016
and
C.M.P.No.13945 of 2016

Gurusamy

... Appellant

Vs.

1.Karuppayammal

2.M.Palaniammal

3.M.Kuppayammal

4.R.Dhanalakshmi

M.Ramayammal (died)

5.R.Chellammal

.... Respondents

Second Appeal preferred under Section 100 of C.P.C., against the judgment and decree dated 16-03-2016 made in A.S.No.31 of 2001 on the file of First Additional District Court, Erode confirming the judgment and decree dated 12-10-1999 made in O.S.No.868 of 1994 on the file of the learned Additional Sub Court (Full Additional Charge), Erode.

For appellant : Mr.N.Manokaran

For respondents : Mr.M.Muruganandam for
M/s.V.Raghavachari for RR1 to 4

JUDGMENT

The suit property admittedly belong to one Marappa Gounder. He had five daughters and one son. Marappa Gounder died on 13-03-1977. The plaintiffs are the daughters of the deceased Marappa Gounder and so is the third defendant. The appellant who is arrayed as the first defendant is the son of the deceased Marappa Gounder and the second defendant is his mother. Before the Trial Court, the appellant has taken a

plea that the Will that is said to have been executed by the deceased Marappa Gounder qua the suit properties which is admittedly unregistered dated 02-07-1975. Thus there is no dispute on the status of the property insofar as the deceased Marappa Gounder is concerned. The Trial Court decreed the suit on the premise that evidence of D.Ws.2 to 4, who are attestors and son of the scribe, since deceased does not inspire confidence. The Trial Court has also exercised power under Section 73 of the Indian Evidence Act, 1872, comparing the signature with the admitted document. The Lower Appellate Court, in turn concurred with the reasons assigned by the Trial Court.

2. The appellant filed further appeal before this Court in S.A.No.219 of 2005. By judgment dated 07-03-2012, this Court while setting aside the judgment and decree of the Lower Appellate Court was pleased to remit the matter back directing the disputed Will under Ex-B3 to be compared with the admitted signature by an expert. The expert who compared the signature, gave his opinion, followed by his evidence in tune with stating that signature as found under Ex-B3 do not tally with the admitted signatures of deceased Marappa Gounder. The Lower Appellate Court taking into consideration of the report of the expert, his evidence and the evidence of the parties, especially the defendant Nos.2 to 4 once again dismissed the appeal. Aggrieved over the same, by framing the following substantial questions of law, the present appeal has been filed.

a. Whether the suit is bad for non-joinder of admitted co-sharers even as per the plaintiffs in the suit?

b. Whether the evidence of handwriting expert (C.W.1) and his reports marked as Exs-C1 and C2 would displace the legal requirement of proving the Will (Ex-B3) under Section 63 of the Indian Succession Act r/w Sec. 68 of the Indian Evidence Act?

c. Whether the courts below right in disbelieving the Will dated 02-07-1975 (Ex-B3) when the evidence of the attestors have fulfilled the legal requirements to prove the Will as a true and genuine one?

d. Whether the courts below erred in decreeing the suit by disbelieving the Will on the ground that; it was not registered, other legal heirs were excluded, no mutation was effected after the death of the testator, particularly when these circumstances cannot create any suspicion over the Maranasastra?

3. Mr. N. Manokaran, learned counsel appearing for the appellant submits that a Will is not to be seen with suspicion, as a matter of course. The discrepancies would

have arisen because of the fact that more than several decades have passed by. The suit itself has been laid belatedly. The evidence of D.W.2 and 3 ought not to have been eschewed and looked into with suspicion by the Courts-below on the sole premise that the witnesses are close relatives of the appellant. The report of the expert being a piece of evidence, the Lower Appellate Court ought not to have placed substantial reliance upon the same. The co-owners of Marappa Gounder have not been added as parties. Therefore, the judgment and decree rendered by the Courts-below will have to be reversed.

4. Mr. M. Muruganandham, learned counsel appearing for the respondents submits that as the findings have been rendered on facts no interference need be made and the genuineness of the Will has not been proved in the manner known to law. The findings of the Courts-below with regard to Ex-B3 cannot be termed as perverse. There is nothing to describe except Exs-C1 and C2 coupled with the evidence of C.W.1. The conduct of the parties will have to be seen as the appellant and the defendant No.2 have sold a portion of the suit property in favour of third parties, pending suit. Even in the said document, it has been merely stated as the ancestral property without making any reference to Ex-B3 which fact has been taken note of by the Trial Court. Thus, no interference is required as no substantial question of law is involved.

5. The relationship between the parties is not in dispute. Similarly, the fact that the suit properties are the self-acquired properties of the deceased Marappa Gounder is also not in dispute. Therefore, the only issue that has to be considered is as to whether Ex-B3, an unregistered Will relied upon by the appellant satisfies the mandate under Section 67 of the Indian Evidence Act and Section 63 of the Indian Succession Act. The Courts-below have found that evidence of D.Ws.2 to 4 is not trust-worthy. D.Ws.2 and 3 are very close relatives of the appellant. Though that itself cannot be a sole ground to doubt their statement, the Courts-below have taken into consideration of the evidence as a whole. Both of them have been ignorant about the place at which the alleged script of Ex-B3 has been prepared, they did not even know the scribe nor his place of residence. D.W.2 is the 'Sambandhi' of the appellant and D.W.3 is his father-in-law. D.Ws.1 to 3 have also stated that they did not know the name of the scribe. D.W.4, being the son of the scribe, in his cross-examination also admits the discrepancies found in the writing of Ex-B3. There is a further admission that no entries have been made about Ex-B3 in the ledger maintained by his father as a document writer. Though Exs-C1 and C2 are

nothing but piece of evidence given from an expert, they cannot be brushed aside, when we consider that it is for the appellant to prove the Will while dispelling the suspicious circumstances, if any. It is curious to note that the appellant has raised objection for sending the document to the expert for comparison of signatures. Incidentally, the Trial Court has taken the exercise available under Section 73 of the Indian Evidence Act, 1872. The expert has also deposed in tune with Exs-C1 and C2. It is not as if the lower Appellate Court has dismissed the appeal by merely placing reliance upon Exs-C1 and C2, coupled with the evidence of C.W.1 alone. On the contrary, it has taken into consideration the evidence of D.Ws.2 to 4. Since the parties are claiming their due shares of the property, owned by the deceased Marappa Gounder, there is no necessity to implead the other co-owners, if any. It is also to be noted that even the appellant and his mother has sold some other properties. Therefore, under the circumstances, truth does not lie in his mouth.

6. Accordingly, this court does not find any substantial question of law warranting interference. The appeal is therefore, dismissed. No costs. Connected C.M.P., is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

glp

To

1. The First Additional District Judge,
Erode.

2. The Additional Sub Judge,
(Full Additional Charge),
Erode.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.733
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.411

Second Appeal No.735 of 2016

SSK(CO)
CA(08/02/2017)