

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.10.2017

PRONOUNCED ON : 23.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.262 of 2001

Ramayal

...

Appellant

Vs.

1.Avanammal
2.Palaniammal
3.Palani Gounder

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 20.04.2000 made in A.S.No.86 of 1996 on the file of the Subordinate Judge, Gobichettipalayam confirming the judgment and decree dated 26.03.1996 made in O.S.No.343/1993 on the file of the District Munsif Court, Sathyamangalam.

For Appellant : Mr.J.Prithivi
for M/s.Kaithamalaikumaran
For Respondents : Mr.S.Parthasarathy

JUDGMENT

The plaintiff, in this second appeal, has impugned the Judgment and decree dated 20.04.2000 made in A.S.No.86 of 1996 on the file of the Subordinate Judge, Gobichettipalayam, confirming the judgment and decree dated 26.03.1996 made in O.S.No.343/1993 on the file of

the District Munsif Court, Sathyamangalam.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for partition.

4. Briefly stated, according to the plaintiff's case, Chinnakrishna Gounder had three daughters viz., the plaintiff, the second defendant and another daughter, who had died and the first defendant is the daughter of the predeceased daughter of Chinnakrishna Gounder and the third defendant is his son and according to the plaintiff, the suit properties described in the plaint schedule belonged to her father Chinnakrishna Gounder and his wife predeceased him and Chinnakrishna Gounder by effecting the partition orally with his son, the third defendant had been enjoying the suit properties and according to the plaintiff, as such she is entitled to 1/8th share in the suit properties and inasmuch as her request for amicable division of the suit properties for allotting her share was not favourably accepted by the defendants, according to the plaintiff, she has been necessitated to lay the suit for partition.

5. The case of the defendants in brief is that the plaintiff is not entitled to any claim for partition in respect of the suit properties and it is stated that Chinnakrishna Gounder had given his daughters in marriage by providing good "seer" and the case of the plaintiff that Chinnakrishna Gounder and his son had been enjoying the suit properties by effecting oral partition amongst themselves is not correct and further, it is the case of the defendants that Chinnakrishna Gounder, while alive, in a sound and disposing state of mind, had bequeathed the suit properties by way of a registered Will in favour of the third defendant dated 25.01.1984 and in such view of the matter, according to the defendants, the suit properties belonged to the third defendant absolutely by virtue of the above said Will and the plaintiff is not entitled to seek any partition in respect of the suit properties and further, according to the defendants, a Panchayat was convened and as per the decision of the Panchayat, a sum of Rs.10,000/- was given to the plaintiff as she had complained about not providing adequate "seer" at the time of her marriage and hence, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 15 were marked. On the side of the defendants, Dws 1 to 3 were examined and Exs.B1 to 14 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the contentions put forth by them, the Trial Court was pleased to dismiss the suit. The first appeal preferred by the plaintiff was not successful. Hence, impugning the judgment and decree of the Courts of below, the second appeal has been preferred by the plaintiff.

8. At the time of admission of the second appeal, the following substantial question of law had been framed for consideration:

" Are the Courts below justified in accepting the genuineness of Ex.B.14 Will, overlooking that there are several suspicious circumstances surrounding the execution of the Will?"

9. Claiming partition of the suit properties on the footing that the same belonged to her father Chinnakrishna Gounder, the suit has

come to be laid by the plaintiff. It is not in dispute that Chinnakrishna Gounder had three daughters and one son and the daughter of the predeceased daughter has been arrayed as the first defendant and the other daughter has been arrayed as the second defendant and his son is arrayed as the third defendant. The plaintiff is the one of his daughters. Thus, claiming 1/8 th share in the suit properties, the plaintiff has laid the suit. The plaintiff's suit has been mainly resisted by the defendants contending that Chinnakrishna Gounder, while alive in a sound and disposing state of mind, voluntarily bequeathed the suit properties in favour of the third defendant, his only son by way of a registered Will dated 25.01.1984 and hence, according to the defendants, by virtue of the above said Will, it is only the third defendant, who has absolute title to the suit properties and hence, the plaintiff is not entitled to claim any partition in the suit properties.

10. Inasmuch as the plaintiff's suit is resisted by the defendants by projecting the Will stated to have been executed by the deceased Chinnakrishna Gounder, it is found that as rightly determined by the Courts below, it is only the defendants, particularly, the third defendant, who has to establish the authenticity of the Will projected by him. The Will, in question, has been marked as Ex.B14. Now,

according to the plaintiff, the said Will has not been executed by Chinnakrishna Gounder in a sound and disposing state of mind and further, it is her case that the Will is shrouded in mysterious circumstances and hence, the Will should not be accepted. It is found that as per the legal requirements as provided under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, the Will being propounded by the third defendant in particular has to be established as provided thereunder and thus, the third defendant has to establish and prove that the testator had the capacity to bequeath the suit properties under the Will in question and for the said purpose, at least one attesting witness should be examined and by way of the same, the propounder should establish that the Will had been executed by the testator with his free Will and that, at the relevant point of time, he was in a sound and disposing state of mind and understood the nature and effect of disposition and that, he had signed in the Will in the presence of two attesting witnesses, who had attested their signatures in his presence or in the presence of each other and further, the propounder should also clear off or remove all the suspicious circumstances, if any, surrounding the Will.

11. To establish the genuineness of the Will marked as Ex.B14, it is found that the defendants have chosen to examine one of the attesting witnesses to the Will viz., Palanisamy as DW2. DW2 in his evidence has clearly deposed that he knew the plaintiff and the defendants and also their father Chinnakrishna Gounder and Chinnakrishna Gounder had executed a Will about 10 years back and that, he had attested the said Will and the said Will is marked as Ex.B14 and the same contains his signature, the said Will Ex.B14 had been executed by Chinnakrishna Gounder at his residence and the same had been scribed by one Sathiyamangalam Jakku who is the document writer and the Will had been attested by him as well as Sellappan, Nanjappa Gounder, and Karuppa Gounder and the recitals of the Will had been dictated by Chinnakrishna Gounder and Chinnakrishna Gounder had affixed his LTI in the Will and he had adequate mental capacity at the time of the execution of the Will and at the time of execution of the Will, he was suffering from Paralytic attack and two days after the execution of the Will, the Registrar concerned came to the residence of Chinnakrishna Gounder and registered the Will and that, he had also attested the Will at the time of the registration and the witness Sellappan had also attested the Will

at the time of registration and that, he had further denied the suggestion that Ex.B14 Will had been concocted. The factum of the execution of the said Will Ex.B14 by Chinnakrishna Gounder has been further reiterated by DW2 during the course of cross examination also by testifying that it is only Chinnakrishna Gounder, who had dictated the terms of the Will and accordingly, written by the document writer and after the execution of the Will, he had attested the Will and at the time of his attestation, Chinnakrishna Gounder had affixed two LTIs on the Will i.e. one LTI on the first page and other LTI on the second page and he had also attested the Will and along with him Sellappa Gounder, Nanjappa gounder also attested the Will and at the time of execution of the Will by Chinnakrishna Gounder, he had witnessed the execution of the Will by Chinnakrishna Gounder, he had read the contents of the Will executed by Chinnakrishna Gounder and he does not remember the colour of the ink of the LTI of Chinnakrishna Gounder and he had affixed two LTI on the Will and two days after the execution of the Will, the Registering officer has come to the residence and the Will was registered and under the said Will, Chinnakrishna Gounder had bequeathed the suit properties in favour of his son. It is thus found that as rightly determined by the Courts below, the attesting witness has clearly deposed beyond any doubt that

Chinnakrishna Gounder had all the mental capacity at the time of the execution of the Will and understanding of the nature of the disposition made by him, it is seen that Chinnakrishna Gounder had executed the Will bequeathing his property in favour of his son, the third defendant and the same had been witnessed by DW2 Palanisamy and the other witnesses and it is also found that the Will had been prepared only as per the dictation of the testator and accordingly, it is found that Chinnakrishna Gounder having executed the Will Ex.B14 in a sound and disposing state of mind thought it fit to register the same and accordingly, two days after the execution of the Will had summoned the registering officer to his residence and accordingly, the Will Ex.B14 had come to be registered by the Registering authority and DW2 had also attested the Will at the time of the registration along with the witness Sellappan and it is thus found that DW2, by way of his evidence, which satisfy all the requirements required to be provided as per law, established the authenticity and genuineness of Ex.B14 Will. As rightly found by the Courts below, despite the cross examination, nothing has been elucidated from DW2 to discredit his testimony, as regards the proof of the Will Ex.B14. That apart, a perusal of the recitals found in Ex.B14 cumulatively would go to show that inasmuch as Chinnakrishna Gounder was affected with paralysis, at that point of

time, though he was a signatory earlier, on account of his physical condition at the time of execution of the Will, it is seen that he had chosen to affix his LTI on the Will and to that effect, the endorsement has also been made by him in the Will and this would also go to establish the reasons as to why Chinnakrishna Gounder had chosen to affix his LTI on the Will instead of signing the Will. It is further seen that the proof of Will has also been established by the registration of the Will, two days after the execution of the same, by the registering officer as per law and necessary recitals to that effect are also found to be incorporated in the Will and the act of the Registration has also been witnessed by DW2 and the other witness and clearly spoken to by DW2 in all aspects satisfactorily and thus, it is found that his evidence, as regards the proof of Will, is sound, convincing, trustworthy and also satisfies all the mandatory requirements of law as above enunciated.

12. In the light of the above position, when the defendants have established the genuineness of the Will in the manner known to law through the evidence of the attesor viz., PW2, it is found that the suit properties bequeathed to the third defendant under the Will Ex.B14 becomes his separate properties. However, countering the above claim

of title to the suit properties by virtue of the Will Ex.B14, it is the further contention of the plaintiff that the Will is shrouded in mysterious circumstances and hence, the third defendant having not dispelled the same with satisfactory materials, according to the plaintiff, the Courts below have erred in upholding the authenticity of the Will Ex.B14. In this connection, it is argued by the plaintiff's counsel that the testator has not put his signature in the Will, though he is in the habit of putting his signature and on the other hand, he has only affixed his thumb impression in the Will. However, as seen above, the testator himself has given the reason for affixing the Thumb impression in the Will as he was, at that point of time, not in good health on account of attack of paralysis and hence, he has stated that instead of putting his signature, he has affixed his thumb impression in the Will. In such view of the matter, the above circumstance projected as a suspicious one, as rightly found by the Courts below, cannot be accepted. It is further argued by the plaintiff's counsel that only one attesting witness has been examined and the defendants should have endeavoured to examine the other attesting witnesses to establish the authenticity of the Will. However, when as per law it is sufficient to prove the truth of the Will by examining one of the attestors to the same and when that requirement

has been satisfied by the defendants by examining PW2, the attestor and when it is further found that the evidence of PW2, has not been exposed to be unreliable and unacceptable and on the other hand, in the light of the above discussions, when his evidence is found to be acceptable, cogent and trustworthy and he has established the authenticity of the Will through his evidence in a satisfactory manner, apart from, proving the mental capacity of the testator, at the time of the execution of the Will, it is seen that the above ground projected cannot be characterized as a suspicious circumstance for rejecting the case of the defendants. The further argument put forth by the plaintiff is that the thumb impression has been affixed after leaving a wide space in the Will. However, on the perusal of the document Ex.B14, the above circumstance, in my opinion, does not merit acceptance and it is found that the Will Ex.B14 has been executed in the normal of course of events and accordingly, the thumb impression by the testator had been obtained in the normal course and at this juncture, it should also be noted that the Will, in question, had been registered immediately. The further arguments of the plaintiff's counsel is that the expert has not been examined to prove authenticity of the Will. However, when the evidence of PW2 is sufficient to establish the genuineness of the Will, there is no need for the defendants to

reiterate their case by subjecting the Will for expert examination etc., If at all, the plaintiff still disputes the thumb impression of the testator in the Will, despite the evidence of PW2, nothing prevented the plaintiff from resorting to that course. As rightly determined by the Courts below, the plaintiff for the reasons best known to her, had not endeavoured to take any steps with reference to the same. Though it is feebly contended that the propounder of the Will viz., the third defendant had taken active part in the execution of the Will, the evidence and materials placed do not indicate the above and in such view of the matter, the above reason also cannot be accepted to disbelieve the Will projected by the defendants. It is the further argument by the plaintiff's counsel that there is no reason for the testator to exclude his daughters including the plaintiff and only bequeath the properties in favour of his son and this is a suspicious circumstance for discrediting the Will in question. However, when materials point out that the plaintiff was given in marriage by providing adequate "seer" by the testator and further, when the plaintiff has not chosen to claim any partition in the properties during the life time of the testator and further, when the materials projected also point out that the plaintiff was subsequently given a sum of Rs.10,000/- as per the decision of the Panchayatars which fact has

also been spoken to by DWs1 and 3, it is found that the testator having only one son, it is natural on his part to bequeath his properties in favour of his only son and in such view of the matter, I am unable to accept the above submission that the disinheritance of the daughters by the testator is a suspicious circumstance to reject the Will in question. The counsel for the plaintiff also contended that there is discrepancy in the evidence of PW 1 & 2 as to the place of the execution of the Will. However, considering the evidence of DW2 in its entirety, it is seen that the above discrepancy is not material enough to disbelieve the authenticity of the Will Ex.B14. Apart from the above contentions, no other valid suspicious circumstance is projected by the plaintiff to discredit the Will Ex.B14. In such view of the matter, it is found that the Courts below have rightly found that there is no valid suspicious circumstance as such to disbelieve the Will and accordingly, they have placed reliance upon the reliable and convincing evidence of PW2 and upheld the Will Ex.B14 to be a true document. The above findings of the Courts below seen from any angle are not shown to be suffering from any infirmity or error so as to disturb the concurrent findings of the Courts below in rejecting the plaintiff's case and upholding the defendants' case.

13. The Principles of law outlined in the decision relied upon by the appellant's counsel reported in **2009 (3) CTC 801 (Premavathi and three others Vs. Sundararajan and two others)** are taken to consideration and followed as applicable to the case at hand.

14. In the light of the above position, the substantial question of law formulated for consideration in this second appeal is answered against the plaintiff and in favour of the defendants.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

23.10.2017

Index : Yes/No

Internet : Yes/No

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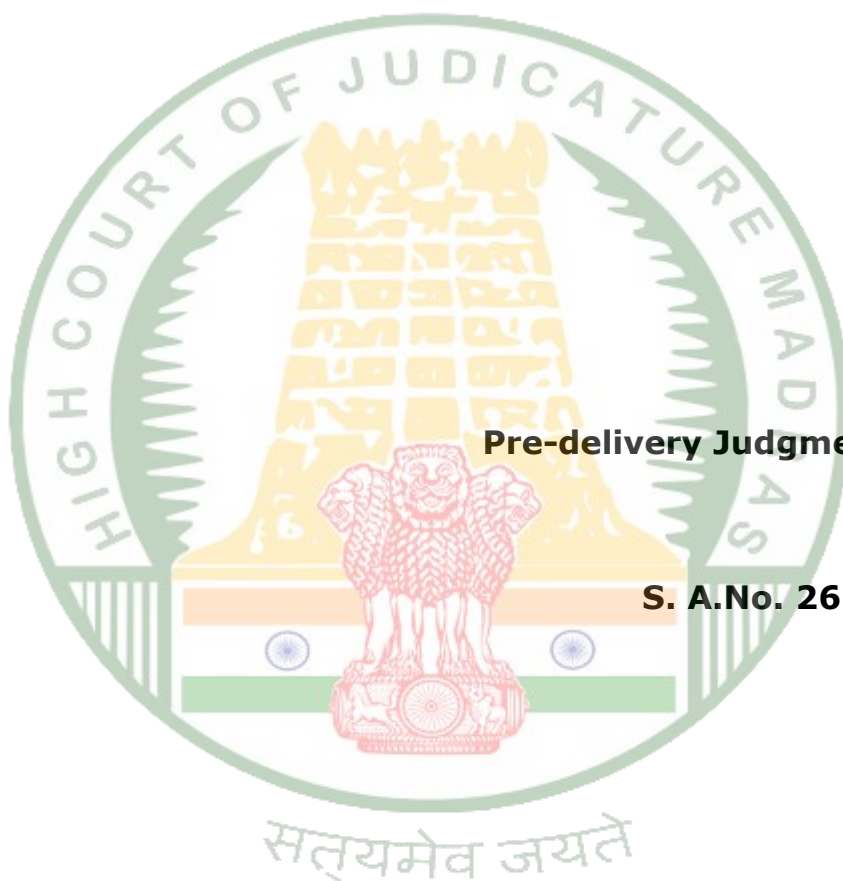
To

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1. The Subordinate Judge, Gobichettipalayam.
2. The District Munsif Court, Sathyamangalam.

T.RAVINDRAN,J.

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**Pre-delivery Judgment made
in
S. A.No. 262 of 2001**

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