



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2017

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.293 of 2017

S.L.Sevugan Chettiar ... Appellant/Appellant/Plaintiff

Vs.

1.P.R.Meenakshi Achi

2.AR.Yelambal Achi

3.M.Lakshmi Achi

4.K.Sowntharam Achi

... Respondents/Respondents/Defendants

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 31.03.2006, made in A.S.No.26 of 2005 on the file of the Sub-Court, Devakottai, confirming the judgment and decree, dated 22.11.2004, made in O.S.No.94 of 2004 on the file of the District Munsif Court, Devakkottai.

For appellant ... Ms.AL.Gandhimathi

For respondent Mr.R.Sundar Srinivasan

Nos.1, 3 & 4

For 2nd respondent No appearance

JUDGMENT

The plaintiff, who has lost before the Courts below, has filed the above appeal. The suit was filed for declaration that the Will, dated 20.07.1998, executed by the plaintiff's mother is void and for consequential relief.

2. The plaintiff and the defendants 1 to 4 are the brother and sisters born out to Lakshmanan Chettiar and Alamelu Aachi. It is stated that some of the properties, including the coffee estate, were purchased by the father of the parties in the name of the mother. After the death of the father in the year 1979, the mother was administering the estate as per the Will left behind by the father. It is stated that the mother was living with the plaintiff from 1979 to till May 1998. The defendants 1 to 3 were married during the life time of the father and the fourth defendant was married after the death of the father. There were talks of partition of the suit property several times among the parties. However, the partition did not take place. While so, the plaintiff's mother died on 03.11.2003. After her death, the defendants had produced a Will, dated 20.07.1998, said to have been executed by the mother



appointing the fourth defendant as an executor. As per the said Will, the plaintiff was not bequeathed any property. The plaintiff has claimed that the Will was obtained by undue influence. Hence, he filed the suit.

3. The suit was resisted by the defendants, denying all the allegations made in the plaint. It was contended by the defendants that the Will was executed by the mother in sound and disposing state of mind on her own volition and out of her free will. Therefore, there was no suspicious or unnatural circumstances surrounded the Will as alleged by the plaintiff. As the attitude of the plaintiff was not liked by the mother, she had gone to the house of the third defendant in the year 1998 itself. Thereafter, she had written the Will in favour of her daughters viz., the defendants 1 to 4, excluding the son viz., the plaintiff. She had also lived for several years after execution of the Will. As the will was executed and proved in the manner known to law, the defendants sought for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, PWs.1 to 3 were examined and Exs.A1 to A4 were marked. On the side of the defendants, DWs.1 to 3 were examined and Exs.D1 to D3 were marked. The Courts below have concurrently held that the execution of the Will is proved in accordance with law.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the records carefully.

6. The Will, dated 20.07.1998, which is marked as Ex.B1 is a registered will. The said Will was written by one V.K.V.Rao and attested by DW2 and DW3. The attested witnesses have categorically admitted that they have seen the testator signing the Will. Both the Courts below have concurrently held that the execution of the Will has been established in the manner known to law by examining the attested witnesses. Excepting the contention by the plaintiff that he has been disinherited being the only son, there is no other evidence to disbelieve the case of the defendants. The theory of the plaintiff that the mother was taken to the daughters' house and got the Will by undue influence, has not been proved. When the due execution of the Will is proved in the manner known to law, merely because the only son was disinherited will not render the Will invalid. The finding of the Courts below need not be interfered with as there is no question of law arising for consideration.

7. In the result, this second appeal fails and accordingly the same is dismissed confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-III)



To

1. The Subordinate Judge, Devakottai.
2. The District Munsif, Devakkottai.

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- + 1 CC TO Mrs.AL.GANDHIMATHI, ADVOCATE IN SR No. 65337
- + 1 CC TO Mr.R.SUNDAR SRINIVASAN, ADVOCATE IN SR No. 65338

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TE/KP/SAR-I : 25/07/2017 : 3P/5C

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