



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.385 of 2017

WEB COPY

1.Kasiammal

2.Kanniammal

3.Kavitha

4.Kala

5.Balraj

6.Packiyaraj ... Appellants /Appellants / Defendants

Vs.

1.Manimegalai

2.Poonkodi ... Respondents /Respondents / Plaintiffs

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 16.03.2015, made in A.S.No.34 of 2013 by the learned Principal District Judge, Thanjavur, confirming the judgment and decree, dated 22.08.2013, made in O.S.No.26 of 2010 by the learned Additional Subordinate Judge, Thanjavur.

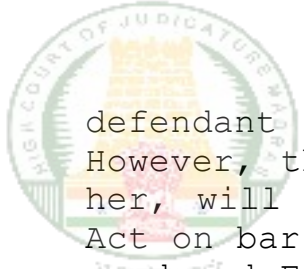
For appellants ... Mr.K.Vaithilingam

JUDGMENT

The unsuccessful defendants before the Courts below have preferred the above appeal. The suit was filed by the plaintiffs for partition.

2.The suit properties originally belonged to one Ramasamy. The plaintiffs are the daughters of Ramasamy born through the first wife. The first defendant is alleged to be the second wife and the other defendants are the children born to her through the said Ramasamy. The plaintiffs have claimed 2/7th share in the suit properties, which has been refused by the defendants.

3. So far as the first defendant is concerned, it is stated that the said Ramasamy married the first defendant, during the subsistence of his first marriage, for the purpose of getting a male child. Even presuming that it was for the said purpose, since the first marriage was in subsistence, the marriage of the first defendant with the said Ramasamy is not legally valid. The first



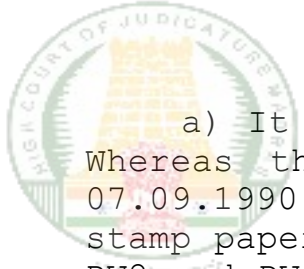
defendant cannot be treated as a legal heir to the said Ramasamy. However, the defendants 2 to 6, who are the children born through her, will get their share under Section 16 of the Hindu Marriage Act on par with the legitimate children. While so, the defendants produced Ex.B1, which is a settlement deed in favour of the first defendant. The said settlement deed was executed for the purpose of marrying the first defendant as the second wife, by the said Ramasamy. Though the plaintiffs had alleged that the said document was executed under coercion and undue influence, the same has not been proved. Therefore, the Courts below had declined the relief of partition with respect to the properties contained in Ex.B1. But, there is no appeal preferred by the plaintiffs.

4. The case of the defendants is that the plaintiffs were given in marriage even during the life time of the said Ramasamy, giving them their share of the properties and other Sridhana articles, and hence, they cannot any claim right over the suit properties. Besides, the defendants had put forth Ex.B4, which is a Will alleged to have been executed by the deceased Ramasamy, in favour of the 5th and 6th defendants, who are the male heirs. The said Ramasamy died on 22.09.1999. If the execution of the Will is true, it would have come into force on the date of death of their father viz., Ramasamy. The defendants also claimed that they have been in possession of the suit property for the last 25 years, based on the strength of the Will. As per the Will, dated 20.12.1998, item Nos.1 to 19 in schedule "A" were bequeathed in favour of the defendants 5 & 6.

5. The question now that remains to be considered is whether the Will - Ex.B4 is proved in accordance with law.

6. DW1, who is the 6th defendant, had deposed that only in search of the documents to be filed in the present suit, he could find the Will in the year 2011. The suit was filed in the year 2010. However, he had stated that at the time of filing the written statement, he was having the custody of the Will. The contradictory deposition of DW1 was eschewed by the Courts below. The next witness examined on the side of the defendants was DW2, who is the brother of the testator Ramasamy. He had stated that in December, 1998, the deceased Ramasamy had executed a Will and it was registered in SRO Office, Boothalur. He has further stated that after his brother Ramasamy signed in the Will, he had signed as attester and thereafter, the co-brother of Ramasamy viz., one Sanyasi - DW3 had attested the same. The next witness DW3, who is the one of the attestors, had stated that the scribe had written the Will in hand and after verification, it was typewritten, after which the signatures were put in the Will.

<https://hcservices.ecourts.gov.in/hcservices>
 The Courts below have held that the Will was not proved in the manner known to law, as it is surrounded by following suspicious circumstances:



a) It is stated that Ex.B4 - Will was executed on 20.12.1998. Whereas the stamp papers used for the same were purchased on 07.09.1990. There was no cogent evidence let in as to why the stamp papers purchased in the year 1990 was used in the year 1998. DW2 and DW3 have also not spoken about the same in their evidence. Further, DW3 has stated that the stamp papers were purchased on the previous day to the execution of Ex.B4. But, the same was not substantiated. DW3 has further stated that he did not know whether the Will was registered.

b) DW3 has stated that he did not sign on the typewritten Will, but only on holographic will. Though DW3 has stated that he had signed on a document, which was registered, Ex.B4 is an unregistered Will. Therefore, the evidence of DW3 was disbelieved by the Courts below.

c) It is the specific case of the defendants 5 & 6 that the Will had come into effect in the year 1998, after the death of Ramasamy and they have been in possession of the suit property in their own right based on the Will. Whereas, in the evidence, it is stated that they could find the Will itself only in the year 2011.

d) There is a reference to a suit in O.S.No.68 of 2008, which was filed with respect to a dwelling house. The suit was filed only in the year 2008 and as the Will was said to have been executed in the year 1998, the defendants had every chance of mentioning about the Will in the said suit. However, there was no mention about the Will and they had also not mentioned about the Will in Ex.A6 - reply notice.

e) The attestors to the Will are closely related to the deceased Ramasamy. If that is so, they would have informed the defendants, immediately after the death of Ramasamy or at least, in the course of time. However, it is stated that till 2010, when the written statement was filed, the defendants were not aware of the Will, which led to strong suspicion. The above circumstances were not answered by the defendants in proof of the Will. Hence, Ex.B4 was held to be not proved and the same was rejected by the Courts below.

8. In view of the above factual aspects, the plaintiffs and the defendants 2 to 6 are equally entitled to the properties belonging to the deceased Ramasamy. The first defendant, who is the second wife of the deceased Ramasamy, will not get any share in the suit properties. Accordingly, the Courts below have declared 2/7th share of the plaintiffs, excepting the properties under Ex.B1. In the light of the above facts, there is no question of law arising for consideration. This Court does not find any error or illegality in the concurrent judgment passed by the Courts below.



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

Sd/-

Assistant Registrar(P&A)

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/True Copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Thanjavur.

2.The Additional Subordinate Judge, Thanjavur.

+1cc to M/S.K.VAITHILINGAM, Advocate SR.No.77506

gcg

MAS/KP/SAR1:04.10.2017:4P-4C

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