

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

C.M.A.No.445 of 2018
and
C.M.P.No.3833 of 2018

1.Kalaivani
2.Srinivasan
3.Vignesh

...Appellants

Versus

1.Maheswari
2.Mohankumar
3.Govindaraj
4.Shanthi
5.Sugumar
6.Vijayalakshmi

...Respondents

This Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(u) of C.P.C against the decree and judgment dated 11.07.2017 passed in A.S.No.48 of 2016 on the file of the II Additional District and Sessions Judge, Salem reversing the judgment and decree dated 15.02.2016 passed in O.S.No.80 of 2014 on the file of the Principal Subordinate Judge, Salem remanding the matter to the trial court.

For Appellants : Mr.V.V.Sairam

For Respondents 1 - 3 : Mr.C.K.M.Appaji

JUDGMENT

A property measuring 1710 Sq.ft in Salem District was purchased in the name of certain Ramasamy and his wife Nagammal. Both of them have died leaving behind them Sundarraaj, Shanthi, Sugumar and Vijayalakshmi as their heirs. Sundarraaj had died leaving behind his widow, the first defendant and plaintiffs and defendants 2 and 3 as his children. The present suit is laid by the three of the children of Sundarraaj against their mother, the first defendant and other siblings namely defendants 2 & 3.

2. The case of the plaintiffs is that in the suit property Sundarraaj became entitled to 1/4 shares, and that each of his heir has become entitled to 1/24 shares. The resistance came from defendants 1 to 3 who have set up a registered Will dated

17.07.2000 and marked as Ex.B.1 before the Trial Court, and this was executed by Nagammal in favour of the defendants 2 & 3, after granting life estate to first defendant. The Trial Court disbelieved the genuineness of this Will, and one of the reasons it has given for disbelieving it is that the suit property was purchased by Ramasamy, and that Nagammal was a mere name lender and that Nagammal executed a Will for the entire property without any title. The suit was accordingly decreed and this was challenged by defendants 1 & 2 in A.S.No.48 of 2016 before the II Additional District Court, Salem. Vide its judgment dated 11.07.2017, the learned District Judge has remitted the matter back to the Trial Court for framing proper issues on the genuineness of the Will and for proving the original Will dated 17.07.2000. This is now challenged in this appeal.

3. Heard the learned counsel for the appellant and the respondents 1 to 3.

4. The point before the first Appellate Court was whether Nagammal at all was entitled to any share in the property and whether the Will that she was claimed to have executed on 17.07.2000 was genuine. Both these aspects have a strong bearing on determining the rights of the parties who may have in the suit property. Admittedly, the Will has not been proved by examining its attesting witnesses. All the same, it has been made available before the Trial Court. Therefore, this Court does not find any material error in the approach of the first appellate Court in remitting the matter for elucidating a finding on the genuineness of the Will, dated 17.07.2000.

This Civil Miscellaneous Appeal is therefore dismissed, but with a direction to the Trial Court to expedite the process of entering a finding on the above aspect within two months from the date of receipt of a copy of this judgment, whereupon, the first Appellate Court namely the II Additional District & Sessions Court, Salem is required to dispose of the Appeal within the next two months. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

mrr

To

1.II Additional District and Sessions Judge,
Salem.

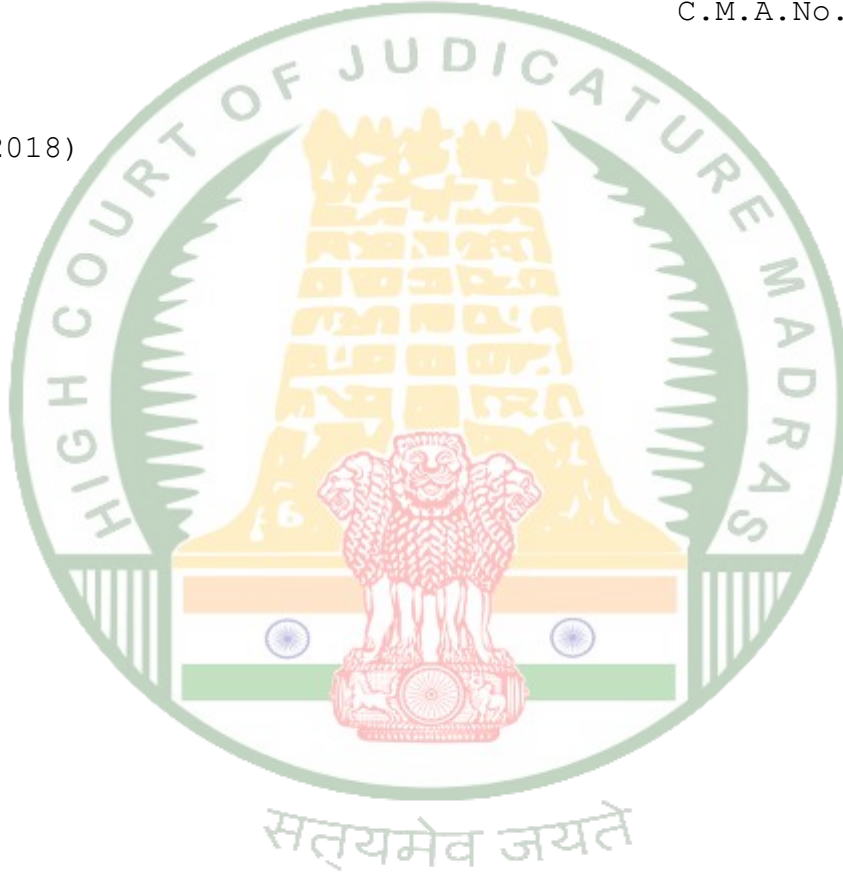
2.The Principal Subordinate Judge,
Salem.

+1cc to Mr.V.V.Sairam, Advocate SR.No.35775

+1cc to Mr.C.K.M.Appaji, Advocate SR.No.36348

C.M.A.No.445 of 2018

CNR(CO)
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