

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2018

PRONOUNCED ON : 02.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.375 of 2015

Jayalakshmiammal (Deceased)

V.Gajapathy (Deceased)

1.G.Saraswathy

2.Dr.G.Sasikala

3.G.Sathish Kumar

4.S.Sujaritha

5.G.Sripriya

... Appellants

Vs.

V.Veeraraghavalu

... Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.08.2006 passed in A.S.No.55 of 2001 on the file of the Principal District Judge, Chengalpattu, confirming the Judgment and Decree dated 30.11.2000 passed in O.S.No.44 of 1999 on the file of the Subordinate Judge, Madurantakam (previously in O.S.No.395 of 1997 on the file of the District Munsif, Madurantakam).

For Appellants : Mr.V.Raghavachari
for M/s.K.Premkumar

For Respondent : Mr.S.Muthukumar

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 28.08.2006 passed in A.S.No.55 of 2001 on the file of the Principal District Court, Chengalpattu, confirming the Judgment and Decree dated 30.11.2000 passed in O.S.No.44 of 1999 on the file of the Subordinate Court, Madurantakam.

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

3.Suit for permanent injunction and possession.

4.The case of the plaintiffs, in brief, is that the first plaintiff purchased the house and ground along with other items of landed properties more fully described in the plaint schedule with her own money by way of the sale deed dated 19.09.1936 and since then, it is she, who is in the absolute possession and enjoyment of the abovesaid properties without let or hindrance and the first plaintiff has got two sons including the defendant herein and her daughter and during the life time, her husband K.Venu Naidu has orally divided his ancestral landed properties situated at Olupakkam Village and Pakkam Village among the defendant and his eldest son and took some items of the properties at the villages for himself and his wife, the first plaintiff and the plaintiff's husband Venu Naidu and his two brothers viz., K.Veeraswamy Naidu and K.L.Jayaram Naidu did not include the properties purchased by the first plaintiff in the year 1936 in their partition, which took place amongst them in the year 1937 and they have admitted that the properties purchased by the first plaintiff had been acquired with her own funds and belonging to her. According to Venu Naidu, he did not include the said properties of the first plaintiff in the oral partition made between himself and the defendant and his eldest son, the second plaintiff. According to the first plaintiff, she had allowed her husband and her two sons to live in the house belonging to her due to the nearness of relationship and her eldest son V.Gajapathy has made the entire financial assistance for the construction of the present house in the place of the old house and the first plaintiff and her husband K.Venu Naidu were living with their eldest son, who had provided all comforts to them. The defendant has separated himself from the family of the plaintiffs several years back and is not in talking terms with the plaintiffs for the past several years. The authorities concerned mistakenly made the tax assessment and granted electric service connection in the name of K.Venu Naidu and with reference to the same, the first plaintiff had been taking appropriate steps to get them transferred in her name. The first plaintiff had allowed the defendant to live in a room in the house belonging to her, when she was in talking terms and she has allowed to put up a small cattleshed in her land situated in front of her house. However, the defendant has no title whatsoever to the plaintiff's property and on the other hand, exceeding his permissive limits, the defendant attempted to put up new constructions in the property with an alternative motive and the defendant is endeavouring in such activities taking advantage of the age of the first plaintiff and hence, according to the first plaintiff, she has been necessitated to lay the suit for the relief of permanent injunction.

5.Pending the suit, the first plaintiff had died and the second plaintiff had come on record by getting himself impleaded

and it is further stated that while in a disposing state of mind, the deceased first plaintiff had executed her last Will dated 04.08.1989 and the deceased first plaintiff having died on 17.03.1991 after her death, it is only the second plaintiff, who is the absolute and exclusive owner of the suit properties and the defendant has no manner of title or interest over the suit properties and hence, according to the second plaintiff, the reliefs prayed for should be granted.

6.The case of the defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. After denying the plaint averments, it is stated that the first plaintiff died intestate in the year 1991, leaving behind the second plaintiff, the defendant and one daughter as her legal representatives to succeed to her estate and the first plaintiff was not hale and healthy during her life time and did not possess good state of mind for several years prior to her death and she had lost her good mental state of mind due to her severe illness and during such illness, the defendant apprehends that taking advantage of the same, the second plaintiff had fabricated the document alleged to be a Will said to have been executed by the first plaintiff and pursuant to the abovesaid Will, the second plaintiff has not taken possession of the suit properties as claimed and further, it is stated that the suit properties had been purchased by the father K.Venu Naidu in the name of the first plaintiff out of the income derived from the ancestral properties and the deceased first plaintiff has no independent income to purchase the suit properties and the suit properties had never been the absolute properties of the deceased first plaintiff. Inasmuch as the father felt that Pangalis would demand a share in the suit properties, to protect the suit properties, he had purchased the same in the name of his wife, the first plaintiff and the second plaintiff is also aware of the same and not objected to the same. Accordingly, the tax assessment and the service connection of the suit properties all stood in the name of their father K.Venu Naidu and the alleged oral partition is not true and there has been never any partition between K.Venu Naidu, the second plaintiff and the defendant as claimed in the plaint and all the family properties are still kept joint and enjoyed in common, only a family arrangement had been made, whereunder the respective parties are in the possession of certain properties without any partition or division and accordingly, the defendant is in the enjoyment of the family properties but without any division by metes and bounds and the first plaintiff has no exclusive right, title or interest over the suit properties and not entitled to execute any Will in respect of the same. The B schedule property had been allotted to the defendant during the life time of K.Venu Naidu and accordingly, he has been in the possession and enjoyment of the same for several decades and also

prescribed title to the same and the suit is devoid of merits and the alleged cause of action is false and therefore, the suit is bad for non joinder of necessary parties and the plaintiffs are not entitled to seek the reliefs prayed for without seeking the relief of declaration and therefore, the suit laid by the plaintiff is liable to be dismissed.

7.On the above pleadings, the parties went for trial and in support of the plaintiffs' case, PWs1 to 3 were examined and Exs.A1 to A33 were marked. On the side of the defendant, DWs1 & 2 were examined and Exs.B1 to 39 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiffs' suit. Aggrieved over the same, the present second appeal has been laid.

9.At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(i). Whether the Court below committed error to give a finding relating to authenticity and genuineness of the sale deed marked as Ex.A2 dated 19.09.1936 as against Section 90 of the Evidence Act without support of any order or documentary evidence by the respondent?

(ii). Whether the Court below committed error to refuse to grant the relief for recovery of possession relating to "B" Schedule property in view of the plea of prescribed title by advance possession was not proved either by oral or documentary evidence as against the true owner?"

10.The relationship between the parties is not in dispute. The deceased first plaintiff is the mother of the second plaintiff and the defendant. Further, the deceased first plaintiff and her husband K.Venu Naidu had also a daughter. The suit had been originally laid by the deceased first plaintiff and after her demise, the second plaintiff had come on record as the second plaintiff and projected the Will dated 04.08.1989 said to have been executed by the deceased first plaintiff in his favour bequeathing the suit properties to him and accordingly, continued the suit and prayed for the reliefs

projected.

11. Materials placed on record go to show that the plaintiffs claim that the suit properties described in the plaint belonged to the deceased first plaintiff based on the sale deed dated 19.09.1936 marked as Ex.A2. On a perusal of Ex.A2 as well as the subsequent mortgage created by the deceased first plaintiff in favour of the vendor Ramasamy Naidu dated 20.11.1936, which document has come to be marked as Ex.A3 and the discharge of the abovesaid mortgage marked as Ex.A4 on 31.08.1942, all would go to show that it is only the deceased first plaintiff, who had acquired the suit properties pursuant to Ex.A2 sale transaction. However it is pleaded by the defendant that though the suit properties had been purchased in the name of the deceased first plaintiff under Ex.A2, it is only K.Venu Naidu, the husband of the deceased first plaintiff, who had paid the money for the abovesaid sale transaction, and also claimed that the deceased first plaintiff has no independent source of income and also pleaded that the abovesaid sale transaction had been taken in the name of the first plaintiff by K.Venu Naidu, with a view to protect the suit properties from the hands of the Pangalis accordingly, it is evident that the defendant has taken the plea of benami transaction in respect of Ex.A2 sale deed. Accordingly, as rightly determined by the trial Court, it is only the defendant, who has to establish the abovesaid plea that though the suit properties had been acquired in the name of the deceased first plaintiff, the sale consideration thereof passed only from K.Venu Naidu. Though it is true that the plaintiffs are unable to establish that the deceased first plaintiff was possessed of sufficient means either through her parents source or otherwise, still evidence has been let in that the deceased first plaintiff was presented jewels by her parents at the time of the marriage. Be that as it may, the defendant having taken the plea of benami in respect of Ex.A2 sale transaction and when it is noted that following Ex.A2 sale transaction, it is only the deceased first plaintiff, who had been dealing with the properties comprised therein as the full owner thereof, it is found that accordingly, the defendant is unable to place acceptable and reliable materials to show that the consideration for Ex.A2 sale deed flowed from K.Venu Naidu and as rightly determined by the trial Court, though the defendant would claim that the first plaintiff was not possessed of sufficient means for acquiring the properties by way of Ex.A2, sale transaction, as could be seen from his evidence, he has pleaded title ignorance about Ex.A2 sale transaction. Furthermore, there is no material worth acceptance placed on the part of the defendant to establish that it is only K.Venu Naidu, who had parted with the sale consideration for Ex.A2 sale deed. On the other hand, as could be seen from the materials placed on record, it is found that

the permission for the construction put up in the suit properties had been obtained only in the name of the deceased first plaintiff, which document has come to be marked as Ex.A5 and also it is seen that the cement distribution has also been issued in the name of the first plaintiff as could be seen from the documents marked as Ex.A6 & A7. Furthermore, it is found that the properties comprised in Ex.A2 sale deed had not been included in the partition, which took place between Venu Naidu and his brothers. Though it is seen that a small extent of 10 cents had also been included in Ex.A2 Koor chit, but when there is no material pointing that the inclusion of the abovesaid item of the suit properties in Ex.A20 Koorchit had been done with the concurrence of the deceased first plaintiff, that by itself, would not entitle the defendant to claim that all the properties comprised in Ex.A2 sale deed had been purchased only by K.Venu Naidu and that, the deceased first plaintiff is only a name lender.

12.The trial Court, on an assessment of the materials placed on record, found that the defendant having failed to establish the benami plea, accordingly, proceeded to hold that the suit properties purchased under Ex.A2 belonged to the deceased first plaintiff. Per contra, the first appellate Court proceeded to hold that the deceased first plaintiff was not possessed of sufficient means on her own to acquire the suit properties by way of Ex.A2 and that, according to the first appellate Court, resultantly, the sale consideration would have been parted only by K.Venu Naidu and thereby, proceeded to hold that the suit properties belonged to Venu Naidu and his joint family. For that determination, it is seen that the first appellate Court has relied upon the tax assessment and electricity payment bills in respect of the suit properties standing in the name of Venu Naidu. No doubt, certain tax receipts and EB Charge bills, had stood in the name of Venu Naidu. However, challenging the same, it is found that the deceased first plaintiff had addressed letters to the concerned authorities to change the assessment/service charges in her name, which had been wrongly effected in the name of her husband K.Venu Nadu and this could be evidenced from Exs.A17 & 18. Furthermore, it is also noted that certain electricity bills standing in the name of the deceased first plaintiff had also been exhibited. In such view of the matter, merely because, the tax assessment and electricity payment bills stood in the name of Venu Naidu, that by itself, would not be sufficient to safely conclude that it is only Venu Naidu, who had parted with the sale consideration for Ex.A2 sale. As rightly determined by the trial Court, considering the relationship of the husband and wife between Venu Naidu and the deceased first plaintiff, it is noted that the tax assessment and the service connection bills etc., would have been taken in the name of the husband Venu

Naidu, and as aboveseen, even challenging the same, the deceased first plaintiff had addressed the letters to the concerned authorities to effect necessary mutation. Furthermore, when there is no material worth acceptance placed by the defendant to safely conclude that the sale consideration for Ex.A2 flowed from Venu Naidu, merely because, the second plaintiff is unable to establish the means of the deceased first plaintiff, that by itself, would not be sufficient to conclude that the deceased first plaintiff is only a name lender and that, Venu Naidu is the real owner of the properties purchased under Ex.A2. The first appellate Court, by shifting the burden on the second plaintiff, is found to have concluded that the suit properties had been purchased only by Venu Naidu in the name of the deceased first plaintiff. On the other hand, as rightly determined by the trial Court, the defendant having failed to discharge his burden in proving that the sale consideration for Ex.A2 sale flowed from K.Venu Naidu, in such view of the matter, merely on the basis of certain tax assessment receipts and electricity bills standing in the name of K.Venu Naidu, we cannot hold that the suit properties are the properties of Venu Naidu and not the separate properties of the deceased first plaintiff. In the light of the above discussions, the determination of the first appellate Court that the suit properties are not the self acquired properties of the deceased first plaintiff and that, they had been purchased in the name of the deceased first plaintiff by Venu Naidu cannot be accepted and accordingly, the conclusion of the trial Court that the suit properties are the separate properties of the deceased first plaintiff is restored.

13.The main issue that is involved in the second appeal is as regards the genuineness of the Will said to have been executed by the deceased first plaintiff bequeathing her properties in favour of the second plaintiff by way of a Will dated 04.08.1989, which document has come to be marked as Ex.A21. The defendant has seriously impugned the genuineness and the validity of Ex.A21 Will. Therefore, the second plaintiff, being the probounder of Ex.A21 Will, as rightly determined by the Courts below, it is for the second plaintiff to establish the abovesaid aspects of the Will in the manner known to law.

14.As abovenoted, the deceased first plaintiff is blessed with two sons viz., the second plaintiff and the defendant as well as one daughter. Therefore, to say that the deceased first plaintiff has bequeathed the properties only in favour of the second plaintiff excluding the other son, the defendant and the daughter, itself, throw a great suspicion in the projected Will marked as Ex.A21 and as could be seen from the materials placed on record, it is found that the second plaintiff examined as PW1

had been closely associated in the execution of the impugned Will marked as Ex.A21. The second plaintiff is an advocate by profession. It is found that the Will in question Ex.A21 had been prepared by his colleague K.R.Ramamoorthy, who is also an advocate. In this connection, the second plaintiff examined as PW1, during the course of chief examination, though would claim that he was not aware of the execution of the Will at the first instance, however, admitted that at the time of the registration of the same, he was also present and he would claim that at the time of the execution of Ex.A21 Will, his mother was hale and healthy. The defence has been taken by the defendant that the mother was not hale and healthy at the time of the execution of Ex.A21 Will and that, taking advantage of the mental infirmity of the mother on account of her aged condition, during her last days, it is contended that the second plaintiff had misused the same and created the Will in question marked as Ex.A21. Though PW1, the second plaintiff, would claim that he was not aware of the execution of the Will, at the first instance, during the course of cross examination, he has admitted and deposed that Ex.A21 Will was scribed / written in his presence and the same was written and registered on the same date in his presence and a draft Will was prepared prior to the execution of Ex.A21 and the draft was prepared by the deceased first plaintiff's grandson Sathiyamoorthy and the draft is available with him and the draft was read over to the deceased first plaintiff and that, he could produce the draft prepared before the execution of the Will and admitted that, he is an advocate by profession and also though he would claim that the relationship between the deceased first plaintiff and the defendant was not cordial, also would depose that his mother namely the deceased first plaintiff directed both him and the defendant to leave the house and accordingly, he had demanded repayment of the amount spent by him and accordingly, it is stated by him that the mother, the deceased first plaintiff, had agreed to leave her properties in his favour as she was not possessed of the sum to repay the same and accordingly, directed him to protect her and the property and resultantly, it is stated by him that the deceased first plaintiff, unable to dispossess the defendant and on the footing that he has to support her, executed the Will Ex.A21 in his favour. Thus, it is found from the abovesaid evidence of PW1, the second plaintiff, he was present during the preparation of the Ex.A21 Will, the execution thereof and the registration thereof throughout and from his evidence, it could be seen that Ex.A21 Will was written, executed and registered on the same date and he was throughout present during the relevant time. Though he would complain of the relationship between the deceased first plaintiff and the defendant not being cordial, from his evidence as aboveoted, it is found that even the relationship subsisting between the deceased first plaintiff and the second plaintiff was also not smooth, accordingly, it is

seen that at one point of time, the deceased first plaintiff had also directed him to leave the house but inasmuch as he had insisted to repay the amount spent by him, left with no other alternative, as the deceased first plaintiff was not possessed the requisite sum to repay the same, accordingly, chosen to execute the Will in question in his favour with the request to him to support her till her last days. Resultantly, it is found that the Will in question Ex.A21 is not executed by the deceased first plaintiff out of love and affection towards the first plaintiff and on the other hand, in some what a strained situation and unenviable position, in which, she had been placed and accordingly, left with no other alternative, it is seen that she had been constrained to execute the Will in question in favour of the second plaintiff. As abovenoted, she had chosen to execute the Will in favour of the second plaintiff as she had not been able to disposess the defendant from the properties. But even as per the pleadings projected in the plaint and the evidence placed on record, it is seen that the defendant was let in a portion of the properties, when the relationship between the parties was smooth and cordial. Therefore, the case projected that inasmuch as the relationship between the deceased first plaintiff and the defendant was not cordial, accordingly, the deceased first plaintiff had excluded him from inheriting the properties by way of Ex.A21 Will, as such, cannot be readily accepted. On the other hand, as abovenoted, even the relationship between the deceased first plaintiff and the second plaintiff was not smooth and only in a forced situation, as above discussed, the deceased first plaintiff was necessitated to execute the Will in question in favour of the second plaintiff. Be that as it may, as could be seen from the evidence of PW1, he was throughout present during the execution and the registration of the Will in question and in such view of the matter, it is seen that he being the propounder, having taken part in the preparation of the Will in question, in the abovesaid situation, that itself, would throw a serious suspicion in the genuineness of the Will in question.

15.The scribe Ramamoorthy examined as PW2 would depose that on the relevant date, the deceased first plaintiff accompanied with M.P.Radhakrishnan came to his chamber and accordingly, it is his statement that she had requested him to assist in preparing the Will in respect of her properties and accordingly, it is stated by him that based on the instructions given by her, he had prepared Ex.A21 Will and handed over the same to the deceased first plaintiff and he had not proceeded to the registration of the same. According to him, the deceased first plaintiff had taken the custody of the Will and left his chamber, this is how he has deposed about the preparation of Ex.A21 Will by him during the course of chief examination. However, during the course of cross examination, he would state that before preparing Ex.A21 Will, he has not prepared any draft

and based on the instructions given by the deceased first plaintiff, he had directly prepared the Will and typed the same and though there is a practice of preparing a draft before preparing the requisite Will, the same is not followed in all the occasions and further, according to him, if a draft is prepared, they used to keep the same in file and further, according to PW2, the deceased has not signed in the Will in his presence and he is not aware of her signature and does not know whether Ex.A21 contains the signature of the deceased first plaintiff and further, according to him, he and PW1 Gajapathy, were in the same chamber and he has also claimed that the deceased first plaintiff, while coming to his chamber, was having the documents with her and would also admit that even during the course of chief examination, after the preparation of the Will and the entrustment of the same to the deceased first plaintiff, while she was proceeding to leave the chamber, the second plaintiff PW1 came to the chamber and he had apprised him of his mother approaching him for preparing the Will in his favour and also informed him that his mother was waiting outside for leaving to her place. As above pointed out, the evidence of PW1 would go to show that he was throughout present during the preparation, execution and registration of the Will and in such view of the matter, the claim of PW2 that PW1 came to his chamber only after the preparation of the Will, when his mother was leaving the abovesaid place as such cannot be readily accepted. Furthermore, when according to PW1, a draft had been prepared before the execution of the Will and the draft is available with him and could be produced by him, PW2, quit inconsistent to the claim of PW1, would state that no draft had been prepared but the Will was directly prepared and typed as per the instructions received from Jayalakshmi, the deceased first plaintiff. In any event, it is found that as regards the abovesaid contradictions, there is no proper explanation. Be that as it may, PW2's evidence would not be safely relied upon to hold that the deceased first plaintiff had signed /executed the Will prepared by him and as admitted by him, the deceased first plaintiff had not signed in the Will Ex.A21 in his presence and he is not aware of her signature available and is not acquainted with the signature as available in Ex.A21 Will.

16.To establish the validity of Ex.A21 Will, the attester M.P.Radhakrishnan had been examined as PW3 by the second plaintiff. Now, according to PW2, when Jayalakshmi, the deceased first plaintiff came to his chamber, he was accompanied with PW3 M.P.Radhakrishnan. As abovenoted, PW1 and PW2 are colleagues in their profession and share the same chamber and even as abovenoted, according to PW2, PW1 came to his chamber, after the preparation of the Will in question. On the other hand, as per the evidence of PW1, he has been present throughout the preparation, execution of the Will in question as well as the registration of the same and accordingly, as per the

evidence of PW1, the execution and the registration of the Will in question took place on the same date. Now according to PW3, the deceased first plaintiff approached him for introducing an advocate and accordingly, it is his claim that he had taken her to the chamber of the advocate Ramamoorthy (PW2) and further, it is stated by PW3 that after leaving her in the chamber of PW2, he left to his office. Therefore, as per the evidence adduced by PW3, during the course of chief examination, he was not present at the time of the preparation of the Will in question by PW2. Therefore, it is seen that as per the evidence of PW3 adduced during the course of cross examination, inasmuch as the deceased first plaintiff had requested him to introduce a good advocate, accordingly, he had taken her to the chamber of PW2 Ramamoorthy and his evidence proceeds as if it is he, who had introduced her to PW2 for the first time. On the other hand, as could be seen from the evidence of the scribe PW2, as adduced during the course of cross examination, it is found that he has clearly admitted that he is known to the deceased first plaintiff for 10 to 12 years prior to the preparation of Ex.A21 and further, he would also state that the deceased first plaintiff came to his chamber for several times for the purpose of seeing her son, the second plaintiff and he and the second plaintiff had practised using the same chamber, therefore, when it is seen from the evidence of PW2 that the deceased first plaintiff is known to PW2 for several years prior to the preparation of Ex.A21 Will, the claim of PW3, that it is he, who had, for the first time, introduced the deceased first plaintiff to PW2 as such cannot be readily believed and accepted. Therefore, it is seen that PW2 has projected a new case of introducing the deceased first plaintiff to PW2. In any event, as could be seen from the evidence of PW2, after leaving the deceased first plaintiff in the chamber of PW2, he had left to his office, therefore, it is evident that he does not know anything about preparation of the Will by PW2 and whether PW2 had prepared the Will as per the instructions given by the deceased first plaintiff. Furthermore, as could be seen from the evidence of PW3, it is seen that he has not directly seen the execution of the Will in question by the deceased first plaintiff and on the other hand, as could be seen from his evidence as adduced during the course of chief examination, he is not aware of the preparation of Ex.A21 Will at the chamber of PW2 and according to him, three days after, he had left the deceased first plaintiff in the chamber of PW2, he was asked by the deceased first plaintiff and grandson Sathiyamoothi, to attest the Will and accordingly, it is his statement that he proceeded to the registrar's office and there under a tree, after reading the contents shown to him, he had signed the document. Therefore, as deposed by him in the normal sequence, he has not stated anything about the execution of the Will by the deceased first plaintiff i.e signing of the Will in question by the deceased first plaintiff and his witnessing of

the same and his attestation thereafter in the Will in question in the presence of the testatrix. But as could be seen from his evidence recorded on the question put up by the plaintiffs' counsel as to whether the deceased first plaintiff had put her signature in the Will, he would depose that the Will contains her signature and that he was present at that point of time and the grandson was also present. Therefore, it is seen that PW3 on his own accord had not stated anything about the execution of the Will by the deceased first plaintiff and his witnessing the same and the attestation of the Will by him in the presence of the deceased first plaintiff etc., Furthermore, during the course of cross examination, he would claim that he does not know for what reason, the deceased first plaintiff had approached him for introducing an advocate and further, he would also state that he had not witnessed the signature of the deceased first plaintiff in any other document to state that her signature is available in Ex.A21 Will and further, according to PW3, only 3 days after the preparation of the Will in question, he had seen the Will for the first time at the registrar's office under a tree and also would state that at that point of time, only the deceased first plaintiff and grandson Sathiyamoorthy were present and PW2 Gajapathy was not present. Therefore, on a reading of the evidence of PW3 in toto, it is seen that he is not speaking the truth. Though he would claim that the deceased first plaintiff is his aunt but strangely he would state that he does now know the reason as to why his aunt had approached him for introducing an advocate. Furthermore, when according to PW3, it is he, who had introduced the advocate PW2 to his aunt for the first time and that immediately thereafter he left to his office. According to PW2, PW1 came to the chamber after the preparation of the Will. On the other hand, according to PW1, he was present throughout at the time of the preparation and execution of the Will and the registration of the same. Now, according to PW3, the attessor PW1 was not present at the time of the registration of the document. Furthermore, according to PW1, the preparation, execution and the registration of the Will had taken place on the same date. On the other hand, as could be seen from the evidence adduced and above discussed, the preparation of the Will took place on a particular date and only three days after the same, the Will had come to be executed and registered and even as above discussed, only at the instance of the plaintiffs' advocate, PW3 would claim that the deceased first plaintiff had signed the Will in his presence and that, he had attested the same. Furthermore, a reading of the evidence of PW3, does not point out to safely hold that he had witnessed the execution of the Will by the testatrix and his attestation as a witness in of the Will and also the attestation of the other attessor in the said Will in the presence of the testatrix and accordingly, when at a later point of time, PW3 has admitted that he is not acquainted with

the signature of the deceased first plaintiff to ascertain whether her signature is available in Ex.A21 Will, all the above facts seen cumulatively would only go to show that PW3 was not at all present at the time of the alleged execution of the Will in question by the deceased first plaintiff and that he had put the signature in the document in question later and accordingly, there had been inconsistent evidence on his part as well as on the part of the other witnesses examined in the matter and accordingly, the resultant position is that there are various material and glaring contradictions surrounding the preparation, execution and registration of the Will in question.

17.The Courts below had not disbelieved the Will in question Ex.A21 merely on the footing that the testatrix has disinherited the other legal heirs from succeeding to the suit properties by way of the same and bequeathed the same solely to the second plaintiff. On the other hand, the discussions made above and as also pointed out by the Courts below, as there are glaring and material contradictions surrounding the execution and the registration of the Will in question as spoken to by the witness examined on behalf of the plaintiff and when with reference to the same, no proper explanation is forthcoming and resultantly, when there is no reason on the part of the testatrix viz., the deceased first plaintiff to disinherit her other son viz., the defendant and her daughter from succeeding to her properties and when there is no reason on her part to bequeath her entire properties in favour of the second plaintiff and as above discussed, the Will in question had not been executed by her in favour of the second plaintiff out of love and affection and on the other hand, by force, she had been constrained to execute the Will in question in favour of the second plaintiff, such being the position, the suspicious circumstances surrounding and associating with the preparation, execution and the registration of the Will in question, the same having not been dispelled by the second plaintiff beyond the reasonable doubt and furthermore, when the second plaintiff being the probounder of the Will is found to be closely associated in the preparation of the Will in question right from the inception till the culmination as claimed by him and when no proper explanation is offered as to why testatrix had excluded her other legal heirs from inheriting the properties, in all, it is seen that the Courts below, pointing to the above aspect of the matter and also considering the authorities projected before them as regards the establishment of the proof of the genuineness and the validity of the Will in question as detailed by the apex Court and High Court, rightly have come to the conclusion that the genuineness and the validity of Ex.A21 Will had not been established by the second plaintiff in the manner known to law and accordingly non-suited his case based on the same.

18. Furthermore, as rightly put forth by the defendant's counsel considering the defence projected by the defendant stoutly resisting the claim of title to the suit properties by the deceased first plaintiff as well as the second plaintiff based on Ex.A21 Will, despite the same, the deceased first plaintiff or for the matter, the second plaintiff having not chosen to claim the relief of declaration in respect of the suit properties as belonging to them respectively as claimed by them and on that score also, it is noted that when the parties had projected rival claims of title to the suit properties, particularly, the defendant having resisted in toto, the claim of title to the suit properties both by the deceased first plaintiff as well as by the second plaintiff, it is seen that the suit laid by the plaintiffs respectively without seeking the relief of declaration of title to the suit properties is fatal and on that score also, the plaintiff's suit has to fail.

19. For the reasons aforesaid, the properties comprised in Ex.A21 Will, as rightly determined by the trial Court, are found to be the separate properties of the deceased first plaintiff and that, the defendant has failed to establish that the said properties had been acquired by Venu Naidu benami in the name of the deceased first plaintiff as put forth by him. The second plaintiff has failed to establish the genuineness and the validity of Ex.A21 Will as per law and in the light of the above discussions, it is found that the second plaintiff is not entitled to claim the reliefs prayed for based on Ex.A21 Will. Though it is claimed by the defendant that he has also prescribed title to the B schedule property by prescription, the materials projected by him do not vouchsafe to his abovesaid claim. Resultantly, the substantial question of law, formulated in this second appeal are accordingly answered.

20. In this connection, the plaintiffs' counsel in support of his various contentions placed reliance upon the decisions reported in 2007 (2) CTC 152 (K.Jaganmohan Vs. D.Ruckmani and another), 2016-5-L.W.548 (Alamelu & others Vs. Kuppayee Ammal), Manu/SC/0278/1963 (Shashi Kumar Banerjee and Ors. Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Ors.), (1974) 2 Supreme Court Cases 600 (Surendra Pal and others Vs. Dr.(MRs) Saraswati Arora and another), (1976) 2 Supreme Court Cases 142 (Afsar Sheikh and another Vs. Soleman Bibi and others), (2014) 15 Supreme Court Cases 570 (Leela Rajagopal and others Vs. Kamala Menon Cocharan and others), (2014) 15 Supreme Court Cases 578 (Ved Mitra Verma Vs. Dharam Deo Verma) and (2005) 9 Supreme Court Cases 375 (Crystan Developers Vs. Asha Lata Ghosh (Smt) Through Lrs. and others) and two other cases. Similarly, the counsel for the defendant, in support of his various contentions, placed

reliance upon the decisions reported in (1968) 3 SCR 473 (Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and others), 2007 (2) CTC 172 (Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao and others), 1959 Supp (1) SCR 426 (H.Venkatachala Iyengar Vs. B.N.Thimmajamma and others), (1977) 1 Supreme Court Cases 369 (Smt.Jaswant Kaur Vs. Smt.Amrit Kaur and others) and 1997-3-L.W.673 (Govindan Chettiar (Died) Vs. Akilandam alias Seethalakshmi and 24 others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Sms
To

1.The Principal District Judge, Chengalpattu.

2.The Subordinate Judge, Madurantakam.

+1cc to Mr.K.Premkumar, Advocate SR.No.76526

S.A.No.375 of 2015

NMI (CO)
GMY (20/12/2018)