

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.10.2018  
PRONOUNCED ON:26.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.476 of 2015  
and  
M.P.No.1 of 2015

1.A.Munusamy  
2.Devaki  
3.Latha  
4.Nagaraj

...Appellants/Defendants

Vs.

1.K.Muniammal  
2.R.Rajammal  
3.Aathilakshmi  
4.S.Parvathy

..Respondents/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 02.03.2011 made in A.S.No.4 of 2010 on the file of the Additional District Court/ Fast Track Court No.II Ranipet, Vellore District reversing the judgment and decree dated 18.12.2008 made in O.S.No.3 of 2004 on the file of the Court of Subordinate Judge, Ranipet.

For Appellants : Mr.T.P.Prabhakaran

For Respondents : Mr.S.K.Chandrakumar

सत्यमेव जयते  
J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 02.03.2011 passed in A.S.No.4 of 2010 on the file of the Additional District Court/ Fast Track Court No.II Ranipet, reversing the judgment and decree dated 18.12.2008 passed in O.S.No.3 of 2004 on the file of the Subordinate court, Ranipet.

2. The Second Appeal has been admitted on the following substantial questions of law.

(a) Whether the lower Appellate Court is correct in law to disbelieve the execution of Ex.B1, Will on the ground that no reason is given in the said Will for this inheriting the the other natural heirs even though DW.3 admitted his signature in the said Will?

(b) Whether the lower Appellate Court is correct in law to disbelieve the execution of Ex.B1, Will on the ground even though DW.3 for attesting witness admits the execution of said Will?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Materials placed on record go to show that the suit properties are the self acquired properties of Andi Sikari Naicker @ Dharamalingam. It is not in dispute that the plaintiffs are the daughters and the first defendant and the deceased Raja Gopal are the sons of Andi Sikari Naicker @ Dharamalingam. The son Raja Gopal had died leaving behind the defendants 2 to 4 as his legal representatives. Claiming that the suit properties are the self acquired properties of Andi Sikari Naicker @ Dharamalingam and after his death, the plaintiffs as his daughters, being entitled to equal shares in the suit properties and inasmuch as the defendants had refused to allot the shares to which the plaintiffs are entitled to, accordingly, it is stated by the plaintiffs that they had been necessitated to institute the suit against the defendants for partition.

5. The defendants mainly resisted the plaintiffs' case on the footing that the deceased Andi Sikari Naicker @ Dharamalingam while he was alive, had bequeathed the suit properties in favour of his sons namely the first defendant and Raja Gopal by way of a registered Will dated 07.03.1986 and following the same, after the demise of the father, it is only the sons and thereby the defendants, who are in the possession and enjoyment of the suit properties by obtaining patta, paying Kists etc., and in such view of the matter, the plaintiffs are not entitled to seek any partition of their alleged shares in the suit properties.

6. As abovenoted, that the suit properties originally belonged to Andi Sikari Naicker @ Dharamalingam is not in dispute. Thus, it is found that the plaintiffs as his daughters would be entitled to claim their respective shares in the suit properties. However, the suit properties being the separate

properties of Andi Sikari Naicker @ Dharamalingam, it is seen that he would be entitled to dispose of the same as he desires and now it is seen that the defendants are resisting the plaintiffs' case on the footing that Andi Sikari Naicker @ Dharamalingam while he was alive, had bequeathed the suit properties in favour of his sons by way of a Will dated 07.03.1986 marked as Ex.B1 and accordingly, inasmuch as the suit properties had been bequeathed to his sons under Ex.B1 Will, the plaintiffs are disentitled to claim any share in the suit properties.

7. Resultantly, the defendants being the propounders of Ex.B1 Will, the onus is upon the defendants to prove the truth and validity of the said Will in the manner known to law. The Ex.B1 is found to be the xerox copy of the registered Will. There is no reason adduced by the defendants as to why have not filed the original Will. That itself rises a suspicions in the genuineness of Ex.B1 Will. No doubt, Ex.B1 Will is found to be a registered document. As could be seen from the death certificate marked as Ex.A2, it is found that Andi Sikari Naicker @ Dharamalingam had died on 07.04.1986. Thus, it is noted that just one month prior to his death, the Will marked as Ex.B1 is alleged to have been executed by Andi Sikari Naicker @ Dharamalingam and to establish the authenticity of the Will, the defendants had chosen to examine the attesor Gopal as D.W.3. The first defendant examined as D.W.1, during the course of his evidence has clearly admitted that the father was bedridden prior to his death and two months prior to his death, his father was in bed and did not go out and accordingly he has averred further that his father had informed him about the execution of the Will two months i.e., 60 days prior to his death and such being the evidence of the first defendant, it has not been explained as to how Ex.B1 Will could have been executed just one month prior to the death of the testator, particularly at that point of time, the testator is found to be bedridden and unable to move out. Thus, the case of the defendants that the impugned Will Ex.B1 had been executed and registered by the testator at the Register's Office on 07.03.1986 as such cannot be believed and accepted. That apart, when according to D.W.1, his father had informed about the execution of the Will two months prior to his death and on the other hand, when the Will itself is found to be executed just one month prior to his death, the abovesaid contradiction has not been properly explained by the defendants and particularly when the movement of the testator had found to be completely restricted and he was bedridden totally, it has not been explained as he would have been able to proceed to the Registrar's office for the execution and the registration of the Will in question.

8. As regards the evidence of the attesor examined as D.W.3 as rightly found by the first appellate court, the attesor had not clearly deposed in his evidence particularly, during the chief examination as well as during the cross examination that he has witnessed the testator signing or executing the Will knowing the contents of the document and that the testator had witnessed his attestation and the attestation of the other witnesses in the Will and in such view of the matter, when the evidence of the attesor D.W.3 does not satisfy the requirements of attestation of the Will by the attesor as contemplated under law, it is seen that no safe credence could be attached to his evidence to accept the truth and validity of Ex.B1 Will. Particularly, as abovenoted, when the testator is found to be totally bedridden two months prior to his death, a serious suspicion arises as to whether at all he would have in a position, both physically and mentally fit, to execute and register the Will in question at the Registrar's Office just one month prior to his death. In any event, as abovenoted, when the evidence of attesor has not referred to the facts about, he having witnessed the execution of the document by the testator and the testator witnessing his attestation as well as the attestation of the other witnesses in the manner known to law, in all, it is seen that the first appellate court had rightly disbelieved the truth and validity of Ex.B1 Will.

9. In addition to that, as rightly pointed out by the first appellate court, no proper explanation has been projected by the defendants as to why the father had chosen to disinherit his daughters from assigning any properties in their favour and the abovesaid factor also would go to expose the falsity of the Will and the suspicion surrounding the same having not been properly dispelled by the defendants, it is seen that the first appellate court is justified in rejecting defence version for refusing the shares to which the plaintiffs are entitled in the suit properties.

10. Considering the fact that the suit properties are the self acquired properties of Andi Sikari Naicker @ Dharamalingam and admittedly the plaintiffs being his daughters and following his death, all his legal heirs would be entitled to equal shares in his properties and the Will projected by the defendants to refuse the claim of the shares by the plaintiffs in respect of the suit properties being found to be not established in any manner, both as regards the execution of the same by the testator as well as the registration thereof as above discussed and the defendants having failed to dispel the suspicious circumstances surrounding the said Will as above pointed out, in all, it is found that the first appellate court is wholly justified in rejecting the defence version and accepting the plaintiffs' case for claiming the shares in the suit properties.

11. In the light of the above discussions, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiffs.

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

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge/  
Fast Track Court No.II,  
Ranipet,  
Vellore District.

2. The Subordinate Judge,  
Ranipet.

3. The Section Officer,  
VR Section,  
High Court,  
Chennai.

+ 1 cc to Mr. T.P. Prabakaran, Advocate SR.73535

+ 1 cc to Mr. S.K. Chandrakumar, Advocate Sr.73400

S.A.No.476 of 2015  
and

M.P.No.1 of 2015

EV(CO)

EU(03/12/2018)

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