

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Second Appeal No.567 of 2018
and Civil Miscellaneous Petition No.17007 of 2018

1.C.K.Loganathan
2.Sakthivel,
S/o.Angappa Mudaliar.
3.Saravanan. Appellants/Plaintiff

vs

1.Rangammal,
W/o.C.K.Subramaniam.
2.Radhakrishnan,
S/o.Manickam.
3.M.Ramasamy.
4.M.Sivasamy.
5.C.Sampathkumar. Respondents/Defendants

Appeal filed under Section 100 of Code of Civil Procedure, 1908 to set aside the judgment and decree dated 31.10.2017 made in A.S.No.24 of 2012 on the file of the Sub Court, Sathiyamangalam confirming the judgment and decree dated 15.09.2012 made in O.S.No.54 of 2010 on the file of the District Munsif Court, Sathiyamangalam.

For Appellants : Mr.S.Kaithamalai Kumaran

JUDGMENT

Heard Mr.S.Kaithamalai Kumaran, learned counsel for the appellants.

2.This appeal, filed by the plaintiffs, is directed against the judgment and decree passed in A.S.No.24 of 2012 dated 31.10.2017, on the file of the Sub Court, Sathiyamangalam confirming the judgment and decree of the District Munsif Court, Sathiyamangalam in O.S.No.54 of 2010, dated 15.09.2012.

3.The above appeal has been filed raising the following substantial questions of law:-

"(i) Whether the Courts below are right in dismissing the suit for declaration, when the plaintiffs had successfully proved his ownership based upon Ex.A-2 as per provision of the Section 68 of the Indian Evidence Act?

(ii) When the Will Ex.A-2 is proved as per Section 68 of Indian Evidence Act by examining P.W.2 and P.W.3 who were attesting witnesses, is it justifiable to hold that since the beneficiary under the Will did not appear for cross-examination, the Will cannot be accepted?"

4.The appellants/plaintiffs filed the suit to declare the suit properties belong to them after the demise of the 1st defendant and for a permanent injunction to restrain the defendants from alienating or encumbering the suit properties.

5.The 1st defendant, the 1st respondent herein is the wife of one C.K.Subramaniam. The defendants 2 to 4 are the children of the sister of the 1st defendant. The plaintiffs are the children of the brother of C.K.Subramaniam, the husband of the 1st defendant.

6.According to the plaintiffs, C.K.Subramaniam had executed a Will in their favour and after the demise, the property stands bequeathed in their favour, as the said C.K.Subramaniam is the sole and absolute owner. Further, it was the case of the plaintiffs that the 1st defendant, wife of C.K.Subramaniam had no right over the property, and the Settlement Deed executed in favour of the defendants 2 to 4 is invalid.

7.Before the Trial Court, on the side of the plaintiffs, five witness were examined as P.W.1 to P.W.5, which included the 1st plaintiff/C.K.Loganathan as well as the 1st defendant Tmt.Rangammal, who was examined as P.W.5. On the side of the defendants, one witness was examined as D.W.1. Eight documents were exhibited on the side of the plaintiffs as Ex.A1 to Ex.A8 and six documents were exhibited on the side of the defendants as Ex.B1 to Ex.B6.

8.The Trial Court, in my considered view, has properly dealt with the oral and documentary evidences placed before it and answered the four questions framed for consideration in a proper and just manner. The genuinity of the Will was not

established by the plaintiffs. In this regard, it is noteworthy to mention here the evidence of P.W.5, the 1st defendant, who has specifically denied that her husband executed a Will. Further, the Trial Court pointed out certain serious inconsistency in the circumstances, which goes to show that there is no Will executed by late C.K.Subramaniam. The findings rendered by the trial Court was tested by the lower appellate Court and after re-appreciating the evidence on record, the Court came to the conclusion that the trial Court was justified in dismissing the suit.

9.In the light of the factual matrix involved in this case, I am of the considered view, that no substantial question of law arises for consideration in this appeal.

10.Accordingly, the appeal fails and the same is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
The Sub Court,
Sathiyamangalam.

2.The District Munsif,
The District Munsif Court,
Sathiyamangalam.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.71842

S.A.No.567 of 2018

PA(CO)
GSP(29/11/2018)

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