

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2018

PRONOUNCED ON : 19.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 982 of 2003

Kaleeswaran ... Appellant/Plaintiff

Vs.

S.Sivasubramanian ... Respondent/Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Court of the Principal Subordinate Judge, Nagapattinam, in A.S.No.126 of 1995 and dated 08.04.1996 in confirming the judgment and decree on the file of the District Munsif Court, Nannalam in O.S.No.257 of 1993 dated 16.09.1994.

For Appellant : Dr.G.Krishnamoorthy

For Respondent: Mr.J.Nandagopal

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 08.04.1996 passed in A.S.No.126 of 1995 on the file of the Principal Subordinate Court, Nagapattinam, confirming the judgment and decree dated 16.09.1994 passed in O.S.No.257 of 1993 on the file of the District Munsif Court, Nannilam.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration, possession and mesne profits.

4.The case of the plaintiff in brief is that the suit properties originally belonged to Govindhasamy Udaiyar and he had two sons namely Samiayya Udayar and Chockalinga Udaiyar and Sri Rangathammal is his wife, Lakshmi ammal is the wife of Samiayya Udayar. Lakshmi ammal died even prior to the death of Sri Rangathammal. Dhanabackiyam is the daughter of Lakshmi

ammal and Sadatcharam is the son of Dhanabackiyam and the plaintiff is the son of Sadatcharam. Appaiya Udayar is the son of Chockalinga Udaiyar and Krishnammal is the sister of Appaiya Udayar. One Murugayya Udaiyar married Krishnammal as his second wife and through his first wife, he had four daughters and the defendant's father Somasundaram is born to the eldest of the above said daughters and defendant is the son of Somasundaram. During the life time of Lakshmi ammal, the properties had been managed by Appaiya Udayar and the suit properties are not the separate properties of Appaiya Udayar and the same are the ancestral properties and it is false to state that Appaiya Udayar is the paternal uncle to the defendant and that he bequeathed the suit properties in favour of the defendant, by way of a Will dated 09.03.1993 and Appaiyya Udaiyar died on 25.03.1993 to the knowledge of the plaintiff both his grandmother Dhanabackiyam and Sadacharam, the father died intestate and as such after the demise of Appaiya Udayar, it is only the plaintiff, who is entitled to succeed the suit properties, taking advantage of the settlement of the plaintiff's grand parents and others at Trichy permanently, on the demise of Appaiya Udayar, the defendant trespassed and occupied the suit properties and hence left with no other alternative, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. Govindhasamy Udaiyar and his two sons Samiayya Udayar and Chockalinga Udaiyar divided the properties on 12.08.1991 and living separately thereafter, Appaiya Udayar is the eldest son of Chockalinga Udaiyar and Chockalinga Udaiyar had also another son Ramachandra Udaiyar and two daughters Krishnammal and Rathikanthammal and all the legal heirs of Chockalinga Udaiyar died even prior to Appaiya Udayar and Appaiya Udayar being the sole heir has been enjoying the suit properties and the plaintiff has no connection whatsoever with the suit properties. Appaiyya Udaiyar did not contract any marriage and the plaintiff is not his legal heir. It is false to state that Appaiya Udayar had been only managing the suit properties on behalf of Lakshmi ammal and the plaintiff has not traced the history of the ancestral nature of the suit properties. Appaiya Udayar had been enjoying the suit properties for several years as his own properties openly and continuously and also alienated the properties enjoyed by him to various persons and the suit laid by the plaintiff without impleading others is bad in law. The defendant is related to Appaiya Udayar and taking care of Appaiya Udaiyar and accordingly on account of love and affection, Appaiyya Udaiyar, by way of a Will dated 09.03.1993 bequeathed the suit properties in favour of the defendant and the said Will had been registered

duly and attested by the witnesses and accordingly on the demise of Appaiya Udaiyar, it is only the defendant, who had been in possession and enjoyment of the suit properties and hence the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 5 were examined. Exs.A1 to A8 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B12 were marked. Exs.X1 to X15 were also marked.

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

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

(a) Whether the Courts below are right in upholding Ex.B3, when the evidence on record establish its impossibility of execution on 09.03.1993?

(b) Whether the Courts below ought not to have held that the defendant being the Propounder of the Will, should remove all suspicions in its execution and on the facts and circumstances of the case, the evidence of D.W.2 and D.W.3 are unreliable and fails to prove the case of due execution?

9. Further, the materials placed on record and as determined by the Courts below rightly, it is found that the suit properties belonged only to Appaiyya Udaiyar. Claiming that he is the only legal heir to Appaiya Udaiyar, the plaintiff has come forward with the suit seeking the reliefs of declaration, possession and mense profits. Per contra, claiming that he is related to Appaiya Udayar and also it is only he, who had taken care of Appaiya Udaiyar during his last days and on account of love and affection, Appaiya Udaiyar had bequeathed the suit properties in his favour by way of a Will dated 09.03.1993 and thereby, the defendant seeks claim of title to the suit properties.

10. The Will dated 09.03.1993 projected by the defendant has been marked as Ex.B3 and according to the plaintiff, the said Will is not a true Will. Having found that Appaiyya Udaiyar is

the owner of the suit properties, the main point arises for the consideration in the matter is, whether the defendant would be entitled to lay a claim of title to the suit properties, by way of the above said Will or the plaintiff as the next legal heir to Appaiyya Udaiyar would be entitled to succeed to the suit properties after Appaiya Udaiyar.

11. Inasmuch as Ex.B3 Will has been challenged by the plaintiff, the defendant being the propounder of the same, has to establish the genuineness and veracity of the same. In this connection, the defendant has examined the testators of the said Will as D.Ws.2 and 3. On a perusal of the evidence of D.Ws.2 and 3, as rightly determined by the Courts below, it is found that they had without any material contradiction and also in a reliable and acceptable manner, cogently and neatly have tendered evidence as to the execution of Ex.B3 Will by Appaiyya Udaiyar as regards the suit properties in favour of the defendant and their witnessing the same in the presence of Appaiya Udaiyar and in the presence of each other and also the registration of the Will in question and accordingly, it is found that the defendant as the propounder of the Will, having established the due execution and the registration of the Will as per the legal requirements through the evidence of D.Ws. 2 and 3 and when from the testimony of D.Ws.2 and 3 as well as the evidence of the defendant examined as D.W.1, it is found that Appaiyya Udaiyar was physically capable of executing the Will in question and not suffering any serious ill health so as to dis-entitled him physically to execute the Will in question or when it is not been placed by any proof that Appaiya Udaiyar had become incapable physically or mentally in executing any document as regards the suit properties particularly, during the relevant point of time, as rightly determined by the Courts below, based on the above said evidence of D.Ws.2 and 3, it is found that the Will in question Ex.B3 has been established to have been executed only by Appaiyya Udaiyar in a fit state of mind, on his volition, with the intention of bequeathing the suit properties belonging to him in favour of the defendant, on account of love and affection towards the defendant.

12. No doubt, as discussed and explained by the Courts below that there are some minor contradictions in the evidence of the witnesses examined on behalf of the defendant as to, who had solicited the witnesses for the execution of the Will and when actually Appaiya Udaiyar had intended to execute the Will as rightly found by the Courts below, the said contradictions being not materially affecting the actual execution of the Will in question by Appaiya Udaiyar as testified by D.Ws.2 and 3 in a clear and acceptable manner, it is found that the Will in question Ex.A3 had been established to be a true document satisfactorily beyond any doubt by defendant in accordance with

law.

13.As rightly determined by the Courts below, though some suggestions had been made that Appaiya Udaiyar was not in good health and immobile and therefore would not have been in a position to execute the Will in question, however, considering the materials placed on record, when it is found that Appaiya Udaiyar during the relevant point of time was capable of writing letters independently by scoring out the same at several places, this could be evidenced from Ex.X13 which would only go to show the mental stability of Appaiyya Udaiyar and further when it also seen that Appaiya Udaiyar had been capable of traveling in the bus as projected in the matter, it could be visualized that Appaiya Udaiyar was maintaining good health, capable of executing the Will in question and in such view of the matter, the case projected by the plaintiff that Appaiya Udaiyar was completely unconscious, immobile and not mentally fit during his last days as such cannot be countenanced. Equally it is found that the testator Appaiya Udaiyar had been residing in the house of the defendant during his last days at "Engan village" as could be seen from the evidence adduced in the matter through the mouth of P.W.5. The case projected that Appaiya Udaiyar would not have been in a position to execute the Will in question in the village of the defendant as such cannot be accepted and rightly disbelieved by the Courts below.

14.The Courts below had rightly taken into consideration, the oral evidence adduced by the parties concerned and assessed the same in detail on all aspects and also taken into consideration the documents projected finding that though Appaiya Udaiyar had been taking treatment for his illness, however, found to be physically fit as such and mentally stable for executing the Will in question during the relevant point of time and it is found that no infirmity could be attributed in any manner to the determination of the Courts below as to the veracity and the genuineness of the Will in question namely Ex.B3.

15.In the light of the above discussions, the Courts below had on a thorough, analysis and discussion of the pros and cons of the oral and documentary evidence adduced in the matter and by adducing proper reasonings, rejected the theory projected by the plaintiff that there is no possibility of the execution of Ex.B3 Will by Appaiya Udaiyar during the relevant point of time and accordingly finding that the propounder of the Will namely the defendant had established the genuineness of the Will Ex.B3 in all aspects through the evidence of D.Ws.2 and 3 and accordingly finding the alleged suspicions projected and surrounding of the Will are not at all true and vitiating in any manner, the veracity of the Will, it is found that no interference at all is called for in the reasonings and

conclusions of the Courts below for upholding the truth of the Will Ex.B3 projected by the defendant. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendant and against the plaintiff.

16.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 Principal Subordinate Judge.
Nagapattinam.

2.The District Munsif,
District Munsif Court,
Nannilam .

Copy to

The Section Officer,
VR Section,
High Court, madras (2 copies)

judgment made in
S.A.No.982 of 2003

ssi(CO)
TR(16/04/2018)

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