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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 14.08.2018

DELIVERED ON 30.08.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Second Appeal No.2097 OF 2001
and C.M.P.No.11902 of 2018

1. S.Parvatham
2. Deivasigamani

... Appellants/Respondents 1 &2/
Plaintiffs

Vs.

1. Yuvaraj, s/o Poosappan,
(R1 declared as major and his mother and guardian
Saraswathi discharged from the guardianship vide order
of court dated 13.07.2018 made in CMP No.11902 of 2018
in S.A.No.2097 of 2001.
2. Saraswathi
3. Lakshiammal (Deceased)
(R3 died) Memo dated 1.8.2018 is recorded. Appellants 1 & 2
and respondents 1 & 2 are recorded as LR's of the deceased viz.,
Lakshmiammal vide order of court dated 01.08.2018 made in
SA.No.2097 of 2001.)
4. Kannammal ...Respondents/Respondents 3 &4/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment made in A.S.No.28 of 2001 dated 19.07.2001 by the II Additional District Judge, Erode reversing the decree and judgment made by the II Additional Sub Judge, Erode in O.S.No.266 of 1993 on 31.10.2000.

For Appellant : M/s V.Srimathi
for Mr.V.Raghavachari

For Respondents 1 & 2 : Mr.T.Murugamanickam, Senior counsel
for Ms. Zeenath Begum

3rd Respondent : Died

4th Respondent : Kannammal (party in person)

No Appearance



JUDGMENT

The unsuccessful appellants in A.S.No.28 of 2001 on the file of the II Additional District Judge, Erode have filed the present appeal. They are the plaintiffs in O.S.No.266 of 1993 on the file of the II Additional Sub Judge, Erode. They filed a suit for partition of the A and B schedule properties into 8 equal shares and to allot 4 such shares in A schedule property and 2 shares in B schedule properties to them (plaintiffs). The suit was decreed as prayed for by the plaintiffs on 31.10.2000 by the II Additional Sub Judge, Erode, as against which, A.S.No.28 of 2011 was filed before the II Additional District Judge, Erode by the 2nd and 4th defendants. The 2nd Additional District Judge, Erode, reversed the findings of the II Additional Sub Judge, Erode and the suit in O.S.No.266 of 1993 was dismissed.

2. The plaintiffs in O.S.No.266 of 1993 on the file of the II Additional Sub Judge, Erode are now before this court as appellants.

3. For the sake of convenience, the parties are called as per their ranking in the original suit in O.S.No.266 of 1993

1. Parvatham
2. Deivasigamani ... Plaintiffs

Vs,

1. Lakshmiammal
2. (Minor) Yuvaraj
3. (Minor) Praveenkumar (deceased)
(minor defendants 2 and 3 are represented by their mother and natural guardian Saraswathi, 4th defendant)
4. Saraswathi
5. Kannammal ... Defendants

4. The first defendant Lakshmiammal had three daughters and one son namely Parvatham (first defendant), Deivasigamani (2nd plaintiff), Kannammal (5th defendant) and late Poosappan and the defendants 2 and 3 are the sons of late Poosappan and his wife Saraswathi is the 4th defendant. Deivanaammal and the first defendant Lakshmi Ammal are sisters born to one Chenniappagounder. The properties described in A schedule was originally belonged to Chenniappagounder, in which the first defendant and her sister Deivanaammal have equal shares. The defendants 2 & 3 (minors) are represented by their mother Saraswathi (4th defendant) and they are the sons of late Poosappan. The B schedule properties were purchased by Deivanaammal's husband Karuppannagounder. Deivanaammal and Karuppannagounder died without issues. The case of the plaintiff is that Daivanaimmal executed a Will dated 25.07.1992 (Ex.A7) bequeathing her properties in favour of the plaintiffs and defendants 1, 2, 3 and 5. As per the said Will Ex.A7, the



plaintiffs and the 5th defendant would each get 1/4th share in the properties mentioned in the Will, while the defendants 2 & 3 get 1/8th share each. It is also the contention of the plaintiffs that a family arrangement dated 06.12.1992 (Ex.A2) was made by which the plaintiffs and the defendants had agreed for division of the properties, as mentioned in the deed and that the said deed was not given effect by the defendants.

5. The defendants 1 to 4 filed a written statement contending that late Deivanaiammal executed a Will dated 07.05.1990 (Ex.B1) in favour of late Poosappan, the only son of the first defendant (since deceased) and since Poosapan pre-deceased Deivanaiammal, she (Deivanaiammal) executed another Will dated 20.09.1992 (Ex.B2) bequeathing her properties in favour of the defendants 2 & 3, sons of late Poosappan. According to them, the Will Ex.A7 and the family arrangement Ex.A2 are not genuine and valid documents and are created to grab the properties, that were bequeathed in favour of the defendants 2 & 3.

6. The 5th defendant in her written statement had alleged that since the plaintiffs and the defendants 1 to 4 did not come forward to divide the properties, as per the Will dated 25.07.1992 (Ex.A7), a Panchayat was convened, in which it was agreed by all the parties as follows.

a. The defendants 2 to 4 would be entitled to the properties situate in Thuyyampondurai Village and the usufructs of the coconut trees would go to the first defendant till her death and thereafter, to the defendants 2 to 4.

b. The defendants 2 to 4 should pay a sum of Rs.50,000/- to the first plaintiff and the 5th defendant and on such payment, both of them should execute a relinquishment deed in respect of all the properties in favour of the defendants 1 to 4.

c. The 2nd plaintiff Deivasigamani should get a sum of Rs.75,000/- from the defendants 2 to 4 and execute a relinquishment deed in respect of the house bearing door No.16, Chinnappa Street, New Ward No.27, Erode Town Municipal limit in favour of the defendants 2, 3 and 4.

d. The first defendant would be entitled to Punja land in Kollankoil Village measuring 1.50 acres and in lieu of the same, a partition deed should be executed by the defendants 1 to 4.

e. The amounts mentioned in the deed (Ex.A2) should be paid within a period of 9



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months from the date of the said deed.

f. The parties should not violate any of the conditions of the deed and in the event of violation, the aggrieved party may approach the court to resolve the disputes and the party, who violates the terms and conditions of the deed would bear the entire expenses incurred in this regard.

7. According to the plaintiffs and the 5th defendant, all the plaintiffs and the defendants 1, 4 and 5 signed the agreement dated 06.12.1992 (Ex.A2), and that, now the defendants 1 to 4 are refusing to give effect to the said family arrangement. They have therefore, prayed for the partition of the suit properties as mentioned in Ex.A2 agreement or to give effect to the Will dated 25.07.1991 executed by Deivanai Ammal.

8. The Trial court held that the Will dated 25.07.1992 (Ex.A7) and the family arrangement dated 06.12.1992 (Ex.A2) are true and valid and decreed the suit partitioning the A schedule property into 4 equal shares and allotting two such shares to the plaintiffs and 1/8 share to the 5th defendant. The Trial Court further held that the plaintiffs and the 5th defendant are each entitled to 1/4 th share in the suit B schedule property.

9. Aggrieved over the decree and judgment dated 31.10.2000 passed by the II Additional Sub Judge in O.S.No.266 of 1993, the defendants 2 to 4 filed an appeal in A.S.No.28 of 2001 before the II Additional District Judge, Erode and the II Additional District Judge, Erode, after full contest, allowed the appeal and set aside the decree and judgment dated 31.10.2000 passed by the II Additional Sub Judge in O.S.No.266 of 1993. It is further held that the Will dated 20.09.1992 (Ex.B2) is true and valid and the plaintiffs and the 5th defendant cannot claim any share in the suit properties.

10. This court while admitting the appeal, framed the following substantial questions of law.

1. Whether the lower appellate court ought not to have rejected Ex.B1 and Ex.B2 as connected deeds, particularly when the existence of the documents had not been disclosed at the earlier point of time?

2. Whether the document under Ex.B2 is not shrouded with mystery, when the propounder of the document is unable to establish any special affection of the Deivanaiammal had for Poosan?

3. Whether the appellate court is right in accepting Ex.B2, when there is no



impression of the Deivanaiammal on the document under Ex.B1 & Ex.B2?

11. At the outset, it may be observed that all the Will dated 07.05.1990 (Ex.B1), 20.09.1992 (Ex.B2), 25.07.1992 (Ex.A7) and the agreement dated 06.12.1992 (Ex.A2) are not registered. The plaintiffs' main prayer is that the defendants either should give effect to the agreement(Ex.A2) or the Will dated 25.07.1992 (Ex.A7). The defendants while denying the execution of both the documents, had pressed into service two Wills dated 07.05.1990 (Ex.B1) and 20.09.1992 (Ex.B2). The Will dated 07.05.1990 (Ex.B1) is said to be executed in favour of Poosappan, the only son of the first defendant and since he died in an accident, it is alleged that late Deivanaiammal executed the 2nd Will dated 20.09.1992 (Ex.B2) in favour of the defendants 2 & 3, who were then minors, mentioning their mother Saraswathi (4th defendant) as their guardian. It is an admitted fact that Deivanaiammal died on 30.11.1992, within 2 1/2 months from the date of execution of the alleged Will dated 20.09.1992 (Ex.B2) and after two years of the death of Poosappan. In Ex.B2, the date of death of Poosappan is mentioned as 07.07.1990. It seems dispute over the properties of the Deivanaiammal had commenced from the year 1990 between the legal heirs of the first defendant Lakshmiammal.

12. The plaintiffs, in order to establish that the Will dated 25.07.1992(Ex.A7) and the agreement dated 06.12.1992 (Ex.A2) are true and valid, examined the 2nd plaintiff as well as one Muthusamy Goundar (Pw2) and Kuzhanthaisamy (Pw3), the attestors of the Will Ex.A7. At this juncture, it is relevant to point out that there is no mention about the Will dated 25.07.1992 (Ex.A7) in the agreement dated 06.12.1992 (Ex.A2). This has not been properly explained by the plaintiffs. Further more, the evidence of Pw1 shows that the plaintiffs and the 5th defendant took active part in execution of the Will dated 25.07.1992 (Ex.A7).

13. On the side of the defendants, the 4th defendant examined herself as well as one Mr.Palanichami (Dw3) and one Mohanasundar (Dw4), attestors of both the Wills Ex.B1 and Ex.B2. The II Additional Sub Judge, Erode has observed that since the place of execution of the Wills dated 07.05.1990 (Ex.B1) and 20.09.1992 (Ex.B2) is one and the same and also the attestors to both Wills are the same persons, there is suspicion over the Wills Ex.B1 and Ex.B2. He has further observed that Ex.A1 appears to be natural, since, all the legal heirs of the sister of Deivanaiammal have been given equal shares in the properties by the testator of the Will Ex.A2. At this juncture, it is to be pointed out that when the plaintiffs issued notice dated 13.03.1993 (a copy of which is marked as Ex.A3) to the



defendants calling upon them to give effect to the family arrangement dated 06.12.1992 (Ex.A2), the defendants issued a reply dated 24.03.1993 (Ex.A6), in which there is no mention about the Wills Ex.B1 and Ex.B2.

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14. The learned counsel appearing for the defendants 1 to 4 would contend that since the plaintiff did not produce Ex.A2 and Ex.A7, as requested by the defendants 1 to 4 in their reply notice Ex.A6, the defendants 1 to 4 did not send any notice subsequently, mentioning the Wills Ex.B1 and Ex.B2 to the plaintiffs.

15. This arguments advanced by the learned counsel appearing for the defendants 1 to 4 cannot be accepted, because, the defendants 1 to 4 had feigned ignorance about the execution of Ex.A2, especially, when the father of the 4th defendant has signed as a witness in Ex.A2. The signature of the 4th defendant's father has not been disputed and he has not been examined on the side of the defendants 1 to 4 to show that he has not signed Ex.A2. Though the 4th defendant has disowned her thumb impression in Ex.A2, she did not take steps to compare her thumb impression with that of the thumb impression found in Ex.A2. The mere fact that the plaintiffs alone have to prove Ex.A2 would not absolve the liability of the defendants 1 to 4 to prove that the 4th defendant had never affixed her thumb impression in Ex.A2. On the other hand, learned counsel for the defendants 1 to 4 contended that the 4th defendant used to sign, which would be evident from the postal acknowledgment card Ex.A5. It is true that the 4th defendant has signed in the postal acknowledgment card Ex.A5, but the signature appears like a drawing by hand.

16. The learned counsel appearing for the appellants would contend that the 4th defendant might have been taught to sign at that point of time, because, the defendants 1 to 4 were in the process of pressing into service the Will dated 07.05.1990 and 20.09.1992 (Ex.B1 and Ex.B2). It is also pertinent to point out that no other documentary evidence is produced by the 4th defendant to show that she does not have the habit of affixing her thumb impression and that she always used to sign in all the documents.

17. The following are the suspicious circumstances attendant on the Wills Ex.B1 and Ex.B2

[i] The Wills are executed in favour of one of the legal heirs of the first defendant and the other legal heirs were excluded.

[ii] The defendants 1 & 4 though had subscribed their thumb impression in Ex.A2 agreement and the father of the 4th defendant



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signed as a witness in Ex.A2, there is no mention about the Will Ex.B1 and Ex.B2.

[iii] In the reply notice Ex.A6 also, there is no whisper about the Will Ex.B1 and Ex.B2.

[iv] Ex.B2 was executed just two months prior to the death of Deivanaiammal.

[v] If Deivanaiammal had really executed Ex.B1 in favour of Poosappan, she would have immediately executed Ex.B2, upon the death of Poosappan in favour of the defendants 2 & 3 and Ex.B2 is executed just two months prior to her death.

[vi] It is not also explained as to what prompted Deivanaiammal to execute Ex.B2, just two months prior to her death, especially when it is alleged that Deivanaiammal had good health, till her death on 30.11.1992.

18. Merely because late Poosappan, son of the first defendant and his wife were staying with Deivanaiammal for some time, it cannot be presumed that Deivanaiammal had special liking towards Poosappan and his children. Though in the Will Ex.B1, it is mentioned that late Deivanaiammal brought up Poosappan from his child hood and got him married to the 4th defendant, the evidence adduced on both sides shows that Poosappan stayed with Deivanaiammal, when he was studying in a college at Erode and thereafter, started living with Deivanaiammal. At this juncture, it is to be pointed out that Poosappan is the only son of Lakshmi Ammal (first defendant), the sister of Deivanaiammal and the plaintiffs and the 5th defendant got married and were living with their family in their respective houses. Therefore, there was no occasion for them to join Deivanaiammal during her old age and Poosappan alone had this advantage over the others. Being a male, he was alone given education at Erode, where Deivanaiammal was residing in the B schedule property, purchased by her husband. Since there are suspicious circumstances attendant on the Wills Ex.B1 and Ex.B2, I hold that they are not genuine.

19. However, the plaintiffs had also taken active part in the execution of the Will Ex.A7 and there is absolutely no whisper about this Will Ex.A7 in the subsequent family arrangement Ex.A2 made on 06.12.1992. Therefore, the Will Ex.A7 cannot also be considered as a genuine document.

20. It is also to be pointed out that both the parties did not take steps to compare the thumb impression affixed in the three Wills viz. Ex.B1, Ex.B2 and Ex.A7 allegedly executed by Deivanaiammal by an expert. As already observed, in the family arrangement dated 06.12.1992 (Ex.A2), there is no mention



about the Will Ex.A7 and the defendants have not also mentioned about the Will Ex.B1 and Ex.B2 in their reply notice Ex.A6. In Ex.A2 family arrangement between the plaintiffs and the defendants, the partition of the properties of Deivanaiammal have been made and this includes the property (B schedule property) which she got from her husband.

21. As per Section 15(2)(b) of the Hindu Succession Act, the B schedule property would devolve upon the heirs of husband of Deivanaiammal and not upon the heirs of Deivanaiammal's father. Section 15(1) and Section 15(2) of the Hindu Succession Act, 1956 reads thus.

15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

However, in Ex.A2, the defendants 2 to 4 were directed to pay a sum of Rs.75,000/- to the 2nd plaintiff and on payment of the same, the 2nd plaintiff should execute a relinquishment deed in respect of the B schedule property in favour of the defendants 2 to 4. The parties to the Ex.A2 family arrangement do not have any right over the B schedule property, since late Deivanaiammal



got the said property from her husband. Therefore, they cannot enter into any sort of agreement in respect of the B schedule property and therefore, Ex.A2 cannot be given effect to. The plaintiffs have filed the suit to enforce either the Will Ex.A7 or the family arrangement Ex.A2. In any event, since the A schedule property was inherited by late Deivanaiammal from her father late Chenniappagounder, the same would devolve upon the first defendant, upon the death of Deivanaiammal. Since in the instant case, the first defendant died during the pendency of this appeal, the suit A schedule properties would devolve upon the plaintiffs, 2nd defendant and the 5th defendant as follows.

a. The plaintiffs (Parvatham and Deivasigamani) and the 5th defendant (Kannammal) are each entitled to 1/4 share in A schedule property.

b. The 2nd defendant (Yuvaraj) is entitled to 1/8th share in A schedule property.

c. Since the 3rd defendant (Praveenkumar) died during the pendency of the suit, his share would devolve upon the 4th plaintiff (Saraswathi), his mother.

22. In the result,

(i) the appeal is partly allowed.

(ii) preliminary decree is passed in respect of A schedule properties and the plaintiffs (Parvatham and Deivasigamani) and the 5th defendant (Kannammal) are each entitled to 1/4th share and the defendants 2 and 4 (Yuvaraj and Saraswathi) are each entitled to 1/8 share in the suit A schedule properties.

(iii) the suit in O.S.No.266 of 1993 on the file of the II Additional Sub Judge, Erode is dismissed as regards the B schedule properties.

(iv) there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

mst

To

1. The II Additional District Judge,
Erode.



2. The II Additional Sub Judge,
Erode.

+1cc to Mr.V.Raghavchari, Advocate SR.No.59552

+1cc to Ms.Zeenath Begum, Advocate SR.No.59951

Second Appeal No.2097 of 2001
and C.M.P.No.11902 of 2018

GJ (CO)

GMV (22/11/2018)