

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.642 of 2018

1.Paramasivam
2.Tmt.Marimuthu
3.P.Ramesh
4.P.Vatchala
5.P.Devaga
6.P.Achuhdan

...Appellants/Plaintiff

Versus

1.Tmt.Sathyavadhi
2.Tmt.Veeramani
3.Tmt.Ulagamani

...Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree passed in A.S.No.48 of 2014 dated 18.04.2018 on the file of the Sub Court, Tirupattur, Vellore District in and by which was confirmed the judgment and decree passed in O.S.No.160 of 2011 dated 23.07.2014 on the file of the Additional District Munsif Court, Tirupattur, Vellore District.

For Appellants : Mr.D.Jayasingh

J U D G M E N T

This Second Appeal is filed challenging the judgment and decree passed by the learned Subordinate Judge, Tirupattur in A.S.No.48 of 2014 dated 18.04.2018, in and by which the learned Subordinate Judge had dismissed the appeal filed by the appellants herein and confirmed the judgment and decree passed by the learned Additional District Munsif, Tirupattur in O.S.No.160 of 2011 dated 23.07.2014.

2. The brief facts of the case are as follows:

The plaintiffs are the appellants before this Court. The property in question originally belonged to one Perumalsamy who is the father of the first plaintiff and the defendants. The said Perumalsamy had two wives viz., Vellachi (mother of the defendants) and Pappammal (mother of the first plaintiff). Panchatcharam is the husband of second plaintiff and father of the plaintiffs 3 to 6.

Plaintiffs' case:

3. The case of the plaintiffs is that in an earlier suit, the property was declared to be the property of Vellachi and the said Vellachi had executed a Will dated 12.06.1991 by which she had bequeathed the 'A' Schedule property to the defendants and 'B' Schedule property to the plaintiffs. It was their further case that the said Vellachi died on 08.07.2000 whereby the Will came into force. Since the defendants were not co-operating, the plaintiffs were constrained to file the suit in O.S.No.160 of 2011 for declaring that they are entitled to suit property on the basis of the Will dated 12.06.1991 and consequently, restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

Defendants' case:

4.1. The defense to the above suit was that the Will was a rank forgery and a concocted one. The defendants would contend that the suit properties were their exclusive properties, in fact, they would also contend that the plaintiffs are guilty of suppression. The mother of the defendants, Vellachi and the defendants had earlier filed a suit O.S.No.1004 of 1992 to declare that the first plaintiff and his brother, Panchatcharam are not the sons of late Perumalsamy and that Pappammal was the concubine of late Perumalsamy. Apart from asking for a permanent injunction, a counter suit in O.S.No.84 of 1993 was filed by the first plaintiff and his brother Panchatcharam to declare themselves and their mother Pappammal as the legal representatives of the late Perumalsamy and Vellachi as the concubine of late Perumalsamy. The suit filed by the defendants was decreed and the suit filed by the plaintiffs was dismissed.

4.2. Against the decree and judgment passed in favour of the defendants, the first plaintiff and his brother, Panchatcharam had preferred Appeals in A.S.Nos.23 & 24 of 1996 before the Sub Court, Tirupattur and the same came to be dismissed on 21.01.1997. Challenging the judgment and decree passed in A.S.Nos.23 & 24 of 1996, the first plaintiff and his brother, Panchatcharam had filed S.A.Nos.844 & 845 of 1998 before this Court. In the earlier round of litigation, there is no mention about the Will dated 12.06.1991. Therefore, the defendants sought for the dismissal of the suit.

Trial Court and Appellate Court:

5. Both the Courts below have concurrently held against the plaintiffs and dismissed their suit against which the present Second Appeal is filed. The Courts below have found that the first plaintiff who come forward claiming title to the property on the basis of the Will dated 12.06.1991 had not let in any evidence to establish the Will in the manner known to law.

Further, despite the fact that the earlier suits were moved, more particularly, when the suit O.S.No.1004 of 1992 had been filed to declare the mother of the plaintiffs as a concubine and that the plaintiffs were not the children of the deceased Perumalsamy, it would have but been natural for the plaintiffs who were defendants there to have marked the Will, if the Will was actually in existence.

6. Heard Mr.D.Jayasingh, learned counsel for plaintiffs/appellants.

7. Both the Courts below have rightly appreciated the evidence on record. Therefore, I find no infirmity in the judgment and decree of the Courts below.

8. In the result, this Second Appeal shall stand dismissed and the judgment and decree passed by the Courts below is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Court,
Tirupattur,
Vellor District.

2.The Additional District Munsif Court,
Tirupattur,
Vellore District.

+1cc to Mr.D.Jayasingh, Advocate, S.R.No.80624

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BS (CO)
GSP(14/02/2019)