



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. (MD) Nos.338 and 339 of 2015
and

M.P. (MD) No.3 of 2015 &
C.M.P. (MD) Nos.5560 of 2016 and 8866 of 2017

S.A. (MD) Nos.338 of 2015

S.Alphonse : Defendant No.1 / Appellant / Appellant

-Vs-

1.A.Gnanaraj
2.G.Sahayaraj
3.G.Arockiaselvi : Plaintiffs 1 to 3/Respondents/Respondens

4.J.Fathima
5.J.Sahayamary
6.J.Jeyaseeli
7.Minor J.Arockiaraja (Person of unsound mind)
Represented by his Mother 4th Respondent
(J.Fathima) : Defendants 2 to 5/ Respondents / Respondens

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment in A.S.No.9 of 2013 passed by the learned IV Additional District Judge, Madurai, dated 29.11.2013, confirming the decree and judgment in O.S.No.571 of 2011 passed by the learned II Additional Sub Judge, Madurai, dated 08.02.2013.

For Appellant : Mr.M.P.Senthil
For R1 to R3 : Mr.V.Sakthivel
For R4 to R7 : Mr.J.Bharathan

S.A. (MD) No.339 of 2015

S.Alphonse : Plaintiff / Appellant / Appellant

-Vs-

1.A.Gnanaraj
2.G.Sahayaraj
3.G.Arockiaselvi
4.Judge : Defendants/Respondents/Respondens

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PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment in A.S.No.8 of 2013 passed by the learned IV Additional District Judge, Madurai, dated



29.11.2013, confirming the decree and judgment in O.S.No.133 of 2012 passed by the learned II Additional Sub Judge, Madurai, dated 08.02.2013.

For Appellant :Mr.M.P.Senthil

For Respondents :Mr.V.Sakthivel

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COMMON JUDGMENT

The first defendant in the suit in O.S.No.571 of 2011, on the file of the learned II Additional Sub Judge, Madurai, is the appellant in these second appeals.

2.The respondents 1 to 3 in these appeals, as plaintiffs filed a suit in O.S.No.571 of 2011, before the learned II Additional Sub Judge, Madurai, for partition of their 1/3 share in the suit property. The case of the plaintiffs is that the suit property originally belonged to one Eswari Ammal and the property was purchased by James Mary from the said Eswari Ammal. It is the further case of the plaintiffs that the said James Mary died on 18.10.1995 leaving behind her husband Sessaiyapillai and three children, namely, Alphonse, Joseph and Arockiya Mary. Since the said James Mary died intestate, it is stated that after the death of the said James Mary, the suit property was inherited by her husband Sessaiyapillai and her children by way of succession. It is further submitted that Arockiya Mary, one of the daughters of the said James Mary died on 06.06.2009, leaving behind the plaintiffs as her sole legal representatives. The first plaintiff is the husband and plaintiffs 2 and 3 are the children of the said Arockiyamary. Joseph, son of James Mary, died on 19.07.2006, leaving behind the defendants 2 to 5 as his legal heirs. The second defendant is the wife of the said Joseph and defendants 3 and 5 are his children. It is also the case of the plaintiffs that the said Sessaiahpillai during his life time, executed a registered Will on 16.04.1999 bequeathing the suit property to all his three children, namely, Alphonse, Joseph and Arockiya Mary. After the death of Sessaiahpillai on 01.08.2009, his legal heirs were entitled to 1/3 share in the suit property. It is therefore submitted by the plaintiffs that the plaintiffs are entitled to 1/3 share, being the legal heirs of the one of the daughters of the James Mary and Sessaiahpillai. The suit is also for a permanent injunction restraining the first defendant not to make any alteration or any construction in the suit property.

3.The suit was contested by the first defendant, one of the sons of James Mary. Referring to the suit, filed by the first defendant in O.S.No.590 of 2011, on the file of the learned II Additional Sub Judge, Madurai, it is contended by the first defendant that the suit is barred by *res judicata*. It is further submitted by the defendant that the first defendant's mother James Mary executed a Will on 14.01.1995 bequeathing the suit property in favour of the first defendant. It is further stated that after the death of James Mary, the Will came into force and that he is in possession and enjoyment of the suit property as an absolute owner on the basis of the said Will executed by his mother James Mary.

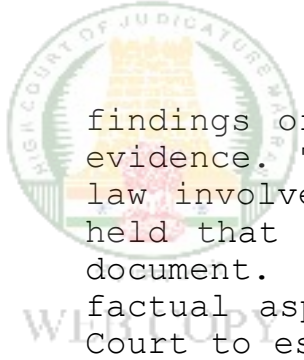


4. The plaintiff in the suit in O.S.No.133 of 2012, on the file of II Additional Sub Court, Madurai, is the appellant in this appeal. The first defendant in the suit in O.S.No.571 of 2011 and the appellant in A.S.No.8 of 2013 has filed a suit in O.S.No.133 of 2012 (originally O.S.No.590 of 2011 on the file of the Additional District Munsif Court, Madurai Town) for permanent injunction restraining the defendant and their men in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The case of the plaintiff / appellant is the same as it was raised in the written statement filed by him in the suit in O.S.No.571 of 2011. The suit property is a house bearing D.No.158, V.O.C. Street, Solai Alagupuram 3rd Street, Madurai Town. The parties are same in both suits and issues are common in both sides. Hence, both suits were tried together and the suit filed by the appellant in O.S.No.133 of 2012 was dismissed and the suit filed by the respondents 1 to 3 in S.A.(MD)No.338 of 2015 in O.S.No.571 of 2011 was decreed as prayed for. Aggrieved by the judgment and decree in both suits, the plaintiff in O.S.No.133 of 2012 preferred appeals in A.S.Nos. 8 and 9 of 2013 before the IV Additional District Judge, Madurai. The appellate Court also confirmed the findings of the trial Court and dismissed both appeals. As against the common judgment rendered in A.S.Nos. 8 and 9 of 2013, these appeals have been preferred.

5. The common issues in both the suits are about the validity of the Will, Ex-B9 under which the appellant claims exclusive title. It is not in dispute that the suit property belonged to James Mary, the mother of the first defendant. It is also not in dispute that in the absence of Will, the suit in O.S.No.571 of 2011, filed by the legal heirs of the Arokiyamy, one of the daughters of the James Mary was liable to be decreed. There is no dispute with regard to the shares of parties in the absence of Will alleged to have been executed by James Mary in favour of the appellant. It is the contention of the appellant that during the life time of James Mary, she executed a Will, dated 14.11.1995. The execution of Will is specifically disputed by the respondents and the Will propounded by the appellant is described as one created and concocted by the first defendant / appellant. The Courts below have elaborately considered the truth and validity of the document, Ex-B9. The appellate Court, based on the oral and documentary evidence adduced on both sides, found that the Will is a fabricated document. The fact that the Will alleged to have been executed by James Mary in favour of the first defendant is an unnatural Will, cannot be disputed. The Courts below have analyzed the evidence adduced on both sides and came to the conclusion that the Will is not proved in the manner known to law and that the appellant has created the document. It is also stated that the Will was attested by a Notary Public. It is ultimately established that the Notary Public became a Notary Public only after 03.10.1998, after the execution of the Will.

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6. Considering the facts and circumstances of the case in detail, the Courts below have rightly held that the Will is a fabricated document and that the appellant cannot claim any exclusive right on the basis of the Will executed under Ex-B9. The



findings of the Courts below are supported by oral and documentary evidence. This Court is unable to see any substantial question of law involved in this appeal, as the Courts below have concurrently held that the Will has not been proved to be a genuine and valid document. Except challenging the finding of the trial Court on factual aspects, no other legal point has been raised before this Court to establish that the findings of Courts below are perverse or not supported by evidence. Having regard to the scope of Section 100 of CPC, this Court is not inclined to entertain these second appeals.

7.As a result, these second appeals are dismissed and the judgment and decree in A.S.Nos.8 and 9 of 2013 passed by the learned IV Additional District Judge, Madurai, dated 29.11.2013, confirming the decree and judgment in O.S.Nos.571 of 2011 and 133 of 2012 passed by the learned II Additional Sub Judge, Madurai, dated 08.02.2013, are affirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

8.It is brought to the notice of this Court that the fifth defendant in the suit in O.S.No.571 of 2011, is the 7th respondent in S.A.(MD)No.338 of 2015. However, in the memorandum of grounds, it is represented that the fifth defendant in the suit is a person of unsound mind, represented by his mother as natural guardian. However, in the appeal memorandum, the 7th respondent has been shown as a minor, represented by his mother, the fourth respondent. The mistake by showing the 7th respondent, as a minor has to be corrected as a person of unsound mind. The learned Counsel for the appellant as well as the respondents have no objection for correcting the mistake. Hence while drafting the decree, Registry is directed to correct the description of the 7th respondent as a person of unsound mind, represented by his mother, fourth respondent in the appeal.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The IV Additional District Judge, Madurai.
- 2.The II Additional Sub Judge, Madurai.
- 3.The Section Officer, Vernacular Records, (2 copies)
Madurai Bench of Madras High Court, Madurai.
- +1cc to Mr.M.P.Senthil, Advocate, SR.No.59729
- +2ccs to Mr.V.Sakthivel, Advocate, SR.Nos.59877 and 59878
- +1cc to Mr.T.R.Jeyapalam, Advocate, SR.No.59484

cmr

RL/9C/4P/KK/SAR1/26/4/2018

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Judgment made in

S.A. (MD) Nos.338 and 339 of 2015

03.04.2018