

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2019

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.1214 of 1999
and
C.M.P.No.12303 of 1999

Amsavalli Ammal (deceased)

R.Saraswathi, L.R of deceased Appellant ...Appellant
(Appellant brought on record as
L.R. of the deceased Appellant
vide order dated 10.06.1999 in
C.M.P.No.7107 of 1999)

Vs

1. Dr.Manivannan
2. Suseela
3. Vasuki
4. Vasanthan
5. Vijayakumar
6. Valarmathi
7. Elanchiathammal

...Respondents

Prayer: The Second Appeal is filed under Section 100 of CPC, against confirming the judgment and decree made in OS 168/1989 dated 28.10.95 the judgment and decree made in A.S.No.148 of 1996 dated 09.01.1997 on the file of the Principal Subordinate Judge, Nagapattinam.

For Appellant : K.Balachandran
for Mr.N.Maninarayanan

For RR2, 5 to 6: Ms.R.T.Shyamala

For R7 : Ms.V.Srimathi

JUDGMENT

The plaintiff in O.S.No.168 of 1989, on the file of the District Munsif Court, Nannilam, is the appellant herein. The suit in O.S.No.168 of 1989 had been filed by the plaintiff C.Ravi, seeking a recovery of possession and mesne profits.

2.This suit came of for consideration before the District Munsif Court, Nannilam. By judgment dated 28.10.1995, the suit was dismissed. It must be mentioned that pending the suit, the plaintiff died and the second plaintiff, Amsavalli Ammal was brought on record. Similarly, the first defendant N.R.Vadivelu also died and his legal representatives were brought on record as third to defendants 3 - 8. The 9th defendant, Elanchiyathammal was brought on record by order of Court dated 07.12.1992 in I.A.No.978 of 1992.

3.Challenging the dismissal of the suit, Amsavalli Ammal filed A.S.No.148 of 1996 before the Principle Subordinate Court, Nagapattinam. By judgment dated 09.01.1997, the first appeal had been dismissed.

4.Challenging that the judgment, Amsavalli Ammal filed the present Second Appeal. The Second Appeal had not been admitted. However, notice was directed to the respondents and learned counsels have entered appearance. Pending the second appeal the appellant Amsavalli Ammal also died and her legal representative was brought on record as the second appellant.

5. The entire issue surrounds execution of a Will which had been marked as Ex.A1 by Murugaiya Padayachi. Suspicious circumstances were raised by the defendants over the execution of the Will. Primary circumstance was that Murugaiya Padayachi affixed his left thumb impression on the Will, Ex.A1. It was pointed that he had put his signatures in Exs.B1 and B2 and also in a partition deed in Ex.A6.

6. It had been urged by the learned counsel for the appellant that the Will in Ex.A1 dated 15.12.1995 is a registered Will and on that date Murugaiya Padayachi was aged about 89 years old and consequently, left thumb impression affixed. However, there is a specific finding in the judgment of the Trial Court that during examination, another person impersonated Gullam Hussain one of the attesting witnesses and tendered evidence as PW3.

7.Both the Courts below have rejected execution of the Will and have refused to grant any relief based on Will. Since the said conclusions are findings on fact, it would not be proper on the part of this Court in the Second Appeal stage to re-

examine the same issue.

8.The Second Appeal is dismissed, no costs. The connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

smv

To

1.The District Munsif, Nannilam.

2.The Principal Subordinate Judge, Nagapattinam.

Copy To : The Section Officer, VR Section, Madras High Court.

+1cc to Mr.R.T.Shyamala, Advocate SR.No.5120

+1cc to Mr.V.Raghavachari, Advocate SR.No.5294

S.A.No.1214 of 1999
and
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SSV(CO)
GMY(11/04/2019)

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