

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 835 of 2010
and Cross. Obj. No. 65 of 2011

1.Kaliammal
2.Palaniammal
3.Kandasamy
4.Ponnusamy
5.Subramaniam
6.Valarmathi
7.Lakshmi

... Appellants/Defendants
in AS No.835/10
& Respondents
in Cros.Obj.65/11

Vs.

1.K.Vangalammal
2.B.Arukkani
rep by their Power Agent Arthanari

... Respondents/Plaintiffs 1 & 2
in AS No. 835/10
& Objectors
in Cros.Obj.65/11

Prayer: Appeal under Section 96 of C.P.C and Cross Objection under Order 41 Rule 22 of the C.P.C. filed against the judgment and decree of the Learned Additional District Judge (Fast Track Court), Namakkal, dated 31.08.2010 in O.S. No.96 of 2008.

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For Appellants : Mr.C.Jagadish
in AS 835/10
and
respondents
in Cros.Obj
65/11

For Respondents : Mr.T.Dhanyakumar
in AS 835/10
and
Objectors
in Cros.Obj
65/11

COMMON JUDGMENT
(Delivered by M.M.Sundresh,J.)

The appellants are the defendants in the suit. Though the first appellant is no more, in view of the presence of other parties, the question of abatement would not arise. The consequence of the death of the first appellant got worked out before the trial Court. Suffice it to state that no abatement has come into being due to the death of the first appellant.

2. The plaintiffs, namely, respondents 1 and 2, and the second appellant are the children of one Ramasamy (since deceased) and the first appellant. The third appellant, being the third defendant, is the husband of the second appellant/defendant and thus the son-in-law of the first appellant. The appellants 4 and 5 are the children of the appellants 2 and 3 and thus, grand children of the first appellant.

3. The respondents/plaintiffs filed a suit for partition on the premise that the suit properties are the self-acquired properties of the deceased father Ramasamy. Admittedly, they are living abroad. Ramasamy till his death was under the custody of the other appellants. Under Ex.A1, a registered Will was executed by Ramasamy on 05.03.1985. Based upon the aforesaid document, the suit for partition was filed by them. The appellants, inter alia, contended that the entire suit properties belong to the second appellant and the appellants 4 and 5 in view of Exs.B1, B2 and B12, viz., settlement deeds and a registered Will. According to them, these documents have been executed by the deceased Ramasamy out of his own free will and without any undue influence.

4. The trial Court framed three issues. On behalf of the respondents two witnesses have been examined as against four witnesses on behalf of the appellants. The respondents marked Exs.A1 to A14 whereas the appellants marked Exs. B1 to B12.

5. The trial Court found that deceased Ramasamy lost his eye sight in the year 1993. DW3 and DW4 were the attesting witnesses to all the documents. DW2 is the son-in-law of the deceased and the first appellant and also the husband of the second appellant. He took active part in the execution of Exs.B1 and B12 which were executed on the same day. The deceased died on 20.09.1999, i.e., within a month after the execution of the aforesaid documents. Inasmuch as Ex.B2 was executed as early as 27.01.1993 and the deceased Ramasamy became totally blind thereafter and he died only on 20.09.1999, the said document was upheld, while Exs.B1 and B12 were not accepted. Accordingly, the suit was decreed insofar as the properties covered by Exs. B1 and B12 while dismissing the same over the properties covered by Ex.B2. Challenging the same, the appellants being the defendants, filed the present appeal, inter alia, alleging that the trial Court erred in disbelieving Exs.B1 and B12. The plaintiffs, being the cross-objectors, alleged that the Court below erred in upholding Ex.B2, inasmuch as the same has not been proved as per law.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Learned counsel appearing for the appellants would submit that inasmuch as all the documents are registered, the suit ought to have been decreed. The respondents did not even come for the funeral of the deceased. Ex.A1 has been modified thereafter in Exs. B1, B2 and B12. Since the deceased was living with the appellants, it is nothing but natural that he has given all his properties in favour of the appellants 2, 4 and 5. Therefore, the judgment and decree rendered by the Court below would require interference. The other documents, relied upon were not taken into consideration properly.

8. Learned counsel appearing for the cross-objector/plaintiffs submitted that the Court below was not right in accepting Ex.B2. As the plaintiffs were living abroad, the appellants took advantage of the situation and got the documents executed. The trial Court has come to the correct conclusion insofar as Ex.B1 and B12 are concerned. Even DW1 has spoken about the active participation of the second defendant. The evidence given on behalf of the defendants would clearly show that both the third defendant, who is the son-in-law of the first defendant and husband of the second defendant, and one

Vijayan, who is the husband of the sixth appellant, took active part in the execution of Exs. B1 and B12. Thus, the cross-appeal appeal will have to allowed and the appeal will have to be dismissed.

9. The question for consideration is as to whether the judgment and decree rendered by the Court below would require interference or not.

10. The execution of the documents is not in dispute. Therefore, we are concerned with the circumstances surrounding the execution. Similarly, the title to the properties and the relationship between the parties are also not in dispute. Thus, admittedly the properties originally belonged to the deceased Ramasamy. Ex. A1 is also not in dispute. Ex. B2 is dated 27.01.1993. Though the very same witnesses were parties to those documents as is the case of Exs.B1 and B12, we do not find any need to look at this document with suspicion.

11. The evidence would suggest that the deceased Ramasamy became blind in the year 1993. The second defendant, namely the second appellant, was taking care of the deceased. Since the property is absolute and self-acquired property of the deceased, he has rightly given it in favour of his daughter, who is the second appellant. The deceased lived for more than five years thereafter. The plaintiffs did not question the document at that point of time. Thus, we do not find any error in the conclusion arrived at by the trial Court insofar as Ex.B2 is concerned.

12. Coming to Exs. B1 and B12, these two documents are settlement deed and Will respectively. These documents were registered on the very same date - 18.08.1999. A month thereafter, Ramasamy died. The trial Court found that he was at the advanced age. DW4 also says that he has not seen Ramasamy affixing his thumb impression in his presence. The evidence adduced on behalf of the defendants also would clearly show the presence of both the third defendant, who is the third appellant before us, and one Vijayan, who is the husband of the sixth appellant. The properties have been given in favour of the grandchildren and the second appellant as against the plaintiffs. Therefore, it is a clear case where undue influence was indeed exerted over the deceased. The first appellant/1st defendant was also at the advanced age. When these facts are not in dispute, there has to be active participation of third appellant, as the son-in-law and it is he who called the attesting witnesses to come for registration. Therefore, the reasoning of the trial Court cannot be found fault with. The evidence available would suggest that the proximity was taken advantage of by the second and third appellants along with son-

in-law, i.e., the husband of the sixth appellant, in executing Ex.B1 and Ex.B12. After all, registration per se, cannot not be a sole ground to validate the document.

13. In such view of the matter, we do not find any reason to interfere with the judgment and decree rendered by the trial Court warranting interference.

14. The apportionment of the share of the first appellant (since died) is a matter to be decided by the trial Court as in law any number of preliminary decrees can be passed.

In fine, both the appeal and the cross-objection stand dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm

To:

1.The Additional District Judge
Fast Track Court,
Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Senthil, Advocate Sr.35412
+1cc to Mr.T.Dhanyakumar, Advocate Sr.34272

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