

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.312 of 2019
and
C.M.P.No.4718 of 2019

Lakshminarayanan (died)

1. Chinnakrishnan

2. Santhi

3. Devika

... Appellants

Vs.

1. Radha

2. Mohammed Unus

... Respondents

Prayer:-

This Second Appeal has been filed Under Section 100 CPC against the Judgment and decree dated 10.09.2018 made in AS No.45/2014 on the file of the Court of the Second Principal Subordinate judge villupuram confirming the judgement and decree dt. 25/09/2014 made in OS No.249/2008 on the file of the court of the principal District Munsif Villupuram.

For Appellant : Mrs. K.Vennila

JUDGEMENT

The plaintiffs, who has lost the suit in both the Courts below, have filed the present Second Appeal.

2. The appellants/plaintiffs filed a suit in O.S.No.249 of 2008 on the file of the Principal District Munsif Court, Villupuram, for declaration declaring their title in respect of the suit schedule properties and also for consequential permanent injunction.

3. The case of the plaintiffs is that, the suit properties belonged to one Rajasekeran, who is the brother's son of the first plaintiff. During his life time,

he executed a Will dated 16.02.2004, bequeathing the entire suit properties in favour of the first plaintiff. Subsequently, on 24.02.2004, the said Rajasekaran committed suicide. According to the plaintiffs, after executing the Will, the Will was handed over to one Sivaraj for safe custody and the execution of the Will is not known to the plaintiffs. Subsequently, the first defendant, who is the mother of the deceased Rajasekaran, had entered into a sale agreement with the second respondent on 21.05.2018. At that time, the above said Sivaraj informed the plaintiffs regarding the execution of the Will. Thereafter, the plaintiffs are claiming right over the properties by virtue of the Will and filed the suit.

4. The suit was contested by the defendants disputing the Will and the first defendant, who is the mother of the deceased Rajasekaran, being the Class-I heir is entitled to inherit his properties and she has also executed a sale agreement in favour of the second defendant. Thereafter, only in order to grab the property, the present suit has been filed by the plaintiffs.

5. The trial Court, after considering the pleadings and evidence and the entire materials available on record, has come to a conclusion that the Will has not been proved by the plaintiffs and P.W.3, who is the attesting witness, is not supporting the case of the plaintiffs. That apart, even though it is stated that the Will was in custody of one Sivaraj for four years, and he was not examined, and only after execution of the sale agreement by the first defendant in favour of the second defendant, the plaintiffs have created the Will and the alleged Will is also surrounded by suspicious circumstances, and dismissed the suit, by judgement and decree dated 25.09.2014. Feeling aggrieved with the same, the plaintiffs/appellants, filed an appeal on the file of the II Principal Subordinate Court, Villupuram. The First Appellate Court also considering the entire materials available on record, concurred with the finding of the trial Court and held that the plaintiffs have not proved the Will and it is surrounded by suspicious circumstances and dismissed the appeal, by judgment and decree dated 10.09.2018. Challenging the same, the appellants are before this Court with this second appeal.

6. I have heard the learned counsel appearing for the appellants and perused the materials available on record.

7. Admittedly the suit properties are the absolute properties of the deceased Rajasekaran, and the first defendant is his mother. The first defendant is entitled to inherit the property as a class-I heir. Now, it is the case of the plaintiffs that during his life time, the said Rajasekaran executed a Will in favour of the first plaintiff and based on the Will, the plaintiffs are claiming right over the property. In order to prove the

Will, the appellants examined P.W.3, who is the attesting witness and he stated that he has not even seen the said Sivaraj. That apart, according to the plaintiffs, after execution of the will, the Will was handed over to one Sivaraj for safe custody and he has not informed the same to the plaintiffs nearly for four years. But, in order to prove the same, the appellants/plaintiffs did not examine the said Sivaraj. Considering all those circumstances, both the Courts below has concurrently held that the plaintiffs have failed to prove the Will and it is surrounded by suspicious circumstances and dismissed the suit. I find no perversity or illegality in the judgments of the Courts below and no substantial question of law arises for consideration in this Second Appeal.

8. In the result, the second appeal is dismissed and the judgment and decree of the First Appellate court confirming the judgment and decree of the trial court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The II Principal Subordinate Court,
Villupuram.

2. The Principal District Munsif Court,
Villupuram.

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

+1cc to Mrs. K.Vennila , Advocate SR.No. 17844

S.A. No.312 of 2019

A.SK(17/07/2019)