

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.160 of 2001

1.G.D.Lalithammal
2.Sowmya
3.Srinivasan

... Appellants/Appellants/Plaintiffs

....Versus....

1.Jayamma (Deceased)

2.R.S.Prasad

[(second respondent is recorded as LR of the deceased first respondent as per the memo dated 03.07.2018 and vide Court order dated 03.07.2018 made in S.A.No.160 of 2001)]

...Respondents/Respondents/Defendants

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.119 of 1996 dated 18.04.2000 on the file of the Subordinate Court, Hosur confirming the judgment and decree made in O.S.No.266 of 1986 dated 30.09.1994 on the file of the District Munsif Court, Hosur.

For Appellants :: Mr.D.Shivakumar

For R1 :: Died

For R2 :: No appearance

J U D G M E N T

Plaintiff is appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. Heard the learned counsel for the appellant.

4. It is seen that the suit property along with the larger extent of the property are originally belonged to one Krishnaswamy Iyengar, who had no issues and he had executed a Will in favour of three persons viz., Krishnammal (his wife), Seshadri Iyengar (sister's son) and another sister Alamelu Ammal on 01.07.1946, which was marked as Ex.A1, hence, he has bequeathed his property and subsequently died.

5. There is no dispute with regard to the property allotted to Alameluu Ammal and in respect to properties covered in 'A' and 'B' schedule, which was marked under Ex.A2 (A.S.54/81 attested copy of order), are property under the Will dated on 01.07.1946, wherein he has bequeathed property to their minor Seshadri Iyengar, (as he was sister's son of Krishnaswami Iyengar) and he also done the last rituals to him.

6. Admittedly, after the death of the Krishnaswami Iyengar, both Seshadri Iyengar and Krishnammal enjoyed the possession jointly. However, Krishnammal had only the right of life estate to enjoyment of the property and after her death, it has to go to Seshadri Iyengar. It appears that Seshadri Iyengar died on 09.11.1976. While, Krishnammal died subsequently on 20.10.1985. In other words, Seshadri Iyengar pre-deceased Krishnammal.

7. In the above factual backgrounds, it appears that there was a dispute between Krishnammal, W/o.Krishnaswami Iyengar and legal heirs of Seshadri Iyengar, viz., Lalithammal, (the first plaintiff), Sowmya, (the second plaintiff) and Srinivasan, (the third plaintiff). Srinivasan, the third plaintiff said to have been died intestate, without marriage on 25.08.2007. As the dispute arose after the death of Seshadri Iyengar and during the lifetime of Krishnammal, the legal heirs of the said Seshadri Iyengar filed a suit in O.S.No.116 of 1979, before the learned Subordinate Judge, Krishnagiri, to declare the rights of their family as per the Will, after the contest, the suit was dismissed.

8. Further, the plaintiff therein have preferred an appeal in A.S.No.54 of 1981, against the judgment in suit O.S.No.116 of 1979 before the learned District Judge of Dharmapuri at Krishnagiri. While, the appeal was pending, some well wishers intervened and the compromise was entered into, between the plaintiffs and the said Krishnammal, whereby, 'A' schedule property in the compromise deed was allotted to the Seshadri Iyengar's family and 'B' schedule in the compromise deed was allotted to Krishnammal, as she was alive at that time.

9. It appears that Krishnammal has subsequently died on 20.10.1985. Before her death, she executed a Will dated 03.01.1981, which is marked as Ex.B2 in favour of one C.S.Ramasamy Iyengar, who is her sister's son and the said Ramasamy Iyengar died on 14.06.1986, leaving behind his wife-the first defendant, Jayamma and his son-the second defendant, R.S.Prasad, who were entitled to the B schedule in the compromise deed. They are arrayed as respondent herein, in the Second Appeal, however, they remained exparte.

10. After hearing the learned counsel appearing for the appellant, the point of determination of this appeal is narrow

down to: Whether Ex.A1-Will dated 01.07.1946 is proved in the manner known to law as, some of the clauses are alleged to have been not satisfied or whether the Ex.B2 dated 03.01.1981, as projected by the defendant was proved in the manner known to law.

11. Both the Courts below have held that pursuant to the Will executed by the Krishnammal under Ex.B2, defendants/respondents are entitled for the suit property and dismissed the suit filed by the appellant/plaintiff herein. These plaintiffs are the legal heirs of the Seshatiri Iyengar who is the beneficiary in the Will executed by the Krishnaswamy Iyengar, dated 01.07.1946-Ex.A1. At this juncture, it is relevant to refer to the clause under Ex.A1 wherein, it is stated that the said Krishnaswamy Iyengar (who is the original owner of the land) suit property executed a Will in favour of his sister's son Seshatiri Iyengar annexed with an obligation to do and perform last rights to his wife Krishnammal also.

12. It is trite in law, while interpretation of the clause in a Will, it is the later clause of Will shall prevail upon the initial and prior clause as contained in the Will. On the death of Krishnaswamy Iyengar, the Will dated 01.07.1946 came into operation thereby, Krishnammal had a life estate to enjoy the property while vested remainder goes to the Seshatiri Iyengar with obligation annexed that he has to look after her and further on the death of the Krishnammal, the Seshatiri Iyengar as to perform last rights for her and thereafter, he can enjoy the property absolutely however, it appears that the Seshatiri Iyengar pre-deceased Krishnammal on 09.11.1976 itself.

13. It is evident from the records that after the death of Seshatiri Iyengar, the said Krishnammal during her life has executed a Will in favour of her sister's son C.S.Ramasamy Iyengar on 03.01.1981 and accordingly, the legal representatives of Seshatiri Iyengar namely Lalithamma-first plaintiff, Sowmya-second plaintiff and Srinivasan-third plaintiff have filed a suit and the said suit was dismissed. When the matter was on appeal in A.S.No.54 of 1997, a compromise was entered between the parties whereby 'B' schedule in the compromise deed was allotted to Krishnammal. While, 'A' schedule property was allotted to the legal representatives of the Seshatiri Iyengar. At this juncture, it remains to be stated that the said Krishnammal has executed a Will on 03.01.1981 even before the above compromise in the above said A.S. on 07.07.1982, in and by the said Will on 03.01.1987, she had bequeathed the property in favour of Ramaswamy Iyengar, in view of line of succession, she being sole legal heir of her deceased husband.

14. It is seen from the records that the suit property in respect of which the appellant/plaintiff, claims title, both the Courts below has held that the suit filed in respect of property covered under 'B' schedule of the compromise deed in A.S.No.54 of 1981, both the Courts below dismissed the claim of the

plaintiff and also held that the Will Exhibit B1 was proved in the manner known to law.

15. On an comparison of description of the property mentioned under Ex.B2 Will executed in favour Ramaswamy Iyengar and property allotted to the legal heirs of Krishnaswamy Iyengar under the compromise deed in A.S.No.54 of 1981 and suit property in the presence suit S.A.No.160 of 2001 (O.S.No.266 of 1986 on the file of the District Munsif Court, Hosur), it is demonstrated that except the property in S.No.62/7A dry 0.63 acres S.No.62/7B dry .04 acres, all other properties are subject matter of the suit property and are covered under the compromise dated 07.07.1982 in A.S.No.54/81 whereby, these other properties have been allotted to the defendant. Insofar as the finding rendered by the Courts below regarding the validity of Ex.B1 Will dated 03.01.1981 executed by Krishnammal in favour of Ramaswamy Iyengar, (The husband of the first defendant and father of the second defendant) have been held to be proved in the manner known to law.

16. This Court is of the considered view that the said finding by the Courts below is well merited and well considered does not warrant any interference at this appellate stage and in view of the above said finding except those two properties mentioned above, all other suit properties that are subject matter in the suit being covered under the compromise deed whereby being the plaintiff party to the compromise deed, they cannot re-agitate the matter in view of the Order 23 Rule 1&2 C.P.C and hence, except for those items of property mentioned above, the compromise deed entered between the present plaintiff with the C.S.Ramaswamy Iyengar being attain finality cannot be altered by operation of law. The concurrent finding rendered by the trial Court is confirmed except to the limited extent indicated above.

17. In view of the above factual position, the substantial question of law arises before the Courts below does not warrant arises for consideration.

18. In the result, this Second Appeal is partly-allowed to the limited extent indicated above that the plaintiffs are entitled in S.No.62/7A dry 0.63 acres and S.No.62/7B dry .04 acres and in all other respects, the suit shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

nvi

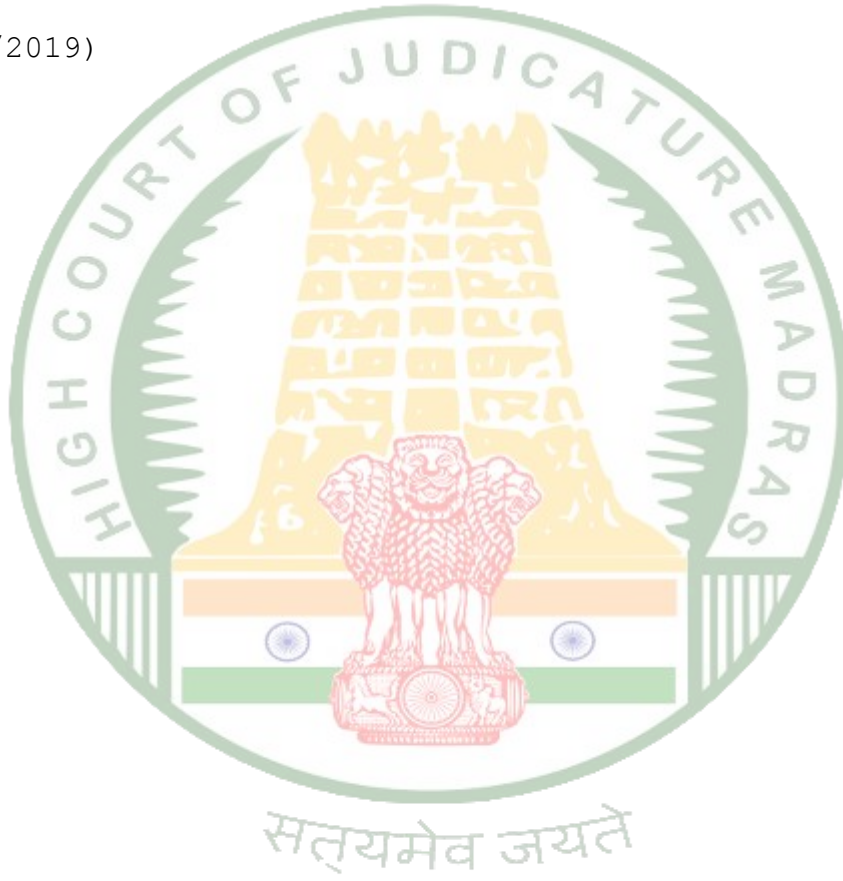
<https://hcservices.ecourts.gov.in/hcservices/>

To

- 1.The Subordinate Court, Hosur
2. The District Munsif Court, Hosur.
3. The Section Officer, V.R.Section, High Court, Madras.

S.A.No.160 of 2001

SPD (CO)
GMY (18/11/2019)



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