



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

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CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.623 of 2008

1.Amudha Rani

2.R.Revathy

.... Appellants/Plaintiff

Vs

1.Rajan (Deceased)

2.Maheswari

3.K.Yesudoss

4.Thilagavathi

5.Minor Jayasree

(Minor represented by her mother and natural guardian

Mrs.Thilagavathi, 4th respondent)

(R4 & R5 brought on record as LR's of the deceased R1 vide Court order dated 01.3.2019 made in MP.No. 3/2009 in SA.No.623 of 2008)

.... Respondents

Prayer :- Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 31.01.2008 made in A.S.No.169 of 2007 on the file of the Court of the Principal Subordinate Judge, Salem, confirming the judgment and decree dated 30.07.2007 made in O.S.No.35 of 2005 on the file of the Court of the Principal District Munsif, Salem.

For Appellants : Mr.T.Dhanasekaran

For Respondents : Mr.N.Manokaran [R3]

R1 - Died

R2 & R4 - No Appearance

JUDGMENT

The suit is for bare injunction and the plaintiff who lost before the Courts below has come forward with this appeal. Though the appeal was instituted in the year 2008, the appeal is yet to be admitted. Parties would be referred to by their ranks before the trial Court.

2. There are two items of suit properties and they belonged to a certain Ramasamy. Ramasamy had three daughters and one son. According to the plaintiffs, on 05.07.1999, Ramasamy had



executed a Will exclusively in favour of two of his daughters, who the plaintiffs themselves are. The first defendant was irresponsible and the second defendant has married a man of her choice from another community much to the disappointment of the father. On 19-05-2001, Ramaswamy died after a few years of paralysis that he suffered prior to his death. It is on the strength of the Will, and contending that the defendants 1 and 2, their brother and the sister are attempting to interfere with the possession of the suit property, plaintiffs have laid the suit for bare injunction.

3. The written statement was filed by the third defendant and the same has been adopted by the first and second defendants, who respectively are the brother and sister of the plaintiffs.

4. The third defendant had set up subsequent Will executed by Ramasamy on 07.01.2001, whereunder Ramasamy had cancelled his earlier Will which the plaintiffs rely on, and bequeathed the properties to all his children including the plaintiffs, allotting to each of them a share in the property. On the strength of Ext.B-3 Will dated 07.01.2001, according to the third defendant, the defendants 1 and 2 had sold their legacy to the third defendant.

5. The matter went for trial, and the trial Court has raised two separate issues as to the existence of the first Will dated 05.07.1999 and the second Will dated 07.01.2001. The former was marked Ext.A2 and the latter was marked Ext.B3.

6.1 To prove Ext-A2 Will, the plaintiffs examined its attestors namely P.W.2 and P.W.3. P.W.2 was not cross-examined. While the trial Court held that the attesting witness did not adequately prove the execution of Ext.A2 Will, a registered Will in that, yet it relied on Ext.B3 Will, which is the second in the sequence, to hold that Ext-A2 Will had indeed come into existence. This is because in Ext.A2 Will was referred to in Ext.B-3 Will, and was cancelled.

6.2 Now, it is all about whether Ext.B3 Will was proved. Here D.W.1, one of the attessor to the Ext.B3 Will was examined and he has spoken to about the execution of the Will to the satisfaction of the trial Court. Accordingly, the genuineness of Ext.B3 Will was upheld and as a consequent result, the suit was dismissed as concerning the shares which the third defendant had purchased from the defendants 1 and 2 under Ext-B5, sale deed dated 18.8.2004. This approach and findings of the trial Court was confirmed by the first appellate Court in A.S.No.169/2007. Hence the present second appeal.



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7. The learned counsel for the appellants made a valiant attempt to convince this Court that inasmuch as Ext.B3 was an unregistered Will, the Court ought to have suspected the same and must have held that Ext.A2 stood proved.

8. This, this Court finds it difficult to accept. Even the Courts below did not say that Ext-A2 did not exist, but goes to say that the same has been subsequently cancelled under Ext.B3 Will, and that the second Will of Ramaswamy stood proved. Here, it must be made known that while under Ext.A2 Will, two of the siblings of the plaintiffs were excluded, whereas Ext-B3 Will appears to make an equitable distribution of testator's estate. This would imply that the plaintiffs were not entirely excluded from inheriting Ramasamy's legacy, but they still enjoy part of the share in Ramasamy's estate to the extent they were given in Ext.B3 Will.

9. The learned counsel for the third respondent has placed reliance on the authorities in Susila.S. Vs. Virudhunagar Hindu Nadarkalukku Patthiyapatta [1995-2-L.W.812], wherein this Court, as already held that merely because the subsequent Will was an unregistered Will, it does not imply that the second Will dated 07.01.2001 must be suspected. This Court is inspired to rely on the same.

10. In the result, this second appeal is dismissed and the judgment and decree dated 31.01.2008 made in A.S.No.169 of 2007 on the file of the Court of the Principal Subordinate Judge, Salem, confirming the judgment and decree dated 30.07.2007 made in O.S.No.35 of 2005 on the file of the Court of the Principal District Munsif, Salem is hereby confirmed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ds

To:

1. The Principal Subordinate Judge
Salem.

2. The Principal District Munsif
Salem.



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

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+1 CC to Mr.T.Dhanasekaran, Advocate sr 47239.

+1 CC to Mr.N.Manokaran, Advocate sr 47183

S.A.No.623 of 2008

MP (CO)
SP (24/09/2019)