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Pronounced on :03.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.801 of 2012 &
M.P.No.1 of 2012

1. Mrs.P.Govindammal
2. Mrs.N.JothilakshmiAppellants/Plaintiff

Vs

1. Mrs.P.Marathal
2. Mr.R.Paramasivam
3. Mrs.R.Nachammal
4. Mrs.P.Sarathambal Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 27.02.2012 passed in A.S.No.13 of 2011 on the file of the Principal District Court, Coimbatore in confirming the judgment and decree dated 30.11.2010 passed in O.S.No.656 of 2003 on the file of the Additional Subordinate Court, Tiruppur.

For Appellants : Mr.T.R.Rajagopalan
Senior Counsel
for Mr.K.S.Karthik Raja

For Respondents: Mr.A.K.Kumarasamy Sr. Counsel
for Mr.K.S.Kaviarasu - for R1
Mr.P.Muthukrishnan- for R2 & R3
No appearance -for R4

JUDGMENT

Aggrieved over the concurrent finding of the Court below in dismissing the suit filed for partition, the present Second Appeal has been filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The brief facts leading to filing of this Second Appeal is as follows :

The plaintiffs and the defendants 2 to 4 are children of one Peria Rasappa Gounder. The first defendant is his wife. The

suit properties belonged to the said Peria Rasappa Gounder. He died intestate on 13.04.1999. The plaintiffs are entitled to 1/6th share each. The second defendant has filed a suit for partition in O.S.No.419 of 1999. The third defendant in the present suit obtained signatures of the plaintiffs and undertook to get the share of the plaintiffs. However, the plaintiffs came to know that the defendant has not prosecuted the above suit. Hence, the suit.

4. The first defendant sailed with the case of the plaintiffs and filed a written statement supporting their case.

5. The second and third defendants are one side. It is the case of the second defendant that his father has executed an unregistered Will on 13.04.99 and died on the same night by committing suicide. It is his contention that O.S.No.419 of 1999 filed in the following circumstances :

The second defendant is the only son of his father. The relation between him and his mother and sisters were quite cordial. Apart from the immovable properties described in the plaint, his father has also left behind cash more than Rs.5 lakhs. During the 16th day ceremony, a 'family arrangement' has been reached between the defendants and his mother and sisters in the presence of M.K.Ramasamy and Mr.K.Krsihasamy. The 'family arrangement' was finalized and the same was reduced into writing on 30.04.99 and signed by the plaintiffs and the defendants. The 'family arrangement' dated 30.04.1999 and original Will of father dated 13.04.1999 have all along been in the custody of M.K.Ramasamy. After the filing of the suit, the said Ramasamy took all efforts to compromise the matter. When his efforts failed, he handed over the original documents to the defendant on 06.09.2004. As per the 'family arrangement' the elder daughter was not given any property since his father has already given her a house site and also substantial sum of money for her daughter's marriage. The cash left behind by Peria Rasappa Gounder was shared by the other heirs of Peria Rasappa Gounder. The second plaintiff and the third and fourth defendants were also given other sums of money due from Sodambika Chit Funds, Lakshmi Vilas Bank and Karur Vysya Bank. The first defendant was given 10 cents of land in S.F.No.722 with the house thereon bearing Door No.2, apart from cash to the tune of Rs.2 lakhs. This defendant was given remaining extent of land and cash of Rs.1,50,000/-. The plaintiffs and the defendants have signed the 'family arrangement'. Since the partition was completed and it was felt that the execution and registration of a partition deed might be very expensive, it was decided that this defendant should file a suit for partition, in which all the parties would enter appearance and obtain a compromise decree. It is only in those circumstances, he has filed O.S.No.419 of 1999 on the file of the Court for partition

of 1/5th share.

6. The defendants 1 to 4 entered appearance in the above suit on 08.10.1999. The fifth defendant also appeared and the suit was adjourned to 03.08.2001 for written statement of the defendants. The filing of the compromise petition was getting delayed because this defendant wanted 10 cents and house thereon, so that this defendant may get the entire immovable property. After some negotiations, the mother agreed for the proposal and a compromise petition has been filed stating that the entire suit property is allotted to this defendant. At the suggestion of the lawyer it was stated in the compromise petition that each of the female heirs was given Rs.25,000/- worth of jewels. The parties were advised that it may entail payment of large Court Fee if the actual amount given to the each female heir is mentioned in the petition. The compromise petition was numbered as I.A.No.12818 of 2001. Actual recording getting postponed because the mother though she had agreed earlier, was not very happy to part with the 10 cents of land and house thereon. Again after prolonged negotiations, this defendant agreed to record a compromise without altering the terms of 'family arrangement'. At the request of the parties, the Court returned the compromise and posted the suit on 24.7.2002. The suit was again adjourned to 13.09.2002. Thereafter, he did not hear anything from his counsel. It appears that on that date, the suit has been dismissed for default. Hence, it is the contention of the defendants that 'family arrangement' has already been effected and the plaintiffs are not entitled to partition.

7. The third defendant supporting the case of the second defendant filed a written statement stating that their father left the Will dated 01.03.199 and the 'family arrangement' was recorded in the family on 30.04.1999. It is also the case of the third defendant that in pursuant to the 'family arrangement' the defendant and others received money from the bank. Hence, prayed for dismissal of the suit.

8. In the reply statement, the plaintiffs denied the signature found in the Will is of their father. The attesting witness is a close associate of the second defendant and another attesting witness is a relative of the second defendant's wife. The testator never intended to give any of his property to the second defendant. There was no necessity for him to cancel the registered Wills and execute an unregistered Will. It is also denied by the plaintiff that there was a 'family arrangement' in the family before the 16th day ceremony of Peria Rasappa

Gounder. It is their contention that the 'family arrangement' has been fabricated at the instance of one M.K.Ramasamy, Chinnasamy and Krishnasamy. Hence, the suit.

9. The trial Court framed the following issues :

1. Whether the plaintiffs are entitled for partition in the suit property?
2. To what relief the plaintiffs are entitled?
3. Cost, if any?

Additional Issues :

1. Whether it is true that Peria Rasappa Gounder cancelled the Will executed in 1978 in favour of the third defendant Jothilakshmi and Saradambal and executed a Will dated 13.04.1999?

2. Whether it is true that after death of Peria Rasappa Gounder there was a 'family arrangement'? Whether the defendants are bound by the 'family arrangement'?

10. On the side of the plaintiff P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.4 were marked. On the side of the defendants D.W.1 to 7 were examined and Ex.B1 to Ex.B.24 marked.

11. The trial Court holding that the Will dated 13.04.1999 is proved and executed by Periya Rasappa Gounder and also held that the 'family arrangement' has been recorded in the family on 30.04.1999 and dismissed the suit. The first appellate Court also dismissed the appeal. As against which, the present Second Appeal has been filed.

12. At the time of the Second Appeal, following questions of law have been framed :

1.) Whether the claim of the second defendant based on Ex.B.5 is sustainable after his suit in O.S.No.419 of 1999 for partition claiming 1/6th share in the suit properties?

2) Whether on the pleadings and evidence, the family arrangement pleaded by the second defendant is sustainable?

3) Whether the due execution and attestation of Ex.B.1 is established on the facts of the case?

4) In view of the specific averments in the suit in O.S.No.419 of 1999 filed by the second defendant for partition, is he entitled to sustain his claim based on Ex.B.5?

13. The learned Senior Counsel appearing for the appellant vehemently contended that the Will dated 13.04.1999 and the 'family arrangement' dated 30.04.1999 are created and fabricated. If really such documents are truly executed by the deceased and other family members, the same would have been reflected in the earlier suit filed by the second defendant in O.S.No.419 of 1999. It is the further contention of the learned Senior Counsel that the execution of the alleged Will by the deceased Periya Rasappa Gounder is highly shrouded with serious doubt. On the date of the alleged Will, the said Periya Rasappa Gounder namely the testator committed suicide. One of the attesting witness, P.W.2 is a close friend of the second defendant and the other attesting witness is also a relative of the second defendant through his wife. The execution of the Will by the deceased on 13.04.1999 is highly doubtful and the conduct of the second defendant proves the same. It is the specific case of the second defendant that his father died only on the night of 13.04.1999. Whereas, the medical evidence and the postmortem doctor evidence clearly show that the death would have occurred 24 hours prior to the postmortem. Hence, it is the contention of the learned Senior Counsel that the Will allegedly executed by the testator on the date of his death is a created one and if really there was a Will, the same would have been included in the suit originally filed by the second defendant. The theory has been introduced by the second defendant in the present suit as if the Will and the 'family arrangement' was handed over to the second defendant only for the first time on 06.09.2004. It is also contrary to the facts.

14. It is further submitted by the learned Senior Counsel that the Will is shrouded with serious suspicion which is inherent to the transaction. Merely because all the interested witnesses deposed about the execution and attestation, the will cannot be given much importance unless suspicion attached to the Will is dispelled. It is the further contention of the learned Senior Counsel that the 'family arrangement' is also not pleaded in the previous suit. The alleged compromise memo filed before the Court in O.S.No.419 of 1999 has not seen the light of the day. Only a copy of the compromise memo has been marked as Ex.B.19 filed, which also create serious doubt about the entire defence. Infact, Ex.B.14 and Ex.B.19 have been created taking advantage of the fact that the plaintiff and some of the defendants have received bank accounts as per the nomination and also as per their entitlement. Those documents have been

created to show as if there was a 'family arrangement' which was acted upon. Hence, it is the contention of the learned Senior Counsel that at any event the 'family arrangement' is also inadmissible under law. Therefore, the Courts below have not considered all these aspects and simply carried away by the evidence mechanically. The conduct of the second defendant and other witnesses also assume significance in this case. Hence, submitted that the plaintiffs are certainly entitled for partition in the properties. The alleged 'family arrangement' and the Will propounded by the second defendant is highly doubtful. Hence, prayed for allowing the appeal.

15. The learned Senior Counsel appearing for the respondents submitted that the will has been clearly proved by examining the attesting witnesses. The 'family arrangement' took place only in terms of the Will and the witness to the 'family arrangement' are respectable members known to both sides. The signature of the parties in the 'family arrangement' has not been disputed. The evidence of the bank officials clearly show that the plaintiffs and the defendants have received amounts from the bank pursuant to the 'family arrangement'. Hence, submitted that once the 'family arrangement' has been acted upon, the plaintiff cannot claim any share in the property.

16. It is the further contention of the learned Senior Counsel that the previous suit was filed as per the directions of all the defendants to file a compromise petition. In fact, the compromise petition has also been filed, which was returned later. The copy of the compromise petition filed in the previous suit clearly indicate that the 'family arrangement' has been acted upon. Now the plaintiff cannot contend that those documents are fabricated. It is the further contention of the learned Senior Counsel that the 'family arrangement' is only an arrangement. Therefore, it does not require any registration. The Courts below clearly analysed the entire facts and held that the plaintiffs are not entitled to any relief. Hence, prayed for dismissal of the Second appeal.

17. The suit has been filed by the plaintiffs. The plaintiffs and the defendants 2 to 4 are children of one Periya Rasappa Gounder and the first defendant is his wife. The suit has been laid for partition of the suit properties. It is not in dispute that the properties belong to one Periya Rasappa Gounder. It is also not in dispute that he died on 13.04.1999 by committing suicide. It is the case of the plaintiff that the second defendant is the only son of the said Periya Rasappa Gounder and he has already filed a suit in O.S.No.419 of 1999

claiming 1/6th share in the suit properties. In the above suit, there is no whisper whatsoever made with regard to the alleged unregistered Will dated 30.04.1999. Whereas, it is the contention of the defendants that the 'family arrangement' has been reached between the parties on 30.04.1999 in the terms of the Will left by the father of the second defendant. The first defendant and the fourth defendants are infact sailing with the plaintiffs. The second and fourth defendant have opposed the contention of the plaintiffs and the first and fourth defendants.

18. It is an undisputed fact that the second defendant has already filed a suit in O.S.No.419 of 1999 as per Ex.A.4. In the above suit, it is the specific contention of the second defendant that his father died due to old age. Therefore, he is entitled to 1/6th share in the suit property. Further, he has also stated in the above plaint that his father has revoked all his registered Wills executed in favour of his sisters on respectively. In the above suit it is specifically stated by the plaintiff that the three registered Wills executed in favour of his sisters by their father on 19..01.1998 and 10.3.1998 are invalid. The execution of the Will is denied by the defendant. Therefore, he claimed 1/6th share in the suit properties. Now, in the present suit it is the specific defence of the second defendant that his father has left the Will on 13.04.1999 and he died on the same day night by committing suicide. Thereafter, on the 16th day ceremony, a panchayat was convened and in the presence of D.W.3 N.K.Ramasamy and other witnesses, the above 'family arrangement' has been reached and the above 'family arrangement' was handed over to him by D.W.3 only on 06.09.2004.

Further his contention is that the previous suit was filed only to record the compromise. He has also given explanation in his written statement for filing previous suit and also for filing an application for compromise in I.A.No.1218 of 2001 in the above suit. It is his contention that I.A.No.1218 of 2001, a compromise petition was filed for lesser amount and if the amount as indicated in the 'family arrangement', which is marked as Ex.B.5, is shown, the same would have attracted higher Court Fee. Therefore, as per the advice of the lawyer, the parties have reduced their value in the compromise application filed before the Court. Such contention is highly improbable. If the compromise is to be recorded as per the 'family arrangement', the came could have been reproduced in the application filed I.A.No.1218 of 2001. But Ex.B.19 has been filed to show that the compromise application has been filed to show as if the entire suit property was allotted to the second defendant. Though the memo indicate that the Wills executed by the father in favour of the sisters of the second defendant is also given, absolutely, there is no mention whatsoever, with regard to the

Will dated 13.04.1999 said to have been executed by the father. If really an application for compromise was filed by the defendant in the earlier suit in I.A.No.1218 of 2001, his normal conduct would be to validate the Will said to have been executed by his father on 13.04.1999. Whereas, the copy of the compromise memo do not find any such reference.

19. It is curious to note that it is the contention of the second defendant that I.A.No.1218 of 2001 was returned by the Court. Thereafter, the suit in O.S.No.419 of 1999 has been dismissed. In this regard, the third defendant, who filed the written statement, has pleaded to the effect that the above I.A.No.1218 of 2001 has been taken back from the Court. The endorsement of the Court show that despite the return of the compromise memo filed in I.A.No.1218 of 2001, the same has not been represented. As per the endorsement of the Court, which has also been filed as a document as Ex.B.22, indicate that the original compromise memo along with the petition has been returned. There was no reason as to why the original has not been filed, except a xerox copy of the alleged compromise memo said to have been signed by the all the parties.

20. It is further to be noted that except a general allegation that petition has been mixed with the Court bundle and could not be traced, no materials, whatsoever, has been filed to show that he filed any application to take back the bundle, further no register of the concerned Court is produced to show that the said I.A.No.1218 of 2001 is not at all returned to the second defendant herein and still lying in the Court bundle. Further the lawyer, who is said to have prepared the compromise memo, was not examined. Contention that only to avoid Court Fee lesser value has been show in the earlier compromise petition, cannot be countenanced. Since, for recording of compromise, no enhanced Court Fee is required. Therefore, the contention of the defendant that only as per the advice of their lawyer they have shown lesser value in the compromise petition is highly improbable.

21. Yet another explanation offered by the defendant in the written statement is that since originally 'family arrangement' Ex.B.5 and Ex.B.1 Will was in the custody of D.W.1 and the same was handed over to him only on 06.09.2004 is also highly improbable for the simple reason that the defendant himself admitted in his evidence that the at the time of filing of the suit in O.S.No.419 of 1999, those two documents were in his custody. In his cross examination, D.W.1 has clearly admitted that on the date when he filed the suit in O.S.No.419 of 1999, the Will, Ex.B.1 and the 'family arrangement' Ex.B.5 were in his

possession. But he has further admitted that he has also shown the above documents to his lawyer at the relevant point of time. Having admitted in his evidence, in the later part of his evidence he has resiled the same. Therefore, his explanation that these documents came into his possession only on 06.09.2004 and he could not mention the same in the previous proceedings is highly improbable. Further, his contention that the compromise memo has been filed to avoid the Court Fee in pursuant to the 'family arrangement' Ex.B.5, is also highly improbable for the simple reason that having made a specific allegation with regard to the earlier Wills executed by his father, the compromise memo is silent about the Will said to have been executed by the father on 13.04.1999. This is actually against human conduct. If a person is really in possession of the last Will of the parents, his conduct would be to validate such Will. But, he has not done so. These facts, in fact, probabalize the plaintiff case that Ex.B.1 and Ex.B.5 have been created at a later point of time.

22. It is the contention of the plaintiff in the suit that the third defendant has conducted the earlier suit on their behalf and she has obtained their signatures and Ex.B.5 has been created with the help of D.W.2 Ramasamy and the second and third defendants. The entire case of the defendants is that since the 'family arrangement' dated 30.04.1999 has been acted upon, the plaintiffs are not entitled to any share in the suit properties. Though the evidence of D.W.5 show that a sum of Rs.1,44,158/- has been received by the second plaintiff and his evidence also clearly indicate that the above amount has been paid to her as a nominee of her father. The evidence of D.W.6 indicate that the deposit in the name of the first defendant namely, mother of the parties, has been paid to her on 29.06.2001 and as a nominee the second plaintiff has received a sum of Rs.1,35,248/- under Ex.B.13. It is the contention of the learned counsel for the appellant that taking advantage of the payments, 'family arrangement' has been created at the later point of time to show as if the parties have acted on the basis of the 'family arrangement'. As already discussed, the conduct of the second defendant, who is in possession of the crucial documents, not referring those documents in the earlier suit and also in I.A.No.1218 of 2001 filed in the above suit, in fact probabalize the plaintiffs case that these documents came into existence at later point of time.

23. These probabilities is further fortified by the very conduct of the second defendant in this case. In the previous suit filed by him, he has stated that his father died due to old age. In the present suit, it has been stated that his father had committed suicide in the night on 13.04.1999. His

contention, in fact, is highly improbable for the reason that the medical evidence proves otherwise. P.W.3, Medical Officer has been examined in this regard. His evidence when carefully perused, he has conducted autopsy over the dead body of Periya Rasappa Gounder on 14.04.1999. He issued Postmortem Certificate Ex.P.2. According to him, he conducted autopsy on 14.04.1999 and that the deceased died 24 to 26 hours prior to the postmortem. His evidence further clearly indicate that rigor mortis very much present in the body, hands and legs. He has also clearly spoken that rigor mortis would pass-off after 36 hours of death. Therefore, the conduct of the second defendant making false statement about the death of his father also cannot be ignored altogether.

24. It is further to be noted that it is the case of the defendant that his father has executed the Will Ex.B.1 on 13.04.1999. One of the attesting witness was examined as D.W.2. Though, he has stated in his evidence that the deceased came to his shop and took him to Koduvai and on the way he also called one Chinnasamy and he has executed the Will in their presence. The Will was drafted by one Somasundaram. Though D.W.3 has spoken about the attestation and execution of the alleged Will, the execution of the Will is shrouded with serious suspicion and such suspicion is inherent in the very transaction itself. It is for the propounder not only to prove the execution but also the attestation and also to dispel the suspicious circumstances attached to the Will. D.W.2 evidence show that after execution of the Will, at 2 p.m., he was dropped at his shop by the deceased. As per the medical evidence, at the time of postmortem, rigor mortis was present all over the body deceased. Only on the basis of rigor mortis, time of death of the deceased may be found out by the medical officer. The fact remains that the deceased died on the day time on 13.04.99. Though exact time of death cannot be ascertained by mere presence of rigor mortis there may be difference of 2 -3 hours on either side. Therefore, it makes clear that the deceased would have died in between 1 to 2 p.m. on 13.04.1999. Therefore, at the relevant point of time, the father executing the Will is highly improbable.

25. Further, the evidence of D.W.2 makes it clear that the evidence of D.W.3 is totally unreliable. D.W.2 in his cross examination has stated that on the next day, he has gone to the funeral of the deceased and his body was cremated at 1.00 p.m. on the next day. That is also contrary to the postmortem doctor evidence. The postmortem doctor has clearly stated that he has conducted postmortem at 1.00p.m. on 14.04.1999. Therefore, the evidence of D.W.2 is highly unreliable. Further, he claims to be a friend of the deceased. He was well acquainted with the

deceased. But his evidence is infact contrary to the facts. Admittedly, the postmortem was done on the next day at 1.00 p.m. Whereas, the evidence of D.W.2 is that the body of the deceased was cremated at 1.00 p.m. The evidence of D.W.3, one Ramasamy, when carefully seen, he has stated that on the date of death, he went to the funeral at 8.30 a.m. The body was burried at 11.30 a.m. His evidence is also contrary to the evidence of D.W.2. Whereas, D.W.2 had deposed that the body was cremated at 1 p.m. D.W.3 has deposed as if the body was burried at 11.30 a.m. Therefore, the evidence of D.W.2, the so called attestor of the Will is highly doubtful. The Will is admittedly an unregistered Will. There are other suspicious circumstances which are very inherent in Ex.B.1. As per the medical evidence, the deceased committed suicide in the day time. Hence, the possibility of the deceased taking two other witnesses to some other place, which is situated away from the place in a car is highly improbable.

26. It is also to be noted that Ex.B.2 to Ex.B.4 are registered Wills executed by the deceased in favour of his daughters in the registrar Office. The deceased is a retired building contractor. He was acquainted with registration procedure. He has already executed three registered Wills Ex.B.2 to Ex.B.4. That being the case, without going to the registrar's office to cancel the earlier Wills and there was no reason for the deceased to go to a place called Koduvai to write a Will with the help of one Sumasundaram, the so called scribe of the Will. Yet another suspicious circumstance is that admittedly the deceased is a resident of Tirupur. He could have executed the document in the place of his residence than going to Koduvai to write the Will with the stamp paper purchased in Tirupur. Whereas, the stamp paper has been purchased at Tirunelveli. This also create serious doubt.

27. It is further to be noted that the First Information Report was lodged by the second defendant for the death of his father. The First Information Report has been marked as Ex.B.23. A careful perusal of the First Information Report makes it clear that the second defendant himself gave a complaint to the effect that the deceased was worried about the loss sustained by the second defendant in his business and he was always worrying about him. The FIR also indicate that the second defendant is also not residing with the deceased for the past two years and the deceased was not mentally sound. That being the position, the deceased going to a far away place taking two other witnesses and writing the Will in the stamp paper purchased at Thirunelveli, which is more than 300 k.m. from Tirupur, create a serious doubt about the Will. Particularly, the medical evidence show that the deceased died during day time

on 13.04.1999. Therefore, merely on the basis of the interested witnesses, namely D.W.1, one cannot presume that the Will is a valid one, when suspicion is very inherent in the transaction, merely, because some interested witnesses were examined, the Will cannot be given effect.

28. Another theory of the defendants is that the 'family arrangement' was reached by the parties on the 16th day ceremony of the deceased in the presence of D.W.3 and others. Ex.B.5 'family arrangement' has been filed. Ex.B.5, when carefully seen, the same show as if the 'family arrangement' has been reached in terms of the Will of their father dated 13.04.1999. It is further curious to note that in the Will, there is no mention about the description of the properties given to the defendants. Further in the Will the signature of the attesting witnesses has been obtained in the same page in a crumbled manner. These are all very much inherent in the document. In the Will there is no mention about Rs.15 lakhs payable to the second defendant. Whereas in the 'family arrangement' the same has been written as if the same was written in pursuance of the Will dated 13.04.1999. This aspect also create serious doubt about the 'family arrangement'. It is to be noted that in 'family arrangement' a right in presentee creates. In fact, it is in the nature of division and allotment of property in favour of the second defendant and also written as if the plaintiffs and the other defendants relinquished their share in the property. Therefore, this document Ex.B.5 relied upon by the second defendant, is certainly required to be registered under Section 17 of the Indian Registration Act. Any document which create or extinguish any right in respect of the immovable property more than Rs.100/- value, has to be compulsorily registered under section 17 of the Indian Registration Act. Unless such document is registered, the same cannot be relied upon in any manner, which has not been taken note of by the Courts below. The purpose of relying upon Ex.B.5 is for division of the property and the relinquishments made by the plaintiffs and the other defendants in respect of the immovable properties. Therefore, it cannot be looked into for any other purpose. When the document is inadmissible in evidence, it cannot be looked into for any other purpose, even for any collateral purpose. But the main purpose of the document itself for division of the suit properties. The first appellate Court has held that the parties have acted upon the family arrangement, though it is not a registered one, the same would operate as estoppel relying upon the judgment of the Apex Court, the first appellate Court has been carried away by the withdrawal of the amount from the bank by the second plaintiff and the first defendant.

29. As discussed above, the fabrication of the documents at the relevant point of time cannot be ruled out. Only after the receipt of the amount by the first defendant as a deposit holder, these documents came to light. The evidence of D.W.1 clearly show that on the date of filing of the earlier suit, Ex.B.5 and 'family arrangement' dated 30.04.1999 and the Will dated 13.04.1999 is very much in his possession. But he has failed to refer those documents either in the previous suit or in the alleged application filed for compromise. The original of the compromise petition said to have been filed in the Court and returned has also not seen the light of the day. Therefore, the contention of the defendant that these documents came into existence during the pendency of the subsequent suit cannot be countenanced. Therefore, when the conduct of the defendants itself create serious doubt about the documents, merely on the basis of the withdrawal of certain amount as per their entitlement, the plea of estoppel cannot be pressed into service in the facts and circumstances of the case. The manner in which the explanation offered by the second defendant in his written statement for not referring the documents said to be in his possession, immediately after the death of his father, in the earlier suit and the explanation offered for filing of the alleged compromise memo to avoid Court Fee is also highly improbable. Infact, the same create serious doubt about the documents. At any event, the Ex.B.1 is shrouded with serious doubt as discussed above. Further his evidence also clearly indicate that the other witness in the 'family arrangement' is also interested in supporting the second defendant alone. It is also to be noted that the alleged 'family arrangement' is also written by one Somasundaram, who was the scribe in the Will Ex.B.1.

30. All these facts create a serious doubt about the existence of the documents. Though D.W.3 has been examined to prove that the plaintiff have signed the document Ex.B.5, it is the specific contention of the plaintiff that their signatures given in the previous suit to the third defendant for conducting the case on behalf of the plaintiffs and others, has now she joined hands with the second defendant and those documents came into existence. The conduct of not mentioning those documents in the earlier occasion and doubt with regard to the Will as discussed above, this Court holds that the plaintiffs case is more probabilized than the defendants case. That apart, Ex.B.5 required to be registered and without registration, it cannot be looked into for any other purpose. Accordingly, the substantial questions of law have been answered in favour of the appellant.

31. Accordingly, the second appeal is allowed the judgment and decree of the first appellate Court is set aside and a preliminary decree is passed for dividing the suit properties in to 6 equal shares and to allot two such shares to the plaintiffs. Consequently, the connected miscellaneous petition is closed. No cost.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

vrcTo

1. The Principal District Judge,
Coimbatore.
2. The Additional Subordinate Judge,
Tiruppur.

+1 CC to Mr.K.S.Karthik Raja, Advocate sr 31933.
+1 CC to Mr.K.S.Kaviarasan, Advocate sr 32504.
+1 CC to Mr.P.Muthukrishnan, Advocate sr 31857.

Second Appeal No.801 of 2012

GJII(CO)
SP(25/04/2019)

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