

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.525 of 2018
and
C.M.P.No.14557 of 2018

L.Balasubramani ...Appellant/2nd Defendant

Vs.

1. Saroja

2. Kannammal ...Respondents/Plaintiffs

L.Sivakami (died) ...Respondent/1st Defendant

(R3 died. R1 and 2, are the legal heirs of
of the deceased 3rd respondent, as per memo
dated 19.07.2018 and order of this Court
dated 03.08.2018 made in CMP. No.9274/2018
in SA.SR.No.12021/2018)

Prayer:- This second appeal has been filed under Section
100 C.P.C., against the judgment and decree passed in A.S.No.102
of 2014 on the file of the I Additional District Judge,
Coimbatore, dated 10.03.2017 confirming the judgment and decree
passed in O.S.No.394 of 2006 on the file of the II Additional
Subordinate Judge, Coimbatore, dated 23.11.2011.

For Appellant : Mr. S.Arjun

For respondents: Mr. C.Veeraraghavan,
for R1 & R2

JUDGEMENT

The 2nd defendant, who suffered a decree for partition
concurrently before the Courts below, has filed the Second
Appeal.

2. The respondents 1 & 2 herein/ plaintiffs have filed a
suit in O.S.No.394 of 2006, on the file of the II Additional
Subordinate Judge, Coimbatore, for partition on the ground that
the suit property is the self acquired property of their father

Lingappa Pillai. The first defendant is the wife and the second defendant and the plaintiffs are brother and daughters, of the Lingappa Pillai. After the death of the said Lingappa Pillai, both the plaintiffs and defendants are entitled to succeed the suit property. But the defendants have not accepted for partition. Hence, the suit has been filed.

3. The defendants contested the suit stating that during his life time, Lingappa Pillai had executed a registered Will in favour of the appellant/second defendant. Even though that Will was cancelled, subsequently, another Will was executed in favour of the second defendant. After the death of Lingappa Pillai, by virtue of the Will, the second defendant has become the owner of the entire extent of the property. The trial Court disbelieved the Will claimed by the appellant/second defendant, and by a judgment and decree dated 23.11.2011, it decreed the suit and granted 2/4 share to the plaintiffs.

4. Aggrieved over the same, the appellant/second defendant filed an appeal in A.S.No.102 of 2014 on the file of I Additional District Court, Coimbatore. The Lower Appellate Court, after considering the entire materials available on record, by judgment and decree dated 10.03.2017, dismissed the appeal, thereby confirmed the judgment and decree of the trial Court. Challenging the same, the appellant is before this Court with this Second Appeal.

5. Today, the appeal came up for admission. I have considered the submissions made by the learned counsels on both side and perused the materials available on record.

6. It is admitted fact that the suit property is the self acquired property of the Lingappa Pillai. The case of the appellant/second defendant, is that during his life time, Lingappa Pillai has executed a Will in his favour, but both the Courts below on considering the entire evidence available on record, concurrently held that the Will was not proved and hence, negatived the contention of the defendants. Since the plaintiffs being the legal heirs of the deceased Lingappa Pillai, both the Courts below granted decree in favour of the plaintiffs. I have carefully considered the rival submissions and perused the records. The appellant claim exclusive right over the property, by virtue of the Will executed by Lingappapillai, but he failed to prove the Will by acceptable evidence. Both the Courts on fact negatived the claim of the appellant. I find no perversity or illegality in the finding of the judgments of the Courts below. No substantial question of law arises for consideration in this Second Appeal and the Second Appeal is liable to be dismissed.

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

mrp

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District Judge,
Coimbatore,
2. The II Additional Subordinate Judge,
Coimbatore,

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.S.Arjun, Advocate, SR.No.14360

+1cc to Mr.C.Veeraraghavan, Advocate, SR.No.13942

S.A. No.525 of 2018

Kak(24/07/2019)

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