

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.317 of 2016 &
C.M.P.No.5918 of 2016 &
C.M.P.Nos.19636 of 2017

1.C.R.Krishnan (Died)
2.K.Gurusamy

3.S.Poongothai
4.R.Chitra
5.P.Mahalakshmi ... Appellants/Defendants 1 and 2

(Appellants 3 to 5 brought on record
as L.Rs of the deceased first appellant,
viz., C.R.Krishnan, vide order of Court
dated 27.09.2019 made in C.M.P.No.3869 of 2018
in S.A.No.317 of 2016)

Versus

Lakshmi (Died)

1.Deivanaiammal
2.R.Balasubramaniam @ Balasubramani (Died)
...Respondents 1 & 2/Plaintiffs 1 to 3
...Respondent 3/Defendent 3

3.K.Kumaresan
4.N.Subramanian
5.Sundari
6.N.Shanmugham
7.N.Ganesan
8.K.P.Selvaraj
9.Raguraman
10.Lakshmana Kumar
11.Sakunthala
12.Thiyagarajan
13.Balachandran

.. Respondents

(R-11 to R-13 brought on record as
L.Rs of the deceased second respondent
viz., R.Balasubramaniam vide order
of Court dated 27.09.2019 made in
C.M.P.Nos.3866 to 3868 of 2018 in
S.A.No.317 of 2016)

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 11.09.2012 made in A.S.No.141 of 2010 on the file of the Principal District Judge, Coimbatore, in confirming the judgment and decree dated 09.09.2005 made in O.S.No.1012 of 1996 on the file of the II Additional Subordinate Judge, Coimbatore.

For Appellants : Mr.N.Damodaran

For Respondents : Mr.V.Sivakumar

1,4 to 6, 8 to 12

R2-Died

R3 : Exparte

R7-Died

JUDGMENT

This Second Appeal arises out of judgment and decree of Principal District Court, Coimbatore passed in A.S.No.141 of 2010, confirming the judgment and decree of the learned II Additional Subordinate Judge, Coimbatore made in O.S.No.1012 of 1996.

2. The appellants are the defendants 1 and 2 in O.S.No.1012 of 1996. One Lakshmi and the respondents 1 and 2 as plaintiffs filed the suit claiming 1/4 share in the suit properties. It is the case of the plaintiffs that their mother Karuppayee Ammal, w/o. Ramaswamy Pillai was the absolute owner of the suit property and she died on 28.06.1996. According to the plaintiffs, she had 4 sons and one daughter, viz., the plaintiffs herein and the first defendant one another son-Natarajan. The plaintiffs mother executed a Will on 29.10.1986, which was registered as Document No.390 of 1986 and as per the terms of the Will, she had bequeathed the suit property to her four children, the plaintiffs herein and the first respondent jointly as tenants in common and as per the Will, they are entitled for 1/4 share in the suit property. The second defendant is the son of the first defendant and the third defendant is the one of the tenants in the suit property.

3. According to the defendants 1 and 2, the said Karuppayee Ammal had executed a Will dated 24.06.1996, bequeathing entire property in favour of the second defendant and hence, the plaintiffs are not entitled for share in the suit properties.

4. Based on the pleadings, the trial Court framed necessary issues. On behalf of the plaintiffs, five

witnesses were examined as P.Ws' 1 to 5 and 17 documents Exs.A1 to A17 were marked. On behalf of the defendants, three witnesses were examined as D.Ws.1 to 3 and produced Exs.B1 to B4.

5. The Will dated 29.10.1986 was marked as Ex.A17. Ex.B1 is the Will executed on 24.06.1996. It is not disputed that both the Wills are registered documents. P.W.3 is the identifying witness and P.W.5 is the attesting witness to Ex.A17. D.W.2 is the attesting witness for Ex.B1 and D.W.3 is the scribe of Ex.B1. The trial Court, disbelieved the execution of Ex.B1, on the grounds that the original documents of the suit property were produced by the plaintiff. Further, no reason has been given for exclusion for other legal heirs and Ex.B1 Will was executed, just 4 days prior to the death of the testatrix. The trial Court, rejected Ex.B1 entertaining suspicious over execution of the Will. The evidence of P.W.3 and P.W.5 were accepted to hold the execution of Ex.A17 Will is proved. On appeal, the appellate Court, confirmed the finding of the trial Court and hence, this Appeal.

6. At the time of admission of above Second Appeal, the following substantial questions of law arose for consideration:-

(a) Whether the Courts below erred in law and misdirected themselves in granting a decree for partition and separate possession of the suit property by holding that Ex.A17 Will executed by late Karuppayee Ammal was proved by the respondents / plaintiffs as per the provisions of Section 68 of Indian Evidence Act, 1872 read with Section 63 of the Indian Succession Act, 1925 by examining P.W.5 attesting witness and P.W.3 identifying witness when the genuineness of the said witnesses itself are questionable?

(b) Is not the second appellant as the propounder of Ex.B1, registered Will, proved its execution and attestation as per Section 68 of the Indian Succession Act, 1925 and by dispelling the suspicious circumstances by letting in cogent, satisfactory and sufficient evidence?

(c) Whether the Courts below erred in law and misdirected themselves in holding that Ex.B1, registered Will was not proved by the propounder of the Will in a manner known to law and the propounder had failed to discharge the suspicious circumstances merely on the premises that one of the attesting witness examined as

D.W.2 is a close relative of the beneficiary and no reasons have been adduced by the testatrix for the exclusion of other heirs while granting the entire property to the second appellant without adverting to the contents of Ex.B1 registered Will in its true perspective?"

7. Mr.N.Damodaran, learned counsel for the appellant would urge that both the Courts below have committed error in rejecting Ex.B1 on the ground that D.W.2 is a close relative of the beneficiary. It is further contended that P.W.3 has admitted in his evidence that one of the attesting witnesses viz., Marudhachalam died and another attesting witness sustained head injury, however, according to the learned counsel, the plaintiffs examined the said Marudhachalam as P.W.5. It is further contended that a bare perusal of the signatures of attesting witness and identifying witness in Ex.A17 with the signatures in the deposition, would clearly reveal that there is a vast difference and hence, evidence of P.W.3 and P.W.5 have to be rejected and Ex.B1-Will, dated 24.06.1996 is to be held as genuine.

8. Per contra Mr.V.Sivakumar, learned counsel for the respondents submitted that both the trial Court and the appellate Court have given valid reasons to entertain suspicious over Ex.B1-Will and the factual findings need not be interfered in this Second Appeal. The learned counsel further submitted that in Ex.A17 itself, it has been mentioned that the original documents have been handed over to the beneficiary and they were also produced by the plaintiffs and they have been marked as exhibits. It is further contended that in Ex.B1, there is no reference about Ex.A17 Will and it was not cancelled under Ex.B1.

9. Heard the learned counsels on either side and perused the materials placed on record.

10. In the matter on hand, the plaintiffs claim share in the suit property on the basis of Ex.A17 Will. In order to prove Ex.A17, the plaintiffs examined P.W.3-identifying witness and P.W.5-attesting witness and the original documents produced by the plaintiffs were marked as Exs.A3 to A8 and A10.

11. It is the contention of the learned counsel for the appellants that the evidence of P.W.3 and P.W.5 have to be rejected, since there is difference in signature in Ex.A17 Will and their depositions. I am not able to agree with the submission of the learned counsel for the appellants for the reasons that Ex.A17 Will was executed

in the year 1986, whereas P.W.3 and P.W.5 were examined in 2003 i.e., after about 2 decades later. Further, a perusal of the records would reveal that there is only a minor difference, which is bound to occur in view of passage of time. Admittedly, D.W.3, who is the sister of the beneficiary, is the scribe of Ex.B1. It is not disputed that within 4 days of the execution of Ex.B1, the testatrix died and that under Ex.B1 Will dated 24.06.1996, Ex.A17 was not cancelled and there is no reference about Ex.A17 in Ex.B1. Both the Courts below after independently analyzing the entire evidence of oral and documentary, came to the conclusion that Ex.B1 was executed in a suspicious circumstances. Hence, I find no valid reason to interfere with the concurrent finding of the Courts below.

12. In such view of the matter, the questions of law are answered against the appellants and the Second Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rns

To

1.The Principal District Judge,
Coimbatore.

2.The II Additional Subordinate Judge,
Coimbatore.

+1cc to Mr.N.Damodaran, Advocate, S.R.No.103793

+1cc to Mr.V.Sivakumar, Advocate, S.R.No.103579

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NJKK(CO)

CB(26/08/2020)