

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2019

PRONOUNCED ON : 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.859 of 2019

1.Elavarasi
2.Rani
3.Kalaivani
4.Gomethagam

... Appellants/Plaintiffs

Vs.

1.Vibhushnan

2.Dhanalakshmi ... Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.02.2019 passed in A.S.No.29 of 2017 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and Decree dated 22.03.2017 passed in O.S.No.21 of 2013 on the file of the Principal District Munsif Court, Tindivanam.

For Appellants : Mr.C.Adhikesavan

For Respondents : Mr.R.Agilesh

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.02.2019 passed in A.S.No.29 of 2017 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and Decree dated 22.03.2017 passed in O.S.No.21 of 2013 on the file of the Principal District Munsif Court, Tindivanam.

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

3.Suit for declaration and permanent injunction.

4.As could be seen from the pleas put forth by the plaintiffs in the plaint and the materials placed on record on their part, it is found that the plaintiffs claim title, possession and enjoyment of the suit property based on the Will dated 10.12.2007 said to have been executed in their favour by Sagadevan. The abovesaid Will projected by the

plaintiffs for claiming title to the suit property has been stoutly challenged by the defendants. In the light of the above position, the plaintiffs being the probounders of the Will, it is for them to establish the truth and validity of the same as per law. In this connection, the plaintiffs had examined one of the attestors to the Will viz., Thirumalai as PW2. PW2, even during the course of chief examination, would only state that he and one Palani had attested the Will marked as Ex.A1 and he has not deposed even in the chief examination that he has witnessed the execution of the abovesaid Will by Sagadevan and also not stated that Sagadevan had signed in the Will in his presence or Sagadevan had witnessed his attestation of the Will and furthermore, he has not also stated that he had attested the Will in the presence of Sagadevan and also not stated that Sagadevan had acknowledged the execution of the Will to him and in such view of the matter, considering the evidence of PW2, as adduced by him, even during the course of Chief Examination, it is found that his evidence would be of no use to sustain the truth and validity of Ex.A1 Will as per law. Furthermore, during the course of cross examination, PW2 would only state that he does not remember whether Sagadevan had signed Ex.A1 Will. In such view of the matter, when PW2's evidence does not satisfy that Sagadevan had really executed the Will as per law and that PW2 had attested the Will in the presence of Sagadevan and furthermore, when the plaintiffs had not chosen to examine to other attesor Palani in support of their case, considering the abvoesaid position, as rightly determined by the Courts below, PW2's evidence does not satisfy the necessary ingredients for establishing the truth and validity of the Will Ex.A1 and furthermore, PW2's evidence also does not satisfy that he had validly attested the Will Ex.A1 and in such view of the matter, the Courts below are found to be justified in holding that PW2's evidence would not be sufficient to uphold the truth and validity of Ex.A1 Will.

5. In addition to that, it is found that on a perusal of Ex.A1 Will, it is seen that the same had been created in such a manner as if to present a picture that it had been executed in the year 2007 itself and accordingly, as rightly found by the trial Court, in particular, the paper, on which the abovestated document had been engrossed, is found to have been crushed and placed in mud and thereafter, placed in a plastic cover, as if to create an impression that it had been executed in the year 2007. Furthermore, on a perusal of the paper, on which, Ex.A1 had been written, as rightly found by the trial Court, it is seen that the contents of the Will had been closely written at the top and below, the description of the property had been given and therefore, on a cursory glance of the said contents and the manner, in which it had been written, the same would only go to show that the Will had been prepared on a paper, in which, the signature had been already obtained and on that ground also, the Will projected by the plaintiffs do not merit acceptance and the abovesaid

suspensions surrounding, the Will had not been properly explained by the plaintiffs. Furthermore, the Will is said to have been scribed by a licensed writer. However, the name of the scribe has not been clearly described and even his license number has not been pointed out and therefore, it is highly doubtful whether the abovesaid Will would have been scribed by a licensed writer as sought to be made out by the plaintiffs. In addition to that, considering the materials available on record, it is found that Sagadevan was not in a good health condition at the alleged time of the execution of the Will. In this connection, the Courts below had rightly relied upon the evidence of DW3 and considering his evidence and when his evidence has not been seriously controverted by the plaintiffs, in all, it is found that Sagadevan was not in a good state of health and also not in a good mental condition at the time of the alleged execution of the Will and therefore, it is highly doubtful whether he would have executed the Will with full conscious of the particulars contained therein. Further, as rightly determined by the trial Court, when it is found that Sagadevan during his life time had settled the item 3 of the plaint schedule properties in favour of his grandson Paranthaman by way of a settlement deed marked as Ex.A15 to say that he had bequeathed the said property also in favour of the plaintiffs by way of Ex.A1 Will would only go to expose as to whether Sagadevan would have executed the Will knowing the contents of the same. Considering the status of Sagadevan, he being found to be presiding over the Panchayat in Village, in such view of the matter, such a person would not have proceeded to execute a Will in respect of a property which he had settled in favour of his grandson and on that ground also, a serious suspicion arises as to whether at all Ex.A1 would have been executed by Sagadevan as put forth by the plaintiffs. Furthermore, considering the materials placed on record, when it is found that the properties belonging to the family of Sagadevan had been orally divided between his two sons and when accordingly, it is found that the Will projected in the matter is found to be covering the properties allotted to the share of the first defendant, in such view of the matter, when the plaintiffs had failed to dispel the abovesaid suspicion raised with reference to the Will, the trial Court, in particular, is found to be justified in relying upon the abovesaid factor also for not accepting the truth and validity of the Will in question. Considering the abovesaid various suspicious circumstances surrounding the Will, in such view of the matter, when the plaintiffs had failed to dispel the abovesaid suspicion satisfactorily and convincingly, on that ground also, the Will projected by the plaintiffs cannot be upheld and rightly rejected by the Courts below.

6. In the light of the abovesaid factors, when the plaintiffs claim the reliefs prayed for in the suit only based on Ex.A1 Will and as above pointed out, when the plaintiffs had miserably failed to establish the truth and validity of

the abovesaid Will as well as failed to dispel and clear the suspicious circumstances surrounding the abovesaid Will, in such view of the matter, the Courts below are found to be fully justified in not granting the reliefs prayed for by the plaintiffs and thereby, rightly rejected their suit.

7.The reasonings and conclusions of the Courts below for non suiting the plaintiffs being founded on a proper appreciation of the materials placed on record as well as the principles of law governing the issues involved between the parties in the right perspective and not suffering from any infirmity or perversity, in such view of the matter, they do not warrant any intereference.

In conclusion, no substantial question of law is found to be involved in this second appeal and accordingly, the second appeal is dismissed. Consequentially, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

sms

To

1.The Principal Subordinate Court, Tindivanam.

2.The Principal District Munsif Court, Tindivanam.

Copy to

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

+1cc to Mr.N.Chinnaraj, Advocate SR.No.72832

+1cc to Mr.T.Dhanasekaran, Advocate SR.No.73906

S.A.No.859 of 2019

CNR (CO)
GMY (09/01/2020)