

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.NOS.996 AND 997 OF 2019

AND

C.M.P.NOS.21446 AND 21457 OF 2019

S.A.No.996 of 2019:

M.S.Chinnusamy

... Appellant/Plaintiff

Vs.

1.S.Jayalakshmi
2.K.Krishnaveni
3.M.K.Logasundaramoorthy
4.M.V.Meenakshi
5.Maragatham
6.Rukmani
7.Soundaram

..Respondents/Defendants

PRAYER in S.A.No.996 of 2019:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 23.01.2019 made in A.S.No.89 of 2018 on the file of Principal District Judge, Erode as confirmed the judgment and decree dated 12.02.2018 made in O.S.No.70 of 2011 on the file of the II Additional Subordinate Judge, Erode and allow the above Second Appeal.

S.A.No.997 of 2019:

M.S.Chinnusamy

..Appellant/1st Defendant

Vs.

1.M.V.Meenakshi
2.K.Krishnaveni
3.M.K.Logasundaramoorthy
4.Maragatham
5.Rukmani
6.Soundaram
7.S.Jayalakshmi

... 1st Respondent/Plaintiff

..Respondents 2 to 7/
Defendants 2 to 7

PRAYER in S.A.No.997 of 2019:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 23.01.2019 made in A.S.No.88 of 2018 on the file of Principal District Judge, Erode as confirmed the judgment and decree dated 12.02.2018 made in O.S.No.54 of 2011 on the file of the II Additional Subordinate Judge, Erode and allow the above Second Appeal.

For Appellant : Mr.M.V.Venkateseshan
in both the appeals

J U D G M E N T

The 1st defendant in O.S.No.54 of 2011 who suffered a decree for partition and separate possession of the plaintiff's 1/6th share concurrently has come up with this Second Appeal. He had also filed a suit in O.S.No.70 of 2011 seeking a decree for permanent injunction against the plaintiff in O.S.No.54 of 2011 and the other defendants in the said suit.

2. In view of the decree passed in O.S.No.54 of 2011 the suit in O.S.No.70 of 2011 was dismissed by the courts below. The claim of the plaintiff in O.S.No.54 of 2011 is that the suit properties originally belonged to late Kolandasamy Gounder's family. The Genealogy of the family is as follows:-

Kolandasamy Gounder (Died - 1968)						
I						
I ---Chinnammal (Wife) (Died-1960)						
I						
Sivasubramaniam (Died-2002)	Logasundaramoorthy D3	Velusamy (Died-2009)	Jegadeesan (Died-1992) unmarried	Maragatham D5	Rukmani D6	Soundaram D7
I			I			
I--- Jeyalakshmi (Wife) D1			I			
I			I			
I			Meenakshi (Wife)			
I			D4			
Krishnaveni D2		Chinnasamy Plaintiff				

3. The plaintiff in O.S.No.54 of 2011 is the wife of one of the sons of Kolandasamy Gounder by name Velusamy. There was a partition between Kolandasamy Gounder and his sons on 17.07.1960. On the death of Kolandasamy Gounder, the sons of

Kolandasamy Gounder divided the properties that were allotted to him in the partition dated 17.07.1960 by way of a registered partition deed dated 14.07.1974. The suit properties were allotted to Jegadeesan S/o. Kolandasamy Gounder under the above registered partitions dated 17.07.1960 and 14.07.1974.

4. The said Jegadeesan, according to the plaintiff, died intestate and as a bachelor leaving behind his three brothers and three sisters to succeed. The plaintiff being wife of Velusamy one of the brothers of Jegadeesan who died in 2009 would claim 1/6th share in the properties. The defendants 2 to 7 did not contest the suit seriously. The 1st defendant who is also the plaintiff in O.S.No.70 of 2011 filed a written statement contending that Jegadeesan had left a Will dated 24.12.1991, in and by which, he had bequeathed the properties to the 1st defendant. Therefore, neither the plaintiff nor the other defendants have any right over the suit properties. The 1st defendant sought for dismissal of the suit on the above contentions.

5. The courts below on a consideration of the evidence on record concluded that the plaintiff in O.S.No.54 of 2011 would be entitled to 1/6th share of Velusamy in the properties that were allotted to Jegadeesan in the partitions dated 17.07.1960 and 14.07.1974. The documents evidencing the partitions were marked as Ex.A1 and Ex.A2.

6. As regards the Will propounded by the 1st defendant, the courts below found that the 1st defendant had miserably failed to prove the Will. Though the 1st defendant had attempted to prove the Will by examining the scribe of the document, the courts below have found that the witnesses examined to prove the Will have not spoken about the execution of the instrument by Jegadeesan.

7. The courts below also disbelieved the version of the 1st defendant on the ground that the Will dated 24.12.1991 is claimed to have been disclosed to the 1st defendant by his wife's uncle one Mr.Ilango only during the year 2011 i.e., nearly 20 years after the execution of the Will. The courts below also found that the 1st defendant has not proved execution of Ex.B8 viz., a Notarized Declaration Deed executed by the said Ilango. The evidence of DW7 in that regard was disbelieved by the courts below. On the above findings, the courts below decreed the suit for partition while dismissing the suit for injunction. Aggrieved by the said concurrent findings the 1st defendant is on appeal.

8. I have heard Mr.M.V.Venkataseshan, learned counsel appearing for the appellant.

9. Mr.M.V.Venkataseshan, learned counsel appearing for the appellant would vehemently contend that the courts below were not right in concluding that the Will has not been proved. Drawing my attention to the fact that the attesting witnesses had died and the 1st defendant has done everything in his capacity to prove the Will. Mr.M.V.Venkataseshan would submit that the courts below were not justified in concluding that the Will has not been proved.

10. I am unable to agree with the counsel for the appellant. Admittedly, the Will is a unregistered instrument and the same was executed in December 1991. There is no evidence much less a satisfactory evidence to explain the reasons for the 1st defendant not projecting the Will at any time earlier.

11. The 1st defendant also claimed that the Will was entrusted to one Ilango, who is his wife's maternal uncle and the said Ilango disclosed the Will to the 1st defendant only on 17.02.2011. This theory is wholly unbelievable. Apart from that, the courts below have considered the evidence of the persons examined to prove the Will and have concluded that none of the witnesses have spoken about the execution of the Will by Jegadeesan. In the absence of any evidence regarding execution of the Will by Jegadeesan, the courts below were justified in disbelieving the Will.

12. The findings of the courts below on the credibility of the witnesses and the factum of execution of the Will being factual in nature, in the absence of perversity, I do not think I can interfere with the said findings particularly sitting in the Second Appeal. I do not find any question of law much less a substantial question of law in order to enable me to entertain these Appeals.

13. Hence, both the Second Appeals are dismissed without being admitted. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The learned Principal District Judge, Erode.
2. The learned II Additional Subordinate Court,
Erode.

+1cc to Mr.M.V.Venkateseshan, Advocate in Sr.No.87140

S.A.Nos.996 and 997 of 2019

SJ(CO)
CS/14/12/2020



WEB COPY