



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.84 of 2014

&

M.P.No.1 of 2014

1.Kanniammal

2.Sampath

3.Venkatesan

... Appellants / Defendants

Vs

Jagadeeswari

... Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree of the Subordinate Judge of Tiruvallur dated 21.06.2013 in A.S.No.3 of 2012 confirming the Judgement and Decree of the learned District Munsif of Tiruvallur dated 15.03.2011 in O.S.No.2 of 2007.

For Appellants : Mr.J.Hariharan
for Mr.Nicholas

For Respondent : Mr.J.R.K.Bhavananthan

J U D G E M E N T

The defendants are the appellants before this Court. The Second Appeal is filed against the Judgement and Decree in A.S.No.3 of 2012 on the file of the Sub Court, Tiruvallur, confirming the Judgement and Decree of the learned District Munsif, Tiruvallur in O.S.No.2 of 2007. The parties to the proceedings are referred to in the same array as in the suit.

Plaintiff's Case:

The brief facts which are necessary to dispose of the Second Appeal are as follows:

2.The plaintiff had filed a suit O.S.No.2 of 2007 on the file of the District Munsif, Tiruvallur for a declaration of her title to the suit property and for recovery of possession of the same from the defendants.



3.The case of the plaintiff was that the suit property originally belonged to her paternal grandmother Rojammal who had purchased the same under a registered sale deed dated 29.05.1958. Thereafter, the said Rojammal had bequeathed the suit property in favour of the plaintiff under a registered will dated 16.11.2005. The testatrix, Rojammal died on 02.10.2006 and there upon the suit property devolved upon the plaintiff and become her absolute property.

4.When the said Rojammal was alive she was under the care and custody of her youngest son Rama Moorthy, father of the plaintiff. The husband of the 1st defendant and father of the defendants 2 and 3, one Anandhan was the eldest son of Rojammal. The said Anandhan had predeceased his mother and since the 1st defendant had become a widow with two small children, Rojammal had permitted them to reside in the house constructed on the suit property. The defendants had originally promised the plaintiff that they would hand over the vacant possession of the suit property as and when claimed by the plaintiff.

5.The plaintiff would further contend that, despite her request on 10.12.2006 and 23.12.2006 the defendants refused to handover the possession and began to assert an independent right over the same. Therefore left with no other alternative, the plaintiff had filed the above suit.

Defendants' Case:

6.The defendants had filed a written statement contending that the said Rojammal did not have any income on her own and her husband Kesava Reddy had purchased the property in her name. It was therefore their contention that the property belonged to Kesava Reddy and his sons and that Rojammal was never the absolute owner of the suit property. They had also denied the execution of the Will.

7.The defendants would further contend that the house tax was being paid in the name of the 1st defendant and the electricity service connection was also in her name. They would further contend that they have been in possession and enjoyment of the property for well over the statutory period and had therefore perfected title over the same.

Trial Court:

8.The learned District Munsif, Tiruvallur had framed the following issues:

"a)Whether the plaintiff is entitled for declaration of her right and title over the suit property?

b)Whether the plaintiff is entitled for recovery of vacant possession of the suit property?"



9.The plaintiff examined herself as P.W.1 and one Narayanan as P.W.2. Ex.A.1 to Ex.A.3 were marked on her side to prove her contentions. On the side of the defendants the 3rd defendant examined himself as D.W.1 and one Balaraman and Thulukkanam were examined as D.W.2 and D.W.3 respectively. They had also marked Ex.B.1 to Ex.B.9 in support of their contentions.

10.The learned District Munsif, Tiruvallur returned a finding that the property was the absolute property of Rojammal and consequently she had every right to execute a Will in favour of the plaintiff. That apart, the attesor of the Will has been examined on the side of the plaintiff as P.W.2 and the Will having been proved the plaintiff was entitled to a declaration of her title to the suit property. The learned District Munsif, Tiruvallur have also held that the plaintiff was therefore entitled to recovery of possession.

Appellate Court:

11.The said Judgement was taken up on appeal in A.S.No.3 of 2012. The learned Subordinate Judge, Tiruvallur by Judgement dated 21.06.2013 was pleased to dismiss the appeal and confirmed the Judgement and Decree of the learned District Munsif, Tiruvallur. It is challenging this concurrent Judgement and Decree that defendants are before this Court.

Second Appeal:

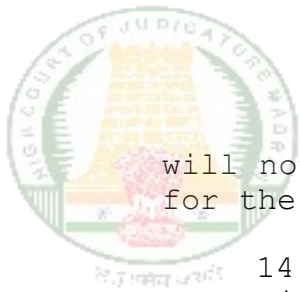
12.At the time of admission the following Substantial Questions of law has been framed:

"1)When there are suspicious circumstances in the execution of the Will and the obligation of the propounder of the Will who has taken active part in the execution to dispel such suspicious circumstances and having failed to dispel such suspicious surrounding the execution and attestation of the will whether the Courts below are correct in granting the relief to the plaintiff on the basis of such will?

2)When the plaintiff has not proved the execution of the Will in accordance with Section 63 of the Indian Evidence Act and Section 63 of Indian Succession Act whether the courts below are correct in upholding the claim of the plaintiff on the said will?"

Submissions:

13.Heard, Mr.J.Hariharan, learned counsel for the appellants/defendants. He would contend that Rojammal did not have any independent income and the said property had been purchased from out of the ancestral nucleus and was therefore joint family property. He would therefore contend that since the property was not the self acquired property of the said Rojammal, the Will executed by her in favour of the plaintiff



will not convey any title to the plaintiff. He therefore prayed for the appeal being allowed.

14.Per contra, Mr.J.R.K.Bhavananthan, learned counsel appearing on behalf of the plaintiff would submit that the property having been purchased in the name of the Rojammal and registered sale deed stand in her name, the said Rojammal is the absolute owner of the said property. The defendants have no semblance of a right, title or interest over the same. He would contend that once the title to the property has been proved and further considering the fact that the defendants were in permissive occupation of the said property there is no scope for interfering with the Judgement and Decree of the Courts below.

15.Heard the counsels and perused the records. The defendants have come forward with the specific case that the property in question though standing in the name of Rojammal, the income for its purchase came out of the ancestral nucleus. The defendants have failed to substantiate the above contention. Further the property standing in the name of a Hindu Female is her absolute property and she was free to deal with the same in a manner of her choice. Therefore taking into account the fact that the sale deed was in the name of the deceased Rojammal and the Will having been proved in the manner known to law by examining the attestator as P.W.2, the title of the property has passed on to the plaintiff. There is no justification for interfering with the concurrent Judgement and Decree.

In the result, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-V)

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To

Sub Assistant Registrar

1.The Subordinate Judge, Tiruvallur.

2.The District Munsif, Tiruvallur.

+1 cc to Mr.V.Nicholas, Advocate, S.R.No.51356

copy to: The Section Officer, VR Section, High Court, Madras.

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TM(CO)
SSM(14/11/2019)