

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 1065 of 2019
and
C.M.P.No. 22887 of 2019

1. V.K.Shanmugam

2. S.Kannammal ..Appellants/ defendants 2&4

Vs.

1. K.Murugesan
S/o Komarasamy Gounder ...1st respondent/Plaintiff

Palaniammal (Died)
W/o Late Komarasamy Gounder.

2. Gowriammal ...2nd Respondent/ Defendants1&3

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgement and decree dated 15.03.2019 made in A.S.No. 57 of 2016 on the file of the learned Principal Subordinate Judge, Erode confirming the Judgement and Decree dated 14.09.2016 made in O.S.No. 441 of 2011 on the file of the learned Principal District Munsif, Erode.

For Appellants : Mr.C.E.Pratap

J U D G M E N T

The defendants 2 and 4 who suffered a decree for declaration and injunction at the hands of the Courts below have become up with this Second Appeal.

2. The suit in O.S.No. 441/2011 was filed by the first defendant for the reliefs stated therein, contending that the suit properties belonged to one Komarasamy Gounder, he having purchased the same, under a registered sale deed, dated 20.07.1978. During his life time, the said Komarasamy Gounder while in sound and disposing state of mind has bequeathed the suit properties in favour of the plaintiffs by executing a registered Will dated 25.09.2002. The said Komarasamy died on 16.12.2006. The Will came into force. The plaintiffs became absolute owners of the suit property. The plaintiffs filed a

suit for declaration of title and consequential permanent injunction. The suit is resisted by the defendants, particularly, the 2nd defendant, contending that the said Komarasamy Gounder had cancelled the Will dated 25.09.2002 by another registered Will dated 21.09.2005, under which the said Komarasamy Gounder had bequeathed the suit properties in favour of the 2nd defendant. The 2nd defendant had settled the property in favour of the 4th defendant under the Settlement dated 22.10.2010. Therefore, the Will dated 25.09.2002 will not confer any title to the plaintiffs.

3. Before the Trial Court the signature in the Will dated 21.09.2005, was compared with the admitted signatures of the Komarasamy Gounder in the Will dated 25.09.2002, by refusing the documents to a handwriting expert. The handwriting expert had opined that the signature found in the Will dated 21.09.2005 does not tally with the admitted signatures of Komarasamy Gounder in the registered Will dated 25.09.2002. The opinion of the expert was marked as Exs. X1 & X2.

4. The Trial Court on consideration of the evidence on record and opinion of the expert, came to the conclusion that Will dated 25.09.2002 is that of Komarasamy Gounder and Will dated 21.09.2005 is not that of Komarasamy Gounder. On such a finding, the Trial Court decreed the suit. Aggrieved, the defendants 2 & 4 filed an appeal in A.S.No. 57 of 2016.

5. On a reconsideration of the evidence on record, the First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal.

6. Mr.C.E.Pratap, the learned counsel for the appellants vehemently contended that the Courts below erred in decreeing the suit, based on the expert's opinion, regarding the validity of Will dated 21.09.2005.

7. I have considered the submissions of the learned counsel. The execution of the registered Will dated 25.09.2002 by Komarasamy Gounder is admitted. Both the courts have examined the evidence and concluded that the evidence of DW2 cannot be relied upon.

8. The Trial Court has granted a declaration declaring that the plaintiffs is the owner of the property as per Will of Komarasamy dated 25.09.2002, which was marked as Ex.A2 and also granted permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties. The plaintiffs had also examined PW2 & PW3 who are the attestors to the Will dated 25.09.2002.

9. The Revenue Documents would go to show that the plaintiff has been in possession of the property. The factual findings of the Courts below are based on evidence. Hence, I do not see any question of law much less a substantial question of law arising for consideration, in order to enable this Court to entertain this appeal. Hence, this second appeal fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmm

To:-

1. The Principal Subordinate Judge,
Erode

2. The Principal District Munsif,
Erode.

+1cc to Mr.C.E.Pratap , Advocate SR.No. 90012

+1cc to Mr.S.Kaithaimalaikumaran , Advocate SR.No. 89857

S.A.No. 1065 of 2019

and

C.M.P.No. 22887 of 2019

A.SK(18/03/2020)

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