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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE NISHA BANU
SECOND APPEAL (MD) Nos.198 and 199 of 2018

and

C.M.P. (MD) .No.5141 of 2018

in

SA(MD)No.198 of 2018

S.A. (MD) .No.198 of 2018:

Vijayakumar

... Appellant /
Appellant/1st defendant

Vs.

1.Premalatha

2.Lalithambiga

3.Rajeswari

... Respondents /
Respondents / Plaintiffs 2 to 4

4.Saroja

5.Suseela

6.Tamil Selvi

7.Dr.Millingtonia

... Respondents 4 to 7/
Respondents 4 to 7 / Defendants 2 to 5

S.A. (MD) .No.199 of 2018:

Vijayakumar

... Appellant /
Appellant/Plaintiff

Vs.

1.Premalatha

2.Lalitha

3.Rajeswari

4.Saroja

5.Suseela

6.Tamil Selvi

... Respondents /
Respondents / Defendants 2 to 7

<https://hcservices.ecourts.gov.in/hcservices/>

COMMON PRAYER: Appeals filed under Section 100 of C.P.C., against the judgment and decree, dated 02.11.2017, passed in A.S.Nos.87 and



86 of 2015 by the Subordinate Court, Kuzhithurai, confirming the judgment and decree, dated 11.02.2015 passed in O.S.Nos.563 and 487 of 2008 respectively by the Principal District Munsif, Kuzhithurai.

For appellant in
both the appeals ... Mr.S.Titus

For respondents 1 to 3
in both the appeals ... Mr.Meenakshi Sundaram,
for Mr.R.Murugan

For respondents 4 to 6 in
both the appeals ... Mr.V.George Raja

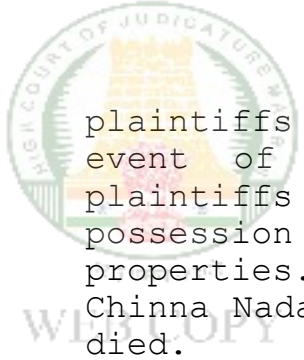
COMMON JUDGMENT

The suit properties originally belonged to one Samuvel Nadar and after his death, the suit properties devolved on his son Chinna Nadar. The said Chinna Nadar died in the year 2006 leaving behind his wife by name Rose Mary, son by name Vijayakumar and six daughters by name Saroja, Suseela, Selvi, Prema, Lalitha and Rajeswari. The appellants and the respondents are the LRs of the said Chinna Nadar.

2. The one and only son of Chinna Nadar by name Vijayakumar (appellant in both the appeals) had filed a suit in O.S.No.487 of 2008 against her mother and sisters for declaration of the suit schedule property viz., 7.3/4 cents of land in S.No.319/7 at Nalloor Village, Vilavancode Taluk, Marthandam, Kanyakumari District, inclusive of a building, as his absolute property and for permanent injunction restraining the defendants from disturbing his peaceful possession and enjoyment of the same.

3. According to the appellant/plaintiff, the properties left by Samuvel Nadar are the co-parcenary properties of plaintiff and Chinna Nadar. Chinna Nadar sold some properties for the marriage expenses of his daughters. As per the oral family settlement, dated 23.01.2005, the suit property was allotted to his share. Having accepted the same, now her sisters are attempting to disturb his peaceful possession and enjoyment of the suit property by producing a bogus Will and hence, he filed the suit.

4. The wife and three daughters of Chinna Nadar by name Rose Mary and the respondents 1 to 3 herein as plaintiffs 1 to 4 had filed a suit in O.S.No.563 of 2008 against the appellant herein and the other three sisters viz, the respondents 4 to 6 herein and a purchaser of a property viz., 7th respondent in S.A.(MD).No.198 of 2008 for declaration of title and possession of the plaintiffs 2 to 4 over "C" schedule property subject to the life interest of the first plaintiff; a decree for demarcation of plaintiff "C" schedule property from the rest of "A" schedule property; a decree for metes and bounds partition and separate possession of 3/4 share of the



plaintiffs 2 to 4 in the plaint "A" Schedule property and in the event of the Court declines the relief of declaration, the plaintiffs prayed for alternative relief of partition and separate possession of 4/8 share in the plaint "A" and "B" schedule properties. During the pendency of the suit, the wife of Chinna Nadar by name Rose Mary / 1st plaintiff in O.S.No.563 of 2008 died.

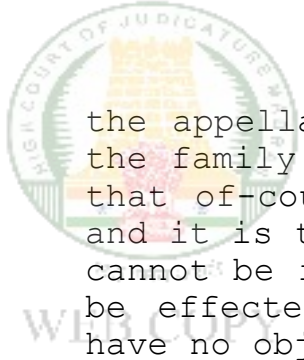
5. According to the respondents 1 to 3 herein, Chinna Nadar during his life time executed a registered Will on 23.12.2003, based on which they claimed right over the above said properties. No oral settlement was arrived at as stated by the appellant. The appellant is also aware of the Will, dated 23.12.2003. In the alternative, the respondents 1 to 3 submitted that as they were being unmarried on the date of the Tamil Nadu Act 1 of 1990 coming into force, they are also entitled for co-parcenary right over the suit "A" schedule property. Chinna Nadar and the appellant have no manner of right to execute any document in respect of undivided co-parcenary property and therefore, the sale deed executed in favour of the 7th respondent in S.A. (MD).No.198 of 2008 is a void document.

6. Since both the suits were interrelated to each other, the trial Court had conducted a joint trial of the suits. On the side of the plaintiffs/ respondents 1 to 3 herein, PW1 and PW2 were examined and Exs.A1 to A29 were marked and on the side of the defendants / appellant, DW1 to DW4 were examined and Exs.D1 to D30 were marked. On the side of the Court, Exs.X1 and X2 were marked.

7. After trial, the trial Court has held that the oral family settlement has not been proved and that the Will executed by Chinna Nadar has been proved and accordingly, partly allowed both the suits. Aggrieved by the judgment and decree passed by the trial Court, the appellant herein preferred appeal suits. Both the appeals were dismissed, confirming the judgment and decree passed by the trial Court. Aggrieved by the concurrent judgments passed by the Courts below, the present second appeals have been filed by the appellant.

8. When the matter came up for hearing today for admission, the learned counsel appearing for the appellant in both the appeals submitted that both the Courts below failed to see that the Will in dispute has not been proved in the manner known to law and that as there is a material alteration with regard to survey number in the Will, it cannot be acted upon. He would further submit that the house stated in the Will is not in existence now and that house was located on the western side of the terrace house of the appellant, but in the lower Court plan, the appellant's house is wrongly divided into two and hence, the same is liable to be set aside. Thus, he prayed to allow the suit in O.S.No.487 of 2008 in toto and to dismiss the suit in O.S.No.563 of 2008.

9. The learned counsel appearing for the respondents submitted that both the Courts below, after dealt with the issues raised by



the appellant in detail, has held that the Will is proved and that the family arrangement has not been proved. He would further submit that of-course, it is true that there is a correction in the Will and it is there in the original Will also, for which the entire Will cannot be rejected and as it is a registered one, the partition may be effected as per the registered original Will. The respondents have no objection for the same. Thus, he prayed to dismiss both the appeals.

10. Heard the learned counsel appearing for the parties and perused the records carefully.

11. Admittedly, it is a dispute between the brother and sisters. The appellant is disputing the Will in question merely based on the correction in the same. It is not in dispute that the Will in dispute is a registered one and the same is marked as Ex.A2. In order to prove the Will - Ex.A2, on the side of the respondents 1 to 3 herein, one of the attestors of the Will has been examined as PW2 and he has categorically stated in his evidence that the Will was executed by Chinna Nadar. Having found the same, both the Courts below have concurrently held that the Will is proved. With regard to the correction in the Will, the Courts below have held that that does not draw any adverse inference and thus, rejected the submission of the learned counsel for the appellant. This Court does not find any reason to interfere with the concurrent judgment passed by the Courts below. There is no question of law arising for consideration. However, as agreed by the learned counsel for both sides, the partition shall be effected in accordance with the original Will available in the Registrar Office. The contention with regard to the erroneous division of the property can be worked out by the appellant in the final decree proceedings.

12. With the above observation, both the second appeals are dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

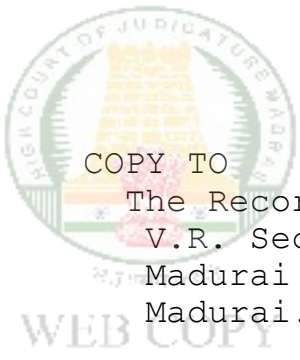
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Sub Assistant Registrar(CS)

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Kuzhithurai.

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2.The Principal District Munsif,
Kuzhithurai.



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+2cc to Mr.R.Murugan, Advocate, SR.No.52591

S.A.(MD) Nos.198 and 199 of 2018
08.03.2019

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