

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on :	Delivered on:
10.12.2019	06.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.PARTHIBAN

S.A.No.1344 of 2007

V.Kothandaraman : Appellant/ 3rd Defendant

vs.

1. K.Rani @ Usharani
2. Sarojini
3. Rajam
4. Padmavathi
5. Indira
6. K.Sowmya
7. Sasikala

... Respondents/Plaintts & Defendants 2,4,5,6 and 7

R1 is not a necessary party,
hence given up. R-4&R-5
remained ex parte. (Hence Notice may be and hereby
disposed with)

Prayer: Second Appeal is filed against the judgement and
decree dated 10.04.2007 in A.S.No.13 of 2006 on the file of
the Court of the District Judge, Nagappatinam, confirming
the judgment and decree dated 18.10.2005 in O.S.No.133 of
2000 on the file of the Principal Sub Ordinate Judge,
Mayiladuthurai.

For Appellants :: Mr.A.Muthukumar

For respondent :: R1 is Given up
Mr.D.Muthukumar for R2
Mr.N.Raja Senthurpandian-R3
R4 & R5 -Ex parte
Mr.S.Sounthar for R6 & 7

JUDGMENT

This Second Appeal has been preferred against the
decree and judgment dated 10.04.2007 in A.S.No.13 of 2006
on the file of the Court of the District Judge,
Nagappatinam, confirming the judgment and decree dated
18.10.2005 in O.S.No.133 of 2000 on the file of the
Principal Sub Ordinate Judge, Mayiladuthurai.

2. The appellant is the 3rd defendant in the original suit. The plaintiffs are the respondents 1 and 2 herein. The 1st plaintiff who is the 1st respondent herein, had approached the trial Court by filing a suit in O.S.No.133 of 2000, seeking for partition of the various suit schedule properties on the ground that she is the wife of one Kirupakaran who was the son of Venkatakrishna Vaithiar and his wife Chinnapillai. There were other legal heirs claiming their shares in the same suit schedule properties, arrayed as defendants, particularly, defendants 6 and 7, who were the daughter and wife of said Kirupakaran respectively. The first plaintiff herein claimed to be the second wife of Kirupakaran and during the trial, the first defendant Sarojini was transformed as 2nd plaintiff in the suit. Various contentions were raised on behalf of the plaintiff for partition of the suit properties after the death of the Venkatakrishna Vaithiar since it became necessary for partition of the suit schedule properties as it was found to be not conducive to hold the properties jointly by all the legal heirs of the deceased Venkatakrishna Vaithiar and Chinnapillai.

3. On behalf of the 3rd defendant who was the appellant herein, a detailed written statement was filed, resisting the claim of the plaintiffs for allotting any shares in the suit schedule properties. Originally, the defendants 6 and 7 were not made as parties, but on the averments made by the 3rd defendant in the written statement, they were added as parties being legal heirs of the original owner, claiming shares to certain suit schedule properties.

4. The trial Court which went into the various issues and the evidence adduced on both sides, finally dismissed the suit as against the 1st plaintiff and held that the 2nd plaintiff was entitled to 1/6th share in the suit schedule properties and so were the defendants 6 and 7. As far as the claim of the 1st plaintiff was concerned, the trial Court found that she was not legally wedded wife as the deceased Kirupakaran had developed illicit intimacy with the 1st plaintiff when the first marriage was still subsisting with the 7th defendant and the 6th defendant was the only daughter of Kirupakaran and 7th defendant. Therefore, the trial Court has completely denied any share in the suit schedule properties as regards the 1st plaintiff was concerned.

5. While passing the judgment and decree against the 1st plaintiff and also passing a preliminary decree, entitlement to the shares of the 3rd respondent was discountenanced and not considered by the trial Court. Aggrieved by the same, the 3rd respondent filed an appeal before the lower appellate Court in A.S.No.13 of 2006.

6. According to the 3rd respondent who is the appellant before the lower appellate Court, that his case was basically on the premise that there was a partition deed effected on 1.1.1984 and as per which, he was entitled to certain suit properties. According to him, partition was effected between him and his brother Kirupakaran and the 3rd defendant and the deceased Kirupakaran, husband of the 7th defendant were the sons of Venkatakrishna Vaithiar. Originally, the trial Court dismissed the claim of the 3rd defendant, stating that he was not able to establish the Will since the Will was executed under suspicious circumstances. Several facts were brought before the trial Court pointing out that the Will which was marked as Ex.B5 was surrounded in mystery and the execution of it is doubtful in nature. Several lacunae were pointed out in the execution of the Will which said to have been executed on 1.1.1984. It was a one page Will in a typed sheet and in his deposition, 3rd defendant's witness DW.1 admitted that the testator of the Will had signed not before the attestors and therefore, the validity of the execution of the Will was questioned. Therefore, the claim of the 3rd defendant was discountenanced which was the subject matter of the appeal before the lower appellate Court. The lower appellate Court has also gone into the various contentions and found that the reasons and findings of the trial Court in respect of Ex.B5 were perfectly in order since there are too many material irregularities in execution of the document Ex.B5. This Will dated 1.1.1984 said to have been executed by Chinnapillai, the mother of the 3rd defendant who was the appellant before the lower appellate Court. The lower appellate Court has held that two documents relied on by the appellant, namely, Exs.B5 Will and Ex.B2 Settlement Deed were not genuine documents and in fact, as far as the Settlement Deed was concerned, the extent of the propperties were not mentioned and therefore, the appellant could not base his claim on such document. On the whole, the lower appellate Court has agreed in toto with the findings of the trial Court and ultimately dismsised the appeal which was filed at the instance of the 3rd defendant alone. As against that, the present Second Appeal has been filed.

7. While admitting the Second Appeal, this Court framed the following substantial questions of law, viz.,

1. Whether the findings of the Courts below that Ex.B5 Will has not been proved when the propounder has clearly established that there are no suspicious circumstances?
2. When the attestors have proved that the testatrix signed the Will and thereafter they signed in her presence, whether the learned District Judge erred in holding that the execution of the Will has not been proved?

8. Shri A.Muthukumar, learned counsel appearing for the appellant would submit that both the Courts below have erred in misconstruing the document Ex.B5 as if genuineness of it was not at all established by the appellant herein. According to the learned counsel, both the trial Court as well as lower appellate Court have failed to appreciate the surrounding circumstances under which the Will was executed and merely concluded against the appellant on the basis of technical ground that the testatrix signed the Will first and later the attestors have affixed their signatures and therefore, the execution of the Will was not proved. The learned counsel would submit that both the trial Court as well as the lower appellate Court have given undue importance to certain minor discrepancies in the Will Ex.B5 and both the Court were guided by such negligible errors and completely discountenanced the claim of the 3rd defendant. Therefore, he would submit that both the Courts below fell into error by being guided by certain extraneous circumstances of the Will. He would therefore submit that the present appeal as against the judgments and decrees passed by both the Courts below, has to be allowed.

9. Per contra, the learned counsel appearing for the contesting respondents would submit that the appellant herein has suffered decrees and judgments passed by the Courts below and the findings of the Courts below cannot be reappreciated in the present appeal. Both the trial Court as well as the lower appellate Court have given extensive reasons as to the circumstances in which the Will Ex.B5 was executed. It was not correct on the part of the appellant to contend that the discrepancies found in the Will were minor in the nature. From the conduct of the parties and the manner in which Ex.B5 was executed, it was a clear case of fabrication of the document at the instance of the appellant. In fact, when the Written Statement was filed immediately after laying the suit, Ex.B5 was with the appellant herein and only when the additional Written Statement was filed after a period of three years, this factum of execution of Ex.B5 was brought about by the appellant, which was a clear case of after-thought in order to claim a share in the suit properties for which, he is not entitled to otherwise.

10. In the above circumstances, both the trial Court as well as lower appellate Court have found that the document was riddled with material discrepancies and irregularities and also the factum that the author of the Will did not sign in the presence of the attestors and the attestors' signatures were obtained subsequent to the affixation of signature of the author which would itself make the Will invalid. In fact, both the Courts below have given sound reasons both in factual as well as legal terms as to how the claim of the appellant herein was unsustainable. Therefore, the learned counsel would submit that the present appeal is

without any merits and the same is liable to be dismissed.

11. Considered the submissions of the learned counsels appearing for the contesting parties. Perused the materials and pleadings placed on record.

12. Issue Nos.1 & 2:

1. Whether the findings of the Courts below that Ex.B5 Will has not been proved when the propounder has clearly established that there are no suspicious circumstances?

2. When the attestors have proved that the testatrix signed the Will and thereafter they signed in her presence, whether the learned District Judge erred in holding that the execution of the Will has not been proved?

13. The entire claim of the appellant herein was on the basis of Ex.B5 Will which was said to have been executed by his mother on 1.1.1984. The circumstances in which the Will was executed was not found to be genuine since there were several discrepancies found in the Will. This was highlighted by the learned trial Court and therefore, the Court gave a finding that the Will is not a genuine document based on which, the appellant made a claim. This Court had occasion to go through the entire judgment of the trial Court during the course of hearing and it is found that the trial Court has given extensive reasons for not accepting the veracity of the document Ex.B5. The contention of the learned counsel for the appellant that the discrepancies found in Ex.B5 Will were minor, cannot be acceptable since the discrepancies were too obvious and material which forced the Courts below to conclude that the document was fabricated and not genuine. In fact, even for a lay person, the discrepancies as found in the document, it could not be discerned as a genuine document. Therefore, the trial Court was right in holding that the document was unreliable and therefore, the entire case which was edified on such document at the instance of the appellant herein was invalid and hence dismissed the suit. The lower appellate Court which dealt with the appeal filed by the 3rd defendant, who is the appellant herein, has also given detailed reasons in confirming the findings of the trial Court. The fact of the matter was that the Ex.B5 was brought in as an after-thought only when an additional Written Statement was filed after a period of three years from the date of the original Written Statement filed by the appellant. Therefore, the lower appellate Court found that the trial Court was right in discarding the Will Ex.B5 and the findings rendered by the trial Court appeared to be well founded by the lower appellate Court and therefore, the lower appellate Court has confirmed the same. In fact, the lower appellate Court has also given its own reasons not

merely confirming the trial Court's findings routinely while dismissing the appeal of the appellant herein.

14. Moreover, it is found from records that the alleged Will dated 01.01.1984 was filed only in the lower appellate Court with the objection from their side before the District Judge, Nagapattinam. Therefore, the trial Court was right in dismissing the plea of partition alleged to have taken place in furtherance of the Will dated 01.01.1984 which was rightly confirmed by the lower appellate Court. In fact, the witnesses made contradictory statements regarding the execution of the Will and the contradictions were material for it to be ignored by the Courts below. In the said circumstances, the lower appellate Court has found the ultimate decision of the trial Court was not to be disturbed.

15. In view of the above narrative, this Court finds that there was nothing amiss in the approach of the trial Court as well as the lower appellate Court in regard to the discrepancies and the irregularities found in the crucial document Ex.B5 Will which were too glaring and obvious for it to be accepted as a genuine document. Since the entire claim of the appellant herein is built on the said document and the said document is found to be fabricated and not genuine, the entire edifice built on such document has to fall flat. This Court is unable to appreciate argument advanced on behalf of the appellant in order to over turn the verdict of both the Courts below. This Court is ultimately of the view that the reasons adopted by the Courts below and the findings rendered thereon were perfectly in order and this Court does not find any infirmity at all while exercising its appellate jurisdiction under Section 100 CPC. Therefore, the substantial questions of law framed while admitting the Second Appeal, are answered against the appellant and the Second Appeal is liable to be dismissed as devoid of merits and substance.

16. In the result, the Second Appeal is dismissed. The interim order, dated 28.07.2009 passed by this Court in M.P.No.1 of 2007 is hereby vacated. Both the parties shall bear their own costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

suk

To

1.The District Judge,
Nagapattinam.

2.The Principal Subordinate Juge,
Mayiladuthurai.

+lcc to Mr.Muthukumar, Advocate, S.R.No.705

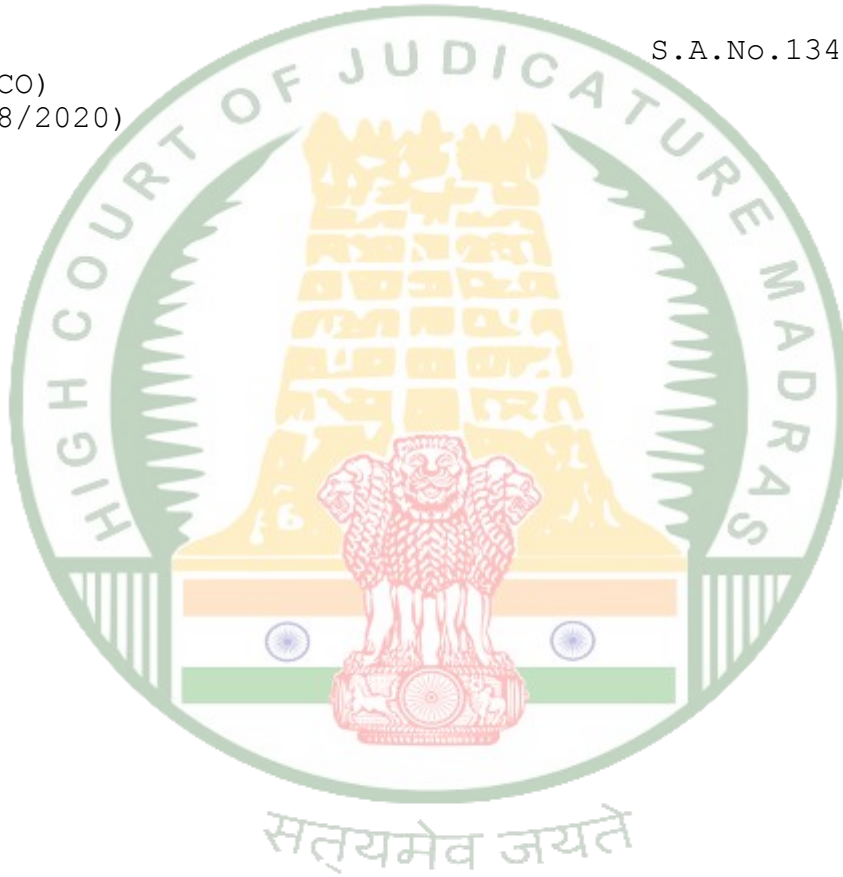
+lcc to Mr.N.Raja Senthoo Pandian, Advocate, S.R.No.1669

+lcc to Mr.P.Brito, Advocate, S.R.No.1626

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VSN II(CO)

CB(27/08/2020)



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