

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2010

PRONOUNCED ON: 27 .01.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A.No.301 of 2008

1.Pandurangan Chettiar(deceased)

2.Jothi

3.Devi

4.Varalakshmi

5.Priya

6.Saravanan

..Appellants/Respondent/Defendant

(Appellants 2 to 6 brought on record

as Legal heirs of the deceased sole

appellant vide order of this Court

dated 21.12.2016 made in

CMP Nos.19104 & 19105 of 2016

in SA.No.301 of 2008)

Vs.

Govindaraju

..Respondent/Appellant/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 21.10.2003 passed in A.S.No.71 of 1997 on the file of the Subordinate Judge, Ariyalur reversing the judgment and decree dated 30.10.1996 made in O.S.No.166 of 1993 on the file of learned Additional District Munsif, Ariyalur.

For Appellants : Mrs.K.Aswini Devi for

M/s.T.R.Rajaraman

For Respondent : Mr.S.Kamadevan

JUDGMENT

This Second Appeal has been filed against the Judgment and decree dated 21.10.2003 passed in A.S.No.71 of 1997 on the file of the Subordinate Judge, Ariyalur reversing the judgment and decree dated 30.10.1996 made in O.S.No.166 of 1993 on the file of learned Additional District Munsif, Ariyalur.

2. The facts which gave raise to the filing of the present Second Appeal are stated hereunder:

The first appellant herein is the defendant in the suit and the respondent herein is the plaintiff. The plaintiff has filed a suit in O.S.No.166 of 1993 on the file of learned Additional

District Munsif, Ariyalur praying for decree and judgment in favour of the plaintiff as against the defendant to declare the right and title of the plaintiff over the suit properties and also a consequential injunction, restraining the defendant from in any manner interfering and disturbing the plaintiff's peaceful possession.

3. According to the plaintiff, one Chellammal, who was the elder sister of the plaintiff's mother, executed a Will on 27.05.1999 in a stamped paper in respect of the suit schedule property in favour of the plaintiff. Since there was a dispute in regard to the title and possession of the property, the plaintiff has filed a suit for declaration and injunction. The defendant is the brother of the said Chellammal, disputed the execution of the Will and alleged that there was a rank forgery. According to the defendant, there was no necessity for the said deceased Chellammal to execute the Will since all along, she was under the care of the defendant and died in the house of the defendant. She was taking care of by the defendant and all her needs attended to by the defendant. The so-called Will Ex.A1 executed by the said Chellammal, which was said to have been attested by the defendant was alleged to be a forged signature, according to the defendant. Therefore, the defendant prayed for dismissal of the suit.

4. The trial Court, which went into the rival contentions of the parties and also after adverting to the various materials placed on record, dismissed the suit on the ground that there were too many suspicious circumstances existing regarding the factum of the execution of the Will by the deceased Chellammal. The trial Court, ultimately held that the plaintiff did not prove his case about the execution of the Will free from fraud and beyond dispute. As against the dismissal of the suit, the plaintiff filed an appeal in A.S.No.71 of 1997 on the file of learned Subordinate Judge, Ariyalur. The lower Appellate Court, while disposing of the appeal, has allowed the appeal by setting aside the judgment and decree of the trial Court vide its judgment and decree dated 21.10.2003. As against that, the present Second Appeal has been filed by the defendant.

5. The learned counsel for the appellant/defendant would submit that the trial Court has extensively dealt with the evidence and truly appreciated the various suspicious circumstances existed in the execution of the Will, viz., Ex.A1 and unfortunately, the lower Appellate Court without giving any contra finding, has accepted and simply reversed the findings. The learned counsel would take this Court to the judgment of the lower appellate Court and would submit that the lower appellate

Court has simply narrated sequence of facts and finally held that the plaintiff was entitled to succeed. There was no discussion at all about the extensive findings rendered by the trial Court. Therefore, the learned counsel would submit that on this ground alone, the finding of the lower appellate Court is liable to be interfered with by this Court.

6. The learned counsel for the appellant would also submit that although the plaintiff claimed that the defendant had affixed his signature as Attester of the Will viz., A1, it was strongly disputed in the Written Statement itself, which fact was not taken into consideration by the lower Appellate Court. According to the learned counsel, once the signature was seriously disputed being forged at the instance of the plaintiff, the plaintiff ought to have taken proper steps to have the signature verified by letting in expert evidence, which he failed to do in the suit proceedings and therefore, the trial Court has rightly dismissed the suit. Unfortunately, the lower Appellate Court miserably failed to appreciate the said crucial factor and completely over looked the same.

7. Per contra, Mr.S.Kamadevan, learned counsel appearing for the respondent/plaintiff would submit that the signature of the defendant being Attester in Ex.A1 Will executed by the deceased Chellammal and signature in Ex.B4, Sale Deed executed by the deceased Chellammal to the third party regarding a portion of the property held by her would match and therefore, the dispute raised by the defendant was to be discountenanced. According to Mr.S.Kamadevan, learned counsel for the respondent/plaintiff that Ex.B4 document was also attested by the same defendant and he wanted this Court to examine both the signatures since the entire dispute now hinges on the factum of execution of Ex.A1 Will.

8. While considering the arguments of the learned counsels on either side, this Court is of the view that sitting in Second Appeal, this Court cannot examine the signature of the deceased 1st appellant/ defendant, whether he had signed the crucial document viz., the Will Ex.A1 as Attester or not or whether it was forged. Such investigation is possible only by letting in expert evidence for coming to any definite conclusion in respect of the rival contentions of the parties.

9. Although, the learned counsel for the plaintiff/respondent would submit that in fact, the defendant was also the beneficiary of the Will, namely, Ex.A1 when the deceased Chellammal was said to have deposited some amounts and as per the Ex.A1 Will, the amounts were equally shared between

the plaintiff and the defendant, it was not open to the defendant to question the Will in respect of title plea of the plaintiff.

10. Although, this point may be in his favour, ultimately when the execution of the Will Ex.A1 itself is being strongly contested and such contest is to be resolved only by the fact of whether the defendant himself was an attesting witness to the Will, viz., Ex.A1 or not, in order to give such a finding, it is incumbent on the part of the Courts to examine the expert evidence in order to give a definite conclusion on the said aspect.

11. Considering the over all circumstances of the case and in order to record clear finding to render justice to the parties, this Court is of the view that the matter may be remitted back to the lower Appellate Court for the limited purpose of examining the expert's evidence to compare the signature of the defendant in Ex.A1 Will with Ex.B4 document. The lower Appellate Court is directed to give a definite finding in this aspect after recording evidence of expert witness. The lower Appellate Court is also directed to issue summons to the expert witness concerned and examine him/her for this purpose and such findings shall be forwarded back to this Court. The above exercise shall be initiated and completed by the lower Appellate Court within three months from the date the matter is remitted back to its file. The Registry is directed to forward the records to the lower Appellate Court for the above exercise and post the Second Appeal for hearing after receipt of the findings from the lower Appellate Court.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Ariyalur
2. The Additional District Munsif, Ariyalur

Copy To: The Section Officer, V.R. Section,
High Court of Madras, Chennai -104.
(Registry is directed to forward the
records to the Lower Appellate Court
for the above exercise)

+1 cc to M/s.S.Kamadevan, Advocate Sr.6057
AKM/10.03.2020/4P-5C /

Order in
S.A.No.301 of 2008