

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.617 OF 2008

&

M.P.NO.1 OF 2008

1.Girija
2.Hariharan
3.Sudha
4.Kirthiga

.... Appellants/Plaintiffs

Vs

1.Govindarajan (Deceased)
2.Anandapadmanaban
3.Anbalagan
4.Jhansi @ Rukmani
5.Suresh @ Manikandan
6.Sathish @ Krishnamurthy

.... Respondents

(Respondents 4 to 6 brought on record as Legal Heirs of the Deceased Respondent 1 vide order of this Court dated 14.02.2019 made in C.M.P.No.16309 of 2018 in S.A.No.617 of 2008)

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree of District Court, Nagapattinam, dated 01.08.2007 made in A.S.No.44 of 2006 confirming Judgement and Decree of the Sub Court, Thiruvarur dated 27.07.2006 made in O.S.No.125 of 2002.

For Appellants : Mr.S.Sounthar
For Respondent 1 : Died
For Respondents 2 & 3 : No Appearance
For Respondents 4 to 6 : Mr.J.Nandagopal

J U D G E M E N T

The plaintiffs are the appellant before this Court. The Second Appeal arises against the concurrent Judgement and Decree dismissing the suit filed by the plaintiffs/appellants for declaration and permanent injunction. The parties are referred to in the same litigative status as in the suit. The brief facts leading to the filing of the above Second Appeal are as follows.

2. The plaintiffs' case is that a larger extent of a property was acquired by one T.V.Ramamurthy Iyer in the name of his second wife Meenakshi and his sons. However, the properties were being managed and enjoyed as his property. The said Ramamurthy Iyer had three sons, the 1st plaintiff's husband, Venkatasubramanian, the 1st defendant and the 2nd defendant, who are the sons of Ramamurthy Iyer through his second wife, Meenakshi. The plaintiff's husband was the son through the 1st wife, Nagalakshmi. On 01.06.1987, the said Ramamurthy Iyer had discussed with his sons about the disposition of his properties and had executed a document termed as "Family Adjustment Deed" which was in effect a Will. The said document was signed by Ramamurthy Iyer, his wife and sons accepting the arrangement. The document was witnessed by the wife of the 1st defendant, the father in law and the wife of the 2nd defendant and one N.S.Manian.

3. Under the said document, Ramamurthy Iyer had valued his properties at Rs.9,00,000/-. Since the properties bequeathed in favour of the said Venkatasubramanian was higher in value Ramamurthy Iyer had directed him to pay Rs.25,000/- to the 1st defendant and Rs.1,80,000/- to the 2nd defendant. The parties accepted the arrangement and acted upon the same even during the lifetime of the Ramamurthy Iyer. Ramamurthy Iyer died on 24.09.1995, his wife Meenakshi predeceased him.

4. On the death of Ramamurthy Iyer, the suit properties were bequeathed and given to the Venkatasubramanian, the husband of the 1st plaintiff and father of the plaintiffs 2 to 4. The said Venkatasubramanian was enjoying the property as his own and had paid the said amounts to his brothers as set out in the deed. Thereafter, on 17.01.1997, the said Venkatasubramanian died leaving behind him surviving plaintiffs to succeed to the suit property. One of the properties that was allotted to Venkatasubramanian was the mill, which on his death, the 1st plaintiff had been running.

5. The defendants taking advantage of the helplessness of the plaintiffs started to give troubles and therefore the plaintiffs had issued a legal notice to the 1st defendant and had also effected the publication in the Dina Malar. The

1st defendant sent a reply contending that the arrangement dated 01.06.1987 was not true and valid document and never been acted upon them. They would contend that the properties are all undivided and still in common. Since the defendants had set up a separate title the plaintiffs was constrained to file the suit. In fact, the 1st defendant had conveyed the A - Schedule property to the 3rd defendant on 25.07.2002 though he has no title to the same.

6. The 1st defendant had filed a written statement which is adopted by the 3rd defendant. The defendants would deny the execution of the document dated 01.06.1987 and would contend that the son Venkatasubramanian had taken advantage of the power and influence he had over Ramamurthy Iyer had executed the document. The document was never executed voluntarily and further the same has never been given effect to.

7. The defendants would further submit that the plaintiffs have not clearly described the document as to whether it was family arrangement or the Will, since the ingredients of the Will was absent from a reading of the said document. The defendants would further contend that neither Venkatasubramanian nor the plaintiffs were in enjoyment of the properties. The suit A - Schedule property belonged to the 1st defendant and therefore he had sold the same to the 3rd defendant. The 1st plaintiff's husband was managing the properties only on behalf of the other co-owners and could not claim right to the properties.

8. The 2nd defendant had filed a written statement accepting the contention of the plaint except for contending that the sum of Rs.1,80,000/- had not been paid by Venkatasubramanian to the 2nd defendant as per the terms of the document. The 2nd defendant contended that if the said amount is paid they have no objection to the suit being decreed.

9. The Trial Court, namely, the Sub-Court, Thiruvavarur had framed the following issues:

"(1)Whether the plaintiffs are entitled to claim the relief of declaration as prayed for?

(2)Whether the plaintiffs are entitled to obtain the relief of permanent injunction as claimed?

(3)Whether the Will dated 01.06.1987 (Family Arrangement Deed) is not valid?

(4)Whether the "A" schedule properties belong to the 1st defendant?

(5) To what relief the plaintiffs are entitled to?"

The plaintiff had examined P.W.1 and marked Ex.A.1 to Ex.A.87. On the side of the defendants D.W.1 is examined and no document was marked.

10. The Trial Court after considering the oral and documentary evidence had dismissed the suit. Aggrieved by the same, the plaintiffs had filed A.S.No.44 of 2006 on the file of the District Court, Nagapattinam. The learned District Judge, Nagapattinam, had framed the following points for consideration:

"(1) Whether the document dated 01.06.1987 is a will or a Family arrangement deed? If Will, whether it is true, valid and binding on the defendants? If family arrangement, whether it is true, valid and binding on the parties?

(2) Whether the plaintiffs are entitled to obtain the reliefs of declaration and permanent injunction as prayed for?

(3) To what relief the plaintiffs/appellants are entitled to?"

11. The Appellate Court also confirmed the Judgement and Decree of the Trial Court. Both the Courts have taken into account the fact that the claim of the plaintiffs was based on Ex.A.87. The said document did not partake the ingredients of the Will and it was only a family arrangement. However, the recitals in the document would clearly show that it was a partition in praesenti. Therefore, the said document requires to be compulsorily registrable. That apart, the properties did not stand in the name of Ramamurthy Iyer on the date of the execution of Ex.A.87 and he could therefore not execute a Will in respect of the property which did not belong to him.

12. The Courts below have also found that the said document has not been proved to be a Will by the plaintiffs. The Courts below have observed that none of the attesters to the document Ex.A.87 has been examined on the side of the plaintiffs. Since, the document was an arrangement in the praesenti, the same has to be properly stamped and was compulsorily registrable. The lower Appellate Court had therefore rejected the document and consequently dismissed the appeal.

13. The said Judgement and Decree has been challenged by the appellants before this Court. Notice of motion has been ordered in the above Second Appeal.

14. The plaintiffs have filed a suit basing their claim on Ex.A.87. In the plaint they would contend that the document in

question was a family adjustment agreement. However, when the document was marked they had described the document as a Will. It is seen that the properties in the said document not only belonged to Ramamurthy Iyer but was consisting of properties belonged to the 2nd wife of the said Ramamurthy Iyer, namely, Meenakshi. Therefore, the Courts have rightly held that the Ramamurthy Iyer could not have executed the Will in respect of the properties not belonging to him. The recitals of the deed clearly points out that the document is a partition in praesenti which has to be compulsorily registered under Section 17 of the Registration Act, 1908. However, the document has admittedly not been registered.

15. Therefore, the Courts below have rightly not considered the said document. The entire claim of the appellants would revolve around Ex.A.87. The Courts have held that the document would clearly show that the properties are joint family properties being enjoyed jointly. The plaintiffs and the defendants would have a right to the said property. However, considering the fact that Ex.A.87 had not been registered it cannot be relied upon. I do not find any grounds to interfere with the findings of the Courts below. The appellants have not made out any substantial question of law warranting the interference of this Court. The Second Appeal therefore stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Judge, Nagapattinam.
- 2.The Sub Judge, Thiruvavur.

Copy To

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.20577

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VGII(CO)
CS/01/02/2021