

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.404 of 2020
and CMP No.8173 of 2020

1. Palanisamy
2. Radhakrishnan
3. Radha

..Appellants/Appellants/
Defendants

Vs.

Sumathi

..Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.01.2020 in A.S.No.35 of 2019 on the file of the Principal Subordinate Judge, Salem confirming the judgment and decree dated 16.11.2018 in O.S.No.78 of 2016 on the file of the I Additional District Munsif Court, Salem.

For Appellants : Mr. D.Sivakumaran

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The defendants in OS No.78 of 2016, who suffered a decree for partition and separate possession of the 1/8th share of the plaintiff, upon its affirmation by the Appellate Court, have come up with this Second Appeal.

2. The suit was laid by the plaintiff claiming 1/8th share contending that the suit property was purchased by the first defendant and his wife Bakiyam on 22.12.1979. It is claimed that the plaintiff is the daughter of the first defendant and Bakiyam. The defendants 2 and 3 are the siblings of the plaintiff. Bakiyam died on 10.05.2011. Claiming that she would

be entitled to 1/4th share in the 1/2 share of Bakiyam, the plaintiff laid the suit for partition.

3. The suit was resisted by the defendants contending that Bakiyam had left a Will dated 09.04.2011 bequeathing her half share in the suit property to her husband/first defendant. Therefore, according to the defendants, the plaintiff was not entitled to a share in the suit property as the daughter of Bakiyam. The claim of the plaintiff that the first defendant did not do anything for her marriage as she married against the wishes of the first defendant was stoutly denied by the defendants.

4. At trial, the plaintiff examined herself as P.W.1 and Exhibits A1 to A3 were marked. The first defendant was examined as D.W.1 and one M.Kumar, an attesting witness of the Will, was examined as D.W.2.

5. The Trial Court upon a consideration of the evidence on record concluded that the execution of the Will Ex.B2 is shrouded in mystery and there were several suspicious circumstances, attached to its execution, which have not been satisfactorily explained by the defendants. The evidence of D.W.2 was held to be unconvincing to prove the execution of the Will by Bakiyam. The fact that the stamp papers for the Will were purchased at Pappireddipatty Village, when the parties were resident at Salem, was also taken into account by the Trial Court. On the said findings, the learned Trial Judge concluded that the execution of the Will has not been satisfactorily proved and decreed the suit for partition.

6. Aggrieved the defendants preferred an Appeal in AS No.35 of 2019. The Appellate Court on a re-appreciation of the evidence on record concurred with the findings of the Trial Court regarding the execution of the Will. Upon such concurrence, the Appellate Court dismissed the Appeal confirming the judgment and decree of the Trial Court. Aggrieved, the defendants have come up with this Second Appeal.

7. I have heard Mr.D.Sivakumaran, learned counsel appearing for the appellants.

8. Mr.D.Sivakumaran, learned counsel appearing for the appellants would contend that the Courts below were not right in disbelieving the Will. He would also fault the Courts below for their appreciation of the evidence of D.Ws 1 and 2. The learned counsel for the appellant would submit that the attesting witness need not know the contents of the documents or the property dealt with under the document. He is expected to depose only with reference to the execution and attestation of the

document. Therefore, any contradiction in the evidence of the attesting witness on the other aspects cannot loom large as suspicious circumstances surrounding the execution of the Will. Therefore, according to the learned counsel, the Courts below have erroneously given importance to the minor contradictions in the evidence of D.W.2 with reference to the property covered under the Will and other incidental issues, to come to the conclusion that his evidence is not trust worthy.

9. I have considered the submissions of the learned counsel for the appellants.

10. The Courts below have come to the conclusion that the execution of the Will is shrouded in mystery on the basis of the evidence of D.Ws. 1 and 2. Admittedly, the deceased Bakiyam was undergoing treatment for renal failure, the Will is just about a month prior to her death. It is an unregistered instrument. The stamp paper for the Will has been purchased at Pappireddipatty Village, which is about 45 k.m. from Salem. The parties, who are residents of Salem City, need not have gone to Pappireddipatty to buy a stamp paper. This fact alone would create a suspicion in the minds of the Courts regarding the genuineness of the Will. As propounders of the Will, the appellants are bound to satisfy the Court and remove all suspicion that may arise while the Court considers the truth and validity of the Will.

11. As already pointed out the evidence of D.Ws 1 and 2 bristles with contradictions and it appears that the evidence is not quite natural. A reading of the evidence itself shows that the Courts below were right in not believing the said evidence. Despite his best efforts Mr.D.Sivakumaran, learned counsel appearing for the appellants is unable to show any perversity in the findings of the Courts below or in the appreciation of the evidence.

12. Hence there is no question of law much less substantial question of law in order to enable me to entertain the Second Appeal. Hence the Second Appeal fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Subordinate Judge,
Salem

2. The I Additional District Munsif Court,
Salem.

+cc to Mr.D.Sivakumar, Advocate , Sr.No. 26042

S.A.No.404 of 2020
and CMP No.8173 of 2020

RSK (CO)
RMP (25/01/2021)



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