

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.678 of 2014
and MP No.1 of 2014

1. Malayathal
2. Deivathal
Both are Rep. By its
Power Agent S.Selvaraj

Mr.S.Selvaraj, is recognised as the Power Agent
of the proposed appellants Malayathal and Deivathal
vide order of Court dated 06.08.2012 made in
MP No.1 of 2012 in SA SR No.48434 of 2012.

...Appellants/Plaintiffs

Vs.

1. Chandrasekaran
2. Kuppuswami
3. Manikandan
4. Sivakumar
5. Chenniappa Gounder

...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against
the judgment and decree dated 27.01.2011 passed by the Learned
Subordinate Judge, Pollachi in A.S.No.62 of 2001 reversing the
Judgment and Decree dated 03.08.1999 passed by the learned
District Munsiff, Pollachi, in O.S.No.256 of 1996.

For Appellants : Mr.K.P.Gopalakrishnan

For Respondents: Ms.V.Janaranjani
for Mr.N.Damodaran

J U D G M E N T

The plaintiffs in OS No.256 of 1996, who were able to
succeed in convincing the Trial Court to pass a decree for
declaration of their title, upon its reversal, by the Lower
Appellate Court in AS No.62 of 2001, have come up with this
Second Appeal.

2. Notice of motion was ordered.

3. I have heard Mr.K.P.Gopalakrishnan, learned counsel appearing for the appellants and Ms.V.Janaranjani, learned counsel appearing for Mr.N.Damodaran, for the respondents.

4. According to the plaintiffs, the suit properties belonged to their mother Seerangammal, who died on 31.10.1995 leaving behind the plaintiffs and the fifth defendant as their legal representatives. It is the further claim of the plaintiffs that the said Seerangammal had executed a registered Will on 16.02.1994 bequeathing the suit properties in favour of the plaintiffs. The plaintiffs would also claim that they are in exclusive possession of the suit properties. On the above claim, the plaintiffs sought for declaration of their title and a permanent injunction restraining the defendants from interfering with their possession of the suit properties.

5. The suit was resisted by the defendants contending that Seerangammal, died intestate and she had not executed a Will as alleged on 16.02.1994 or on any other date. It was also claimed that Seerangammal, is not the absolute owner of the property. The defendants would further contend that the suit property originally belonged to one Srirangathal, who is the grandmother of the plaintiffs and the 5th defendant and their father Chenniappa Gounder who were given only a life estate. However, she along with her son sold the properties to one Velusamy and repurchased the same. The defendants would also plead that since Srirangathal had only a life estate and the sale she made by her is invalid, the subsequent purchase would not give her an absolute title. Therefore according to the defendants Srirangathal had no right to settle her half share on Seerangammal. The will said to have been executed by Seerangammal was also denied.

6. At trial, the second plaintiff was examined as P.W.1 and one Krishnasami, was examined as P.W.2. Exhibits A1 to A8 were marked. The third defendant was examined as D.W.1 and Exhibits B1 to B7 were marked.

7. The Trial Court rejected the claim of the defendants that Srirangathal, had only a life estate and that the sale by her and subsequent re-conveyance would not confer her absolute title to enable her to execute the Settlement Deed dated 12.08.1976 in favour of Seerangammal. On the above conclusion, the learned Trial Judge without going into the fact, as to whether, the plaintiffs have proved the Will dated 16.02.1994 under which they rest their claim decreed the suit for

declaration alone. The relief of injunction was negated on the ground that the plaintiffs have not proved their exclusive possession. Aggrieved, the defendants 1 to 4 preferred an Appeal in AS No. 62 of 2001. The learned Appellate Judge agreed with the findings of the Trial Court as regards the title of Srirangammal and her right to execute the Settlement Deed dated 12.08.1976. The learned Appellate Judge, however, found that the Will dated 16.02.1994 has not been proved in accordance with law and therefore, the plaintiffs would not be entitled to the declaratory relief sought for, since the fifth defendant as the son of Seerangammal would also be entitled to a share in the suit property. On the said finding, the learned Appellate Judge dismissed the suit. Aggrieved by the plaintiffs have come up with this Second Appeal.

8. Mr.K.P.Gopalakrishnan, learned counsel for the appellants would vehemently contend that the Will in question having not been denied and it is being a Registered Will, the Lower Appellate Judge was not right in concluding that it has not been proved under Section 68 of the Evidence Act. The Law on proof of Will is too well settled. Even, if the Will is not denied, the propounder has to prove the same by examining at least one attesting witness. The proviso to Section 68 of the Evidence Act, which dispenses with examination of attesting witnesses in case of registered instruments, the execution of which is not denied, does not apply to testamentary instruments.

9. The plaintiffs and the fifth defendant are the legal heirs of Seerangammal. On her death, her properties would devolve on both the plaintiffs as well as the fifth defendant. If the plaintiffs want to exclude the fifth defendant and obtain a declaratory relief, they will have to prove the Will in accordance with law. In the case on hand, there is a specific denial of the execution of the Will by Srirangammal, at the earliest point of time even in the written statement filed by the defendants.

10. The defendants have specifically pleaded as follows:

"The said Srirangammal, had not executed any Will as alleged on 10.02.1994 in favour of the plaintiffs."

In the light of this specific denial, it is incumbent upon the plaintiffs to prove the Will in accordance with law. The Lower Appellate Court has specifically found that the plaintiffs have not proved the Will in accordance with law by examining at least one of the attesting witnesses.

11. In the light of the above, I do not think that the Appellate Court can be faulted with for dismissing the Suit. I see no question of law much less substantial question of law in order to enable me to entertain the Appeal. Hence the Second Appeal is dismissed without being admitted. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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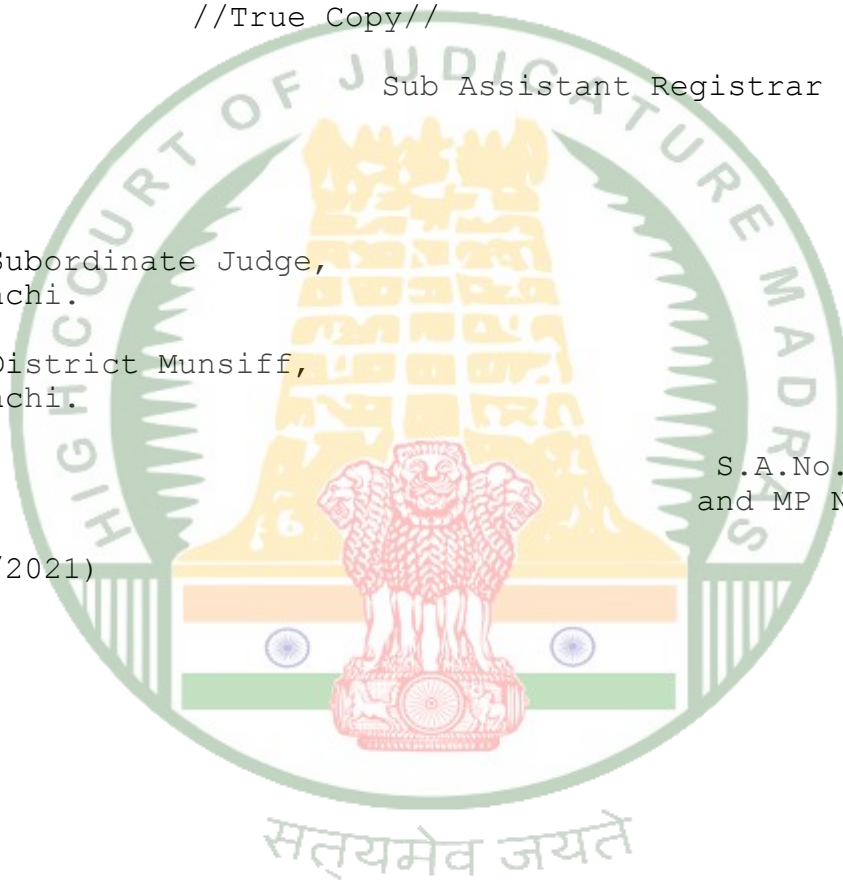
Sub Assistant Registrar

jv
To

1. The Subordinate Judge,
Pollachi.
2. The District Munsiff,
Pollachi.

SAI (CO)
RMP (27/04/2021)

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and MP No.1 of 2014



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