



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
10.12.2020

Delivered on
18.12.2020

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.688 of 2014
and MP No.1 of 2014

1. Varadarajan
2. Vetrivel
3. Bakialakshmi

..Defendants/Appellants/Appellants

Vs.

1. Shanmugasundaram
2. Nirmala
3. Sivaprakasam @ Nallasivam
4. Dakshinamurthy
5. Selvanayagam
6. P. Bakialakshmi
7. P.Vijay
8. P.Satheesh

..Plaintiffs/Respondents/Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 12.11.2013 in A.S.No.102 of 2006 on the file of the VI Additional District and Session Judge, Coimbatore, confirming the judgment and decree dated 18.04.2006 in O.S.No.600 of 2004 on the file of the III Additional Subordinate Judge, Coimbatore.

For Appellants : Mr.C.R.Prasanan

For Respondents: Mr. S.Mukunth

for M/s. Sarvabhauman Associates

J U D G M E N T

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



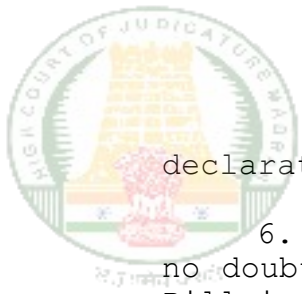
The defendants in OS No.600 of 2004 have come up with this Second Appeal, challenging the judgment and decree of the IV Additional District Court, Coimbatore, made in AS No.102 of 2006 confirming that of the Trial Court, viz., The III Additional Sub Court, Coimbatore granting a declaration of the title of the plaintiffs and permanent injunction restraining the defendants from interfering with the plaintiffs' possession of the suit property made in OS No.600 of 2004.

2. The plaintiffs sought for declaration of their title and consequential permanent injunction claiming that the suit properties belonged to Arumugam Pillai, husband of the first plaintiff and father of the plaintiffs 2 to 5, he having purchased the suit 1st item under a registered Sale Deed dated 04.03.1936 and inherited the suit 2nd item from his mother Ayyammal, as per her Will dated 25.06.1949. The plaintiffs would further contend that the said Arumugam Pillai, was in possession and enjoyment of the properties till his death on 03.01.1975. It is also pleaded that there were disputes between Arumugam Pillai and his sister Amminiammal and there were several litigations between the two families.

3. In fact Amminiammal, the sister of Arumugam Pillai, had filed a suit in OS No.1884 of 1982 against the plaintiffs seeking an injunction and the said suit came to be dismissed on 03.01.1991 for non-prosecution. Again the said Amminiammal filed another suit in OS No.1115 of 1987 against the first plaintiff alone and the same was allowed to be dismissed for default on 02.02.1999. It is also stated that a suit for partition in OS No.1245 of 1983 was filed by the third defendant on behalf of the second defendant, which also came to be dismissed for non-prosecution on 06.07.1990.

4. The plaintiffs would further plead that Arumugam Pillai, during his life time had lodged a complaint against his sister Amminiammal and her son the first defendant in this suit, accusing them of criminal trespass. Based on the said compliant prosecution was launched against them in C.C.No.13 of 1964, which resulted in their conviction. An appeal filed against the said conviction in C.A.No.777 of 1964 also came to be dismissed.

5. In the above backdrop, the plaintiffs came to know that the first defendant had executed a Settlement Deed in respect of some of the suit properties in favour of the second defendant on 14.09.2004, claiming title under an alleged Will said to have been executed by Arumugam Pillai, on 12.03.1970 and the said Settlement Deed included certain properties that were sold by the plaintiffs even on 18.03.1981. Claiming that the execution of the Settlement Deed created a cloud on the title of the plaintiffs, the plaintiffs came up with the above suit for



declaration and permanent injunction.

6. The suit was resisted by the defendants contending that no doubt there were very serious legal disputes between Arumugam Pillai and his sister Amminiammal. But Arumugam Pillai, with a view to normalise the relationship with his only sister had executed the Will dated 12.03.1970, but the plaintiffs who were bent upon spoiling the relationship denied the Will. The claim that the Will has been created by the first defendant is false. It is also claimed that the said Will has been marked as Ex.A1 in OS No.1115 of 1987. Therefore, the plaintiffs knew about the Will, even during the earlier proceedings. On the above pleadings, the defendants sought for dismissal of the suit.

7. At trial, the fourth plaintiff was examined as P.W.1 and Exhibits A1 to A30 were marked. The second defendant was examined as D.W.1 and one Ayyasami, the attesting witness to the Will was examined as D.W.2. Exhibits B1 to B5 were marked.

8. The Trial Court upon a consideration of the evidence on record concluded that the only valid defence projected by the defendants viz., the Will dated 12.03.1970 has not been proved in accordance with law. The learned Trial Judge rejected the evidence of Ayyasami, as it did not inspire the confidence of the Court. The Trial Court also found that the execution of the Will is shrouded in mystery, inasmuch as, Arumugam Pillai and his sister Amminiammal were fighting litigations tooth and nail all through the period. The availability of the plaintiffs as heirs of Arumugam Pillai and their dis-inheritance was also taken as a ground by the Court to disbelieve the will. On the above conclusions, the learned Trial Judge decreed the suit as prayed for.

9. Aggrieved the defendants preferred an appeal in AS No.102 of 2006. The learned IV Additional District Judge, Coimbatore, who heard the Appeal agreed with the conclusions of the Trial Court and dismissed the Appeal. Hence the present Second Appeal.

10. Notice of motion was ordered on 27.06.2014 and upon a service of notice M/s.Sarvabhauman Associates have entered appearance for the respondents.

11. I have heard Mr.C.R.Prasanan, learned counsel appearing for the appellants and Mr.S.Mukunth, learned counsel appearing for M/s.Sarvabhauman Associates, for the respondents.

12. Mr.C.R.Prasanan, learned counsel appearing for the appellants would vehemently contend that the Courts below were not right in concluding that the defendants have not proved the Will dated 12.03.1970 in accordance with law. He would further



contend that a reading of Ex.A20 produced by the plaintiffs would show that Arumugam Pillai, has created a mortgage of the suit properties in favour of Varadharajan represented by his mother Amminiammal as guardian on 10.07.1957 and in the absence of any evidence to show the redemption of the said mortgage, the plaintiffs cannot seek a declaration of title against the mortgagee and his legal representatives. Mr.C.R.Prasanan, would also further contend that from the recitals in Ex.A20, it could be gathered that Arumugam Pillai was directed to procure a immovable property worth Rs.2,000/- in the name of the minor son of Amminiammal, viz., the first defendant Varadharajan and Ex.A20 was executed by Arumugam Pillai, agreeing to purchase such property or to pay cash. It is therefore, the contention of Mr.Prasanan, that Arumugam Pillai did not fulfill the obligation thrust upon him under the Will of Ayyammal, dated 25.06.1949 and hence, in order to discharge the pious obligation he had executed the Will dated 12.03.1970 in favour of his sister Amminiammal.

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

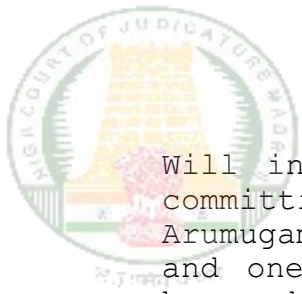
14. As regard the first question viz., the proof of the Will, I find that both the Courts have discussed the evidence, the prevailing circumstances and have reached the conclusion that the Will cannot be true and genuine. The following facts have been taken into account by the Courts to buttress their conclusion:

Firstly, it is seen from the documents produced that Arumugam Pillai and Amminiammal, were fighting each other in various litigations right from the year 1960 till his death in 1972. Even thereafter the families have been fighting various litigations. Therefore, the burden on the defendants is all the more heavier, inasmuch as, the defendants are required to remove the suspicion created due to the pendency of such litigations.

Secondly, except the evidence of the third defendant as D.W.1 there is no other evidence which could be looked into to clear the air of suspicion that has been created by the documentary evidence that is available on record.

Thirdly, even the evidence of the attesting witness viz., D.W.2, as rightly pointed out by the Courts below, does not inspire the confidence of the Court. I have looked into the evidence of D.W.2. I find that it lacks clarity on material details and is clearly unreliable.

15. While taking note of the suspicious circumstances in execution of the Will Ex.B4 dated 12.03.1970 both the Trial Court and the Appellate Court have pointed out that the brother and sister were fighting a bitter litigation and therefore, there was no possibility for Arumugam Pillai, having executed a



Will in favour of his sister, whom he had got imprisoned for committing criminal trespass over his property. Moreover, Arumugam Pillai had the plaintiffs as his legal representatives and one fails to understand, as to how, Arumugam Pillai would have chosen to exclude the plaintiffs and execute a Will in favour of his sister, who was always fighting him. Apart from being concurrent findings, the findings of the Courts below regarding the execution of the Will appear to be just and reasonable. I therefore, do not think the concurrent finding regarding the validity of the Will can be interfered with that too in an appeal under Section 100 of the Code of Civil Procedure.

16. Coming to the second contention of learned counsel Mr.C.R.Prasanan, that the document that has been marked as Ex.A20 creates a mortgage in favour of the first defendant and in the absence of a proof of redemption, the plaintiffs cannot claim title, I am unable to accept the said submission of the learned counsel. The reasons are :

A perusal of the document shows that it is not a mortgage but it creates a charge over the property of Arumugam Pillai for payment of a certain amount of money. It is stated in the said document that Arumugam Pillai, shall purchase a property within one year failing which he shall pay a sum of Rs.3,000/- with a particular rate of interest to the first defendant. It is also seen from Ex.A21, the judgment in OS No.1503 of 1960, the earliest litigation between Arumugam Pillai and his sister Amminiammal, that a suit has been filed for recovery of money based on the security bond dated 10.07.1957 marked as Ex.A20. From the judgment that has been produced as Ex.A21 it is seen that a preliminary decree has been granted in the said suit in favour of the first defendant, who was then a minor. The suit Register extract in OS No.1503 of 1960 has been produced as Ex.A16. A perusal of the same shows that execution proceedings were launched by Amminiammal, as the guardian of Varadharajan the first defendant herein and the Arumugam Pillai had deposited the monies due under the decree and the same was permitted to be withdrawn by Varadharajan on 16.06.1964. There were further execution proceedings for recovery of further sum of Rs.1,242.41 and it is seen that the E.P. was eventually dismissed on 09.12.1965. The Security Bond viz., Ex.A20 also stands discharged.

17. Therefore, the claim of Mr.C.Prasanan, learned counsel that there is a mortgage that has been created under Ex.A20 and in the absence of redemption of the said mortgage, the plaintiffs are not entitled to assert title also fails.

18. Despite his best efforts, Mr.C.R.Prasanan, learned



counsel appearing for the appellants is unable to show that the said factual findings can be termed as perverse. He is also unable to make out any question of law much less a substantial question of law in order to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The VI Additional District and Session Judge,
Coimbatore
2. The III Additional Subordinate Judge,
Coimbatore.

Copy to:

The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.41818

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.41886

SA. No.688 of 2014
and MP No.1 of 2014

AD(CO)
CB(26/08/2021)