



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 24.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A(MD).No.66 of 2018

&CMP(MD).No.1421 of 2018

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1.V.Elangovan

2.M.Sivakumar

:Appellants/Appellants/Defendants 3 & 4
Vs.

1.Rajasekaran

2.Arukkaniammal

3.Rathinam

:1st Respondent/1st Respondent/Plaintiff

:Respondents 2 & 3/Respondents 2 & 3/
Defendants 2 & 3

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree in A.S.No. 55 of 2011 dated 23.10.2013 on the file of the Principal Subordinate Judge, Karur confirming the judgment and decree in O.S.No.373 of 2009 dated 10.02.2011 on the file of the Principal District Munsif, Karur.

For Appellants : Mr.K.Govindarajan
For R1 : Mr.Raghuvaran Gopalan
For R3 : Mrs.S.Prabha
(In SR stage) for Mr.S.Gokulraj

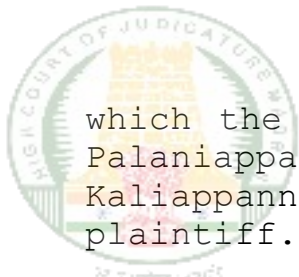
J U D G M E N T

The defendants 3 and 4 in O.S.No.373 of 2009 on the file of the Principal District Munsif Court, Karur are the appellants before this Court. The parties are referred to by the rank in the suit.

2.The suit was laid for declaration that the 2 sale deeds, which are marked as Ex.A.11 dated 19.09.2005 executed in favour of the second defendant, and Ex.A.12 dated 17.07.2007 executed in favour of the defendants 3 and 4 as null and void and that they would not bind the plaintiff, and a further declaration that the suit properties are the absolute properties of the plaintiff and for other consequential relief.

3.1The properties covered under Ex.A.11 and Ex.A.12 sale deeds referred to above were part of Survey No.461. It has a total extent of 6.59 acres. This property originally belonged to a certain Palaniammal. Palaniammal was married to Rasa Gounder. The couple had 3 sons namely, Palaniappa Gounder, Nagappa Gounder and Kandhasamy Gounder. After demise of Palaniammal, the suit properties and others devolved on Rasa Gounder and his 3 sons.

<https://hcservices.courts.gov.in/hcservices/> 3.2 On 09.12.1959, Vide Ex.A.1, they partitioned the property, in



which the suit property fell to the share of Palaniappa Gounder. Palaniappa Gounder had two sons namely, Kaliyappan and Ramasamy. Kaliappann had one son namely, Rajendran. Ramasamy's son is the plaintiff.

4. While so, on 30.05.1990, Palaniappa Gounder executed a Registered Will bequeathing his properties to both his grand-sons. Under the said Will, the suit property was bequeathed to the plaintiff. The plaintiff was then a minor. On 08.01.2003, Palaniappa Gounder died. The facts up to this are not disputed by either side. The dispute starts from here.

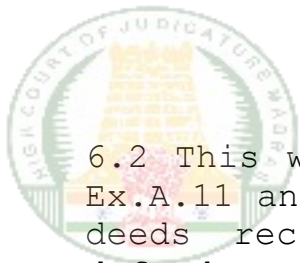
5.1 According to the plaintiff, Palaniappa Gounder died on 08.01.2003 consequent to which Ex.A.3 Will came into force. Since the plaintiff was a minor at that time, his father was administering the property. However, his parents executed sale deeds, the details of which are as follows:

Date	Exhibits Number	Extent	Purchaser
19.09.2005	Ex.A.11 = Ex.B.1	40 cents	D2
17.07.2007	Ex.A.12 = Ex.B.3	52 cents	D3 and D4

These sales were against the interest of the plaintiff and hence, the plaintiff laid a suit within 3 years after he attaining majority.

5.2 All the defendants admitted the devolution of title to the property upto Paliappa Gounder, but, impugned Ex.A.3 Registered Will. Further, the second defendant would say that the sale consideration of Rs.89,400/ paid under Ex.A.11 sale deed in his favour was deposited in a nationalized bank in the name of the plaintiff under Ex.B.2. The defendants 3 and 4 would contend that the sale consideration that they had paid under Ex.A.12 = Ex.B.3 was Rs.4,50,000/- out of which Rs.50,000/- was paid in cash to the parents of the plaintiff and remaining Rs.4,00,000/- was deposited in a nationalized bank in the name of the minor as evidenced by Ex.B.3.

6.1 Before the trial court, both sides adduced oral and documentary evidence to which reference has been made already. However, to formally prove Ex.B.3 Will neither of the two attesting witnesses thereto were examined. The trial court decreed the suit. Before the trial court, the defendants appeared to have strongly contended that inasmuch as Ex.A.3 Will was not formally proved, the suit property must be taken as the property of Palaniappa Gounder, and accordingly, Ex.A.11 and Ex.A.12 sales might have to be upheld, since after Palaniappa Gounder's demise, his son Ramasamy would become entitle to succeed to the estate of Palaniappa Gounder along with his brother Kaliyappan.



6.2 This was rejected by the trial court on the ground that both Ex.A.11 and Ex.A.12 (Ex.A.11 = Ex.B1 and Ex.A.12 = Ex.B.3) sale deeds recited about Ex.A.3 Will. This would prove that the defendants knew about the existence of the Will and proceeded to hold that admitted fact might not have to be proved. Accordingly, it decreed the suit.

7. When the matter went before the First Appellate Court, it concurred with the finding of the trial court on the implication that absence of formal proof of Ex.A.3 Will would not have any adverse consequence since the Will has been recited and disclosed in the sale deeds. In addition, it also held that before the sale, leave of the Court has not been obtained under Section 8 of the Hindu Minority and Guardianship Act, and dismissed the appeal.

8. Aggrieved by the said decree, as already indicated, the defendants 3 and 3 have preferred the present Second Appeal.

9. The learned counsel for the appellants strenuously argued that the Will has to be formally proved in terms of Section 68 of the Indian Evidence Act, and that it is an exception to Section 58 of the said Act. In other words, according to the learned counsel, while an admitted fact need not be proved, Will cannot be proved by an admission of the parties. The learned counsel relied on the judgment of the Hon'ble Supreme Court of India reported in [2005 (1) SCC 40] in **Daulat Ram and others Vs. Sodha and others**. So far as the said judgment is concerned, on facts this Court does not find any similarity in the present case.

10. This Court does not find the said argument impressive enough to satisfy its conscience. The defence taken by the appellants are disclosed as follows;

- a) that the Will has been disclosed under Ex.A.12 = Ex.B.3 sale deeds.
- b) the sale consideration even according to the plaintiff was deposited in the name of the plaintiff.

This implies that, not only these appellants knew about the existence of the Will, but also knew that the sale consideration ought to go only to the plaintiff. This now follows that these defendants trace their title only through Ex.A.3 Will and not through any other. Ex.A.3 Will is also a Registered Will. Given the fact that the sale deeds disclose the will and that the appellants too have acted on it, they are now estopped from questioning the Will.

<https://hcservices.ecourts.gov.in/hcservices/> 11. To conclude, this Court does not find any substantial question



of law involved in this appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To

1.The Principal Subordinate Judge,
Karur.

2.The Principal District Munsif,
Karur.

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The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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