



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.NO.1964 OF 1999

AND

CMP.NO.5273 OF 2000

1.Krishnasamy (Died) ...Appellant/2nd Appellant/
2nd Defendant
2.Kaveri Ammal
3.K.Palani Samy
4.K.Ravi
5.K.Sasikala ... Appellants

(Appellants 2 to 5 brought on record as LR's of the deceased sole appellant viz., Krishnasamy vide order of this Court dated 20.01.2021, made in CMP.No.20486 to 20488 of 2017 in S.A.No. 1964 of 1999)

Vs.

1.Ayyanna Thevar ... 1st Respondent/1st Respondent/
Plaintiff
2.Nagappan ... 2nd Respondent/2nd Respondent/
1st Defendant

PRAYER: This Second Appeal has been filed under Section 100 of CPC., against the Judgment and Decree dated 30.06.1998 in A.S.No. 18 of 1997, on the file of the Principal District Judges Court, Coimbatore, preferred against the judgment and decree dated 30.09.1996 in O.S.No.2043 of 1991 on the file of the Principal District Munsif's Court, Coimbatore.

For Appellants : Mr.C.R.Prasannan

For Respondents : No appearance

JUDGMENT

The second defendant in the suit in O.S.No.2043 of 1991, is the appellant herein.



2(i).The first respondent herein/plaintiff has filed a suit in O.S.No.2043 of 1991, for claiming compensation of Rs.4,000/- by alleging that in the suit property land, there was a sugarcane crushing machine with shed, that was demolished by the defendants and thereby caused damage about Rs.4,000/- and hence, the same has to be paid by the defendants.

2(ii).The defendants have filed a written statement inter alia contended that as per the Will in Ex.A4, dated 22.03.1978, the third wife of the testator viz., Marimuthammal got a right of residence and enjoyment in the properties and that they did not demolish the sugar cane crushing shed as alleged in the plaint. Further, their father viz., Arunachalam has executed a Registered Will on 17.01.1971, which was marked as Ex.B1 and as per the said Will the plaintiff was in dis-possession of the properties and the second defendant was in possession and enjoyment of the property.

2(iii).On the contrary, the plaintiff relied upon Ex.A4/Will dated 22.03.1978. In the execution of Ex.B1/Will, dated 17.01.1971, in favour of the defendants, the plaintiff in the cross examination has objected the execution of the Will in favour of the defendants and he has also been acted upon.

2(iv).During the Trial, before the learned Principal District Munsif, Coimbatore, in favour of Ex.A4/Will, one of the attestors of the Will/Ex.A4 was examined as PW2. In order to prove Ex.B1/Will on behalf of the second defendant, it is represented before the Trial Court that the attester could not be examined.

2(v).Considering the scope of the suit and issues framed therein, the learned District Munsif has accordingly found that whether the respective wills are proved in the manner known to law is irrelevant? and further, proceeded to Ex.A4/Will, dated 22.03.1978, had held that it is valid one and also held that Ex.B1/Will dated 17.01.1971, was not proved in the manner known to law and the same is invalid.

2(vi).Aggrieved against the said judgment and decree, the second defendant has preferred A.S.No.18 of 1997 and by an order dated 30.06.1998, the learned Principle District Judge, Coimbatore, has allowed the appeal and dismissed the suit on the ground that in view of the recital in Ex.A1, viz., the suit property wherein, the sugarcane crushing machine shed was situated, is allotted to all the three persons under the Will and the suit framed as such is not maintainable since, the suit is



for damages only and while Ex.A1 legal notice, he was asked to reconstruct the building with the sugarcane crushing machine shed and accordingly allowed the appeal consequently dismissed the suit.

WEB COPY

2(vii).Thereafter, the second defendant has preferred this appeal only against the findings rendered by the Courts below that the Will in favour of the plaintiff viz., Ex.B1 is held to be not proved in the manner known to law.

3.At the time of the admission of the second appeal following substantial question of law was framed:

"Whether in law the courts below are right in accepting the Ex.A4 as a will when especially the will in Ex.B2 executed by the same testator was accepted by the plaintiff and that the same was acted upon the testator's death"

4.Heard Mr.C.R.Prasannan, the learned counsel appearing for the appellants. No representation for the respondent.

5.After perusing the issues framed before the Trial Court, this Court finds that both the Courts below have concurrently come to the conclusion that true and genuineness of the respective Wills viz., Ex.A4 and Ex.B1 are not germane to the issue involved viz., whether, the second defendant is liable to pay damages to the tune of Rs.4,000/- to the plaintiff or not.

6.Both the Courts below have concurrently held that the suit property is a common property for all the plaintiffs, first defendant and second defendant and hence, this Court finds that the finding rendered by the Courts below that Ex.B1/Will said to have been executed in favour of the defendants is held to be not proved in the manner known to law, does not warrant on the factual circumstances.

7.Besides both in the pleadings as well as in the evidence of PW1, he has categorically admitted about coming into existence of Ex.B1/Will, dated 17.01.1974 and hence, the findings to that effect in respect of truth and genuineness of the will in respect of second defendant, Ex.B1 stands vacated and accordingly, the substantial questions of law No.1 is answered.



8. Accordingly, the Second Appeal stands allowed to the limited extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Deputy Registrar (L.A)

//True Copy//

Sub Assistant Registrar

dua

To

1. The Principal District Judges Court, Coimbatore.
2. The Principal District Munsif's Court, Coimbatore.

+1cc to Mr.C.R.Prasannan, Advocate, S.R.No.8074

S.A.No.1964 of 1999
and CMP.No.5273 of 2000

RSV (CO)
CS/29/11/2021