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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2021

PRONOUNCED ON : 19.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.1526 & 1527 of 2008
and
M.P.No.1 of 2008

S.A.No.1526 of 2008

1. P.Mohanraj,
S/o, Palanisamy

2. Hamsalakshmi,
W/o, Mohanraj,

Both are residing at
182, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

... Appellants/R1 & R2/P1 & P2

Vs.

1. A.Palanisamy,
S/o, Ammasai,
180, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 004.

2. Ayyasamy,
No.182, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

3. Chinnakannan @ Chinna Ponnai,
Bharat Chits Company,
Theethipalayam,
Porur Post,
Coimbatore.

4. A.Chenniappan,
S/o, Ayyavu Gownder,
No.183/1, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

... Respondent 5, 3 & 4/
Respondent 3 & 4/Defendant 3 & 4



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5. N.Kabeer,
S/o, Nandha Sahib,
183, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

6. S.Jebamalai,
S/o, Lazer,
184, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

7. Dilshad Begum,
W/o, Mohammed Syed,
185, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

8. Gopalakrishnan,
S/o, Kumaran Nair,
186, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

... Respondents 5 to 9/
R5 to R9/P2 to P6

S.A.No.1527 of 2008

P.Mohanraj,
S/o, Palanisamy,
182, Annapoorna Layout,
New Siddhapudur.
Coimbatore - 641 044.

... Appellant/Respondent/Plaintiff

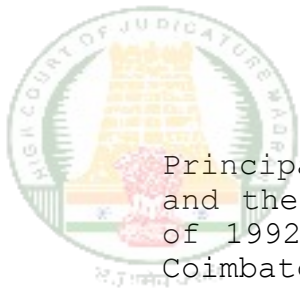
Vs

A.Palanisamy,
S/o, Ammasai,
180, Annapoorna Layout,
New Siddhapudur,
Coimbatore - 641 044.

... Respondent/Appellant/defendant

Prayer in S.A.No.1526 of 2008: Second Appeal filed under Section 100 of C.P.C., against the decree and common judgment dated 19.12.2007 rendered in A.S.No.5 of 2007 on the file of the Principal Subordinate Judge, Coimbatore, reversing the decree and the common judgment dated 04.08.2006 rendered in O.S.No.1189 of 1996 on the file of the Third Additional District Munsif of Coimbatore.

Prayer in S.A.No.1527 of 2008: Second Appeal filed under Section 100 of C.P.C., against the decree and common judgment dated 19.12.2007 rendered in A.S.No.6 of 2007 on the file of the



Principal Subordinate Judge, Coimbatore, reversing the decree and the common judgment dated 04.08.2006 rendered in O.S.No.1149 of 1992 on the file of the Third Additional District Munsif of Coimbatore.

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For Appellants : Mr.S.Subbiah, SC
for M/s.P.Raja in both Appeals

For R1 : Mr.S.Mukunth
for M/s.Sarvabhauman Associates
in both appeals

R2 to R8 : Given up

C O M M O N J U D G M E N T

Second Appeal Nos.1526 and 1527 of 2008 are directed against the common judgment and decree dated 19.12.2007 passed in A.S.Nos.5 of 2007 and 6 of 2007 on the file of the Principal Subordinate Court, Coimbatore, reversing the judgment and decree dated 04.08.2006 passed in O.S.Nos.1189 of 1996 and 1149 of 1992 on the file of the III Additional District Munsif Court, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants in O.S.No.1189 of 1996 are the appellants in S.A.No.1526 of 2008. The plaintiff in O.S.No.1149 of 1992 is the appellant in S.A.No.1527 of 2008.

4. O.S.No.1149 of 1992 has been laid by the plaintiff for declaration and permanent injunction. O.S.No.1189 of 1996 has been laid by the defendant and others for declaration, possession and permanent injunction.

5. O.S.No.1149 of 1992 and O.S.No.1189 of 1996 have been jointly tried by the trial court and common evidence has been recorded in O.S.No.1149 of 1992.

6. Both the second appeals have been admitted on the following substantial questions of law:

a) In a case of an adoption of an Hindu under the Hindu Adoptions and Maintenance Act 1956, when the adopted person is not a minor, it is necessary that the natural father or mother should also execute the adoption deed?

b) When Section 16 of the Hindu Adoption and Maintenance Act



1956 contemplates the execution of the adoption deed by the natural parents in respect to "the child", as it obligatory for the execution of such a document by the natural parents even in respect to a person who had been adopted who is not a child.

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c) When the plea of customary adoption of a person already married and above 15 years having been not raised by the contesting defendant pleading of such a custom not in vogue or non-existence, is it the duty of the plaintiff to prove such a custom?

d) when the evidence of scribe of the Will who is also an attester to the Will could be rejected simply because that the said witness was also a scribe?

e) Whether the judgment of the Lower Appellate Court is vitiated in holding the deficiency of the Court Fees on account of the under valuation of the suit properties for not following the provisions contained under Section 21(2) of the Code of Civil Procedure?

7. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

8. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A17 were marked. On the side of the defendants, D.Ws.1 to 4 were marked. Exs.B1 to B9 were marked.

9. Suffice to state that the parties are not at issue that the suit property involved in both the suits originally belonged to Chinnakkal @ Chinnammal, W/o, Krishna Gounder by virtue of a sale deed dated 09.02.1971. The abovesaid sale deed has been marked as Ex.A1. Now, according to the plaintiff, he has been taken in adoption by Chinnakkal @ Chinnammal on 26.04.1990 and the adoption deed dated 26.04.1990 has been marked as Ex.A2. Further according to the plaintiff, following the adoption under Ex.A2, Chinnakkal @ Chinnammal had bequeathed the suit property in his favour by way of a registered Will dated 22.06.1990 which has come to be marked as Ex.A3. Thus, it is found that the plaintiff claims title to the suit property based on Ex.A3 Will and according to the plaintiff, inasmuch as, he had been taken in adoption by Chinnakkal @ Chinnammal, Chinnakkal @ Chinnammal had bequeathed the suit property in his favour under Ex.A3 Will.

10. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth, the trial court was pleased to decree the suit as prayed for by the plaintiff in O.S.No.1149 of 1992 and dismissed the suit laid by the defendant and others in O.S.No.1189 of 1996. On appeal



by the defendant in both the matters, the first appellate court on a consideration of the materials available on record, both oral and documentary and the submissions putforth by the respective parties, was pleased to set aside the common judgment and decree of the trial court and by way of allowing the appeals preferred by the defendant, dismissed the suit laid by the plaintiff in O.S.No.1149 of 1992 and decreed the suit in favour of the defendant and others as prayed for in O.S.No.1189 of 1996. Impugning the same, the second appeals have been preferred by the appellants.

11. Per contra, according to the defendant, the plaintiff has not been taken in adoption by Chinnakkal @ Chinnammal as claimed by the plaintiff under Ex.A2 adoption deed and the abovesaid adoption pleaded by the plaintiff is not true and legally unsustainable and further putforth the case that Chinnakkal @ Chinnammal had not bequeathed the suit property in favour of the plaintiff under Ex.A3 Will and therefore, putforth the case that the alleged Will marked as Ex.A3 is not true and valid and on the other hand, the same has been fabricated by the plaintiff. Further according to the defendant, Chinnakkal @ Chinnammal had already bequeathed the suit property in favour of the defendant by way a Will dated 25.01.1989 and the said Will has been marked as Ex.B2. Thus, it is noted that the parties having not disputed that the suit property belonged to Chinnakkal @ Chinnammal, now, the plaintiff claims title to the suit property based on Ex.A3 Will said to have been executed by Chinnakkal @ Chinnammal in his favour and on the other hand, the defendant claims title to the suit property based on Ex.B2 Will said to have been executed in his favour by Chinnakkal @ Chinnammal.

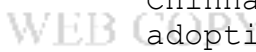
12. Considering the pleas putforth by the plaintiff, it is found that the plaintiff has come forward with the case that, inasmuch as, he had been taken in adoption by Chinnakkal @ Chinnammal under Ex.A2 deed, resultantly, she had chosen to bequeath the suit property in his favour under Ex.A3 Will. Therefore, according to the plaintiff, the factum of the execution of Ex.A3 Will by Chinnakkal @ Chinnammal in his favour is only on the basis of taking him in adoption under Ex.A2 deed. Furthermore, even on a perusal of the terms contained in Ex.A3 Will, it is noted that Chinnakkal @ Chinnammal had chosen to bequeath the suit property in favour of the plaintiff as she had taken him in adoption under Ex.A2 deed and as Chinnakkal @ Chinnammal had also taken one Nanjappan, as her adopted son, according to her, with a view to avoid disputes between her adopted sons, she had chosen to bequeath the suit property in favour of her adopted son namely the plaintiff under Ex.A3 Will. It is not in dispute that both the plaintiff as well as the defendant are the relatives of Chinnakkal @ Chinnammal.



13. As above pointed out, the Will executed in favour of the defendant marked as Ex.B2 is earlier in point of time to the Will executed in favour of the plaintiff marked as Ex.A3. As regards the Ex.B2 Will, the same has been adverted to by the plaintiff in his plaint ie., in O.S.No.1149 of 1992. Further according to the plaintiff in O.S.No.1149 of 1992, by virtue of Ex.A3 Will, Chinnakkal @ Chinnammal had cancelled the earlier Will executed by her dated 25.01.1989 marked as Ex.B2 in favour of the defendant and therefore, according to him, by virtue of Ex.A3 Will, Ex.B2 Will ceased to be in force. It is thus noted that as rightly held by the first appellate court, the execution of Ex.B2 Will by Chinnakkal @ Chinnammal in favour of the defendant marked as Ex.B2 has not been disputed by the plaintiff. In addition to that, the defendant has also sustained the authenticity of Ex.B2 Will as per law by examining one of the attestors of the Will as D.W.3 and considering the evidence of D.W.3 in toto and in the light of the abovesaid factors, the first appellate court is justified in holding that the genuineness of Ex.B2 Will has been established by the defendant in accordance with law.

14. In the light of the abovesaid position, now, we are to only decide whether the plaintiff had been taken in adoption by Chinnakkal @ Chinnammal under Ex.A2 deed and whether thereafter, Chinnakkal @ Chinnammal had bequeathed the suit property in favour of the plaintiff under Ex.A3 Will as putforth by the plaintiff.

15. As above pointed out, both the plaintiff and the defendant are related to Chinnakkal @ Chinnammal. It has been admitted by the plaintiff examined as P.W.1 that he had got married during 1983 and further also admitted that, he was aged about 33 years on the date of adoption effected under Ex.A2 deed. In the light of the abovesaid factors, as rightly contended by the defendant, the plaintiff has not come forward with the case that in the family Chinnakkal @ Chinnammal, there had been a custom or usage which permitted to take in the adoption of a person who is already married and also to taken in the adoption of a person who has completed the age of 15 years. When according to the defendant, as putforth in the written statement, the plea of adoption putforth by the plaintiff is not true and legally not valid, if according to the plaintiff, he had been voluntarily taken in adoption by Chinnakkal @ Chinnammal and when as above pointed out, the plaintiff was a married person and aged about 33 years on the date of adoption, in the absence of any plea putforth by the plaintiff that the custom or usage in vogue amongst the parties concerned, permitted the taking in adoption of a person who has been already married and who has crossed 15 years of age, on the abovesaid ground alone, as held by the first appellate court,



16. In addition to that as per the evidence of P.W.1, Chinnakkal @ Chinnammal was aged about 70 years on the date of adoption and would state that he came to know about Chinnakkal @ Chinnammal taking him in adoption only on the date of Ex.A2 deed and further deposed that other than executing Ex.A2 deed, no other formality or celebration was conducted and he does not know whether there is any reason for Chinnakkal @ Chinnammal taking him in adoption and further according to him, on the date of adoption and at the time of execution of the adoption deed Ex.A2, his mother and his uncle were also present. Therefore, as contended by the defendant's counsel, if the plaintiff had been validly taken in adoption by Chinnakkal @ Chinnammal, particularly, their custom permitting the practice of taking a person in adoption who has already been married and who has crossed 15 years of age and when as per the Hindu Adoptions and Maintenance Act, no adoption shall be valid, unless the person adopted is capable of being taken in adoption and when the person to be taken in adoption must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth to the family of its adoption, as provided under sections 6 and 11 of the abovesaid Act and when according to P.W.1, the plaintiff, his mother were available in the scene at the time when he had been taken in adoption and Ex.A2 deed has been executed, as contended by the defendant's counsel and as rightly held by the first appellate court, necessary recitals would have been incorporated in Ex.A2 that the plaintiff's mother had agreed to give the plaintiff in adoption to Chinnakkal @ Chinnammal and in turn, Chinnakkal @ Chinnammal had agreed to take the plaintiff in adoption and furthermore, the plaintiff's mother had also not signed in the adoption deed Ex.A2. On the other hand, Ex.A2 is found to have been subscribed only by Chinnakkal @ Chinnammal by affixing her LTI and though it is claimed in Ex.A2 that the plaintiff had been taken in adoption with the consent of his parents, if the abovesaid claim is true and as above pointed out, when the plaintiff's mother, according to the plaintiff, was available on the date of Ex.A2 and in the scene, the parties concerned would have endeavored to obtain the signature of the plaintiff's mother in Ex.A2 deed and also necessary recitals would have been incorporated in Ex.A2 deed that the plaintiff's mother had given the plaintiff in adoption to Chinnakkal @ Chinnammal and accepting the same, Chinnakkal @ Chinnammal had taken the plaintiff in adoption. When according to the plaintiff examined as P.W.1, he is not aware of Ex.A2 and when as above pointed out, the factum of adoption of the plaintiff by Chinnakkal @ Chinnammal lacks the legal sanction, particularly the plaintiff



being a married person and aged about 33 years on the date of adoption and when the plaintiff has not pleaded any custom or usage, enabling the parties concerned, to take the plaintiff in adoption, despite the abovesaid features and when the essential requisites for a valid adoption are not even incorporated in Ex.A2 deed and when the plaintiff's mother has not signed in Ex.A2 deed, all put together, the first appellate court is found to be fully justified in holding that the plaintiff has failed to establish the factum of his valid adoption by Chinnakkal @ Chinnammal under Ex.A2 deed.

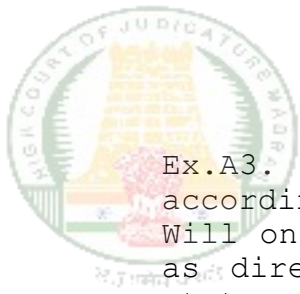
17. In addition to that, when according to the plaintiff, Ex.A2 deed had been attested by two attestors namely Karuppusamy and Avinasi Gounder and when the defendant has disputed Ex.A2 deed as an invalid document, to establish that the plaintiff had been lawfully taken in adoption by Chinnakkal @ Chinnammal, the plaintiff should have endeavored to examine the abovesaid two attestors, to sustain his case. The plaintiff for the reasons best known to him, has not even endeavored to examine the attestors of Ex.A2 deed.

18. It has also been putforth before the Courts below that the plaintiff having been taken in adoption by way of Ex.A2 deed, the presumption is available to the plaintiff under section 16 of the Hindu Adoption and Maintenance Act 1956. However, when as above pointed out, Ex.A2 deed had not been signed by the plaintiff's mother and been subscribed only by Chinnakkal @ Chinnammal by affixing her LTI, there is no question of invoking the presumption under section 16 of the abovesaid Act. However, to obviate the abovesaid feature/position standing against the plaintiff, the plaintiff's counsel in the second appeal would contend that the plaintiff being not a minor on the date of adoption, there is no necessity at all for executing the deed of adoption. Evidencing the factum of adoption, when according to the plaintiff, he had been taken in adoption by Chinnakkal @ Chinnammal by executing the deed of adoption marked as Ex.A2 and when the abovesaid plea of the plaintiff is stoutly repudiated by the defendant, in such view of the matter, the contention now raised that there is no necessity at all to execute a deed of adoption, as the plaintiff was not a minor at that point of time, in my considered opinion, is found to have been taken only for the purpose of the second appeal proceedings to justify the plaintiff's case of adoption one way or the other. The plaintiff having taken the plea of adoption under the deed, it is for the plaintiff to establish the truth and validity of the same. As above discussed, the plaintiff having miserably failed to establish his abovesaid case and when he is not entitled to take presumption as provided under the Hindu Adoptions and Maintenance Act 1956 and in the absence of any custom or usage,

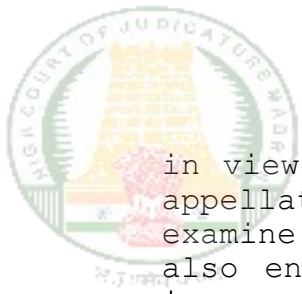


the plaintiff is found to be a person who could not have been validly taken in adoption by Chinnakkal @ Chinnammal as per law and furthermore, when none of the ingredients of valid adoption had been incorporated in Ex.A2 deed and when Ex.A2 deed had not been signed by the plaintiff's mother who is admitted to be present at that point of time by the plaintiff himself and when the plaintiff has not endeavored to establish the truth and validity of Ex.A2 deed by examining the attestors of the said document and the defendant having taken the plea that the plea of adoption putforth by the plaintiff is not valid, accordingly, it is seen that it is only the duty of the plaintiff to establish that the custom or usage prevailing amongst the persons concerned, permitted the taking in of the adoption of a person who has been already married and who has crossed 15 years of age, all put together, as rightly held by the first appellate court, the plaintiff has miserably failed to establish that he had been taken in adoption by Chinnakkal @ Chinnammal under Ex.A2 deed in accordance with law and therefore, justified in holding that Ex.A2 deed is not true and valid and further justified in holding that the plaintiff is not the adopted son of Chinnakkal @ Chinnammal. The abovesaid determination of the first appellate court do not warrant any interference.

19. As above pointed out, the basis of the plaintiff's case in claiming the title to the suit property is that Chinnakkal @ Chinnammal had bequeathed the suit property in his favour as he had been taken in adoption by her under Ex.A2 deed. When as above pointed out, the truth and validity of Ex.A2 deed having not been established by the plaintiff and consequently, the plaintiff is found to be not having been taken in adoption by Chinnakkal @ Chinnammal lawfully, the very basis of the plaintiff's case that Chinnakkal @ Chinnammal had bequeathed the suit property in his favour as he had been taken in adoption by her, falls to the ground. In addition to that, to sustain his case that Ex.A3 Will had been executed in his favour by Chinnakkal @ Chinnammal, the plaintiff had chosen to examine one of the attestors of the said Will namely Omana as P.W.2. At this juncture, it is to be noted that Karuppusamy is the other attestor of Ex.A3 Will. Karruppusamy is also one of the attestors of the adoption deed Ex.A2. However for the reasons best known to him, when the defendant has challenged both Exs.A2 and A3 as not true and invalid, in such view of the matter, as concluded by the first appellate court, the plaintiff should have endeavored to examine Karuppusamy to sustain the truth and validity of both Ex.A2 deed and Ex.A3 Will. However, the plaintiff had chosen only to examine Omana, the other attestor as P.W.2. Considering the evidence of P.W.2 Omana, it is seen that she had not been summoned by Chinnakkal @ Chinnammal to attest the Will said to have been executed by her marked as



Ex.A3. According to P.W.2, she is a document writer and further according to her, she came to know about the execution of Ex.A3 Will only on the date of execution and she had attested the same as directed by Chinnakkal @ Chinnammal and further she would state that she had not been solicited by Chinnakkal @ Chinnammal earlier to come and attest Ex.A2 Will on the date of the execution of the same. It is thus found that P.W.2 is only a chance witness and she had accordingly testified that she had attested the Will as directed by Chinnakkal @ Chinnammal. Further according to P.W.2, Chinnakkal @ Chinnammal had chosen to bequeath the suit property in favour of the plaintiff for the only reason that the plaintiff had been taken in adoption by her. As above pointed out, when the plaintiff has miserably failed to establish that he is the adopted son of Chinnakkal @ Chinnammal and been validly taken in adoption by her and the deed of adoption Ex.A2 is a true and valid document, all put together, when P.W.2 Omana is found to be a chance witness, her claim that she is already acquainted with Chinnakkal @ Chinnammal prior to Ex.A3 Will, however, her abovesaid claim being not buttressed by any acceptable and reliable materials, be that as it may, when it is noted that Karuppusamy is the common attesor to both Ex.A2 and Ex.A3 documents, as rightly concluded by the first appellate court and rightly contended by the defendant's counsel, the plaintiff should have endeavored to examine the attesor Karuppusamy to sustain his case. When it is found that Chinnakkal @ Chinnammal was aged about more than 70 years at the time of the adoption as well as at the time of execution Ex.A3 Will and when in Ex.A3 Will, she has been stated to be aged about 76 years and when according to the defendant, two years prior to her death, she was physically and mentally disabled and not in a position/condition to move due to various physical and mental infirmities and when according to the defendant, Chinnakkal @ Chinnammal may have been impersonated by somebody at the instance of the plaintiff, to accomplish the task of creating Exs.A2 and A3 documents and on that footing, when Exs.A2 and A3 are being challenged by the defendant as false and fabricated documents and when the claim of P.W.2 that she is acquainted with Chinnakkal @ Chinnammal prior to Ex.A3 Will is not substantiated by acceptable and reliable materials on the part of the plaintiff and when P.W.2 is found to be a chance witness and when she had not been solicited by Chinnakkal @ Chinnammal to stand as an attesor to Ex.A3 Will and when the evidence adduced in the matter would go to show that it is only Karuppusamy who was brought by Chinnakkal @ Chinnammal at the time of the alleged execution of Exs.A2 and A3 documents and when as above pointed out, as per the evidence of P.W.2, Chinnakkal @ Chinnammal intended to give the suit property only to her adopted son and when the plaintiff has miserably failed to establish that he is the adopted son of Chinnakkal @ Chinnammal, in such view of the matter, resultantly



in view of the abovesaid position, as rightly held by the first appellate court, the plaintiff should have endeavored to examine the other attestor Karuppusamy to buttress his case and also endeavored to examine the scribe of Ex.A3 Will, Sundaram, in support of his case and particularly to hold that Chinnakkal @ Chinnammal was hale and healthy and in a fit state of mind to execute Exs.A2 and A3 documents and that she had on her volition without any compulsion or force, voluntarily executed the abovesaid deed as per law and therefore right in holding that the plaintiff's case cannot be uphold straightaway on the evidence of the chance witness P.W.2 and when according to the defendant, the plaintiff had impersonated somebody as Chinnakkal @ Chinnammal and got executed and registered the documents marked as Exs.A2 and A3, to get rid of the suspicious circumstances surrounding the abovesaid documents in accordance with law, as concluded by the first appellate court, the plaintiff should have examined the other persons associated with the abovesaid documents as per law. On the other hand, when it is seen that the plaintiff had not chosen to examine any other person in support of his case, other than him as P.W.1 and the attestor Omana as P.W.2, for the reasons aforestated, the first appellate court is found to be justified in rejecting the plaintiff's case by holding that the plaintiff has also miserably failed to establish the truth and validity of Ex.A3 Will and accordingly right in holding that the plaintiff is not entitled to claim the title to the suit property based on Ex.A3 Will. The abovesaid determination of the first appellate Court do not warrant any interference.

20. The plaintiff having failed to establish the truth and validity of the Exs.A2 and A3 documents and when the execution of Ex.B2 Will in favour of the defendant is not in dispute and the truth and validity of Ex.B2 Will having been established by the defendant, by examining D.W.3 the attestor, in such view of the matter, the first appellate court is found to be justified in upholding the defendant's claim of title to the suit property based on Ex.B2 Will.

21. The first appellate court has held that the suit has not been properly valued by the plaintiff. However as rightly contended by the plaintiff's counsel, as regards the under valuation of the suit, the defendant should have not only taken the said plea at the earliest stage when he entered appearance and filed the written statement and also should have raised the issue as a preliminary issue before going into the merits of the matter. In addition to that the defendant has also not even placed any material worth acceptance as to the market value of the suit property on the date of the plaint. The first appellate court has also not determined as to what is the market value of the suit property on the date of the plaint. Even



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assuming that the plaintiff has undervalued the suit, on that ground alone, the plaintiff's suit cannot be thrown out. The plaintiff should have been granted sufficient opportunity to pay the deficit court fee within a fixed time. In view of the abovesaid factors, the first appellate court without any basis or materials, had erred in holding that the suit has been undervalued by the plaintiff that too at the appellate stage, when the parties had not proceeded with the said issue before the trial court. Though it is found that the defendant has taken the plea of undervaluation, as to in what manner it is so pleaded and when there is no material on the part of the defendant as to the market value of the suit property on the date of the suit and the defendant having raised the abovesaid plea on the footing that the trial court has no jurisdiction to entertain the suit, as contended by the plaintiff's counsel, the trial court should have determined the said point by framing the issue one way or the other at the foremost, more particularly, when there is no material to hold as to the actual market value of the suit property on the date of the suit, in my considered opinion, the determination of the first appellate court that the plaintiff's suit is under valued cannot be justified.

22. In support of his contentions, the plaintiff's counsel placed reliance upon the decisions reported in

1. 2001(3)CTC 283 [Corra Vedachalam Chetty and another Vs. G.Janakiraman]
2. 2007(2) CTC 172 [Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao and others]
3. 2018 (4) CTC 373 [Ramadoss Vs. Subbayyan and another]
4. 2020 (4) CTC 321 [Shivakumar and others Vs. Sharanabasappa and others]

23. In support of his contentions, the defendant's counsel placed reliance upon the decisions reported in

1. 2018 (4) CTC 373 (Mad) [Ramdoss Vs. Subbayyan and another]
2. 1975 (2) SCC 251 [Dhanraj Vs. Suraj Bai]
3. 1990 (I) Law Weekly 249 [Mahalingam Vs. Kannayan and another]
4. 2011 (5) CTC 287 [N.Govindarajan Vs. N.Leelavathy and others]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

24. For the reasons aforestated, the substantial questions of law 1 to 4 are answered against the plaintiff and in favour



of the defendant and the substantial question of law No.5 is answered in favour of the plaintiff and against the defendant.

25. In conclusion, the common judgment and decree dated 19.12.2007 passed in A.S.Nos.5 of 2007 and 6 of 2007 on the file of the Principal Subordinate Court, Coimbatore, reversing the judgment and decree dated 04.08.2006 passed in O.S.Nos.1189 of 1996 and 1149 of 1992 on the file of the III Additional District Munsif Court, Coimbatore are confirmed. Resultantly both the second appeals are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal Subordinate Judge,
Principal Subordinate Court,
Coimbatore.
2. The Third Additional District Munsif,
Third Additional District Munsif Court,
Coimbatore.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.Elizabaeth Ravi, Advocate, S.R.No.17979

+2ccs to M/s.Sarvabhauman, Associates, S.R.No.17707,17708

S.A.Nos.1526 & 1527 of 2008
and M.P.No.1 of 2008

PPA (CO)
HS (02/09/2021)