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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.16 of 2008

&

M.P.No.1 of 2008

Dhanajeyan ...Appellant/2nd Respondent

Vs

1.Dharaniammal ...Respondent/Appellant

2.Puranikaraja ... Respondent/1st Respondent

3.S.Mohanan

4.Chandrammal

5.Gopalaraja

6.Loganatharaja

7.Punniyavathiammal

8.Mohanraja ...3 to 8 Respondents/
3 to 8 Respondents

Prayer: Second Appeal filed under Section 102 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.33 of 2008 dated 26.04.2007 on the file of the Subordinate Court, Vellore reversing the Judgement and Decree made in O.S.No.457 of 1998 dated 31.01.2006 on the file of the Principal District Munsif, Vellore.

For Appellant : Ms.R.T.Sundari

For Respondent 1 : Mr.P.G.Thiyagu

For Respondent 4 : Died

For Respondents 2, 3, 5 to 8 : No Appearance



J U D G E M E N T

The 3rd defendant in the suit has filed the above Second Appeal challenging the Judgement and Decree in A.S.No.33 of 2006 on the file of the Subordinate Court, Vellore, in and by which the learned Subordinate Judge had reversed the Judgement and Decree of the Principal District Munsif, Vellore in O.S.No.457 of 1998. For ease of understanding the parties are referred to in their array as in the suit.

2. The plaintiff had filed the suit O.S.No.457 of 1998 on the file of the Principal District Munsif, Vellore for a declaration of her title to the suit schedule property and for recovery of possession and permanent injunction restraining the defendants from selling or creating encumbrance in respect of the suit property. The suit property consist of 11 items of Nanja lands and the 12th item is a dilapidated thatched house with vacant site. All the items of property are situate in various survey numbers of Nedumipalayam Village, Vellore.

3. The case of the plaintiff is that the three sons of one Rangaraja, Venkatasamyraja, Ramaraja and Balakrishnaraja had partitioned their joint family properties under a registered partition deed dated 09.03.1952. After the partition, the three of them were enjoying their respective shares as their separate property. Venkatasamyraja had mortgaged the properties several times over. The said Venkatasamyraja had died leaving behind him his wife, Muniyammal and son Kumarasamyraja. Muniyammal's sister Indirani Ammal was also living with the family of Venkatasamyraja and joint patta was given in the name of Kumarasamyraja, Muniyammal and Indirani Ammal in respect of the properties of Venkatasamyraja.

4. After the demise of Muniyammal and Indirani Ammal the said Kumarasamyraja was in exclusive enjoyment of the properties in question. Apart from these ancestral properties, Kumarasamyraja was also settled with some other properties under a settlement deed dated 03.06.1973. The settler was the name sake of his father and the son of Bethuraja. At the time of the settlement, Kumarasamyraja was a minor. Apart from the properties inherited from his father Venkatasamyraja, Kumarasamyraja was also in possession and enjoyment of the properties settled on him by Venkatasamyraja son of Bethuraja. The revenue records stood in the name of Kumarasamyraja.

5. It appears that the said Kumarasamyraja who was a bachelor had executed a Will dated 12.01.1996 bequeathing the suit properties on the plaintiff. The plaintiff is the daughter of Indirani Ammal, the sister of Kumarasamyraja's mother



Munniyammal. Kumarasamyraja breathed his last on 30.06.1996. After his death, the plaintiff came to know about the Will and the Will came into effect. As a result of which, the plaintiff became the absolute owner of the suit schedule properties.

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6. The 1st defendant is the paternal uncle of Kumarasamyraja and the 2nd respondent is the son of Balakrishnaraja, the other brother of Venkatasamyraja. The 3rd defendant is a stranger to the property and is also not a relative. Since the defendants were attempting to trespass into the suit property and on 12.07.1998 had denied the title of the plaintiff to the suit properties, the plaintiff was constrained to file the suit in question. Pending the suit, the 1st defendant had died and the legal representatives were brought on record as defendants 5 to 9.

7. The 3rd defendant had filed a written statement, which was adopted by defendants 1, 2, 5 to 9. In the written statement filed by the 3rd defendant, the suit filed by the plaintiff was resisted inter alia on the ground that Kumarasamyraja had died intestate leaving behind him surviving only the defendants 1 and 2 as his legal representatives since Kumarasamyraja had died bachelor. The suit properties therefore devolved only upon defendants 1 and 2 and they have been in possession and enjoyment of the suit properties.

8. The 3rd defendant had denied the Will dated 12.01.1996 said to have been executed by Kumarasamyraja. It was their contention that the said Will was forged document created exclusively for the purpose of the suit and therefore the plaintiff was not entitled to any share in the suit schedule property. It was also contended that defendants 1 and 2 had sold most of the properties to the 3rd defendant on 13.06.1996. Therefore the contention that the plaintiff was in possession and enjoyment of the suit property was absolutely false and the suit deserves to be dismissed.

9. During the trial of the suit, the plaintiff had examined herself as P.W.1, the attester of the Will one Chinnasamy was examined as P.W.2 and Janaki, the scribe of the Will was examined as P.W.3. The plaintiff had marked Ex.A.1 to Ex.A.6 in support of their case. The defendants had neither let in any oral evidence nor submitted documentary evidence to support their contention.

10. The Trial Court disbelieved Ex.A.6 Will on the ground that the testator even according to the evidence of P.W.1 was unwell and he had died within a few days of executing Ex.A.6 Will. The learned District Munsif, Vellore had also observed that the testator had not signed on the first sheet and had only



signed the second sheet and the second sheet was also not written on stamp paper but was written on a plain paper and this sheet was glued to another sheet. Therefore, the learned Judge entertained doubts about the Will.

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11. The learned Judge had also observed that there were contradictions in the evidence of P.W.1 and P.W.2 and P.W.3 with reference to the place of the execution. The learned Judge therefore proceeded to dismiss the suit as the plaintiff had failed to prove her case. However, the learned Judge had also drawn adverse inference from the fact of the defendants not entering into the box to adduce oral evidence or to file documentary evidence. However, considering the fact that the plaintiff had to succeed on the strength of her case, the suit was dismissed on the ground that the Will had not been proved in the manner known to law.

12. Aggrieved by the said Judgement and Decree, the plaintiff had filed A.S.No.33 of 2006 on the file of the Subordinate Court, Vellore. The learned Subordinate Judge, Vellore on an elaborate consideration of the evidence of the scribe and the attesor and after going through the contents of the Will reversed the finding of the Trial Court by holding that the Will has been proved in the manner known to law. Challenging this Judgement and Decree, the 3rd defendant alone has preferred this Second Appeal.

13. When the matter had come up for admission on 09.01.2008, this Court had directed notice regarding admission. The 1st respondent / plaintiff has entered appearance through counsel.

14. Ms.R.T.Sundari, learned counsel appearing and arguing on behalf of the 3rd defendant would submit that the appellate Court has totally overlooked the fact that the Will is shrouded in suspicious circumstances. She would argue that the Will which contains two pages has been signed by the testator only in the second page and the fact that the testator who was just 40 years had died within a days of the execution of the Will would establish that he was not in a sound disposing state of mind.

15. That apart, she would argue that there was contradiction between the plaintiff, the attesor and the scribe with reference to the place, where the Will had been executed by the deceased testator. She would further argue that the attesor P.W.2 had deposed that he did not know the contents of the documents which he had attested and all these circumstances would only go to show that the Will is fabricated one.



16. Per contra Mr.P.G.Thiyagu, learned counsel appearing on behalf of the plaintiff would contend that the property which has been bequeathed on the plaintiff is the property that had been settled in favour of Kumarasamyraja by Venkatasamyraja son of Bethuraja. The learned counsel would contend that Kumarasamyraja was in a sound disposing state of mind and a mere reading of the contents of the Will would clearly establish the same. He would submit that the scribe and the attesor has spoken in one voice about the execution of the Will by Kumarasamyraja and with reference to his mental condition. Therefore, the Will has been proved in the manner known to law as per the provisions of Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act.

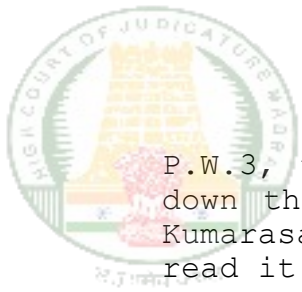
17. The learned counsel would argue that the evidence of both P.W.2 and P.W.3 has not been shaken in cross and cogent reasons have been given for obtaining signature only in single sheet and the reasons why the second sheet had been glued to another sheet. He would further argue that the 3rd defendant has no locus standi to file the appeal without the 1st and 2nd defendants, since they are the Class II legal heirs of the deceased Kumarasamyraja. Since they have not challenged the judgement it only shows that they have accepted the Judgement.

18. Heard the counsels and perused the records.

19. The Will which is the subject matter of dispute in the suit has been executed by the testator in the presence of P.W.2 and the other witness. P.W.2, Chinnsamy has cogently narrated the execution of the Will by Kumarasamyraja and reasons as to why Kumarasamyraja had chosen to bequeath the properties on his first cousin, Dharani Ammal. The witness has stated that Kumarasamyraja had bequeathed properties on the plaintiff on account of her being physically challenged and as she had been attending to his needs.

20. It is also to be borne in mind that the plaintiff is the daughter of Kumarasamyraja mother's sister. The mother of the plaintiff had been residing with the said Kumarasamyraja's mother and father and in fact the patta, Ex.A.3 stood in the name of the plaintiff's mother as well. P.W.2 has clearly deposed that he has been regularly in contact with the testator. He would also in his cross examination submit that the Will was only with reference to the properties situate at Nedumipalayam, which was the subject matter of the settlement deed, Ex.A.2.

21. He had also deposed that he was very much aware of the fact that the Will had been executed bequeathing the properties at Nedumipalayam since the plaintiff was physically challenged.



P.W.3, the Scribe would depose to the effect that she had taken down the recitals of the Will on the dictation of the testator Kumarasamyraja. Kumarasamyraja signed the Will after she had read it out aloud the contents.

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22. The defendants had attempted to discredit the evidence of P.W.3 by trying to make it appear that she was an interested witness. However, she has effectively refuted the suggestions made by the defendants in this regard. She had also given reasons for the 2nd page being glued to another sheet. She would depose that since the paper was of very thin consistency, the papers were getting torn and therefore the papers had been glued on to a thicken paper. She would submit that though the testator had not signed on the 1st page despite her asking him to do so, however, a reading of the Will would clearly show the flow of language and the connection between the recitals in the first page and the second page.

23. Therefore, from a perusal of the evidence of P.W.2 and P.W.3 it is clearly evident that the testator Kumarasamyraja was in a very sound disposing state of mind on the date on which he had executed the Will. The contents of the Will has been dictated by him and he has signed the Will and had also seen the attestation of the Will by the witness who in turn has seen the testator affix his signature to the Will. Therefore the Will has been proved in conformity with the provisions of Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act. The defendant have not come forward to adduce or produce evidence. The 3rd defendant admittedly is stranger to the family. The defendants 1 and 2 who are the people having a caveatable interest in the property have not chosen to challenge the Judgement and Decree of the learned Subordinate Judge, Vellore and therefore the Judgement and Decree in A.S.No.33 of 2006 of the Subordinate Judge, Vellore has attained finality.

24. Another controversy which was pointed out by the learned counsel for the appellant was that there was discrepancy in the evidence of P.W.1 , P.W.2 and P.W.3 with reference to the place of execution of the Will. P.W.1 and P.W.2 had stated that the Will was executed in the house of Balammal, the foster mother of the testator. P.W.3 has adduced evidence to the fact that the Will was executed at Mohamadpuram. From the evidence it is clear that Balammal, was residing in Mohamadpuram. Therefore, there is no contradiction regarding the place of execution even on this ground. The appeal fails.

25. The appellant has not made out any substantial question of law warranting the interference of this Court in the Judgement and Decree of the learned Subordinate Judge, Vellore.



In fine the Second Appeal stands dismissed. The Judgement and Decree in A.S.No.33 of 2016 on the file of the Subordinate Court, Vellore is confirmed. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Vellore.
2. The Principal District Munsif,
Vellore.

+lcc to M/s.P.G.Thiyagu, Advocate, Sr.25839
+lcc to M/s.M.P.Jayaprakash, Advocate, Sr.26509

S.A.No.16 of 2008

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NSK 06/09/2021