



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

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THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.1406 OF 2007

1. A.N.S.Shanmugam
2. Raja @ Balasubramaniam
3. R.Venkatarama Gounder
4. Munusamy
5. Lucas
6. Kongu Vellalar Educational Trust
rep. by its President
A.C. Thangavel
Pallipalayam Village
Perundurai Taluk

...Defendants/Appellants/Appellants

Vs.

1. Kuttiammal
2. Kamatchi
3. Komalavalli
4. Marasamy
5. Annapoorani
6. Sundari
7. Guruvayee
8. Arumugham
9. Madheswari
10. Mangammal
11. Guruvayee
12. Uthirasamy
13. Venkatachalam
14. Perumal
15. Madheswari
16. Devi
17. Veeramani

...Respondents



Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 14.11.2006 passed in A.S. No.8 of 2006, on the file of the Additional District Judge (Fast Track IV), Bhavani, Erode, upholding the decree and judgment dated 01.02.2005 passed in O.S. No.599 of 2004, on the file of the Principal District Munsif of Bhavani.

For Appellants : Mr.J.Prithvi
for Mr.Kaithamalai Kumaran

R1 to R16 : Mr.T.Murugamanickam,
Senior Counsel.
Assisted by Mr.V.Rajesh

R17 : Given up.

JUDGMENT

The appellants are the defendants in O.S.No.599 of 2004 on the file of the Principal District Munsif Court, Bhavani, Erode District and the appellants in A.S.No.8 of 2006 on the file of the Additional District Court, Fast Track Court No.4, Bhavani, Erode District.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The respondents herein filed a suit in O.S.No.599 of 2004 before the Principal District Munsif Court, Bhavani, Erode District, praying for a declaration that they are the absolute owners of the suit property as the legal heirs of the deceased Narayanan and for a consequential relief of permanent injunction restraining the present appellants from interfering with their peaceful possession and enjoyment of the suit property.

4.The case of the plaintiffs is that the suit property was purchased by late Narayanan through a registered sale deed dated 02.06.1972 (Ex.A1) and that after the death of the said Narayanan on 26.04.2002, the plaintiffs who are the paternal cousins of the deceased Narayanan are entitled to succeed to the



suit property as Class - II legal heirs since Narayanan died as a bachelor. The further case of the plaintiff is that a portion of the suit property was let out to the seventh defendant who subsequently vacated the same. Since the house in the suit property was in a dilapidated condition, the same was demolished. However, the respondents / defendants attempted to trespass into the suit property by contending that they are the trustees in a trust formed by late Narayanan in respect of the suit property. Therefore, they filed the suit for the reliefs as stated above.

5.The suit was resisted by the respondents on the ground that late Narayanan executed a Will dated 27.07.1987 (Ex.B7) through which he created a trust for educating poor girl children and also nominated the first defendant / first appellant to manage the trust. It is further contended that the appellants / defendants 2 to 5 were appointed as trustees who in turn executed a sale deed in favour of the sixth appellant namely Kongu Vellalar Educational Trust and that they are in possession and enjoyment of the suit property.

6.The trial court after framing appropriate issues and after full contest decreed the suit filed by the plaintiffs vide its decree and judgment dated 01.02.2005 and also held that the Will dated 27.07.1987 (Ex.B7) has not been proved by the defendants as genuine.

7.Aggrieved over the same, the defendants filed an appeal in A.S.No.8 of 2006 on the file of the Additional District Judge, Fast Track Court No.IV, Bhavani, Erode District, and the learned Additional District District Judge, Fast Track Court No.4, Bhavani, Erode District, dismissed the appeal vide his decree and judgement dated 14.11.2006 and upheld the findings recorded by the trial court.

8.Now the present second appeal is filed on the following substantial questions of law:

- a) Are the Courts below justified in rejecting the Will Ex.B7 on the ground of exclusion of the heirs of the testator, overlooking the intention of the testator in creating a trust for the education of poor girl students?



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b) Are the Courts justified in throwing a suspicious circumstances in the execution of the Will on the ground of exclusion of close relatives overlooking that all the legal heirs are excluded cannot be considered as a suspicious circumstances?

9. The suit property was purchased by late Narayanan through a registered sale deed dated 02.06.1972 (Ex.A1). It is admitted that late Narayanan died as a bachelor. The plaintiffs are the Class -II legal heirs of late Narayanan and they have filed the suit for declaration that they are entitled to succeed to the suit property after the death of their paternal uncle Narayanan. However, the defendants pressed into service a Will dated 27.07.1987 (Ex.B7) and had contended that late Narayanan during his life time executed a Will in respect of the suit property for educating the poor girl children and also appointed appellants 1 to 5 as trustees and the trustees in turn executed a settlement deed in favour of the sixth appellant. Both the courts below had concurrently held that Ex.B7 is not true and valid. A bare perusal of Ex.B7 Will shows that there are over writings, alterations and interalienation. In fact the last page of the Will is written in two different ink. The attestors of the Will were examined as D.W.2 and D.W.3 in the trial court and they also admitted that there are several over writings, alterations in the Will and had not been authenticated by the testator. Ex.B7 also refers to 'New Subramaniam Hotel' run by the first appellant herein and he is shown as one of the trustees in the Will. The names of the trustees are written in the Will in different ink. It is in evidence that 'New Subramaniam Hotel' came into existence only during the year 1999. Therefore, there is a strong suspicion as to the execution of the Will by late Narayanan. It is also contended by the respondents / plaintiffs that Narayanan was in the habit of writing diary as is evidenced by Ex.B8 to Ex.B11 and there is no mention in these diaries with regard to the purchase of stamp papers for executing the Will Ex.B7. It is also contended by the plaintiffs that the diary relating to the corresponding year during which Ex.B7 Will was executed has not at all been produced by the appellants. The trial court and the first appellate court had concurrently held that there are suspicious circumstances attendant on the Will Ex.B7 and the attestors D.W.2 and D.W.3 are also closely related to the first appellant. It is also seen that though the appellants contended that as per



the settlement deed executed by the trustees in favour of the sixth appellant, consequent upon which the sixth appellant took possession of the suit property, the sixth appellant did not enter into witness box to speak about his possession over the suit property. All the findings recorded by both the courts below are based on well laid principles of law and in fact they have analysed the entire evidence adduced on both sides and had come to the conclusion that Ex.B7 Will is not true and valid. Therefore, the substantial questions of law are answered against the appellants. In fact there is no substantial question of law involved in the present case.

10. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 14.11.2006 passed in A.S. No.8 of 2006, on the file of the Additional District Judge (Fast Track IV), Bhavani, Erode, and the decree and judgment dated 01.02.2005 passed in O.S. No.599 of 2004, on the file of the Principal District Munsif, Bhavani, Erode District, are upheld.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1. The Additional District Judge (Fast Track IV), Bhavani, Erode District.
2. The Principal District Munsif, Bhavani, Erode District,
3. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.51674

+1cc to Mr.V.Rajesh, Advocate, S.R.No.51918

S.A.No .1406 of 2007

SR-II(CO)

RLP(11/11/2021)