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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2021	Pronounced on: 29.10.2021
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CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.1184 of 2009
and
M.P.Nos.1 of 2009 & 1 of 2013

1.Muniappa
2.Narayanappa
3.Ramappa
4.Krishnappa
5.Chinna Papaiah
6.Gowramma

.. Appellants/Appellants/Plaintiffs

Vs.

1.Obamma
2.Nariappa
3.Seenappa
4.Nagesh

.. Respondents/Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the decree and Judgement and Decree dated 29.04.2009 made in A.S.No.23 of 2008 on the file of Sub Court, Hosur, confirming the Judgement and Decree dated 16.04.2008 made in O.S.No.376 of 2005 on the file of the District Munsif Court, Hosur.

For Appellants : Mrs.S.Mahalakshmi for
M/S.C.Ramkumar, R.Gowri.
For Respondents : Mr.Hariharan for
M/S.V.Nicholas &
N.E.A. Dinesh for RR1 to 4

J U D G M E N T
(Heard through video conferencing)

This Second Appeal has been preferred against the judgement and decree dated 29.04.2009 passed in A.S.No.23/2008 on the file of the learned Subordinate Judge, Hosur.



2. The Appellants are plaintiffs in the suit. For the sake of convenience the parties are referred as plaintiffs and defendants during the course of this discussion.

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3. The averments of the parties in brief:

The suit property is situated in S.No.59 of Siddhanapalli Village, Hosur Taluk which comprised of 3 acres and 52 cents. The patta for the above said property stood in the name of the plaintiff's grandfather, Jingala Muniappa. And the said lands in the suit property later sub divided as S.Nos.59/2A, 59/2B and 59/2C.

3.1. The said Jingala Muniappa had three sons namely Venkataramanappa, Chinnappa and Venkatappa. The plaintiffs 1 to 6 are the legal heirs of Venkatappa. The wife of Venkatappa is no more. The 1st defendant is the daughter of Chinnappa. In the year 1948, an oral partition took place among the three sons and their father Jingala Muniappa. In the said partition, the lands in S.No.59/2 (3 acres and 52 cents) was divided into 4 shares, comprising of 88 cents each. The elder son Venkataramanappa sold his share of 88 cents in favour of one Ramappa on 15.04.1968. Another son Chinnappa settled his share of 88 cents in favour of his daughter Obamma on 07.11.1962. Jingala Muniappa bequeathed his share by virtue of a Will dated 07.03.1948. In view of that, Venkatappa, who is the father of the plaintiffs became entitled to 1 acre 76 cents in S.No.59/2 i.e. in the suit property.

3.2. The 2nd defendant Narriappa is the husband of the 1st defendant Obamma; Narriappa is not entitled to any extent of land in S.No.59/2. However he misrepresented before the U.D.R officials and secured patta in his name for an extent of 0.86.5 hectares in S.No.59/2A. Even the 1st defendant herself has got only 88 cents by virtue of the settlement executed in her favour by her father Chinnappa. Even though U.D.R shows the extent of property in S.No.59/2 as 5 acres 27 cents, on ground there is only an extent of 3 acres 52 cents is available. The defendants 3 and 4 are the sons of 1st and 2nd defendants. The defendants have got no right over the suit property in S.No.59/2.

4. The written statement of the 2nd defendant in brief is as under:

The written statement of the 2nd defendant was adopted by the other defendants. In the written statement, it is stated that an extent of 0.02.5 hectares land in S.No.59/2 has been



classified as 'Poramboke'. The patta number pertains to the entire extent of 3 acres 52 cents comprised in S.No.59/2 is 42. It was a joint patta stood in the name of 3 sons of Jingala Muniappa. Since the husband of Venkatamma died, she was under the care and custody of her father Jingala Muniappa and her father had settled his share of 88 cents in her favour.

4.1. On 07.11.1962, his second son Chinnappa had settled his share in favour of his daughter Obamma, who is the 1st defendant herein. The said Obamma married Nariappa, who is the son of Venkatamma. Hence, Nariappa has been in enjoyment of 88 cents which was settled in favour of his wife Obamma along with another 88 cents got by his mother Venkatamma. Thus, the 1st defendant Obamma and her husband Nariappa (2nd defendant) were in enjoyment of 1 acre and 76 cents in S.No.59/2. Only because of that the patta for an extent of 0.86.5 in S.No.59/2 A stands in the name of Nariappa. It is false to state that Jingala Muniappa had executed a Will in favour of the father of the plaintiffs 1 to 5 namely, Venkatappa and hence, the plaintiffs have got no right over the suit properties.

5. On the basis of the above pleadings, the trial Court has framed the following issues:

- “(1)வாதிகள் வழக்குரையில் கோரியவாறு விளம்புகைப் பரிகாரம் பெறத் தகுதியானவர்களா?
(2)வாதிகள் வழக்குரையில் கோரியவாறு நிரந்தர உறுத்துக் கட்டணம் பரிகாரம் பெறத் தகுதியானவர்களா?
(3) வாதிகளுக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள் என்ன?”

6. During the course of trial, on the side of the plaintiff two witnesses have been examined as P.W.1 and P.W.2 and five documents have been marked as Ex.A.1 to A.5. On the side of the defendants also two witnesses have been examined as D.W.1 & D.W.2 and Ex.D1 to D3 have been marked. The report and plan of the Commissioner have been marked as Ex.C1 and C2.

7. After the conclusion of trial, the learned trial Judge has dismissed the suit. Aggrieved over that the plaintiffs have filed the first Appeal before the Sub-Court, Hosur. The first Appeal was also dismissed confirming the judgment of the Trial Court. Having got aggrieved over the said judgment, the plaintiffs have preferred this Second Appeal.

8. The Second Appeal has been admitted on the following substantial questions of law:

1. Whether the Courts below are right in not appreciating in proper perspective that the plaintiff



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has proved the genuineness, execution and attestation of the Will (Ex.A.3) as per the legal requirements in terms of Section 63 of the Indian Succession Act 1925 and Section 68 of the Indian Evidence Act 1972?

2. Whether the Courts below are right in adjudicating and conferring the title of the suit property upon the defendants entirely taking into consideration of the U.D.R. Patta, when it is a settled proposition of law that patta is not a document of title?

9. Heard the arguments advanced by Mrs.S.Mahalakshmi, learned counsel for the appellants/plaintiffs and Mr.Hariharan, learned counsel for the respondents/defendants and perused the materials available on record.

10. The learned counsel for the appellants submitted that the Courts below had conferred the title of the suit property in favour of the defendants, by relying on the U.D.R.patta; the Courts below failed to appreciate the evidence of PW.2 who is the son of one of the attestors of the Will Ex.A.3; despite the Will was 40 years old, the Courts below failed to accept its genuineness. He further submitted that the Courts below overlooked the evidence of PW.2 and failed to appreciate Ex.A3 and Ex.A4.

11. The fundamental facts that are not disputed between the parties of the suit property is that the suit land and its appurtenants totally measures 3 acre 52 cents and it was originally owned by one Jingala Muniappa. In a partition took place between Jingala Muniappa and his three sons, it has been divided into 4 shares comprising 88 cents each. The dispute is only with regard to 88 cents which was allotted to Jingala Muniappa. It is claimed by the defendants that Jingala Muniappa had settled his share of 88 cents in favour of his only daughter Venkatamma. It was claimed by the plaintiffs that the said 88 cents of Jingala Muniappa was bequeathed in favour of their father by virtue of Will dated 07.03.1948. The said Will has been marked as Ex.A3. Since the plaintiffs claimed that the said 88 cents was bequeathed in favour their father Venkattappa and filed this suit on the basis of the said Will, the burden is on them to prove the genuineness of the Will.

12. It is claimed by the plaintiffs that Jingala Muniappa had affixed his thumb impression on the Will dated 07.03.1948. Jingala Muniappa is said to have executed the Will in favour of one of his son Venkattappa, even though Venkattappa himself was



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allotted with his share of 88 cents during the family partition. The plaintiffs claimed that that the Will was executed as early as in the year 1948. Despite that, there is no averments as to when Jingala Muniappa died and when the alleged Will had come into force.

13. Neither Venkatamma has produced the alleged Settlement deed which is said to have been executed by Jingala Muniappa in her favour. In the written statement it is not stated whether the settlement deed is a registered one. However it is the plaintiffs who have filed the suit for the relief of declaration in respect of the suit properties. Hence, the burden is on the plaintiffs to prove that the alleged Will is a genuine one and it had come into force immediately after the death of Jingala Muniappa. But they have not produced any successive documents to show their continuous possession. It has not been shown that the patta had been transferred anytime in the name of their father, Venkattappa and thereafter mutated in the name of the plaintiffs.

14. However, it is submitted by the learned counsel for the appellants that the trial Court and the First Appellate Court ought not to have relied on the patta stood in the name of Nariappa in order to hold that they are the owners of the suit property. Since the plaintiffs' father Venkattappa had other two brothers and a sister, they ought to have convinced the Courts below that Jingala Muniappa had some special reasons to execute a Will in respect of his share in favour of Venkattappa by leaving out his other children. In the absence of any such reasons, it is correct for the courts below to presume doubts about the Will, which excluded the natural heirs of Jingala Muniappa.

15. The suit has been filed in the year 2005. The claim of title on the basis of the Will of the year 1948, have been first raised by the plaintiffs in this suit only. The plaintiffs have lost the advantage of examining the attesting witnesses who are no more. A son of one of the attestor Sennappa has been examined as PW2. Admitted signatures of Sennappa available in Ex.A3 has also been produced in order to prove his alleged attestation in the Will.

16. With these evidence on record it is claimed by the plaintiffs that the mandates of Sec.63 and 68 of Indian Evidence Act, have been substantially complied with and the plaintiffs have discharged their burden of proving the Execution of the Will. The fact remains that the plaintiffs have not produced



any single documents to show that their father was in enjoyment of the suit property in pursuance of the Will.

17. It is submitted by the Appellants that they have proved the genuineness of the Will by following the procedure contemplated under Sec.68 of the Indian Evidence Act. The provisions of Sec.68 read as follows:

"68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: 1[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] "

18. With the examination of PW.2 who is said to be the son of an attesting witness, the plaintiffs have claimed that they have proved the Will. Admittedly the attestors are not alive. In the absence of the testimony of those witnesses with regard the execution of the Will, it is obligatory on the part of the plaintiff to prove that the Will was given effect to after the death of the executant and that their father was in enjoyment of the same. Claim for properties basing on the Will cannot as simple as proving an attester's signature alone, when suspicion clouds on the Will. As it has been stated already been stated, the plaintiffs have not produced any of the documents to show their continuous enjoyment.

19. Not a single document has been produced to show that the father of the plaintiffs had in anyway dealt with the suit property. The defendants have produced documents to show that they are in enjoyment of the suit property for a considerable length of time. Since the preponderance of the evidence with regard to the enjoyment of the property is found to be more in favour of the defendants than in favour of the plaintiffs, the Courts below have concluded that the plaintiffs failed to dispel the suspicious circumstance surrounding the Will.

20. The whole reading of the judgments of the Courts below would reveal that both the Court have rightly appreciated the



evidence available on record and arrived at a conclusion that the appellants have failed to prove the genuineness of the Will. As it has been already been pointed out that the appellants/ Plaintiffs had omitted to prove the genuineness of the Will by dispelling the suspicious circumstances surrounding the Will, I find no reason to interfere with the judgment of the Courts below on this point. Thus the substantial question of law No.1 is answered against the appellants.

21. It is a settled principle of Law that the plaintiffs who claims relief has the burden to prove his case and he cannot lean on the demerits of the defendants' case. Though the patta is not a document of title, it can serve as a prima facie proof to show someone's enjoyment over the property. Admittedly the defendants had not filed any counter claim and no decree has been passed in their favour, though the findings have been rendered in their favour. Under said circumstance the very relevancy of the Substantial Questions of Law No.2 itself is lost and hence it is answered against the appellants.

In the result, the second appeal is dismissed and the judgment and decree of the First Appellate Court dated 29.04.2009 made in A.S.No.23 of 2008, by the file of Sub Court, Hosur is upheld. No costs. The connected miscellaneous Petitions if any are also closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

jrs

To

- 1.The Sub Judge,
The Sub Court, Hosur.
- 2.The District Munsif,
The District Munsif Court, Hosur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



+1cc to Mr.V.Nicholas, Advocate SR.No.56573

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S.A.No.1184 of 2009
and
M.P.Nos.1 of 2009 & 1 of 2013

BR (CO)
CB (16/12/2021)