



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

S.A.No.391 of 2017

Rayathal

...Appellant/Appellant/1st Defendant

Vs.

1.N.Muthusamy
2.N.Jeganathan
3.A.Thangavelu
4.A.Ramasamy

... Respondents 1 to 4/Respondents
1 to 4/Plaintiffs

5.M.Balasubramaniam

...5th Respondent/5th Respondent
/2nd Defendant

Prayer:Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 07.08.2009 made in A.S.No.58 of 2004 on the file of the I Additional District Court, Coimbatore confirming the findings with respect to Ex.B1 Will dated 27.04.1983 made in O.S.No.321 of 1997 dated 17.10.2001 on the file of the II Additional Subordinate Court, Coimbatore.

For Appellant : Mr.V.Ayyapparaja

For Respondent- 5 : Mr.M.V.Venkataseshan

JUDGEMENT

This Second Appeal has been filed to set aside the findings with regard to Ex.B1-Will dated 27.04.1983 in the judgment in O.S.No.321 of 1997 dated 17.10.2001 on the file of II Additional subordinate Court, Coimbatore as confirmed by the judgment in A.S.No.58 of 2004 dated 07.08.2009 on the file of I Additional District Judge.

2.The learned counsel for the appellant submitted that totally five suits were filed before the Trial Court with regard



to the same suit schedule property to the extent of 5.03 acres of land and the Trial Court heard all the suits together and passed the common judgment.

3.O.S.No.603 of 1985 was filed for specific performance by one Krishnan @ Krishnasamy for the entire 5.03 acres and the suit was dismissed. Against the dismissal, appeal suit was preferred and the Appellate Court directed to refund the advance amount and no second appeal was preferred against the same.

4.O.S.No.22 of 1985 was filed by the one Balasubramaniam against Arunachalam Gounder for specific performance to the extent of 5.03 acres of land and the suit was decreed and no appeal was preferred.

5.O.S.No.1427 of 1994 was filed for permanent injunction by Arunachala Gounder against Balasubramanian and the same was dismissed and no appeal was filed.

6.O.S.No.554 of 1996 was filed for permanent injunction by Balalsubramaniam against Kaliammal and others and the suit was decreed to the entire extent of 5.03 acres of land and no appeal was preferred.

7.O.S.No.321 of 1996 was filed for permanent injunction by Muthusamy against Rayathal, the subsequent purchaser and the suit was dismissed. Against which, A.S.No.58 of 2004 was filed and the same was also dismissed. Against the the said dismissal, the present Second Appeal has been filed.

8.The learned counsel further submitted that the said Balasubramaniam was enjoying the entire property. He was enjoying 2 acres as the owner of the land and remaining 3.03 acres as cultivating tenant. Further, according to the appellant the suit property was sold to her by one Chinammal, who obtained the entire extent of 5.03 acres by virtue of Will executed by her father. Now, the issue to be decided is with regard to the execution of the Will by Arunachala Gounder in favour of the Chinammal. According to the appellant, she is one of the legal heir of Arunachala Gounder. There are four daughter for the said Arunachala Gounder and at the time of the execution of Will, Kaliammal one of the daughter was also alive. Excluding other three daughters, Arunachala Gounder executed a Will in favour of the Chinmmal.

9.The learned counsel admitted the fact that 5.03 acres is the cultivating property. According to the appellant other legal heirs are not mentioned in the Will and the reason for not executing the Will in favour of other daughters was also not mentioned and this aspect was not considered by the Court below.



WEB COPY

The learned counsel further submitted that the Arunachala Gounder admitted the fact that the Will was executed in favour of Chinnammal in the written statement filed in O.S.No.22 of 1985 and one Nanjapan, one of the attestor to the Will was also examined as DW2.

10.He further submitted that Chinnammal was actively participated in the execution of the Will, for the registration of the Will in Sub-Registrar Office. The main issue raised in the present appeal is only with regard to the objection made by the appellant in execution of Will was not considered by the Court below in proper perspective and there is cloud over in the execution of the Will. Therefore, he prayed that in the judgment of both the Courts below the findings with regards to the Will dated 27.04.1983 is alone to be set aside and he suggested the following substantial questions of law.

“Whether the findings of the Courts below with regard to Ex.B1 Will dated 27.04.1983 is not vitiated in law and is not liable to be set aside?”

11.The learned counsel for the respondents submitted that Arunachala Gounder has himself admitted the fact that the Will was executed by him in favour of Chinnammal in the written statement filed in O.S.No.22 of 1985 and one of the attested witness to the Will was examined as D.W.2 to prove the Will. The reason for not executing the Will in favour of other three daughters was also stated by Arunachala Gounder in the Will. Thus, the Will has been proved before the Court below in the manner known to law. Hence, the judgment of both the Courts below do not need any interference.

12.Heard the learned counsel for the appellant as well as the respondent and perused the materials available on record.

13.In the present case, the Will was executed on 27.04.1983 by one Arunachala Gounder in favour of his 2nd daughter, Chinnammal. Admittedly, the Arunachala Gounder has four daughters. A perusal of the Will would show that the schedule mentioned property was settled in favour of Chinnammal excluding the other three daughters for the reason that Arunachala Gounder settled the needs of the other three daughters at the time of their marriage. Therefore, he has not provided any share in the property and settled the property in favour of Chinnammal.

14.The only contention of the appellant is that there was a cloud over in the execution of the Will, since the reason for not settling the property in favour of the other three daughters has not been mentioned. As mentioned above, the settlor has categorically mentioned the reason as to why he ignored other



three daughters and settled the property in favour of the Chinnammal.

15.The settlor, Arunachala Gounder has admitted the fact that he executed the Will in favour of the Chinnammal in the written statement filed in O.S.No.22 of 1985 and one Nanjapan, attested witness to the Will was also examined as D.W.2, who deposed that the Will was executed by Arunachala Gounder in favour of Chinnammal. Based on the documentary and oral evidence, both the Courts below has come with the concurrent findings that the Will was executed by Arunachala Gounder in favour of Chinnammal and there was no cloud over on the execution of the Will.

16.The learned counsel for the appellant referred the judgment of the Hon'ble Apex Court in the case of H.Venkatachala Iyengar Vs. B.N.Thimmajamma and Others reported in 1959 Supp (1) SCR 426 : AIR 1959 SC 443. The relevant of the judgment is extracted hereunder:

"21.Apart from the suspicious circumstances to which we have just referred, in some cases the Wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the Wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefits under it, that itself is generally treated as a suspicious circumstances attending the execution of the Will and the propounder is required to remove the said suspicion by clear and satisfactory evidence."

17.The Hon'ble Apex Court in the above case held that if the propounders themselves take a prominent part in the execution of the Wills it will confer substantial benefits on them and the same can be treated as suspicious circumstances attending the execution of the Will. In the present case, the only averment made by the appellant is that the Chinnammal was actively participated in the execution of the Will but it was not proved in the manner known to law. Therefore, the principles laid down in the above said case will not apply for the present case. In the similar way the learned counsel also referred Paragraph No.19 of the judgment rendered by the Hon'ble Apex Court in the case of Kavitha Kanwar Vs. Pamela Mehta & Others reported in 2020 0 Supreme (SC) 375. The principal laid down in the above said judgment also does not apply for the case in hand.

18.In view of the above, this Court does not find any



infirmity in the judgment and decree passed by the Courts below and no substantial question of law that arises for consideration as suggested by the appellant.

19. In the result, the present Second Appeal is dismissed.
No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rst

To:

1. The I Additional District Court,
Coimbatore.
2. The II Additional Subordinate Court,
Coimbatore.

+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.12902

S.A.No.391 of 2017

GJ(CO)
SU(01/10/2021)