



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AS.No.645/2018

[Video Conferencing]

1.Kamalam

2.Ramayee [died]

*1st appellant is LRs of the deceased as per

Memo dated 08.09.2021 and vide Court

order dated 15.09.2021 made in

AS.No.645/2018

..Appellants /Defendants 8 & 9

Vs.

1.C.P.Arunachalam

2.Saraswathi

3.Parimalam

4.C.P.Nallasamy

..Respondents 1 to 4/Plaintiffs

5.Annakodi @ Annaporani

6.Nithya

7.Minor Shruthi

8.Dhanabakkiam

9.Parameswari

10.Vijaya @ Vijayalakshmi

..RR 5 to 10/Defendants 2 to 7

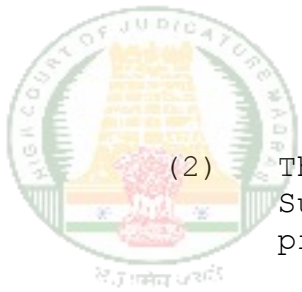
Prayer:- Appeal Suit filed under Order 41 Rule 1 read with Section 96 CPC against the judgment and decree dated 05.07.2018 made in OS.No.223/2015 on the file of the learned II Additional District Judge, Erode.

For Appellants : Mr.N.Manokaran

For RR 1 to 4 : Mr.T.Nirmaleshwar

JUDGMENT

- (1) The Court heard the arguments advanced by the learned counsel for the appellants / defendants 8 and 9 and the learned counsel for the respondents 1 to 4 / plaintiffs.



- (2) The only point that arise for consideration in this Appeal Suit is whether the Will dated 25.01.1977 under Ex.A1 is proved or not?
- (3) Defendants 8 and 9 in the suit in OS.No.223/2015 on the file of the learned II Additional District Judge, Erode, is the appellants herein.
- (4) Respondents 1 to 4 in this Appeal, as plaintiffs, filed the suit in OS.No.223/2015 for partition of 1.35 ½ acres to the plaintiffs and to effect division in the said manner and for other reliefs.
- (5) The suit was contested by the defendants including the appellants herein who are defendants 8 and 9 in the suit only on the basis of the Will which was marked as Ex.A1. It is stated that the maternal grandfather of plaintiffs 1 to 4 / respondents 1 to 4 herein, namely, Muthusamy Gounder, who had no male heirs during his lifetime, had executed the Will dated 25.01.1977 and that through the said Will, he bequeathed his 1.35 ½ acres of property to which the plaintiffs seek relief in the suit.
- (6) It is admitted that the original Will is not produced. None of the attestors to the document were examined. The appellants herein / defendants 8 and 9 examined DW2 by name Dharmalingam who is said to be a person who had acquaintance with the signatory of one of the attestors of the Will. Unfortunately, the evidence of DW2-Dharmalingam, is to the effect that he is unaware of the Will of Muthusamy Gounder. The said witness also admitted that he was not aware of the documents signed by his father as attestor. The nature of evidence given by DW2 does not satisfy the requirement of Section 71 of the Indian Evidence Act and it is not in anyway helpful to the appellants herein to prove attestation of the Will. Hence, the Trial Court specifically given a finding that the appellants failed to prove the Will by Muthusamy Gounder, father of one Palaniammal who is the mother of plaintiffs 1 and 4 and one C.P.Krishnan. When the Will is not proved, the case of the appellants that they are entitled to claim title over the property, viz., 1.35 ½ acres, in SF.No.169 of Perundurai Village, cannot be accepted.
- (7) The Trial Court is therefore, is right in decreeing the suit as prayed for. Since no other ground was raised by the appellants/defendants 8 and 9 to defend the suit, this



Court has no reason to interfere with the findings of the Trial Court.

(8) In the result, the Appeal Suit is dismissed as devoid of merits. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The II Additional District Judge, Erode.
- 2.The Section Officer, VR Section, High Court, Chennai.

+1 CC to Mr.T.Nirmaleshwar, Advocate sr 62846

+1 CC to Mr.N.Manokaran, Advocate sr 63165.

AS.No.645/2018

RK (CO)
SP(06/01/2022)