



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

S.A.(MD)No.69 of 2021

and C.M.P.(MD)No.880 of 2021

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M.Duraipandi ... Appellant/1st Respondent/Plaintiff

Vs.

1.R.Rani ... 1st Respondent/Appellant/1st Defendant

2.The Sub Registrar,
Office of the Sub Registrar,
Tirupparankundram, Thirunagar 7th Stop,
Thirupparankundram Taluk,
Madurai District. ...2nd Respondent/2nd Respondent/
2nd Respondent

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree, dated 15.03.2019 made in A.S.No.13 of 2018 on the file of the Subordinate Court, Thirumangalam, reversing the judgment and decree, dated 30.10.2017 made in O.S.No.490 of 2011 on the file of the District Munsif Court, Thirumangalam.

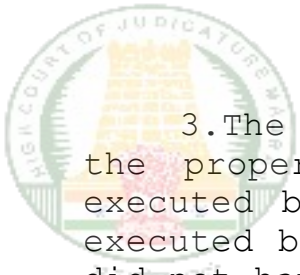
For Appellant

:Mr.T.Vadivelan

JUDGMENT

The plaintiff in O.S.No.490 of 2011 has come up with this second appeal, aggrieved by the reversal of the judgment and decree of the trial Court, which declared his title to the suit property and granted a permanent injunction restraining the first defendant from interfering with the plaintiff's peaceful possession of the property.

2.The plaintiff claims title under a sale deed said to have been executed by one Kanni @ Ammapillai, his maternal aunt on 05.09.1994. It is also the case of the plaintiff that the said Kanni @ Ammapillai obtained the property under a Will executed by her father, Muthan on 23.06.1986. Contending that the defendant, who is the daughter of Andichi @ Guruvammal / mother of the plaintiff, through her second husband, is attempting to interfere with the possession of the property, claiming under a settlement deed said to have been executed by her mother on 25.08.2011, the plaintiff has sought for the relief as stated above.



3.The suit was resisted by the first defendant contending that the property belonged to her mother ancestrally and the Will executed by Muthan was denied. The sale deed said to have been executed by Kanni @ Ammapillai was also termed as invalid, as she did not have any title to the property.

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4.At trial, the plaintiff examined himself as PW-1 and the attesting witness to the Will, one Pitchai, was examined as PW-2. Ex-A1 to Ex-A15 were marked on the side of the plaintiff. The first defendant was examined as DW-1 and one Ammavasi examined as DW-2. Ex-B1 to Ex-B4 were marked on the side of the defendants.

5.The learned District Munsif, upon a consideration of the evidence, concluded that the plaintiff has established his title and decreed the suit. Aggrieved, the first defendant preferred an appeal in A.S.No.13 of 2018. The appellate Court, upon a re-consideration of the evidence, concluded that the plaintiff has miserably failed to prove the Will said to have been executed by Muthan in favour of the Kanni @ Ammapillai. Having held that the Will has not been proved in accordance with law, the learned Appellate Judge reversed the judgment of the trial Court and dismissed the suit. Aggrieved, the plaintiff has come up with this second appeal.

6.I have heard Mr.T.Vadivelan, learned Counsel appearing for the appellant.

7.Mr.T.Vadivelan, learned Counsel for the appellant would vehemently contend that the appellate Court was not right in disbelieving the Will only on the basis of a stray admission made by PW-2 in his evidence. He would submit that the appellate Court should have looked into the other evidence, that is available to establish the Will.

8.I am unable to countenance the submission of the learned Counsel for the appellant. The appellant has come to the Court with a specific case claiming title under a Will said to have been executed by his Grandfather Muthan in favour of his maternal aunt. It is, therefore, incumbent upon the appellant to have established the Will in the manner known to law. The appellate Court had referred to the evidence of the attesting witness to PW-2, who had deposed as follows:

“முத்தன் உயில் எழுதியது எனக்குத் தெரியாது. அவரின் கைரேகை வைத்ததை நான் பார்க்கவில்லை.”

9.The appellate Court has took note of the further evidence of PW1, wherein, he had admitted that he had prepared the Will. The part in execution of the Will itself is a

<https://hcc.mca.gov.tj/kcs/mcs/>



suspicious circumstance and it is incumbent upon the legatee to remove the said suspicion also.

10.The appellate Court has rightly pointed out that there is no evidence that has the effect of removing the suspicion caused by the conduct of the appellant. Once the attesting witness states that he is not seen the testator signing the Will, any further evidence on the execution of the Will cannot be accepted, as proof of the Will. I, therefore, do not find any perversity in the findings of the appellate Court, when it held that the Will has not been established in accordance with law.

11.Despite his best efforts, the learned Counsel for the appellant is unable to make out a question of law, much less a substantial question of law to enable me to entertain the appeal. The appeal, therefore, fails and it is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Cmr

To

1.The Subordinate Judge, Thirumangalam.

2.The District Munsif, Thirumangalam.

3.The Sub Registrar,

Office of the Sub Registrar,

Tirupparankundram, Thirunagar 7th Stop,

Thirupparankundram Taluk,

Madurai District.

4.The Section Officer, V.R. Section,

Madurai Bench of Madras High Court, Madurai(2 copies).

Judgment made in
S.A. (MD)No.69 of 2021
12.02.2021

TP(CO)

TR(05.03.2021) 3P 6C