



A.S.No.304 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2022

Delivered on: 14.10.2022

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE TMT. JUSTICE N.MALA

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1.Padmavathy

2.Selvi

3.Jayalakshmi

4.Raghavi

...

Appellants/
Plaintiffs 2 to 5

-Vs-

T.Manickam (died)

..

1st Plaintiff

1.M.Subramani

2.Ramachandran

3.J.Romal Thayan Raja

..

Respondents /
Defendants 1 to 3

Prayer: Appeal filed under Section 96 of the Civil Procedure Code r/w. Order 41 of the Civil Procedure Code against the Judgement and Degree of the learned Principal District Judge, Krishnagiri dated 01.10.2015 in O.S.No.31 of 2014.

For Petitioner

: Mr.V.Nicholas

For Respondents

: R1 to R2 – No Appearance
Mr.T.S.Baskaran for R3



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JUDGMENT

D.KRISHNAKUMAR, J.

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The appellants are the plaintiffs 2 to 5 in O.S.No.31 / 2014 on the file of the Court of Principal District Judge, Krisnagiri and challenging the judgment and decree dated 01.10.2015 passed in the said Suit, has filed the present appeal Suit.

2. The case of the plaintiffs, as averred in the plaint, are as follows:

2.1. The plaintiffs 2 to 5 and defendants 1 and 2 are the sons and daughters of the first plaintiff and one Muniammal. The 3rd defendant is the 3rd party to the family of the plaintiffs and the defendants 1 and 2. The Suit Property is a house site, admeasuring to an extent of 2370 Sq.Ft., purchased by the wife of the first plaintiff, namely Muniammal and one Valiammal, wife of Munisamy, as per registered Sale Deed dated 27.04.1975. The said Muniammal constructed a thatched house and she had been in possession and enjoyment of the same in respect of her half share i.e., 1185 Sq.Ft. The said Muniammal died on 07.09.1997. After the demise of Muniammal, the plaintiffs and the defendants 1 and 2 succeeded to the said property. During the lifetime of Muniammal, she has not expressed that she has



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executed Will in favour of the first defendant and the plaintiffs only takes care of the first plaintiff and the said Muniammal and that the said Muniammal had no intention to execute any will in favour of the first defendant.

2.2. On 04.03.2014, when the third defendant came to the Suit property along with his men and attempted to dig a foundation in the suit property, for which the plaintiffs prevented the 3rd defendant from doing so. The 3rd defendant informed the plaintiffs that the 1st defendant sold the suit property to him. The plaintiffs immediately applied the copy and the Sale Deed stands in the name of the 3rd defendant on 14.03.2014. After receipt of the Sale Deed on 17.03.2014, the plaintiffs came to know from the recitals of the Sale Deed that Muniammal had executed a Will dated 19.08.1997 in favour of the first defendant.

2.3. It is the claim of the plaintiffs that the date of death of Muniammal is 07.09.1997 and 18 days prior to the death of the said Muniammal, the said Will was fabricated by the 1st defendant, taking



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advantage of the old age and ill health of the said Muniammal. According to the plaintiffs, the Muniammal was not in sound state of mind and she was bedridden, unable to move anywhere and hence the alleged Will dated 19.08.1997 is a forged one and the 1st defendant is not entitled to claim any right based on the said forged Will. According to the plaintiffs, the Suit Property belongs to Muniammal and the plaintiffs and the defendants 1 and 2 are the legal heirs of the said Muniammal and hence, the plaintiffs are entitled to equal shares in the suit property and therefore, the plaintiffs are entitled to 5/7 shares in the Suit Property and the defendants 1 and 2 are entitled to 1/7th share each in the Suit Property. The 1st defendant had fraudulently created the Will and the defendants did not come forward for division of Suit properties amicably and therefore, the plaintiff has filed the aforesaid Suit for the following reliefs:

- (a) for partition in respect of the plaintiffs 5/7 shares in the suit property;
- (b) divide the suit property by appointing a Commissioner into 7 equal shares by metes and bounds with reference to good and bad soil in the final decree proceedings ;



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(c) allot 5 such shares to plaintiffs and put them in separate possession of the same;

(d) declaring a Will dated 19.08.1997 stands in the name of the 1st defendant as null and void.

(e) declaring the sale deed dated 18.06.2009 created by the 1st defendant in favour of the 3rd defendant as null and void.

(f) granting permanent injunction restraining the 3rd defendant from trespassing in to the suit properties or making any construction in the suit property till the partition is effected and plaintiff's share allotted separately;

(g) direct the defendants to pay costs of the suit; and

(h) to grant such other reliefs.

3. The 1st defendant has filed a Written Statement denying the averments made in the plaintiff and stated that Muniammal was in sound and disposing state of mind while she came to the Sub Registrar Office and executed a registered Will in favour of the 1st defendant on 19.08.1997 and the said execution of the Will are clearly known to the plaintiffs and the 2nd



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defendant. It is further stated that the plaintiffs have no right and title over the suit property and as per the Will, the 1st defendant is the absolute owner of the suit property.

4. The third defendant has filed a written statement denying the averments made in the plaint and stated that it is not in dispute that the house site measuring 2370 Sq.Ft., was jointly purchased by Muniammal and Valliammal as per the Sale Deed dated 27.04.1975, in which the said Muniammal had got separated from Valliammal, put up a house and resided along with the 1st defendant and died on 07.09.1997. While she was in sound state of mind, Muniammal executed a registered Will dated 19.08.1997 bequeathing an extent of 1500 Sq.Ft. to the first defendant and then died on 07.09.1997, that the said Will came into force, that the 1st defendant became absolutely entitled to the property mentioned in the said Will and that since 07.09.1997, the 1st defendant was in exclusive possession and enjoyment of the same. It is further stated that the 1st defendant, in the presence of 1st plaintiff and the 2nd defendant, entered into an Agreement to Sell with the 3rd defendant on 23.07.2008 in respect of Suit



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Property and after repeated reminders, the 1st defendant came for amicable settlement and then executed the Sale Deed dated 18.06.2009 in respect of the above mentioned property and handed over possession to the 3rd defendant. The 1st plaintiff and the 2nd defendant attested in the said Agreement dated 23.07.2008 and hence, the 2nd defendant has been arrayed as 2nd defendant and now the plaintiffs and the defendants 1 and 2 seem to have joined hands together and caused the above litigation with false and imaginary allegations and prayed for dismissal of the Suit.

5. The Trial Court, on the basis of the pleadings and the documents filed, framed the following issues namely:

- (a) whether the plaintiffs are entitled for 5/7 shares in the suit property;
- (b) whether to declare the Will dated 19.08.1997 as null and void.
- (c) whether to declare the sale deed dated 18.06.2009 created by the 1st defendant in favour of the 3rd defendant as null and void.
- (d) whether to grant permanent injunction as sought for by the plaintiffs;



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(e) whether the 1st defendant has legal right over the suit property as per the Will?

(d) whether the plaintiffs are not in possession of the suit property at the time of filing of the Suit?

(h) to grant such other reliefs.

6. Before the Trial Court, the 3rd plaintiff was examined as PW1 and one Vajram as PW2. Exhibits A1 to A2 were marked on behalf of the plaintiffs. The 3rd defendant was examined as DW1 and exhibits B1 to B13 were marked on behalf of the defendants.

7. On the basis of the evidence let in by the parties, the trial court came to the conclusion that:

(i) As per the Will dated 19.08.1997, the 1st defendant is the legal owner of the suit property

(ii) The Will dated 19.08.1997 is a genuine Will and cannot be declared as null and void.

(iii) The plaintiffs are not entitled for the relief of permanent



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injunction.

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(iv) The plaintiffs are not entitled for 5/7 shares in the suit property

(v) The plaintiffs are not in possession of the suit property at the time of filing of the Suit

(vi) The plaintiffs are not entitled for any other relief.

Aggrieved by the judgement and decree dated 01.10.2015 passed in O.S.No.31/2014 on the file of the Principal District Court, Krishnagiri, the plaintiffs 2 to 5 in the suit have filed the above appeal.

8. Heard the learned counsel for the plaintiffs and the learned counsel for the defendants. We have also perused the entire records including the judgment and decree passed by the trial court.

9. The following issues arise for consideration in this appeal:

(i) Whether the Registered Will dated 19.08.1997 executed by Muniammal in favour of the 1st defendant is genuine or not?

(ii) Whether the appellants/plaintiffs are entitled for Suit for Partition?



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In short, these issues were decided against the plaintiffs by the trial court, it is to be seen whether the trial court has correctly decided these issues.

Question No.1:

10. The defendants' side witnesses has stated that the author of the Will namely Muniammal, after knowing the contents of the Will, has signed in the Will/ Ex.P11 dated 19.08.1997. DW4, even not knowing the contents of the Will, has read the contents of the Will to Muniammal and thereafter, signed in the Will and since the plaintiffs 1 and 2 have signed as witness in the Sale Deed and therefore, based on the evidence of the said witnesses, the Trial Court has come to the conclusion that the averments of the plaintiffs cannot be accepted. The Trial Court further recorded the finding that on 19.03.1997, the Stamp Paper was purchased in the name of Muniammal and though the stamp paper was dated 19.03.1997, it cannot be said to be forged since it was executed as Will on 19.08.1997. It is an admitted fact that the mother of the plaintiffs, namely Muniammal was residing with the 1st defendant. The Suit Property is in possession and enjoyment of the 1st defendant for the past 20 years. The Trial Court came to the conclusion that



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the Will dated 19.08.1997 is a genuine Will and therefore, the plaintiffs are not entitled for permanent injunction and the 1st defendant had got the suit property by way of Will and based on the same, he had executed Sale Agreement with the 3rd defendant.

11. The appellants raised a ground that the Will / Ex.P11 was executed by Muniammal on 19.08.1997 and she died on 07.09.1997 and she was in unsound state of mind and further stated that Section 68 of the Indian Evidence Act has not been proved by the defendants. As per Section 68 of the Indian Evidence Act “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”. One of the attesting witness to be examined to prove the execution of the Will. The signature of the Attestor to the Will was not denied by the parties. As regards the execution of the Will it is to be noted that the 3rd plaintiff, knowing fully about the Will, had filed a Suit in O.S.No.272/2008 against the other plaintiffs and the defendants. The 1st



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plaintiff/husband of the Testator/ Muniammal himself has accompanied his wife at the time of execution of the Will and he signed as one of the Witness to the Will. It is specifically denied by the defendants about the signature of their father/1st plaintiff in the Will, since he does not know to write and he usually puts thump impression, it was proved before the Trial Court that the 1st plaintiff/Manickam (died) had subscribed his signature in the Will.

12. The 1st plaintiff, knowing fully about the Will, signed as Witness in the Sale Agreement / Ex.B4 executed between the defendants 1 and 3. Therefore, after the demise of Muniammal, the Will came into effect, in and by which the 1st defendant became the absolute owner of the property. The 1st defendant, having title over the suit property through Will, has executed Sale Deed / Ex.B4 in favour of the 3rd defendant. The execution of the Will has been clearly established by the defendants through oral and documentary evidence before the Trial Court. The appellants have not produced any material to prove that at the time of execution of the Will, the Testator/Muniammal was in unsound state of mind. DW4 was examined on the side of the defendants and he deposed that at the time of execution of the



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Will by Muniammal, she signed in the said will in a sound state of mind and based on the oral evidence of DW4, execution of the Will was very much proved by the defendants. It is an admitted fact that the aforesaid suit property is a Natham Poromboke Land and hence, the revenue records has also not been produced to prove that patta has been granted in favour of Muniammal. It is also admitted that the 1st defendant is in possession and enjoyment of the Suit property. In the light of the above, the contentions of the appellants are liable to be rejected and this Court has no hesitation to hold that the Will dated 19.08.1997 executed by Muniammal in favour of the 1st defendant is genuine. Therefore, Question No.1 is answered in favour of the defendants 1 and 2.

Question No.2

13. The Suit property as per the plaintiff is 1343 Sq.Ft and as per Ex.B11/Will – 1580 Sq.ft. was given to the 1st defendant. As per Exs.A1 and B3, Valiammal and Muniammal had purchased totally 2470 Sq.Ft. and half of the share to extent of 1235 Sq.Ft. belongs to Muniammal. As per Ex.B6, 1343 Sq.ft was sold by the 1st defendant to the 3rd defendant. The 1st



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plaintiff /Manickam, has already sold the property to an extent of 500 Sq.ft. to the 1st defendant. Therefore, the 1st defendant was having more extent of property than the half share of Muniammal. Since the suit property was already sold through Sale Deed as per the Will by the 1st defendant and the genuineness of the Will was also amply proved by the defendants through oral and documentary evidence, the plaintiffs are not entitled for partition in the Suit property. This Court, while answering Question No.1, has held that the Will /Ex.P11 dated 19.08.1997 executed by Muniammal in favour of the first defendant is genuine and based on such Will, the first defendant has sold the suit property to the third respondent and therefore, Question No.2 is also answered in favour of the defendants 1 and 2.

14. In the light of the reasons assigned above, this Court finds no reason to interfere over the impugned judgment passed by the Trial Court and finds no merit in this appeal suit.

15. Accordingly, this Appeal Suit stands dismissed, confirming the judgment and decree passed by the Principal District Judge, Krishnagiri



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dated 01.10.2015 made in O.S.No.31 of 2014. Considering the relationship of the parties, there shall be no order as to costs.

[D.K.K., J.] [N.M., J.]

14.10.2022

Index: Yes/No
Internet: Yes/No
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To
Principal District Judge,
Krishnagiri.

D.KRISHNAKUMAR, J.
and
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Judgment in
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