



A.S.No.1213 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE N. MALA

A.S.No.1213 of 2015

Alamelumangaiammal

... Plaintiff/Appellant

Vs.

1.S.Murugesan

2.Vasanthi

... Defendants/Respondents

Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree of the learned I Additional District Judge, Tiruppur in O.S.No.157 of 2012 dated 24.06.2015.

For Appellant : Mr.J.Franklin
For R1 and R2 : No appearance



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J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

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The plaintiff in the suit in O.S.No.157 of 2012 on the file of the First Additional District Court, Tiruppur, has filed this Appeal Suit as against the judgment and decree dated 24.06.2015 in O.S.No.157 of 2012. The plaintiff and defendants in the suit are the appellant and respondents respectively.

2.The suit in O.S.No.157 of 2012 was filed by the plaintiff for partition of her $\frac{1}{2}$ share in the suit property and for other consequential reliefs. The case of the plaintiff is that the suit property originally belonged to her grand-father by name Thiru.Peria Ramasamy Gounder by virtue of a registered sale deed dated 29.03.1937. After the death of Thriu.Peria Ramasamy Gounder, his wife Smt.Devathal and two sons by name K.R.Subbaian and K.R.Appachiappan and one daughter Smt.Deivathal succeeded to the property. In a partition deed dated 05.05.1976, an extent of 3.12 Acres with reference to specific boundaries in S.F.No.129 of Thottipalayam Village was allotted to the plaintiff's father by name



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K.R.Subbaian. The plaintiff and first defendant are the son and daughter of

Thiru.K.R.Subbaian. It is stated that the plaintiff's father K.R.Subbaian

settled an extent of 1 Acre in S.F.No.129 of Thottipalayam Village in her

favour by virtue of registered settlement deed dated 31.10.1979. It is further

stated that her father along with first defendant sold an extent of 90 cents by

a sale deed dated 19.01.1995. Now the plaintiff has come forward with the

suit that her father K.R.Subbaian on 22.06.2003 died leaving behind him

the plaintiff, first defendant and her mother who died intestate on

20.05.2004. The plaintiff also stated that the plaintiff and the first

defendant were in cordial terms for some time and a suit for specific

performance filed by them jointly was also pending before the Additional

District Court, Fast Track Court, Tiruppur, which was disposed of on

31.03.2010. Stating that the plaintiff is in joint possession and enjoyment of

the suit property along with the first defendant and the first defendant failed

to render account for the money which he received by way of rent, the suit

came to be filed for partition. The suit was contested by the defendants

mainly on the ground that the property was bequeathed by their father

K.R.Subbaian in favour of the first defendant by way of registered Will



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dated 31.10.2001, registered as Doc. No.190 of 2001 before the Joint Sub

Registrar-I, Tiruppur. The Will consists of 'A' and 'B' schedule. Though 'A'

schedule was allotted to the defendant's mother by name Tmt.Dhanalakshmi

Ammal for her life it should devolve upon first defendant after her life. Suit

'B' schedule property which is an extent of 93½ cents was allotted to the

defendants as per the Will. Therefore, the only defence taken by the

defendant in the written statement was on the basis of the Will stated to have

been executed by his father in his favour out of love and affection. The trial

Court after framing necessary issues held that the Will under Ex.B-14 is

valid and held that the first defendant who is enjoying the property as per

the Will. Though the plaintiff/appellant relied on a few circumstances and

doubted the genuineness of the Will, the trial Court after considering the

entire evidence on record came to the conclusion that the Will is the last Will

of the testator executed out of free will and volition in favour of the first

defendant. One of the attesting witnesses was examined as D.W-2 and the

witnesses also spoke to the attestation by the other witness who is not

examined. Since the defendants have established the Will under Ex.B-14

the trial Court dismissed the suit holding that after the death of his mother



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the first defendant had become the absolute owner of the property by virtue of the registered Will under Ex.B-14. Aggrieved by the same, the above Appeal Suit has been preferred by the unsuccessful plaintiff.

3.Heard the learned Counsel for the appellant and perused the materials available on record.

4.The learned Counsel for the appellant strenuously argued that the plaintiff has established the fact that the testator was bedridden and undergone treatment from October, 2001 and the lower Court has erroneously held that the plaintiff has not produced any documentary evidence to prove that the testator of the Will had undergone treatment. After holding that the defendant had discharged the burden of proving the Will, the suit came to be dismissed.

5.The learned Counsel for the appellant mainly relied on the portion of evidence of D.W-1 regarding the fact that the testator was admitted in hospital. Plaintiff admits in her plaint, the execution of a registered Cart



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track agreement in favour of plaintiff on 14.09.2001. The Will under Ex.B-

14 is dated 31.10.2001. The original Will is produced as Ex.B-14. Ex.B-14

is the Registered Will with the signature and thumb impression of the executor. The defendants have examined D.W.-2 who is the one of the attesting witness to the document. Since the witness D.W-2 also speak about the attestation done by the other witnesses, this Court is of the view that the Will has been proved in the manner known to law. The learned Counsel for the appellant is unable to demonstrate by referring to any other incriminating document that the Will is not genuine. Due to certain peculiar features which are unique in the law of Will this Court and the Hon'ble Supreme Court have held that little care should be taken while accepting the genuineness and execution of the Will. The Will also is required to be proved like any other document. In the present case, the due execution of the Will by examining the attesting witness is proved by the plaintiff. The plaintiff herself admits the execution of the settlement deed exclusively to the plaintiff in respect of other property in favour of the plaintiff. In such circumstances, we find no compelling reasons to interfere with the findings of the lower Court. The learned Counsel appearing for the appellant is



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unable to bring forth any suspicious circumstances except the statement of the first defendant as D.W-1 about the physical health. From the evidence, this Court is unable to point out any specific circumstances which would prompt the Court to take a different view than the lower Court. As it has been held by the Hon'ble Supreme Court, every circumstances cannot be taken as suspicious without a rational basis. In other words, the suspicious circumstances must be identified with reference to various attending circumstances or certain unnatural aspects surrounding the Will but not mere fantasies of a doubting mind. Hence, this Court is unable to interfere with the judgment of the lower Court.

In the result, this Appeal Suit is dismissed. The judgment and decree dated 24.06.2015 in O.S.No.157 of 2012 passed by the learned First Additional District Judge, Tiruppur, is confirmed. No costs.

(S.S.S.R., J.) (N.M., J.)
07.11.2022

SRM
Internet : Yes
Index : Yes / No



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S.S. SUNDAR, J.
and
N. MALA, J.

SRM

To

The First Additional District Judge,
Tiruppur.

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