



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :04.02.2022

PRONOUNCED ON :13.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.536 of 2015

Vanitha,
represented General Power of Attorney
her husband Surendhiran ...Appellant/Plaintiff

Vs

1. Sudhakaran (Died)
 2. The Branch Manager,
Karur Vysya Bank,
Dharmapuri.
 3. S.Parvathi @ Santhi
 4. S.Harish Babu
 5. S.Manikandan
 6. S.Siva Anusuya ...Respondents/Defendants
- R3 to R6 brought on record as
LR's of Deceased 1st Respondent
vide order dated 30.11.2021
in C.M.P.No.18750/21 in A.S.No.536 of 2015)

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1& 2 of CPC read with Section 96 of CPC, against the Judgement and Decree dated 25.03.2015, made in OS.No.49 of 2010, on the file of the file of the Principal District Judge, Dharmapuri.

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.A.V.Radhakrishnan
for Mr.Pradeepan-R2

: Mr.M.R.Jothimanian-RR3 to6

R1 : Died



JUDGEMENT

1. This Appeal Suit has been filed, challenging the judgement and decree, dated 22.01.2015, passed in O.S.No.7450 of 2012 by the learned XV Additional Judge, City Civil Court, Chennai.

2. The appellant is the plaintiff and the respondents 1 and 2 are the defendants in the suit. Pending this appeal, since the 1st respondent died, his legal heirs were impleaded as respondents 3 to 6 in this appeal. The suit was filed by the plaintiff for partition, separate possession, mesne profits, and permanent injunction.

3. The case of the plaintiff, as set out, in the plaint is as follows:-

a) The suit schedule properties belonged to the plaintiff and the 1st defendant jointly and are in possession and enjoyment of the same. The 1st defendant is the brother of the plaintiff's husband. The suit properties were jointly purchased on 24.6.1954, by one Pangajammal, maternal aunt of the plaintiff and one Gajalakshmiammal, mother of 1st defendant and were in joint possession and enjoyment of the same. Since, Pangajammal had no issues, she bequeathed her share of properties, to the plaintiff's mother, Anantha, who is the sister of said Pangajammal, by a Will dated 16.12.1973 and she died on 31.8.1974. After her demise, Anantha is entitled for her share of properties. Then the said Anantha, executed a Will on 22.6.2004 in favour of the plaintiff bequeathing her half share in the suit properties and she died on 26.6.2005. Hence, the plaintiff is entitled for half share in the suit properties.

b) Another sharer of the suit properties, Gajalakshmiammal, is the mother of the plaintiff's husband, Surendhiran and the 1st defendant and she executed a Will in favour of the 1st defendant, in respect of her half share in the suit properties. Hence, the plaintiff and the 1st defendant are in joint possession and enjoyment of the suit properties. The plaintiff's husband was working in Indian Bank and got retirement on 30.11.2008. The 1st defendant told the plaintiff and her husband to construct a building for rent for the 2nd defendant, by which they can earn considerable amount. Hence, the plaintiff's husband spent his retirement amount of Rs.15,00,000/- and the 1st defendant also spent Rs.15,00,000/- for construction of the building. The plaintiff's husband only looked after the construction work. The 1st defendant looked after the work of getting Municipal Permission, Electricity connection, Telephone connection and talking over rental agreement with the 2nd defendant, etc. For that purpose, the plaintiff, handed over the original documents and signed blank



WEB COPY

papers to the 1st defendant. During the Opening Ceremony of the 2nd defendant Bank on 14.10.2009, the 1st defendant was announced as the owner of the building. When the plaintiff and her husband, questioned the 1st defendant, he has not given proper reply. He also refused to return the original documents and half share in the rent. Since the original documents belonged to the plaintiff, were with the 1st defendant, he made a false representation to the 2nd defendant and entered into the agreement fraudulently. Hence, the plaintiff sent a letter on 21.10.2009 to the 2nd defendant, as if she is the co-owner of the building and to pay half of the rent to her. But the 2nd defendant did not respond to the plaintiff's words. The plaintiff and her husband were running consultancy in the name of "V Trading Enterprises", in the Eastern side shop of the suit properties. Since, the plaintiff is not able to be in joint possession, she insisted the 1st defendant to divide the suit properties and to effect partition through mediators. But the 1st defendant has not come forward for partition. The plaintiff also sent a legal notice on 12.11.2009. The 1st defendant sent reply with false allegations. The plaintiff and the 1st defendant are having 1/2 share in the suit properties. Hence, the suit is filed for the relief of partition, separate possession, mesne profits and for permanent injunction.

4.The case of the 1st Defendant, in a nutshell, as set out in the written statement, is as follows:-

- a) The suit is false, vexatious and liable to be dismissed. The plaintiff has no right in the suit properties. The plaintiff's mother Anantha, has another daughter Kalaiselvi and son Balaji @ Kumar. The suit is liable to be dismissed, for non joinder of the above parties. It is true that the suit properties were jointly purchased by Gajalakshmi and Pangajammal. Pangajammal, appointed this 1st defendant, as her nominee. She bequeathed her half share, to this defendant on 15.7.1973, by a Will and she died on 31.8.1974. From that date, this defendant is in possession and enjoyment of the suit properties. The plaintiff and others knew the same. Hence, the Will dated 16.12.1973 in favour of the plaintiff is a forged one. The plaintiff and her husband colluded and created the same. The plaintiff has not mentioned about the Will dated 16.12.1973 before filing of the suit. The plaintiff and her husband are causing so many troubles to this defendant. The Will dated 16.12.1973 is not true and valid. The plaintiff's husband and the plaintiff entered into a sale agreement on 29.3.2007 with this defendant, regarding 2nd item of the property in the power deed for Rs. 13 lakhs and received the amount and agreed to execute the sale deed in favour of this defendant. This defendant has averred these matters in the reply dated



WEB COPY

19.11.2009. Gajalakshmiammal, executed a Will in favour of this defendant, bequeathing all the suit properties on 30.7.1993. From that date, this defendant alone is in possession and enjoyment of the suit properties. When the plaintiff's husband was working in Indian Bank, he made malpractices and got suspended. This defendant paid the full amount and got the plaintiff's husband reinstated. Thereafter, the plaintiff's husband created false records and obtained loan from Tamil Nadu Industrial Investment Corporation. Since he has not repaid the amount, paper publication was made in 'Thina Thanthi' daily, for auction sale. Hence, this defendant filed a suit against the plaintiff's husband and TIIC, on the file of District Munsif Court, Dharmapuri and also got interim injunction. This defendant has cleared the debts due to TIIC. Thereafter, the suit in O.S.200/2004 was decreed in favour of this defendant.

- b) The plaintiff and her husband also entered into a sale agreement in respect of the suit properties to make unlawful gain with one Dhakshinamoorthy on 16.05.2008 and got the amount. The said Dhakshinamoorthy filed a suit in O.S.29/2009 on the file of this Court. On knowing the same, this defendant lodged a complaint against Dhakshinamoorthy, the plaintiff and her husband, before the District Crime Branch, Dharmapuri. On enquiry, the sale agreement dated 16.05.2008 was cancelled on 29.09.2009, for the same, this defendant paid the amount due to Dhakshinamoorthy and the suit in O.S.29/2009 was dismissed on 03.11.2009. All the records, water connection and property tax, are in the name of this defendant. This defendant constructed a building in the suit property and let out to Karur Vysya Bank. The plaintiff has not paid any amount for construction of the building. This defendant also discharged the loan obtained from Dharmapuri Town Co-op. Housing Society on 8.12.2009. The building was constructed by raising loan from the bank. The monthly rent is also adjusted towards the loan. The suit is barred by limitation. Neither the plaintiff nor her husband had any right in the suit property. There is no cause of action for the suit. Hence, prayed for the dismissal of the suit with costs.

5.The case of the 2nd defendant, in a nutshell, as set out in the written statement, is as follows:-

- a) Gajalakshmiammal executed a Will on 30.07.1993 in favour of 1st defendant and after the death of Gajalakshmiammal, the Will came into force. The 2nd defendant entered into rental agreement with the 1st defendant, for 9 years. The same was registered on 18.08.2010 in the Dharmapuri Joint II



SRO. The plaintiff has no prima facie title over the suit properties. There is no cause of action for this suit. This suit has not been properly valued. Hence, prayed for the dismissal of the suit with costs.

WEB COPY

6. On the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the Plaintiff is entitled to get a decree for partition and separate possession in the suit properties as prayed for?
 2. Whether the Plaintiff is entitled to get permanent injunction against the Defendants?
 3. Is it true to say that Pangajammal has executed the Will in favour of Ananthammal dated 16.12.1973 is forged one? And the said Will is not in force?
 4. Is it true to say that Pankajammal has executed the Will in favour of the 1st Defendant and his mother Lakshmi dated 15.07.1973?
 5. Whether the Plaintiff Vanitha's mother Ananthammal has executed Will in favour of the Plaintiff dated 22.06.2004 is genuine one?
 6. Whether the suit is bad for non joinder of necessary parties?
 7. Whether the suit is barred under Order 2 Rule 1 of CPC?
 8. Whether the 1st Defendant is in possession of the suit properties based on the Will dated 30.07.1993?
 9. Whether the suit cause of action is false?
 10. To what any other relief the Plaintiff is entitled?
7. Before the Trial Court, on the side of the Plaintiff, PW.1 to PW.3 were examined and Ex.A1 to Ex.A11 were marked. On the side of the Defendants, DW.1 to DW.3 were examined and Ex.B1 to Ex.B10 were marked. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed.
8. This Court heard the submissions of the learned counsel on either side.
9. The learned counsel for the Appellant has submitted that the suit was filed for partition and mesne profits and that the



suit property was jointly purchased by Pankajammal and Gajalakshmiammal on 24.05.1954 under Ex.A2 and that Bagyalakshmiammal executed a will in favour of Anantha, in 1973 under Ex.A3. Ananthammal executed a will in favour of the Appellant on 22.06.2004 under Ex.A4 and now the Appellant claimed right over the property in Ex.B5. He would further submit that the 1st Respondent is the brother in law and Ex.B5 is a forged one and that they cannot claim full right over it and that the municipality and electricity charges were paid by the Appellant and so it is their property and they are enjoying the property. The Appellant has got $\frac{1}{2}$ share under Ex.A1, Ex.A3 and Ex.A4. The learned counsel would further submit that they demolished the old portion and constructed a new building and that her husband spent Rs.15 lakhs for the constructions, but the 1st Respondent executed a lease agreement and collected rents and refused to give a share in the property and that the Trial Court, without appreciating the oral and documentary evidence, came to the wrong conclusion and hence, he prays for allowing this appeal.

10.The learned counsel for the Respondents 3 to 6 has submitted that the 1st Respondent has got right through the will Ex.B5 and so, he is the absolute owner of the property and that the Plaintiff has no right over the property and that the 1st Respondent only has cleared the debts due to TIIC and that the 1st Respondent filed a suit and it was decreed in his favour. He would further submit that the Appellant has filed only xerox copies of the Will and the original Will is not filed and that the suit is also barred by non joinder of necessary parties and that now the suit property was leased out to Karur Vysya Bank and that the Appellant has not marked any other document that her mother enjoyed the property and no mutation was done in the revenue records and that the building plan was also obtained by the 1st Respondent and all the revenue records stand in the name of the 1st Respondent. He would further submit that the suit for partition filed by the Appellant is not maintainable and that even today, the legal representatives of the 1st Respondent are enjoying the suit property and that the Trial Court, appreciated all the oral and documentary evidence and passed a proper order and no interference is warranted in this appeal and hence, he would pray for dismissal of this appeal.

11.The learned counsel for the 2nd Respondent has submitted that the 2nd Respondent entered into a registered lease agreement with the 1st Respondent and occupied a portion of the property.

12.This Court considered the submissions of the learned counsel on either side and also perused the materials available on record. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.



13.The contention of the Plaintiff is that he is entitled to 1/2th share of the property by virtue of the Will executed by her mother Ananthammal. Ananthammal got the property from one Pankajammal, under the registered sale deed, dated 16.12.1973. Pankajammal and Gajalakshmiammal purchased the property under the sale deed, dated 24.06.1954 and Pankajammal executed an unregistered Will, in favour of Ananthammal and so half share of Pankajammal belongs to the Plaintiff.

14.The contention of the Defendants is that the entire property belonged to him by virtue of the registered Will executed by his mother Gajalakshmiammal dated 30.07.1993. He also relies upon the unregistered Will executed by Pankajammal in favour of the Gajalakshmiammal, dated 15.07.1973 under Ex.B5.

15.A perusal of Ex.A3 reveals that it is the xerox copy of the Will. To prove the Will, attestors were not examined. Even in the earlier notice Ex.A8, the details of the Will dated 16.12.1973 are not given.

16.A perusal of Ex.A4 reveals that it is also a xerox copy and to prove the contention, the attestors were not examined. To prove the existence of the Will, the other legal heirs of Ananthammal are also not examined.

17.The contention of the Defendant is that the documents of the suit properties have been forged by the Plaintiff and her husband and the same was mortgaged with TIIC and he only paid the debt amount and a suit in OS.No.200 of 2004 was filed by him for declaration and that the suit property belongs to him and the same was decreed by the lower court. For this, proper explanation has not been given and the copy of the decree was marked as Ex.A8.

18.To prove the contention that Ananthammal enjoyed the property after 1973, not even a single document was filed by the Plaintiff and no revenue record is also filed.

19.In Ex.B2, it is stated as "2. Subsequently, by another will the entire property of 33 ft. x 100 ft was given to my brother and as per this he is owning the property".

20.In Ex.B4, it is stated as "நான் மேற்படி உயில் ரத்து செய்து வெள்ளைகவுண்டன் பாளைய கிராமத்தில் உள்ள சொத்து முழுவதையும் எனது தம்பி பெயருக்கு எனது தாயார் உயில் எழுதி வைத்து விட்டார் என்று கூறினேன் "

21.Considering the all the above facts, the Trial Court after perusal of the documentary and oral evidence, came to the



proper conclusion and hence, the impugned judgement is proper and no interference is warranted.

22. In fine, this appeal suit is dismissed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Srcm/uma

To

The Principal District Judge,
Dharmapuri

Copy To

The Section Officer
VR Section,
Madras High Court.

+1cc to Mr.C.Prabakaran, Appellant Advocate, S.R.No.34618

+1cc to Mr.M.R.Jothimanian, Respondent Advocate, S.R.No.35233

AS.No.536 of 2015

NR(CO)
RGA(07/07/2022)