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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.960 of 2006

A.Krishnamoorthy

... Appellant

Vs.

1.A.Sriramulu

2.Arumugam(died)

3.Padma Arumugam

4.Jaya

5.Bharathi

6.Jairam

... Respondents

(RR3 to 6 brought on record as

Lrs of the deceased second

respondent vide order of this Court

dated 01.03.2021 made in

CMP No.14750 to 14752 of 2018

in S.A No.960 of 2006 by TKRJ)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 17.02.2006 made in A.S.No.168 of 2005 on the file of the learned Additional Subordinate Judge, Salem confirming the judgment and decree dated 29.11.2004 made in

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O.S.No.1492 of 2004 on the file of the learned I Additional District Munsif, Salem.

For Appellant : Mrs.P.Veena Suresh for
Mr.T.R.Rajaraman
For Respondents : Mr.M.K.Kabir, Sr.counsel for
M/s.M.K.Padma for R1
Mr.V.Raghavachari for RR3 to

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JUDGEMENT

This Second Appeal has been filed against the judgment and decree dated 17.02.2006 made in A.S.No.168 of 2005 on the file of the learned Additional Subordinate Judge, Salem confirming the judgment and decree dated 29.11.2004 made in O.S.No.1492 of 2004 on the file of the learned I Additional District Munsif, Salem.

2. The appellant herein is the plaintiff and the respondents herein are the defendants. For the sake of convenience, the parties herein are referred to as in the same status before the trial Court.

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WEB COPY 3.The brief facts of the plaintiff's case are as follows:

The suit property is a residential building, which was originally belonging to one Late Gopal Chettiar as his self acquired property. He had two wives namely, Hamsa Ammal and Lakshmi Ammal. He was blessed with one daughter, namely, Susila through his 1st wife; while one daughter, namely Padma and two sons namely Arthanari and Ramanathan through the 2nd wife. During his life time, Gopal Chettiar, out of his earnings, had purchased the suit property in the name of his 2nd wife. The 2nd wife namely Lakshmi Ammal had no means to purchase the suit property and he was in possession and enjoyment of the said property till his death. The property tax was in his name, and he was paying the tax. Later, while he was in sound disposing state of mind, had bequeathed the suit property in favour of the plaintiff and the 1st defendant by way of a registered Will dated 4-2-1964. The Lakshmi Ammal had accepted the Will and had also attested the said will. Thus the Lakshmi Ammal is estopped from claiming any right in the suit



property. The executant of the Will, Gopal Chettiar died on 24-9-1965 and after his demise, the suit property had vested on the plaintiff and the defendant. Both the plaintiff and defendant are entitled to half share each in the suit property. The plaintiff had leased out the building recently. The plaintiff was demanding the defendant for partition amicably on 10-1-95, but the defendant was evasive and had not replied.

4. The second defendant was subsequently added as party since he claimed to have purchased the suit property from the 1st defendant. The alleged sale in favour of the second defendant is void ab initio. Hence the suit filed for partition.

5. The suit was resisted by the 1st defendant by filing a Written Statement, denying that the suit property originally belonged to Gopal Chettiar as his self acquired property and that he had purchased the same in the name of Lakshmi Ammal. It is also denied that Gopal Chettiar had executed a registered Will on 4-2-64 which was accepted and attested by Lakshmi Ammal. It is stated that the suit property was a self acquired property of the Lakshmi Ammal, who purchased the same



under a registered sale deed on 2-10-1949 and she was in possession and enjoyment of the suit property by paying tax to the Government.

She, being the grand mother of the 1st defendant, had settled the suit property in his name under a Gift settlement deed dated 27-10-1984. Likewise, the plaintiff also got the properties from his grand mother Lakshmi Ammal under registered document No.1094/84. The defendant was in possession and enjoyment of the suit property from the date of settlement in his favour. The plaintiff is also fully aware of this fact. Being the owner of the suit property the defendant had created mortgage over the property on several occasions and later sold the same to the 2nd defendant on 9.1.1995, i.e. prior to filing of the suit.

6.By way of additional Written Statement, the first defendant further stated that the alleged Will dated 4-2-1964 is a forged one and has no legal effect and it came to light only after a lapse of 20 years which clearly indicates falsity of the Will. The alleged suit in O.S.233/99 and the consequent decree and judgment has been obtained by fraud and



by abusing the process of court. This defendant is not a party to the said suit. The plaintiff in O.S.233/99 was in America. The Will had been registered only in 1969 after the death of the testator. While registering the said will the mandatory and formalities were not complied. With these averments, the 1st defendant prayed for dismissal of the suit.

7. The 2nd defendant also filed a Written Statement, denying that the suit property was purchased by Gopal Chettiar out of his own income in the name of Lakshmi ammal. The testator Gopal Chettiar had no right to bequeath the property. The suit property is the self acquired property of the Lakshmi Ammal. The said Lakshmi ammal had settled the suit property in favour of the first defendant under a Gift Settlement and this defendant had purchased the suit property on 12-10-1995 from the 1st defendant. The plaintiff has no share in the suit property. Hence the suit is liable to be dismissed.

8. Before the trial Court, on behalf of the plaintiff, PWs1 & 2 were examined and Ex.A1 to Ex.A19 were marked. On the side of the



defendants, D.W.1 to DW7 were examined and Exs.B1 to B12 were marked.

9. The trial Court, on consideration of both oral and documentary evidence and after hearing both sides, has come to the conclusion that the plaintiff has failed to prove that the suit property was a self acquired property of Gopal Chettiar and purchased in the name of his wife Lakshmi Ammal. As regards Ex.A1 Will dated 04.02.1964 said to have been executed by the Gopal Chettiar in favour of the plaintiff and defendant is concerned, the plaintiff would contend that the validity of the said Will has already been decided in the earlier suit filed in O.S.No.233 of 1989 by the Principal Subordinate Court, Salem after full contest. Therefore, the plaintiff relied upon Ex.A1 Will and as per which, the plaintiff and the 1st defendant are entitled to half share each in the suit schedule property. The trial Court found that the 1st defendant was not the party to the earlier suit filed by the plaintiff and there was no issue framed as regards the validity of the Will and adjudicated upon it



and further, the executor of the Will, Gopal Chettiar had no right over the suit property and the plaintiff has proved that it was exclusively belonging to Lakshmi ammal, who in turn settled the properties both in favour of the plaintiff and the 1st defendant by virtue of settlement deeds Ex.B3 and B12, settling the property bearing D.No.12C (present D.No.25) in favour of the plaintiff while the suit property in favour of the 1st defendant and they have been handling their respective properties and subsequently, the first defendant sold the property on 12.10.1995 to the second respondent. With these findings, the trial Court dismissed the suit.

10. Aggrieved over the said judgment and decree of the trial Court, the appellant herein preferred the first appeal in A.S.No.168 of 2005, before the learned Additional Subordinate Judge, Salem. On consideration of the findings of the trial Court and on hearing both sides, the lower appellate Court dismissed appeal confirming the judgment and decree passed by the trial Court, Salem. Aggrieved over by the said judgment and decree of the first Appellate Court, the appellant herein



has preferred the present Second Appeal.

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11. This Court has admitted the Second Appeal on 29.08.2006 and the following substantial questions of law have been formulated for consideration in this Second Appeal:-

(i) In the face of validity of the Will, Ex.A1, on the basis of which the present suit is filed, having been upheld in the earlier proceedings in O.S.No.233/99, to which the uncle of the plaintiff and the first defendant are the parties, cannot the said finding operate in favour of the present plaintiff also?

(ii) Whether Ex.A1 is really in the nature of "Will" and if not, would it not partake the character of a family arrangement?

(iii) If it is held that it is a family arrangement, have not the Courts below committed an error in treating the said document as a "Will" and then non-suiting the plaintiff solely on the ground that the said "Will" had not been proved?

12. The learned counsel for the plaintiff/appellant would submit



that Ex.A1, Will was executed by Gopal Chettiar in favour of the appellant and the first respondent in respect of the suit properties at Door nos.25 & 26 and the plaintiff has been enjoying Door no.25 alone. He further submits that the Ex.A1 Will was executed as early as in the year 1964 whereas the Gift Settlement Deed viz., Ex.B3 said to have been executed by Lakshmi Ammal on 20.09.1984 in favour of the plaintiff settling the property at Door no.25 and another Gift Settlement Deed viz., Ex.B12 said to have been executed on 27.10.2004 in favour of the first defendant, settling the property at Door no.26. The learned counsel for the plaintiff/appellant would point out that these Gift Settlement Deeds were executed subsequent to the execution of the Will in the year 1964. Further, he would submit that O.S.No.233 of 1989 was filed before the Principal Subordinate Judge, Salem by one Mr.Ramanathan, Senthil Kumar against the plaintiff/appellant who was arrayed as 2nd defendant, wherein, it was held by the Court that the Will executed by Gopal Cherritar on 4.2.1964 has been proved and as such, the suit was decreed in favour of the plaintiff and therefore, once the



Will was proved, the plaintiff is entitled to half share in the suit property, viz. Door No.26, which is the subject matter of Ex.B12 Gift Settlement deed. Without considering these aspects, the Courts below have wrongly passed the judgments and decrees, which are liable to be set aside and hence, the learned counsel prays interference of this Court.

13. On the other hand, the learned counsel appearing for the first defendant would submit that he is the owner of the suit property at D.No.26 by virtue of the Gift Settlement Ex.B12 dated 27.10.2004 executed by Lakshmi Ammal who was the original owner of the property and further, the said Lakshmi Ammal also settled the property in favour of the plaintiff at Door no.25 by virtue of the Gift Settlement Deed Ex.B3 dated 20.09.1984. Further, the learned counsel would contend that there is no issue with regard to death of Gopal Chettiar as early as on 24.09.1965, whereas, the Will said to have been executed on 04.02.1964, but registered in the year 1969, which was subsequent to the death of Gopal Chettiar, i.e. after four years from the demise of



Gopal Chettiar and hence, according to the learned counsel, the Will was a created one for the purpose of the suit. As regards upholding the Will Ex.A1 by the Court in earlier suit in O.S.No.233 of 89 is concerned, the learned counsel would contend that the said suit was a collusive one, filed by one Mr.Senthil Kumar claiming suit property against the plaintiff, who had not seriously objected the said Will and the first defendant herein was not a party to the said suit and no issue regarding validity of the Will was framed and adjudicated upon by the Court. Therefore, the learned counsel would submit that the genuineness and truthfulness of the Will was not proved as required under Section 68 of the Evidence Act. Therefore, the learned counsel submitted that both the Courts below have rightly dealt with all the issues and dismissed the suit, which requires no interference and hence, he prays for dismissal of the appeal.

14. The learned counsel appearing for the 2nd defendant/respondent would submit that the 2nd defendant has purchased the suit property from the vendor of the 1st defendant and he has been in



possession and enjoyment of the same. He would further submit that

Gopal Chettiar was not the original owner, but his wife Lakshmi Ammal was the owner, who settled the suit property in favour of the 1st defendant, who in turn, sold the same to the 2nd defendant. Hence, he also prays for dismissal of the appeal.

15. Heard the learned counsel for the appellant/plaintiff as well as the respondents/defendants and perused the entire materials available on record.

16. It is not in dispute that the suit property originally stood in the name of Lakshmi Ammal since she purchased the same vide registered sale deed dated 02.10.1949. It is pertinent to note that Lakshmi Ammal executed the Gift Settlement deed Ex.B3 dated 20.09.1984 in favour of the plaintiff settling the property situated at Door no.25 (Old No.12C) and also executed another Gift Settlement Deed Ex.B12, dated 27.10.2004 in favour of the 1st defendant, settling the property situated



at Door no.26 (Old No.12C1), which is the suit property. The main case of the plaintiff that the suit property, which is a residential building bearing D.No.26 (Old No.12C1) was originally belonging to Gopal Chettiar as his self-acquired, but purchased in the name of his 2nd wife Lakshmi Ammal. During his life time, Gopal Chettiar executed a registered Ex.A1 Will dated 04.02.1964, bequeathing the suit property in favour of the plaintiff and the 1st defendant equally and therefore, the plaintiff claims half share. However, it is pertinent to note that the plaintiff has filed the suit for partition in respect of suit property at Door no.26 only, that too based on the Ex.A1 Will, but not the property at Door No.25, which was already settled in his name by Lakshmi Ammal. The learned counsel for the defendants/respondents would submit that the Ex.A1 Will was a fabricated one. It also not in dispute that the alleged Will Ex.A1 said to have been executed on 04.02.1964, but it was not registered in the year 1964 when the testator Gopal Chettiar was live, but it was registered only in the year 1969, i.e. four years after the demise of the testator, who died on 24.9.1965. Further, the earlier suit



filed in O.S.No.233 of 1989 was a collusive one, filed by one Senthil Kumar against the plaintiff herein only, but not impleaded the 1st defendant even though he is also a legal heir of Gopal Chettiar and the plaintiff has brought Ex.A1 Will after a lapse of nearly 20 years, which shows the falsity of the Will and that it was created for the purpose of the suit. Further, as rightly observed by the Courts below, the plaintiff Senthil Kumar in the earlier suit had not resisted the Will and sought for adjudication upon the Will Ex.A1 produced by the plaintiff herein as defendant and the concerned Court also has not framed any issue and dealt with the genuineness or truthfulness of the Will Ex.A1. Therefore, the contention raised by the plaintiff/appellant that the validity of the Will Ex.A1 was upheld by the Court in earlier suit, cannot be accepted. That apart, absolutely, the plaintiff has not adduced any evidence that to establish that the suit property was the self acquired property of Gopal Chettiar and he was the owner of the same. On the other hand, it is not in dispute that Lakshmi Ammal was the original owner of the suit property at Door No.26 and also the property at Door No.25. When a



property is bought and registered in the name of one individual, he/she alone holds the ownership title of the property. This type of ownership is known as sole ownership or individual ownership of property. It is pertinent to note that even if other parties have helped the owner to arrange funds for the property to purchase, they do not have any right in the property, if the sale deed is registered only in the name of the principal buyer. Admittedly, in the present case, in respect of the suit property, the sale deed is registered in the name of Lakshmi Ammal as principal buyer, even though it is contended that she had no means, but purchased in her name by Gopal Chettiar, it cannot be construed that said Gopal Chettiar holds the right or title over the suit property and claim that he is the owner of the property, that too in the absence of evidence adduced by the plaintiff to prove that Gopal Chettiar was the original owner of the suit property. Therefore, once it is established that Gopal Chettiar had no right or title over the suit property, he cannot bequeath the property under a Will to any person, much less the plaintiff and the 1st defendant equally. The testator must possess right over the



property in order to execute a Will transferring the property in favour of

another one. Further, as already discussed above, the validity of the Will

Ex.A1 was not conclusively adjudicated by the Court in earlier suit in

O.S.No.233 of 1989 since it was a collusive suit. Hence, this Court has

no hesitation to hold that the plaintiff is not entitled to claim half share in

the suit property. Further, the original owner of the suit property, one

Lakshmi Ammal who acquired right and title by way of registered sale

deed, had settled the suit property at Door No.26 in favour of the 1st

defendant under a Gift Settlement Deed dated Ex.B12 dated 27.10.2004

and she also settled another property in the name of the plaintiff at Door

No.25 under another Gift Deed Ex.B3 dated 29.09.1984 and both of

them have been in possession and enjoyment of their properties and in

fact, the 1st defendant proved by examining DW.2 Bank Manager and

through Exs.B4 to B11 that the plaintiff has mortgaged his property and

availed loan while the 1st defendant mortgaged the suit property and

availed loan. Thus, it is evident that right from the date of Exs.B3 and

B12 Gift Settlement Deeds executed by the original owner Lakshmi



Ammal, both the plaintiff and the 1st defendant have been enjoying their respective properties. However, later the 1st defendant had sold the suit property in favour of one S.Arumugam, who in turn, sold the same to the 2nd defendant and at present, the legal heirs of the 2nd defendant were in possession of the same. These aspects have been dealt with by the Courts below in proper perspective and rightly rejected the claim of the plaintiff. Hence, this Court does not find any infirmity or irregularity in the concurrent findings of the Courts below in order to interfere with the same. Accordingly, the substantial questions of law are answered negatively against the plaintiff/appellant, holding that Ex.A1 would not partake the character of a family arrangement and as such, the Courts below have not committed any error in not treating the Will as family arrangement and thereby, rightly non-suited the plaintiff as owner of the suit property and entitled to half share in the light of the fact that the plaintiff failed to prove the Will Ex.A1.

17. In the result, the Second Appeal fails and it is dismissed,



confirming the judgment and decree passed by both the Court below.

No costs.

26.09.2022

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To

1.The Additional Subordinate Judge,
Salem.

2.The I Additional District Munsif,
Salem.



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KRISHNAN RAMASAMY.J.,

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Second Appeal No.960 of 2006

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