



S.A.No.1150 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1150 of 2010
and M.P.No.1 of 2010

1.Selvi

2.Rajamanickam

3.Velu

...Appellants

Vs.

1.S.Madurai

2.Elumalai

3.Saraswathi

4.Bommi

5.Krishnan

6.Victoria

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 18.12.2009 in A.S.No.536 of 2005 on the file of the IV-Additional City Civil Court, Chennai confirming the judgment and decree dated 17.11.2004 in O.S.No.700 of 2000 on the file of the XIV-Assistant City Civil Court.



S.A.No.1150 of 2010

For Appellants : Mr.Poovendra Perumal
for Mr.Sai Krishnan
For Respondents : Ms.Tamizh Selvi for R2, R3 & R6
- No Appearance
Mr.A.Vivek for R4 & R5
- No Appearance

J U D G M E N T

The defendants in O.S.No.700 of 2000 on the file of the 14th Assistant City Civil Court, Chennai who had suffered a decree on 17.11.2005 and had also suffered an adverse judgment in A.S.No.536 of 2005 which was on the file of the IV-Additional District Court at Chennai dated 18.12.2009 are the appellants herein.

2.The suit in O.S.No.700 of 2000 had been filed for partition and separate possession of two schedule mentioned properties which were given as 'A' schedule and 'B' schedule. The plaintiffs therein, sought that the property should be divided into 17 equal parts and that they must each be given one part each. The other parts would go to the defendants.



S.A.No.1150 of 2010

WEB COPY

3.The brief background of the facts would indicate that the properties, originally belonged to one Govindasamy Mudaliar who had purchased the 'A' schedule property by way of a sale deed dated 05.10.1933. His wife, Veerammal was the owner of the 'B' schedule property having purchased the same by sale deed dated 07.08.1943. They had one daughter, Neelaveniammal. The plaintiffs are the daughters and son of Neelaveniammal and the defendants are the legal representatives of another son, Natarajan.

4.It is stated that Natarajan was looking after Veerammal after the death of Govindasamy Mualiar and therefore, out of love and affection, she had executed a registered Will in favour of Natarajan which Will was dated 04.06.1968 and which was marked as Ex.B2 during the course of trial. Thereafter, Natarajan had executed another Will on 21.09.1993 which had been marked as Ex.B1 in favour of his two sons who are shown as 2nd and 3rd defendants in the suit. Assailing execution of the Will and seeking partition and separate possession, the suit had been filed.



S.A.No.1150 of 2010

WEB COPY

5. During the course of trial, to uphold the validity of the Will unfortunately, on the side of the appellants / defendants, no witnesses were examined. The 1st appellant / 1st defendant, Selvi, wife of Natarajan was alone examined as witness. Both the Wills were not proved in manner known to law. Both the Courts below held that the Will could not have been executed by Veerammal over a property to which she had no right, title or interest.

6. The learned counsel for the appellants however, made a submission that Veerammal had a right to execute the Will with respect to 'B' schedule property. It is claimed that she had purchased the said property out of her own belongings and therefore, she has title and interest over the said property. But, again that fact was not established during the course of trial or even during the First Appeal where opportunity always subsist to the appellants to file additional evidence under Order 41 Rule 27 of C.P.C. Unfortunately, the appellants herein / defendants did not prove either the execution of the Wills were able to satisfy both the Courts below that



S.A.No.1150 of 2010

Veerammal had right, title and interest in the property over which she had executed the Will.

7.The learned counsel for the appellant placed arguments assailing Section 213 of the Indian Succession Act stating that the said provision is violatory of Article 15 of the Constitution of India in that, it discriminates between religious denominations by making it compulsory for the Wills of Hindus, Jains and Sikhs to be probated before a Court of law whereas the Wills executed by Christians, Muslims and Mohammadians are exempted. It was also stated that the Law Commission in its Report No.209 had also recommended that Section 213 of the Indian Succession Act should be struck down from the enactment.

8.This is an issue beyond the scope of the Second Appeal and I would refrain from being drawn into a discussion on it.
So long as the said provision holds, and is still in the statute, there is a duty cast to follow the said provision



S.A.No.1150 of 2010

9. There is no reason given by the appellants / defendants for not taking any steps to probate either one of the two Wills or both the Wills.

They could have perfected title. On the basis of the said Wills, they could have sought declaration of title over the said properties. They have not done so. Their non-action had handed the opportunity for the other legal heirs of Neelaveniammal / brother and sisters of Natarajan to file a suit for partition. Partition had been granted. Preliminary decree in the suit had been granted and confirmed. The ratio in which the preliminary decree granted is not under question or challenged.

10. I hold no question of law arises for consideration much less substantial questions of law. This Second Appeal is dismissed.

11. The Trial Court is directed to follow the dictum laid down by the Hon'ble Supreme Court in ***Kattukandi Edathil Krishnan & Others Vs. Kattukandi Edathil Valsan & Others, in Civil Appeal Nos.6406 - 6407 of 2010, dated 13.06.2022***, and proceed further with the final decree application and make an endeavour to dispose of the same at the earliest.



S.A.No.1150 of 2010

WEB COPY

12.This Second Appeal is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

15.06.2022

kkn

Index:Yes/No

Internet:Yes/No

Speaking / Non-speaking order

To:-

1.The IV-Additional Judge,
City Civil Court,
Chennai.

2.The XIV-Assistant Judge,
City Civil Court,
Chennai.



WEB COPY



S.A.No.1150 of 2010

C.V.KARTHIKEYAN, J.

KKN

S.A.No.1150 of 2010
and M.P. No.1 of 2010

15.06.2022