



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.07.2022

Pronounced on : 25 .08.2022

**CORAM :THE HONOURABLE MR.JUSTICE
C.V.KARTHIKEYAN
S.A.No. 1285 of 2010
And
M.P.No. 1 of 2010**

R.Sundararajan ... 3rd Plaintiff/3rd Appellant/Appellant
Vs.

1. Gayathri
2. Subaida
3. Balan
4. Kumar

... Defendants 1 to 4/Respondents 1 to 4/Respondents 1 to 4

5. Nagammal ... 1st Plaintiff/1st Appellant/5th Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the Principal Subordinate Judge' Court at Coimbatore, dated 29.06.2010 in A.S.No. 45 of 2008 confirming the Judgment and Decree of the III Additional District Munsif Court at Coimbatore, dated 11.10.2007 in O.S.No. 908 of 2004.

For Appellant : Mr. P .Valliappan

For 1st Respondent : Mr. K.Mukunth



2

for M/s. Sarvabhaman Associates

For RR 2 to 5 : Given up

JUDGMENT

The 3rd plaintiff in O.S.No. 908 of 2004 on the file of the III Additional District Munsif Court at Coimbatore, is the appellant herein.

2. The said suit in O.S.No. 908 of 2004 had been originally filed before the Sub Court at Coimbatore as O.S.No. 139 of 1996 by two plaintiffs, Nagammal, Rajammal who were sisters against the first respondent herein Gayathri and three other defendants, who were tenants in the suit property, seeking a declaration that they are the rightful heirs to the suit property which was left behind by Govindasamy and Marammal and consequent to such declaration, to direct the first defendant Gayathri to deliver vacant possession and for past and future mense profits for use and occupation and consequential reliefs. During the pendency of the suit, the second plaintiff died and her husband R.Sundara Rajan was impleaded as the third plaintiff.

3. On transfer to the District Munsif Court at Coimbatore, O.S.No.



WEB COPY

139 of 1996 was renumbered as O.S.No. 908 of 2004. By Judgment dated 11.10.2007, the III Additional District Munsif, Coimbatore, dismissed the suit.

4. Thereafter, the plaintiffs filed A.S.No. 45 of 2008 before the Principal Sub Court at Coimbatore. By Judgment dated 29.06.2010, the Appeal Suit was dismissed and the Judgment and Decree of the trial Court in O.S.No. 908 of 2004 was confirmed.

5. The third defendant R.Sundararajan alone then filed the present Second Appeal.

6. The Second Appeal had been admitted on the following substantial questions of law:-

“1. When Govindasamy and Marammal died intestate without any issues, whether the sisters of Govindasamy are not entitled to succeed to his estate as per the provisions of the Hindu Succession



WEB COPY



Act, 1956?

2. When Ex.B.14 Will dated 28.12.1995 has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Evidence Act, 1872, whether the Courts below are correct in law in upholding Ex.B.14 – Will?

3. When the attestors of Ex.B.14 alleged will are the very close relatives of the first respondent and when there are clear contradictions in their evidence, whether the Courts below are correct in law in not holding that the execution of the alleged Will is shrouded by suspicious circumstances?”

O.S.No. 908 of 2004 [III Additional District Munsif Court, Coimbatore]:

7. The first and second plaintiffs claimed that they and Govindasamy were the children of Munusamy Naidu. Govindasamy was



married to Marammal. He died in the year 1993. Marammal was his only legal heir. She died on 31.12.1995. They did not have any children. It was claimed that both of them died intestate. The first and second plaintiffs, as sisters of Govindasamy claimed that they should therefore be recognised as the legal heirs of Govindasamy and Marammal and must succeed to the suit property.

8. The suit property was land and building at Kempatti Colony formerly called Linga Gounder Thottam in Coimbatore. It had been purchased by Govindasamy in his name and in the name of his wife Marammal by sale deed dated 07.04.1978 from one Vijayalakshmi. It was claimed by the plaintiffs that the entire sale consideration was provided only by Govindasamy. A few years before Govindasamy and Marammal died, since they had no issues, the first defendant Gayathri, by birth a Keralite, got into the confidence of Govindasamy and Marammal and assumed the character of a household member. The plaintiffs stated that she was married twice. After the death of Govindasamy, who died in the year 1993, the first defendant changed her attitude and took control of the house. The other relatives were made unwelcome to the house. After



the death of Mammal, the first defendant did not even allow the relatives to see the dead body. The relatives were able to perform the last rights only at the burial ground. The first and second plaintiffs being the sisters of Govindasamy claimed to have inherited the suit schedule property and demanded possession from the first defendant. Since the first defendant refused, a notice dated 28.01.1996 was issued. The second to fourth defendants in the suit were tenants in the property. The suit was therefore filed for declaration of right and title and for delivery of vacant possession and mense profits.

9. The first defendant filed a written statement claiming exclusive title to the suit property. She claimed that Govindasamy, with the consent of Mammal, married Mani and she was born to Mani. She therefore claimed that she was a daughter of Govindasamy. She was brought up, educated and given in marriage by Govindasamy and Mammal to the knowledge of the plaintiffs. After the death of Govindasamy, she and Mammal succeeded to the property and after the death of Mammal, she claimed to be the natural legal heir to succeed to the property. She also claimed that Mammal left a Will in her favour. It was stated that



the plaintiffs aimed to grab the property. It was also stated that the plaintiffs participated in her marriage. She denied the allegations against her in the plaint. She stated that she was in lawful possession of the suit property. She claimed that the suit should be dismissed.

10. The second and third defendants filed written statements claiming that they were the tenants in the suit property and that their rights should be protected.

11. On the basis of the above pleadings, the III Additional District Munsif Court, Coimbatore, framed the following issues for trial:-

“1. Whether the plaintiffs are entitled to a declaration that the plaintiffs are the rightful heirs to the suit properties left by the deceased Govindasamy and his widow Marammal and for the delivery of peaceful possession of portion of the properties which is in illegal occupation of the 1st defendant?;

2. Whether the plaintiffs are entitled to



the future mesne profits in respect of the said portion?;

3. Whether the plaintiffs are entitled to direct the defendants 2 and 3 to accede to symbolical possession of the portions in their occupation from the date of suit and in consequence thereof directing them to pay the accrued monthly rents after the suit referable to the portions in their occupation as tenants?;

4. Whether the plaintiffs are entitled to deliver possession of that portion of the suit properties in which he had been inducted in by the 1st defendant during the pendency of the suit and direct him to pay such mesne profits pertaining to that portion from the date of his illegal occupation till delivery of that portion to the plaintiffs?; and

5. To what other relief?"



12. During trial, the third plaintiff R.Sundararajan was examined as PW-1 and two other witnesses S.Kuppammal and S.Panchali were examined as PW2 and PW-3. The first defendant P.Gayathri was examined as DW-1 and two other witnesses N.Gopalakrishnan and G.Durairaj were examined as DW-2 and DW-3.

13. The plaintiff marked Exs. A-1 to A-10. Ex.A-1 was a copy of the sale deed with respect to the suit property dated 07.04.1978, Exs. A-2 and A-3 were the death certificates of Govindasamy and Marammal, Ex.A-4 was the copy of the legal notice dated 20.01.1996, Ex.A-8 was the reply issued by the second defendant dated 02.02.1996.

14. The defendant marked Exs. B-1 to B-17. Ex.B-1 was the original sale deed with respect to the suit property dated 07.04.1978, Ex.B-6 was the marriage invitation of the first defendant, Exs. B-7 and B-15 were the death certificates of Govindasamy and Marammal, Ex.B-10 dated 28.06.1985 was a copy of objection letter sent by Marammal to Housing Board Madras, Ex.B-14 dated 28.12.1985 was the original Will executed by Marammal in favour of the first defendant, Ex.B-17 was a



transfer certificate in the name of the first defendant of Corporation High School, Okkiliar Colony, Coimbatore, showing the name of her father as Govindasamy Naidu.

15. On the basis of the pleadings and the oral and documentary evidence adduced by the parties, the learned III Additional District Munsif Court, Coimbatore, proceeded to examine issue No.1, namely, whether the plaintiffs were entitled to a declaration to the suit property left behind by Govindasamy and Maramal. The sale deed of the said property had been marked as Exs. A-1 and B-1.

16. There is no dispute that the property had been purchased in the join names of Govindasamy and Marammal. There is also no dispute that Govindasamy and Marammal had no children. There is also no dispute that the first and second plaintiffs were the sisters of Govindasamy and therefore have a legitimate right to claim title as class II heirs.

17. However, it is the case of the first defendant that Govindasamy had married Mani and through her, had begotten the first defendant. It is



also in evidence that the first defendant came to the house hold of Govindasamy and Marammal as an infant just three months old and from that time Govindasamy and Marammal had been looking after her, bringing her up, educating her and had also given her in marriage. In view of such evidence on record, the III Additional District Munsif Court, held that “*the chain is complete without missing link*”.

18. It was therefore held, owing to the evidence available, namely, the oral admissions of PWs 1 to 3 and also the evidence of DWs 1 to 3 and also Ex.B-17 which had been disputed by the plaintiffs, that for all practical purposes both Govindasamy and Marammal had looked upon the first defendant as their own daughter. In this connection reference was also made to Ex.B-10 dated 28.06.1985 letter to the Housing Board in which Marammal referred to the first defendant as her daughter. Reference was also made to Ex.B-14 dated 28.12.1995 which was the original Will executed by Marammal in which she had also referred to the first defendant as her brought up daughter [வளர்ப்பு மகள்]. The witness to the said Will, M.Gopalakrishnan had been examined as DW2 and another witness G.Durairaj had been examined as DW3.



WEB COPY

19. It must also be mentioned that it was on evidence that the plaintiffs themselves participated in the marriage of the first defendant and there is also evidence to the effect that they had actually arrayed the second marriage of the first defendant.

20. The relationship between Govindasamy and Marammal had been spoken to by both PW2 and PW-3. In Ex.B-3 ration card, the name of the first defendant was also found along with the names of Govindasamy and Marammal. She was described as their daughter. The original sale deed and the earlier mortgage deed had also been produced as Exs. B-1, B-8 and B-9.

21. All these factors compelled the learned III Additional District Munsif Court to come to a conclusion that the first defendant had sufficiently established that she was a daughter born to Govindasamy and therefore had a right to be placed in priority to succeed to the estate or properties left behind by Govindasamy and / or Marammal.



WEB COPY

22. The contradictions relating to the place and timing when the Will was executed were addressed by the learned Additional District Munsif who held that slight contradictions cannot over ride the evidence of DW-2 and DW-3 with respect to the actual execution of the Will. Holding as above and particularly also holding that the Will Ex.B-14 stands proved, the issue was answered against the plaintiffs and their relief to be declared entitled to the suit property was negatived. Once this issue was answered against the plaintiffs, the learned Additional District Munsif had to necessarily answer the other issues framed for trial also against the plaintiffs and in effect, proceeded to dismiss the suit however with costs.

A.S.No. 45 of 2008 [Principal Subordinate Court, Coimbatore]:

23. The plaintiffs then filed aforementioned Appeal suit. By Judgment dated 29.06.2010, the learned Principal Sub Judge, Coimbatore, framed necessary points for consideration, namely,



WEB COPY

“1. Whether the first defendant can be considered as daughter of Govindasamy?;

2. Whether the Will of Marammal dated 28.12.1995 is lawful and had been proved in manner known to law?; and

3. Whether the appellants/plaintiffs would be entitled to seek declaration of title to the suit property.”

24. The learned Principal Sub Judge pointed out the evidence of PW-1 in cross examination where he stated that the first defendant came under the employment of Govindasamy as a servant maid in the year 1976. This statement was disbelieved, since the first defendant, according to Ex.B-17 was born on 20.06.1976. Reference was also made to Ex.B-2 photograph and Exs. B-4 and B-5 photographs at the time of marriage of the first defendant and it was held that these photographs can be relied on to show that the first defendant was under the care and protection of Govindaamy and Marammal.



WEB COPY

25. PW-1 had actually admitted to Ex. B-4 and also to Ex.B-5 where he stated that he and his wife / second plaintiff were also present. The truthfulness of the Will was also examined by the Principal Sub Judge and during cross examination PW-3 had admitted knowledge about the Wills, though in chief, she had stated that prior to her death, she was not in good mental status. The evidence of the attestors to the Will was also observed. It was finally held that the Will had been proved in manner known to law and holding so, the Principal Sub Judge, Coimbatore, dismissed the Appeal suit and confirmed the Judgment and Decree of the trial Court in O.S.No. 139 of 1996.

S.A.No. 1285 of 2010:

26. The third plaintiff alone had filed the present Second Appeal.

27. The Second Appeal had been admitted on the following substantial questions of law:-



“1. When Govindasamy and Marammal died intestate without any issues, whether the sisters of Govindasamy are not entitled to succeed to his estate as per the provisions of the Hindu Succession Act, 1956?

2. When Ex.B.14 Will dated 28.12.1995 has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Evidence Act, 1872, whether the Courts below are correct in law in upholding Ex.B.14 – Will?

3. When the attestors of Ex.B.14 alleged will are the very close relatives of the first respondent and when there are clear contradictions in their evidence, whether the Courts below are correct in law in not holding that the execution of the alleged Will is shrouded by suspicious circumstances?”



WEB COPY

28. Heard arguments advanced by Mr.P.Valliappan, learned counsel for the appellant and by Mr.K.Mukunth for M/s. Sarvabhauman Associates for the first respondent.

29. The parties shall be referred as plaintiff and the first defendant.

30. The substantial questions of law surround execution of Ex.B-14 Will dated 28.12.1995 and whether it had been proved in manner known to law and whether the Courts below had considered the suspicious circumstances surrounding its execution in proper perspective.

31. The first and second plaintiffs were the sisters of one Govindasamy. He was to married Marammal. They had no issues. They however left behind the suit property. Naturally issues arose among those who claimed right to the said property. The first and second plaintiffs claimed that both Govindasamy and Marammal died intestate and therefore, by applying the stipulations under the Hindu Succession Act, they claimed that they should be declared to be entitled to the suit property as Class II heirs.

32. This contention is refuted by the first defendant who claimed that Govindasamy died intestate but Marammal left behind a Will and



under the said Will the property which is the subject matter of the lis had been bequeathed to her absolutely and such bequeath ousted the 1st and 2nd plaintiffs from seeking any claim over the said property.

33. Naturally the entire case surrounds the proof of the Will produced as Ex.B-14.

34. Ex.B-14 is in Tamil. The testatrix had affixed her left thumb impression on the same. It is dated 28.12.1995. Marammal died on 31.12.1995. Both the attesting witness has been examined as DW-2 and DW-3. Their evidence had been carefully examined by the Courts below. It was pointed out on behalf of the appellant that DW-3 was the father-in-law of the first defendant. However, it must also be pointed out that the husband of the first defendant was the younger brother of the husband of the sister of third plaintiff. Thus, there is a direct relationship which can link the third plaintiff/PW-1 and the first defendant. Thus the first defendant cannot be permitted to be termed as a stranger to the family.

35. As a matter of fact, DW-3, the father-in-law stated that he gave his son in marriage to the first defendant only as proposed by the second



and third plaintiffs. He also stated that after marriage, the first defendant and her husband resided with Govindasamy and Marammal. He further stated that after the death of Govindasamy, the plaintiffs, who were his sisters tried to influence Marammal to register the suit property in their name. He stated that he signed the Will dated 28.12.1995 as a witness. He claimed that Marammal was in sound disposing mind. He also stated that the Will was prepared and read over to Marammal.

36. The learned counsel for the appellant however pointed out the contradictions, namely, that DW-2 stated that the Will was executed at around 2.30 p.m., while DW-3 stated that the Will was executed between 2.30 p.m. and 4.30 p.m. But that it was executed had been stated by both the witnesses. That is the crucial fact. Their concepts of time might differ but on a broad basis, it can be taken that it was executed in the afternoon of that particular date.

37. It must also be kept in mind that DW-2 was cross examined on 16.08.2007 nearly after more than a decade of execution of the Will.



DW-3 was cross examined on 11.09.2007.

38. It is only natural that there would be minor contradictions in their evidence as they were called upon to speak about an attestation which was done more than 10 years back.

39. I must state that the crucial aspect with respect to proof of a Will would be the sound and disposing state of the executrix. In this connection, even though, during her chief examination, PW-2 stated that Marammal was ill due to her death, during her cross examination, she admitted that she was healthy and was able to perform her house hold chores herself. It was also pointed out that when Marammal died, the relatives were prevented from seeing the body but this statement must be balanced with the fact that the relatives actually performed the final ceremonies at the burial ground. The certificate issued at the cremation centre had also been produced as Ex.A-9 by the plaintiff themselves.

40. In (2017) 1 SCC 257 (*Ramesh Verma (d) tr. L.Rs. Vs. Lajesh Saxena (D) and others*), the Hon'ble Supreme Court has held as follows:-



“13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.

14. In *Savithri v. Karthyayani*



WEB COPY



Amma reported as (2007) 11 SCC 621 at page 629, this Court has held as under:-

“A Will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists



suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before it can be accepted as genuine.”

41. To reiterate, the initial burden of proof of a Will is on the propounder of the Will. To prove the execution of the Will the attesting witness must be examined, as envisaged under Section 68 of the Indian Evidence Act. The Will should also be in conformity with Section 63(c) of the Indian Succession Act. The evidence of the attesting witnesses will have to be examined, primarily to determine whether the executor had actually signed the Will or not. With respect to the contents of the Will, the Court will have to sit in the arm chair of the attestor or attestrix to determine whether the dispossession of the property was natural.

42. In the instant case, the only person who looked after Govindasamy and Marammal through their later ages was the first defendant. They had brought her up. They had educated her. They had given her in marriage. It is only natural that they also considered her as their own daughter. Marammal referred to her as her *brought up child*



[வளர்ப்பு மகள்]. That she was brought up by them has been spoken to by the witnesses produced by the plaintiffs themselves. PW-1 is also related to her through her husband. The first and second plaintiffs had arranged her marriage. Photographs had been produced showing the presence of the second and third plaintiffs along with her.

43. All these facts would go to show that she was not a stranger to the parties. It is only natural that the property would be bequeathed to her. Minor contradictions as to the time when the Will was actually executed pales into insignificance, when it is considered with the fact that the attesting witnesses were cross examined well after a decade from the date of execution of the Will. The fact that the testatrix Marammal died within a few days, might, if viewed with skewed eyes, look a little suspicious, but the admission of PW2 during cross examination is that she was able to do her household work prior to her death and was healthy.

44. Both the Courts below have held that the Will was proved in



manner known to law.

45. In *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan*, (1999) 6 SCC 343, it was held as follows by the Hon'ble Supreme Court :

“12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

*“13. In **Ramanuja Naidu v. V. Kanniah Naidu** [(1996) 3 SCC 392] this Court held:*

“It is now well settled that concurrent findings of fact of trial court and first appellate



court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.”

“14. In *Navaneethammal v. Arjuna Chetty* [(1996) 6 SCC 166] this Court held:

“Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material.”

“15. And again in *Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N.* [(1997) 4 SCC 484] this Court held:



WEB COPY

“The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible.”

46. In view of all the above reasons, I hold that the Courts below had come to a correct conclusion with respect to the crucial issue, namely, the circumstances surrounding the execution of the Will, I hold that the Will had been proved in manner known to law.

47. In view of the above reasoning I would answer the substantial questions of law against the appellants and hold that the plaintiffs are not entitled to succeed to the estate of Govindasamy since the Will in Ex.B-14 dated 28.12.1995 had been proved in manner known to law and that the contradictions pointed out are minor and were only natural since the witnesses were examined well after a decade after its execution.

48. In the aforesaid circumstances, the Second Appeal fails and is accordingly dismissed, however, in the circumstances, without costs.



WEB COPY

49. In the result,

(i) the Second Appeal is dismissed. No costs;

(ii) The Judgment and Decree of the Principal Sub Court, Coimbatore dated 29.06.2010 in A.S.No. 45 of 2008 and the the Judgment and Decree of the III Additional District Munsif Court at Coimbatore, dated 11.10.2007 in O.S.No. 908 of 2004 are confirmed; and

(iii) Consequently, connected Miscellaneous Petition is closed.

25.08.2022

Index :Yes/No

Internet:Yes/No

vsg

To

1. Principal Sub Court, Coimbatore.
2. III Additional District Munsif Court at Coimbatore.



WEB COPY



29

C.V.KARTHIKEYAN, J.

vsg

**Pre-Delivery Judgment made in
S.A.No. 1285 of 2010
And
M.P.No. 1 of 2010**

25.08.2022