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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2022

PRONOUNCED ON : 30.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.938 of 2010

and

M.P.No.1 of 2010

1. Marammal (Died) ...Appellant/1st Respondent/
Plaintiff

2. Marappa Gounder
3. Manimekalai
4. Revathi
5. Moorthy

...Appellants/
LRs of Plaintiff/1st appellant

Vs.

1. Savithri ...1st Respondent/Appellant/
4th Defendant

2. Masammal
3. Kempammal (Died)
4. Subbulakshmi
5. P.N.Rajendran
6. Sabudhin
7. Rajan
8. Murthy
9. Musthaba
10. Saravanakumar
11. Manikumar
12. Palanisamy
13. Kumar
14. Arumugam
15. Sahul Ameen

16. Secretary,
Co-operative Bank Branch,
489, Nochikuttai, Main Road,
Punjaipuliampatti Village,
Sathyamangalam Taluk,
Erode District.

...Respondents 2 to 16
Respondents/Defendants 1 to 3, 5 to 16

17. Najammal @ Thangamani
18. Kamalam



19. Natarajan
20 S.Sivaprakash

...Respondents 17 to 20

[A2 to A5 brought on record as LR's of the deceased sole appellant viz., Marammal vide order of Court dated 04.10.2019 made in CMP No.16992, 16995 and 16998 of 2019 in S.A.No.938/2010 (AQJ)]

[R17 to R19 brought on record as LR's of the deceased R3 viz., Kempammal vide order of Court dated 04.10.2019 made in CMP No.16982, 16984 & 16986 of 2019 in S.A.No.938/2010 (AQJ)]

[R20 impleaded as party respondent vide order of Court dated 14.11.2019 made in CMP No.15852 of 2019 in S.A.No.938/2010 (AQJ)]

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 29.04.2010 made in A.S.No.30 of 2007, on the file of the learned Additional District Judge (FTC-II), Gobichettipalayam, reversing the judgment and decree dated 11.10.2006 made in O.S.No.77 of 2001 on the file of the learned 1st Additional Subordinate Judge, Gobichettipalayam.

For Appellants : Mr.T.Murugamanickam, Sr. Counsel
for Mr.R.T.Doraisamy

For Respondents:
R1 Mr.S.Mukunth
for M/s.Sarvabhauman Associates

R2, R4 & R17-R19 Mr.N.Ishtiaq Ahmed
R3 Died
R5-R16 Given up vide Memo Sr.No.34337
R20 Mr.N.Manokaran

J U D G M E N T

The Second Appeal is focused as against the judgment and decree dated 29.04.2010 made in A.S.No.30 of 2007, on the file of the learned Additional District Judge (FTC-II), Gobichettipalayam, reversing the judgment and decree dated 11.10.2006 made in O.S.No.77 of 2001 on the file of the learned 1st Additional Subordinate Judge, Gobichettipalayam. The suit is for declaration, partition, injunction and for mesne profits.

2. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.



3. The laconic averments made in the plaint, are as follows:

(i) The plaintiff and the defendants 1 to 3 are all sisters. 4th defendant is the wife of the plaintiff's brother Murugappan. Defendants 5 to 16 are the tenants in the suit property.

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(ii) In view of the decree passed in O.S.No.107 of 1988 on the file of the Sub Court, Gobichettipalayam, the deceased Murugappan became the absolute owner to the suit property. In the said decree, there is a provision in respect to Door No.8/153, that the mother of the plaintiff is entitled to enjoy the same till her life time. Before passing the said decree, the plaintiff's mother Deveerammal was residing in Door No.8/153, which is a portion of the suit property and later, she let out some area of the said suit property for lease. However, from the year of 1995 onwards, the said Deveerammal became ill. Therefore, as per the requisition made by Murugappan, the plaintiff and her husband Marappa Gounder were taking care of the said Deveerammal and residing at Door No.8/153. But as agreed, the said Murugappan did not give any money to the plaintiff, till the life time of Deveerammal.

(iii) Apart from the life estate, as per the final decree, the plaintiff's mother Deveerammal got Rs.75,000/- as her share and she used the same for her personal expenses. She had let out two portions in D.No.8/153 for lease and received the money. After knowing the death of Deevarammal on 27.11.2000, the said Murugappan has not participated in the funeral ceremony. Only the plaintiff and defendants 1 to 3, met the funeral expenses.

(iv) Later, after the receipt of rent from the tenants, the said Murugappan did not give any rent receipt. On 01.02.2001, when at the time, the plaintiff's husband paying the rent to the said Murugappan, the 4th defendant, who is the wife of Murugappan refused to receive the same. Subsequently, on the next day, the 4th defendant attempted to vacate the plaintiff from the house which was let out to the plaintiff. In this regard, the 4th defendant filed a suit in OS No.22 of 2001 before the District Munsif Court, Sathyamangalam.

(v) During the time, when a quarrel arose between the 4th defendant and the plaintiff, it was informed by the said Murugappan as he had executed a Will, in favour of his sisters and others, with regard to the suit schedule property. Afterwards, on 15.02.2001 at about 3PM, the said Murugappan died and immediately, the Will dated 29.01.2001 alleged to be executed by the said Murugappan came into effect. In view of the above referred Will, the 1st item of the suit schedule property goes to the plaintiff and the 2nd item of the suit schedule property goes to defendants 1 to 3 and 4th defendant. As such, in view of the share allotted, the plaintiff and



defendants received rent from the tenants.

(vi) On 16.03.2001, the plaintiff asked the defendants 1 to 4 for partitioning the suit property and the same was refused by them. At that time, it was stated by the 4th defendant that the said Murugappan executed one another Will dated 15.02.2001 through which he bequeathed the suit property in her favour. In view of the Will dated 29.01.2001 executed by the Murugappan, the 4th defendant has no title over the 1st item of the suit schedule property. Hence, it would be necessary to declare the Will dated 29.01.2001 as genuine and valid. Also, it would be necessary to partition the suit property as prayed in the suit. Further, the present suit has been filed for the mesne profits.

4.The averments found in the written statement filed by the 4th defendant and adopted by defendants 5 to 16, are as follows:

(i) The plaintiff is residing in her own house. Only the deceased Murugappan inducted the defendants 5 to 16 as the tenants in the suit schedule property. It is not correct to say that the tenants have refused to pay the rent. The plaintiff is not having any right to claim rent from defendants 5 to 16. Except the portion in which the deceased Deveerammal residing, the remaining portion have been let out for rent by Murugappan. The funeral ceremony of Deveerammal was performed by Murugappan and 4th defendant. The said Murugappan alone filed a suit in O.S.No.22 of 2001 before the District Munsif Court, Sathyamangalam against the plaintiff and defendants 1 to 3.

(ii) The attessor of the Will dated 29.01.2001 are the henchmen of plaintiff's husband. After partition, the plaintiff and the defendants 1 to 3 created inimical attitude against the husband of the 4th defendant. The signature found in the Will dated 29.01.2001 is not the signature of the testator Murugappan. The Will dated 29.01.2001 is a rank forgery. The Will dated 15.02.2001 executed in favour of the 4th defendant is a genuine one. After the demise of said Murugappan, the 4th defendant becomes the absolute owner to the suit schedule property. Accordingly, the 4th defendant alone is entitled to collect the rent from the tenants. The plaintiff and the defendants 1 to 3, cannot claim any right over the suit schedule property. Hence, she prayed for dismissal of the suit.

5.Based on the above said averments, the trial Court framed necessary issues and tried the suit. On the side of the plaintiff, PW1 to PW3 were examined and fourteen documents were marked as Ex.A1 to A14. On the side of the defendants, DW1 to DW3 were examined and marked two documents as Ex.B1 and Ex.B2.

6.Having considered the materials placed before him, the learned 1st Additional Subordinate Judge, Gobichettipalayam, came



to the conclusion that the suit filed by the plaintiff was proved and ultimately, granted a preliminary decree.

7. In the appeal filed by the 4th defendant in A.S.No.30 of 2007, the findings arrived at by the trial Court were reversed by the learned Additional District Judge (FTC-II), Gobichettipalayam and ultimately, the suit was dismissed.

8. Feeling aggrieved over the findings arrived at by the lower appellate Court, the plaintiff has filed the present Second Appeal. During the pendency of the appeal, the sole plaintiff/appellant died and her legal heirs were impleaded as appellants 2 to 5 and when the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"a. Whether the lower Appellate Court is correct in holding that the Will dated 29.01.2001 is not proved by the plaintiff, when the plaintiff examined two attesting witness and proved the Will as per law?

b. Whether the lower Appellate Court is correct in holding the signature of the Testator in the Will Ex.A-2 is not tallied with that of Ex.B-2 ignoring the fact that Ex.B-2 was signed by the Testator more than seven years ago?

c. Whether the lower Appellate Court is correct in holding that the 2nd Will dated 15.02.2001 is genuine since it is registered one, forgetting the law that mere registration of Will does not give rise to presumption of the genuineness-propounder has to discharge the burden qua its genuineness?"

9. Heard Mr.T.Murugamanickam, the learned Senior counsel appearing on behalf of the appellants, Mr.S.Mukunth, the learned Counsel appearing on behalf of the 1st respondent, Mr.N.Ishtiaq Ahmed, learned counsel appearing on behalf of the respondent Nos.2,4 and 17 to 19 and Mr.N.Manokaran, learned counsel appearing on behalf of Respondent No.20 and perused the materials available on record.

10. Admittedly, the plaintiff-Marammal and defendants 1 to 3 viz., Masammal, Kempammal and Subbulakshmi are the sisters. The deceased Murugappan, is their brother. Savithri, the 4th defendant is the wife of the deceased Murugappan. Defendants 5 to 16 are the tenants in the suit schedule property. Also, it was admitted on either side that in view of the final decree passed in I.A.No.195 of 1992 in O.S.No.107 of 1988, on the file of the learned Subordinate Judge, Gobichettipalayam, the deceased Murugappan, becomes the absolute owner to the suit property. However, in the said final decree, in respect to house property bearing Door No.8/153, life interest was given



to one Deveerammal, who is none other than the mother of the said Murugappan.

11. In this connection, it is the case of the plaintiff that while at the time, the said Deveerammal is sick, the deceased Murugappan requested the plaintiff and her husband to maintain his mother. Also, he permitted the plaintiff and her husband to stay in Door No.8/153, which is one of the suit schedule properties. Later after the death of Deveerammal both the plaintiff and her husband on the compulsion of Murugappan stayed in the same house as a tenant. In this regard, both the husband of the plaintiff and Murugappan entered into an agreement and in view of the same, the said Murugappan issued rent receipt under Ex.A8.

12. It is the further case of the plaintiff that on 29.01.2001, the said Murugappan executed a Will and through it, he bequeathed the entire suit property to his sisters and to his wife. As per the Will, he bequeathed the 1st item of the suit schedule property to the plaintiff and bequeathed $\frac{3}{4}$ share in the 2nd item of the suit schedule property to the defendants 1 to 3 and gave $\frac{1}{4}$ th share to the 4th defendant. Now, based upon the said Will, the plaintiff filed the present suit for the relief of declaration and for partition.

13. In this occasion, it is the case of the 4th defendant that during the life time of Murugappan, he was staying along with her. While at the time, the said Murugappan became sick, he alone invited his relations i.e., DW2 and DW3 and in their presence on 15.02.2001, he executed a registered Will through which he bequeathed the entire suit schedule property in her favour.

14. Therefore, this is a case where based upon different Wills, both the plaintiff and the 4th defendant, claimed title and right in the suit schedule property. Though the 4th defendant claimed the right in the suit schedule property, she has not filed any counter claim, for the relief of declaration as the Will dated 15.02.2001, is genuine and acted upon. However, being the reason that the plaintiff claimed the right based upon the Will dated 29.01.2001, in the suit schedule property, it is for her to prove the same, in terms of Section 68 of the Indian Evidence Act and also in terms of Section 63(c) of the Indian Succession Act.

15. In this context, in order to prove the Will dated 29.01.2001, on the side of the plaintiff, two witnesses have been examined as PW2 and PW3. In their proof affidavit, as well as in their cross examination, they have clearly stated about the execution of the Will, about the purchase of papers,



instructions given by the testator and about the execution of the Will.

16. In this connection, the learned counsel appearing for the defendants would contend that though PW2 and PW3 gave evidence in support of the plaintiff's case, the other circumstances, found in and around the execution of the Will create a suspicious circumstances as to whether the Will dated 29.01.2001 is executed as stated by PW2 and PW3 or not.

17. Now, one of the circumstances indicated by the defendants' counsel is that during the relevant point of time, the very same testator alleged to have executed the Will dated 29.01.2001 has filed a suit as against the plaintiff and others for the relief of injunction, that too, in respect to suit property. In the said circumstances, if the testator is having a cordial relationship with the plaintiff, it would not be necessary for him to file a suit against the plaintiff. According to him, it is one of the circumstances, which create a doubt, over the execution of Will.

18. Now, on considering the said submissions with the relevant records, it is true, the plaintiff while at the time of giving evidence as PW1, admitted in her cross examination, as when at the time her mother died, the testator Murugappan quarreled with her and afterwards he lodged a complaint against her in the police station. She has further stated that before his death, he filed a suit against her in O.S.No.22 of 2001 for the relief of injunction, particularly, in respect to the suit property. Also, she has deposed that the said suit has been filed on 05.02.2001 that means after six days from the date of alleged Will dated 29.01.2001. In the said situation, if really the testator Murugappan is having a cordial relationship with the plaintiff, it would not be necessary for him to file a suit against the plaintiff. Further, in the plaint, in paragraph No.10, in respect to cause of action, it was stated that on 30.01.2001, the plaintiff and her henchmen attempted to interfere with the possession of the testator. So, in all, filing the suit by the Testator immediately at the relevant point of time itself creates a doubt, whether the said Will is a genuine one or not.

19. The other circumstances, which indicated by the learned counsel appearing for the defendants is in respect to the existence of the alleged Will- Ex.A2 dated 29.01.2001.

20. In this regard, PW1 has stated in her cross examination that she was informed by one Anganan as the deceased Murugappan on 29.01.2001, executed a Will and through it, he bequeathed the suit schedule property to the plaintiff and to defendants 1 to



4, further, she has stated the said information was given by the said Anganan after six days from the date of death of the said Murugappan. On the other hand, she has specifically stated that the said Anganan participated in the funeral rites of the deceased Murugappan.

21.Now, on a whole reading of the above said evidence given by PW1, the same would create a doubt that if really the alleged Will was executed in presence of the said Anganan, it is for him to inform the same immediately after the death of Murugappan. But, for the reasons best known to him, he has not informed the existence of the Will, at the time when he attended the funeral ceremony of Murugappan. Therefore, the said circumstances also would create a doubt whether the alleged Will (Ex.A2), was executed in the presence of PW2 and PW3, as stated by the plaintiff.

22.The other circumstances now found against the case of the plaintiff is that, before execution of the Will, the Testator Murugappan obtained planning permission from the Puliampatti Town Panchayat for constructing the house. Admittedly, in the said document he has signed as a petitioner. Later, in respect to the signature found in the Will, PW1 herself admitted that there was a difference between the signature found in the Will and the signature found in the Plan. Therefore, in all, the execution of the Will is not proved beyond reasonable doubt.

23.In this occasion, though the learned counsel appearing for the appellants relied on various judgments, they are all in respect to the infirmity found in the case of the defendant. But, herein it is a case, in the absence of any counter claim, it would not be necessary to decide whether the Will dated 15.02.2001 stands in favour of the 4th defendant, is genuine are not.

24.In this regard, it would be relevant to see the judgment of our Hon'ble Apex Court, in Madhukar D.Shende Vs. Tarabai Aba Shedage, reported in (2002) 2 Supreme Court 85, wherein it is held as follows:

"The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of



significance."

25. By applying the principles set out in the above referred judgment, obviously in construing the Will the Court must consider the surrounding circumstances, such as, the testator's position, his family relationship, the probability that he would use his words in a particular sense and many other things summed up in the picturesque phrase. Here it is a case, as already stated, the surrounding circumstances are all not in favour of the plaintiff. Further, in this connection in a case of Uma Devi Nambiar and others Vs. T.C. Sidhan (dead), reported in (2004) 2 SCC 321, our Hon'ble Apex Court has held as follows:

"it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the Court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations"

26. Therefore, applying the above said principles with the case in hand, here it is a case, the propounder of the Will has not removed the above referred suspicious circumstances as the alleged Will dated 29.01.2001 was executed with an intention to settle the property in favour the plaintiff and defendants 1 to 4. Though, the alleged Will dated 29.01.2001 was executed in the normal line of succession, considering the inimical attitude having by the plaintiff and the Testator, it would not be possible to execute the Will in favour of the plaintiff. Further, the said Will is an unregistered Will and therefore, in all probabilities, the plaintiff has not proved her case upto the expectation of law. In otherwise, it would not be necessary to see the case of the defendants as the Will dated 15.02.2001 is found genuine or not. Accordingly, the said findings arrived at by the first appellate Court cannot be disturbed and the same is confirmed. The substantial questions of law framed, are answered as above.

27. In the result, the second appeal fails and the same is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

1. The Additional District Judge (FTC-II),
Gobichettipalayam.

2. The I Additional Subordinate Judge,
Gobichettipalayam.

3. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+2cc to Mr.R.T.Doraisamy, Advocate, S.R.No.21162

+1cc to Mr.Sarvabhauman, Advocate, S.R.No.21594

+1cc to M/s.N.Manokaran, Advocate, S.R.No.21522

S.A.No.938 of 2010

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