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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A. NO.152 OF 2022
AND C.M.P. NO.3034 OF 2022

Ezhumalai

.. Appellant

Vs.

1. Ettipillai
Vasanth (Died)

2. Bathmavathy
3. Kasturi
4. Venilla
5. Shanta
6. Sekar
7. Palani
8. Sudha

.. Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the decree and judgment dated 14.09.2021 made in A.S. No.38 of 2015 on the file of the Subordinate Court, Ranipet confirming the judgment and decree dated 07.10.2010 made in O.S. No.151/2006 on the file of District Munsif Court, Ranipet.

For Appellant : Mr. S.Sri Ranjith

JUDGMENT

The plaintiff in the suit in O.S. No.151 of 2006 on the file of District Munsif Court, Ranipet is the appellant in the above second appeal. The appellant filed the suit O.S. No.151 of 2006 for declaration declaring his absolute vested interest over the suit properties by virtue of the Will dated 10.02.2006 executed by his grandfather Govindasamy Pillai and for consequential permanent injunction restraining the defendants / respondents from in any way alienating or encumbering the suit properties.

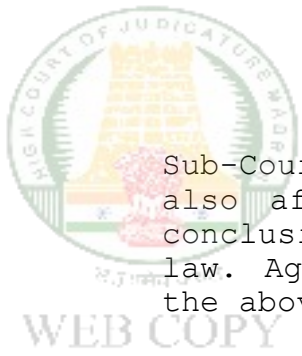
2. It is admitted that the suit properties are the absolute and self acquired properties of one Govindasamy Pillai. The



plaintiff is the grandson of Govindasamy Pillai. It is the case of plaintiff that Govindasamy Pillai executed a Will on 10.02.2006 bequeathing all his self acquired properties in favour of the plaintiff and the 7th defendant. According to the plaintiff, the seventh defendant, the wife of testator, was to enjoy the property till her lifetime and thereafter the property vest with the plaintiff as absolute owner. Since the seventh defendant was given only life interest under the Will executed by Govindasamy Pillai, it is stated by the plaintiff that he was constrained to file the suit as the seventh defendant was trying to alienate / encumber the suit property.

3. The suit was contested by all the defendants. The fourth respondent filed a written statement which was adopted by defendants 2,3,5,6 & 7. The first defendant is the father of plaintiff who remained ex parte. It is the common case of other defendants that defendants 2 to 6 are born to Govindasamy Pillai through his second wife by name Kasiammal, the seventh defendant in the suit. It is the specific case of respondents that the said Govindasamy Pillai, out of love and affection, executed a registered settlement deed in favour his first wife's son, the first defendant, to an extent of 1 acre and 85 cents along with a well and service connection. It was further stated in the written statement that there was a friction in the family and that the said Ettipillai executed a relinquishment deed in favour of Govindasamy Pillai in respect of other properties of Govindasamy Pillai. It is also the case of defendants that Ettipillai was living separately and he never had any connection with the family of the second wife of his father and the other children of Govindasamy Pillai. It is further stated that Govindasamy Pillai executed a registered Will on 06.06.1983 bequeathing some of his properties in favour of his second wife Smt. Kasiammal. It is also stated that the said Govindasamy Pillai, executed another registered Will on 04.02.1994 in favour of his daughters. Based on the Will, it is stated by the defendants that several documents have been executed to show that the Will executed in favour of second wife of Govindasamy Pillai and his daughter was acted upon. Having regard to the nature of transactions and intention expressed by the testator namely Govindasamy Pillai, a specific stand was taken by the defendants that the Will alleged to have been executed by Govindasamy Pillai in favour of plaintiff / appellant is forged.

4. The trial Court, after framing necessary issues, found that the plaintiff has not produced cogent evidence to prove the Will propounded by him. As a matter of fact, the Courts below specifically found that the Will has been created. In view of the specific findings rendered against the plaintiff by the trial Court, the suit came to be dismissed. However, the appellant preferred an appeal in A.S. No.38 of 2015 before the



Sub-Court, Ranipet, Vellore District. The lower appellate Court also after considering the issues independently, came to the conclusion that the Will is not proved in the manner known to law. Aggrieved by the concurrent findings of the Courts below, the above Second Appeal is preferred by the plaintiff.

5. In the memorandum of grounds of appeal, the appellant has raised the following substantial questions of law:

" 1. Whether both the Courts below are correct in law to disbelieve the execution of Exhibit A1 Will in the absence of any oral and documentary evidence to disprove the same?

2. Whether both the Courts below are correct in law to reject Exhibit A1 will only on speculation, surmises and conjunctures without any relevant evidence made available to disprove the same ?

3. Whether both the Courts below are correct in law to disbelieve the evidence of P.W.2 branding him as interested witness only on the ground that he has also signed as witness in some other documents executed by late Govindasamy Pillai ?

4. Whether both the Courts below are correct in law to hold that non-examination other 5 witnesses signed in Exhibit A1 Will will disprove the execution of Exhibit A1 Will ?"

6. Learned counsel appearing for the appellant, referring to the findings of the trial Court, submitted that the Courts below have failed to consider the genuineness, validity and proof of Will in a proper perspective. Learned counsel for the appellant submitted that no evidence is adduced by the respondents to prove the Will. It was contended by the learned counsel that the truth and validity of the Will was not gone into by the Courts below with reference to the admitted facts and the statements of plaintiff's witnesses. It is also stated that the findings of the Courts below regarding proof of Will is perverse.

7. This Court is unable to accept any of the submissions of the learned counsel for the appellant. It is to be noted that the trial Court has specifically found that the testator earlier had executed a previous Will in the year 1983 bequeathing the entire property in favour of his second wife namely the seventh defendant. It is admitted that the testator, during his



lifetime, executed another Will in the year 1994 bequeathing the property in favour of second wife Kasiammal for her life and then to all his children. It was also pointed by the lower appellate Court that Govindasamy Pillai and Ettipillai were not jointly living and that due to some dispute, the first defendant namely the father of plaintiff was forced to stay out of the family. Apart from the factual admissions with regard to several suspicious circumstances, the trial Court held that the evidence of P.W.2 is not reliable and he has not spoken to prove the Will satisfying the requirement of law.

8. First of all, the Will is a document required to be proved in the manner contemplated under law. In the present case, the Will relied upon by the appellant was executed by plaintiff's grandfather by name Govindasamy Pillai on the date on which the testator died. It is held by the Courts below that Govindasamy Pillai and Ettipillai, the father of plaintiff, were not in talking terms. In such circumstances, the Will propounded by the plaintiff is surrounded by several suspicious circumstances. The plaintiff has not proved the genuineness of the Will after removing all the suspicious circumstances. Secondly, the lower appellate Court has specifically held that the evidence of P.W.2, the only witness, is not reliable. No circumstances pointed out to exclude the second wife and daughter of testator. The testator died at 05.00p.m. and on the same day the Will has come. The testator has not signed the Will. The lower appellate Court has referred to several circumstances pointing out that the Will propounded by the plaintiff is surrounded by suspicious circumstances. There is no evidence as to place of execution of Will. Taking into account all circumstances, the Courts below have held that the Will is not proved in the manner known to law. Though the testator had executed two different Will with little modifications bequeathing the entire property in favour of his second wife, the Will propounded by the appellant does not provide any right or share to the seventh defendant in the Will produced by the plaintiff. The lower appellate Court considered the peculiar facts and circumstances of the case in the light of several judgment of various High Courts to hold that the plaintiff failed to prove the Will as a voluntary disposition. Since the whole case of plaintiff rest on the Will, the appellant cannot succeed without establishing the truth and validity of Will. It was not proved that testator was in a sound disposing state of mind at the time of execution of Will just few hours before his death.

9. Having regard to the scope of Section 100 C.P.C., this Court is not inclined to entertain this appeal as there is no factual basis for any of the substantial questions of law framed by the appellant in this appeal. Having regard to the factual



findings by Courts below, this Court do not find any merits in this appeal. Accordingly this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge, Ranipet.
2. The District Munsif, Ranipet.

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.20818

S.A. No.152 of 2022

SJ(CO)
PM/21/04/2022