



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.1199 OF 2011

AND

M.P.NO.1 OF 2011 & C.M.P.NO.18063 OF 2021

1. M.Vairamudi
2. M.Natarajan
3. M.Rameshbabu

... Appellants/Appellants/Defendants

Vs.

1. R.Sundararajan
2. R.Saravanan
3. R.Sentamizhselvan

... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 20.06.2011 passed in A.S. No.46 of 2010, on the file of the Principal Subordinate Judge, Thiruvannamalai, upholding the decree and judgment dated 02.08.2010 passed in O.S. No.520 of 2004, on the file of the Principal District Munsif, Thiruvannamalai.

For Appellants : Mr.R.Rajarajan

For Respondents : Ms.G.Sumitra

JUDGMENT

The defendants in O.S.No.520 of 2004 on the file of the Principal District Munsif Court, Thiruvannamalai, who failed in both the Courts below have filed the present second appeal. The suit was filed by the respondents/plaintiffs for a declaration of their title to the suit property and for a consequential relief of permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property.



2. The suit property as described in the plaint is a land and superstructure in T.S.No.190/8 and T.S.No.190/13 of Thiruvannamalai town with specific measurements and boundaries as stated in the plaint schedule.

WEB COPY

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiffs in nutshell is as follows :

The suit property is the self acquired property of Jayalakshmi Ammal who is the plaintiffs' father's paternal aunt. Jayalakshmi Ammal, though married, was living separately for the past 40 years. She had properties at Gudiyattam also. The plaintiffs' father Ramalingam was taking care of his paternal aunt Jayalakshmi Ammal after the death of her father and she nominated him as her legal heir in all her bank accounts. The defendants who are the sons of Jayalakshmi's brother Mugaleewaran did not bother to visit Jayalakshmi Ammal and take care of her. In spite of that Jayalakshmi Ammal had executed a Will bequeathing her two houses at Gudiyattam in favour of the defendants. The plaintiffs' father was treated by Jayalakshmi Ammal as her adopted son. While so, Jayalakshmi Ammal executed a Will dated 23.05.2003 (Ex.A1) bequeathing the suit property in favour of the plaintiffs' father Ramalingam. During the last week of May 2003, Jayalakshmi Ammal went to Gudiyattam and died on 31.05.2003 under mysterious circumstances. Jayalakshmi Ammal before leaving for Gudiyattam informed the plaintiffs that the defendants took her to the Sub Registrar Office at Thiruvannamalai on 21.05.2003 and obtained her marks and signatures on blank papers stating that it is a consent letter for obtaining loan over some of the properties other than the suit properties which were given by her to the defendants' father. Jayalakshmi Ammal became suspicious subsequently and wanted to verify the same and left for Gudiyattam on the evening of 23.05.2003. Before leaving, she handed over the Will dated 23.05.2003 to the mother of the plaintiffs and asked her to keep it safe. In fact, the plaintiffs' father was not aware of the execution of the Will dated 23.05.2003 by Jayalakshmi Ammal in his favour. On hearing the news of the death of Jayalakshmi Ammal on 31.05.2003, the plaintiffs went to Gudiyattam along with their parents and the plaintiffs' father performed all the ceremonies as her adopted son. On the next day they came to know about the registered Will dated 21.05.2003 allegedly executed by Jayalakshmi Ammal bequeathing the suit property in favour of the defendants. It seems Jayalakshmi Ammal had informed about the Will dated 23.05.2003 (Ex.A1) in favour of her brother Ramalingam to the defendants. The defendants on knowing this manhandled her, as a result of which, she fell down and



sustained a fracture on 24.05.2003. Thereafter, she became unconscious and ultimately died on 31.05.2003. Though the plaintiffs and their father wanted to inform the police on 01.06.2003, they did not do so as it was too late for them to inform the police. The Will (Ex.A1) was the last Will of late Jayalakshmi Ammal and was executed when she was in sound state of mind and health. Based on the said Will the plaintiffs' father executed a settlement deed (Ex.A2) dated 13.06.2003 in favour of the plaintiffs and the possession of the suit property was also handed over to the plaintiffs. The tenancy was also attorned and all the tenants are paying rents to the plaintiffs. The defendants issued a notice dated 27.06.2003 (Ex.A3) to the plaintiffs with false allegations for which the plaintiffs gave a suitable reply dated 17.07.2003 (Ex.A4). On receiving the reply notice, the defendants attempted to trespass into the suit property with some goondas on 01.08.2003. Hence, the suit.

5. The suit was resisted by the defendants on the following grounds:

- 1) It is false to allege that the plaintiffs' father assisted Jayalakshmi Ammal in all respects.
- 2) In fact Jayalakshmi Ammal was very much fond of her younger brother Mugaleewaran, father of the defendants.
- 3) When Jayalakshmi Ammal wanted to raise a loan in 1991 from Thiruvannamalai Co-operative Urban Bank, she required the assistance of Ramalingam for introducing her to the bank officials and also stand as a surety for the loan. Thus the name of Ramalingam appeared in all the mortgage papers (Ex.A5 to Ex.A8).
- 4) On 20.05.2003, Jayalakshmi Ammal slipped and fell down and sustained a fracture on her right wrist and hip. The tenants in the house informed the same to the defendants over phone and the third defendant rushed to Thiruvannamalai to take Jayalakshmi Ammal for medical treatment.
- 5) On the next day i.e. on 21.05.2003, she executed a Will (Ex.B2) bequeathing the suit property in favour of the defendants and went to Sub Registrar Office, Thiruvannamalai in an autorikshaw and got the Will registered. In fact the Will (Ex.B2) was written by a scribe and the contents thereon were read over to her. She had affixed her thumb impression on each page of the Will in the presence of attestors.
- 6) Ex.B2 was executed by Jayalakshmi Ammal out of her own volition and while in sound state of mind and health.
- 7) On 22.05.2003, the third defendant took Jayalakshmi Ammal to Gudiyattam and gave her treatment. She was also taken to Nagriputhur for treatment.



WEB COPY

- 8) On 31.05.2003, Jayalakshmi Ammal died (death extract Ex.B3) and her funeral was arranged by the defendants.
- 9) Jayalakshmi Ammal had no intention to bequeath the suit property in favour of the plaintiffs' father and she was not also in a position to sign on 23.05.2003. The plaintiffs and their father had forged the signature of Jayalakshmi Ammal on Ex.A1 Will with the aid of mortgage loan papers which contained the signatures of Jayalakshmi Ammal.
- 10) The allegation of the plaintiffs that the Will Ex.B2 was obtained under coercion and threat is totally false.
- 11) The plaintiffs therefore should pay exemplary costs to the defendants for filing a vexatious suit.

6. On the basis of the above pleadings the trial Court framed the following issues :

- 1) Whether it is true that Jayalakshmi Ammal purchased the suit property through a registered sale deed and whether it is true that she treated Ramalingam as her adopted son?
- 2) Whether the plaintiffs are entitled for a declaration as prayed for?
- 3) Whether the plaintiffs are entitled for a permanent injunction as prayed for?
- 4) To what other reliefs the plaintiffs are entitled?

7. In the trial Court, the second plaintiff examined himself and five other witnesses and marked Ex.A1 to Ex.A8. The second defendant examined himself and marked Ex.B1 to Ex.B6. The letter sent by the Forensic lab, Mylapore, Chennai to the trial court stating that in the absence of contemporary documents, the signature of Jayalakshmi Ammal on Ex.A1 cannot be compared, was marked as Ex.C1.

8. After full contest, the learned Principal District Munsif, Thiruvannamalai, decreed the suit in favour of the plaintiffs vide his decree and judgment dated 02.08.2010. The appeal in A.S.No.46/2010 was also dismissed. Now the present second appeal is filed by the defendants.

9. At the time of admission the following substantial questions of law were framed.

- 1) Have not the Courts below grossly erred in law by holding that Ex.A1 Will dated 23.05.2003 has been proved by the plaintiffs without giving any finding about the suspicious circumstances surrounding the execution of Ex.A1?
- 2) Whether the Courts below are correct in placing the burden of proof on the shoulders of the defendants to prove



execution of Ex.B2 when the plaintiffs have come forward with the suit for declaration and injunction on the basis of Ex.A1 Will dated 23.05.2003?

- 3) Whether the Courts below are correct in disbelieving Ex.B2 dated 21.05.2003 when the defendants have proved the due and valid execution of Will as contemplated under law and also by adducing sufficient evidence to remove the suspicious circumstances surrounding the execution of the Will?

10. Mr.R.Rajarajan, learned counsel for the appellants / defendants contended that Jayalakshmi Ammal could not have signed Ex.A1 Will on 23.05.2003 as she had a fracture on her right wrist and hip. According to him, there are several suspicious circumstances attendant on the execution of Ex.A1 Will. In fact, the second plaintiff (P.W.1) during the course of cross examination admitted that Jayalakshmi Ammal had knowledge about the execution of the Will dated 21.05.2003 (Ex.B2) on 23.05.2003, when she allegedly executed Ex.A1 Will. When Ex.B2 is registered Ex.A1 has not been registered. The earlier Will dated 21.05.2003 (Ex.B2) was not mentioned in the subsequent Will dated 23.05.2003 (Ex.A1) and this crucial aspect has not been taken into account by both the Courts below. The plaintiffs also did not take any steps to prove the signature of Jayalakshmi Ammal on Ex.A1 and there are several contradictions in the evidence of P.W.1 to P.W.5. When the plaintiffs have not proved the Will Ex.A1, the Courts below wrongly shifted the burden of proof on the defendants throwing to winds the well settled principles of law that the plaintiffs should stand or fall on his own legs. He also relied on the following decisions in

- 1) Ms. Josephine Jerome and others vs. S. Santiago and another reported in (2007) 5 MLJ 706.
- 2) H. Venkatachala Iyengar vs. B.N. Thimmajamma & others reported in 1959 AIR 443.
- 3) Robert Prabhakar vs. David Ebenezer reported in (2007) 1 MLJ 146.
- 4) Rabindranath Mukherjee & another vs. Panchanan Banerjee (dead) by LRs & ors reported in 1995 SCC (4) 459.
- 5) J. Naval Kishore vs. D. Swarna Bhadrans and others reported in (2007) 5 MLJ 1417.
- 6) Balathandayutham and another vs. Ezhilarasan (Civil Appeal No(s). 7357/2002)

and contended that



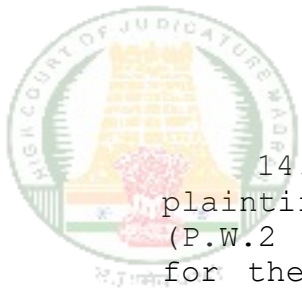
WEB COPY

- a) The initial burden is always on the propounder of the Will to prove that testatrix executed the testament. Under Section 63 of the Indian Succession Act, attestation is considered to be a part of execution and mere proof of attestation does not prove 'due execution'.
- b) The evidence adduced on the side of the plaintiffs is not convincing as there are suspicious circumstances surrounding the Will (Ex.A1).
- c) It is the duty of the propounder to remove all the clouds and satisfy the conscience of the Court.
- d) The Will Ex.B2 was registered and it is on record that Sub Registrar had explained the contents of the Will to late Jayalakshmi Ammal whereas there is no proper evidence on the side of the plaintiffs that the contents of Ex.A1 were read over to her.

11. Per contra, Ms.G.Sumithra, learned counsel for the respondents 1 to 3 contended that both the Courts below after analysing the evidence on record had rendered a concurrent finding that Ex.A1 is true and valid and that the defendants did not prove the validity of Ex.B2. Her specific contention is that there is no substantial question of law involved in the present second appeal since the findings recorded by both the Courts below are based on oral and documentary evidence. The findings of facts recorded by both the Courts below cannot be questioned in the present second appeal especially when they are not perverse.

12. It is admitted fact that the suit property absolutely belonged to late Jayalakshmi Ammal and she was living separately as her husband deserted her long back. Jayalakshmi Ammal had three brothers namely Venugopal, Subramani and Mugaleewaran. Ramalingam, father of the plaintiffs is the son of Venugopal. The defendants 1 to 3 are the sons of Mugaleewaran. When the plaintiffs contend that their father was treated as an adopted son by late Jayalakshmi Ammal and that she bequeathed the suit property in his favour through an unregistered Will dated 23.05.2003 (Ex.A1), the defendants claim that late Jayalakshmi Ammal executed a registered Will on 21.05.2003 (Ex.B2) in respect of the suit property in favour of the defendants 1 to 3. According to the defendants 1 to 3 / appellants, Jayalakshmi Ammal was very much fond of their father Mugaleewaran as he was her youngest brother.

13. The Courts below analysed the evidence on record and concurrently held that the plaintiffs have proved the Will Ex.A1 and the defendants failed to prove Ex.B2.



14. In order to establish the due execution of Ex.A1, the plaintiffs have examined the scribe (P.W.5) and the attestors (P.W.2 & P.W.3) of Ex.A1. The contention of the learned counsel for the appellants is that since P.W.5's (scribe) license was cancelled, his evidence cannot be relied upon. The very same arguments were put forth before the first appellate Court by pressing into service Ex.B7 to Ex.B9 as additional documents. However, it was held that P.W.5's license was cancelled because he swindled public money when he was in Government service and FIR was registered against him and not because he was in the habit of preparing bogus documents. It was further held that his evidence was corroborated with the evidence of other witnesses to Ex.A1.

15. Both the courts below also analysed the veracity of Ex.B2 Will and recorded the following factual findings.

- 1) It was contended by the defendants that Jayalakshmi Ammal herself read the entire contents of the documents (which goes upto six pages). This is not believable since a woman of the age of 85 years who had sustained a wrist and hip fracture on the previous day could not do that and that too, sitting in an autorickshaw.
- 2) The fact that she was taken to Sub Registrar's office on 21.05.2003 and not to the hospital create a suspicion in the minds of the court.
- 3) D.W.1 did not explicitly mention that D.W.2, one of the attestors to Ex.B2 was present at the time of execution of Ex.B2.
- 4) Though in the written statement it is specifically mentioned that on 23.05.2003 Jayalakshmi Ammal was in Nagriputhur taking medical treatment, it is in evidence that Jayalakshmi Ammal was taken to Nagriputhur only on 22.05.2003.
- 5) D.W.1 further stated that Jayalakshmi Ammal was given homeopathy treatment at home but D.W.2 had deposed that she was taken to Government hospital. No prescription was filed.
- 6) D.W.3 deposed that he saw Jayalakshmi Ammal inside the Sub Registrar office while the other two witnesses stated that she was sitting in an autorickshaw outside the office.
- 7) D.W.1's evidence is totally in contradiction to D.W.2's evidence.
- 8) D.W.1 admitted that the defendants do not know the place of residence of Jayalakshmi Ammal at Thiruvannamalai.
- 9) Ex.A5 to Ex.A7 bank documents clearly show that the plaintiffs' father was the nominee of late Jayalakshmi Ammal not only in Co-operative Bank, Thiruvannamalai, but also in few of her other transactions.



WEB COPY

- 10) It is clear from the evidence that Jayalakshmi Ammal was residing with the plaintiffs.
- 11) Execution of Ex.A1 was proved by the plaintiffs by adducing acceptable evidence and there are no suspicious circumstances surrounding the Will Ex.A1.
- 12) The defendants did not discharge their burden to disprove the validity of the Will Ex.A1.
- 13) Merely because Ex.B2 was registered, it cannot be held that Ex.A1, the subsequent and last Will of the testatrix, is invalid.
- 14) Registration of a Will alone is not sufficient when the evidence of the attestors and the other witnesses are not reliable.
- 15) The settlement deed was executed by Ramalingam in favour of his sons only after the death of Jayalakshmi Ammal and the defendants did not prove that it was made prior to the execution of the Will as alleged by them.

Thus it is seen that both the courts below had analysed each and every evidence threadbare and I do not see any perversity in their findings of facts.

16. Both the courts below did not shift the entire burden on the defendants as alleged by the counsel for the appellants. A bare perusal of judgments of both the courts below shows that the evidence adduced on the side of the plaintiffs was also analysed threadbare before going into the veracity of the witness statements on the side of the defendants.

17. The contention of the counsel for the appellants is that when Jayalakshmi Ammal knew the execution of Ex.B2, she did not cancel the same before executing Ex.A1. Execution of another Will would amount to revocation of the earlier Will as per Section 70 of the Succession Act.

18. The facts of the case in H. Venkatachala Iyengar vs. B.N.Thimmajamma & others (cited supra) are that the propounder of the Will took a prominent role in executing the Will and there was no evidence to show that the draft was ever approved by the testatrix or that the Will was fully read over to her and she knew its contents. In such circumstances, it was held that the propounder of the Will has not proved the Will in the manner known to law. But the facts of the present case are entirely different. In the instant case, the plaintiffs have proved the execution of the Will Ex.A1 by adducing acceptable evidence and as already observed, both the courts below had properly analysed the evidence adduced on the side of the plaintiffs and had come to a conclusion that the plaintiffs have proved that Ex.A1 was the last Will of late Jayalakshmi Ammal.



19. The case in J. Naval Kishore vs. D. Swarna Bhadran and others (cited supra) is that the attestors to the Will who have been examined as the witnesses failed to prove the execution of the Will and therefore, it was held that the propounder has not proved the Will in accordance with Section 68 of the Indian Evidence Act and Section 63 of Indian Succession Act. Therefore, the above ruling may not apply to the facts of the present case.

20. The facts in the decision in Balathandayutham and another vs. Ezhilarasan (cited supra) are that the Will was executed when admittedly the testator was not in sound state of health. Here it is not the case of the plaintiffs and the defendants that the testatrix was not in sound state of mind and health at the time of execution of Ex.A1. Though an attempt was made by the defendants to show that the testatrix Jayalakshmi Ammal slipped and fell down on 20.05.2003 and sustained fracture on her hip and right wrist and that therefore she could only affix her thumb impression, the same has not been proved by them. This has also been elaborately discussed by both the courts below in extenso and the same need not be repeated here in the present second appeal especially when they are the findings based on facts.

21. The contention of the learned counsel for the appellants is that the first Will dated 21.05.2003 (Ex.B2) was registered and it is also on record that the Sub Registrar had explained the contents to the testatrix and there was no suspicious circumstances surrounding on the Will Ex.B2. He relied on the decision in Rabindranath Mukherjee & another vs. Panchanan Banerjee (dead) by LRs to substantiate his contention in this regard. In that case, there were no suspicious circumstances surrounding on the registered Will. This was not so in the instant case as Ex.B2 has suspicious circumstances surrounding it. In the present case, the defendants have not proved the execution of the Will Ex.B2 of late Jayalakshmi Ammal on 21.05.2003 and merely because the said document is registered, it cannot be held that it is a true and valid document. Moreover, the plaintiffs have adduced acceptable evidence to show that the contents of Ex.A1 were read over to late Jayalakshmi Ammal before she signed on Ex.A1. Therefore, the above ruling would not apply to the facts of the present case.

22. The decision in Ms. Josephine Jerome and others vs. S. Santiago and another cited supra, is that there was no evidence as to why the elder son who was an equal beneficiary with the second son as per the earlier registered Will has been altogether excluded in the subsequent Will. In such circumstances it was held that the the initial burden of proving



the Will was not discharged by the propounder of the Will. This ruling is also not useful to the case of the appellants.

23. The decision in Robert Prabhakar vs. David Ebenezer would not also apply to the facts of the present case since it was found in that case that the evidence of the witnesses is in conflict with each other. The materials on record created a doubt about the genuineness of the Will. In the police complaint given by the father of the propounder, there was no whisper about the Will executed by the testatrix in whose name the property was purchased.

24. Section 100 CPC is a jurisdiction confined to substantial questions of law only. In the decision in Madamanchi Ramappa and Another Vs Muthalur Bojjappa reported in (1964) 2 SCR 673, the Apex Court observed as follows:

"12.The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition.

.....
If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

25. The defendants did not even know where Jayalakshmi Ammal was residing in Thiruvannamalai and in such circumstances, it is difficult to believe the versions of the defendants that the third defendant, on receiving a telephonic message from the



tenants of the house of Jayalakshmi Ammal, rushed to Thiruvannamalai on 20.05.2003 and on the very next day got the Will executed and registered at Thiruvannamalai Sub Registrar's office, taking the testatrix who had suffered a hip fracture in an autorickshaw to the Sub Registrar's office. All the observations made by both the courts below are based on sound principles of law and after analysing the oral and documentary evidence adduced on both sides. Therefore, I do not see any reason to interfere with the same. Thus, the substantial questions of law are answered against the appellants.

26. In the result,

- 1) The second appeal is dismissed. No costs. Consequently connected miscellaneous petitions are closed.
- 2) The decree and judgment dated 20.06.2011 passed in A.S. No.46 of 2010, on the file of the Principal Subordinate Judge, Thiruvannamalai, and the decree and judgment dated 02.08.2010 passed in O.S. No.520 of 2004, on the file of the Principal District Munsif, Thiruvannamalai, are upheld.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge,
Thiruvannamalai.
2. The Principal District Munsif,
Thiruvannamalai.

+1cc to M/s.G.Sumitra, Advocate, S.R.No.28090

S.A.No.1199 of 2011
and M.P.No.1 of 2011 &
C.M.P.No.18063 of 2021

NK(CO)
RLP(23/06/2022)