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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.410 of 2012
and
MP No.1 of 2012

1. Palanisamy

2. Valliammal

...Appellants/Defendant
1,2 in Trial Court

Vs.

1. Valliathal

2. P.N.Palanisamy

3. Periyasamy

4. Rukumani

5. Chandra

...Respondents/Plaintiff and
Defendant 3 to 6 in Trial Court

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree passed in A.S.No.19 of 2011 dated 08.11.2011 on the file of Subordinate Judge of Dharapuram confirming the judgment and decree passed in OS No.81 of 2004 on the file of District Munsif Court, Kangayam dated 21.01.2011.

For Appellants : Mr.V.Raghunathan
for M/s. S.Dhanasekaran

For Respondents : Mr.S.Saravanan, for R1
R2 Died (Steps not taken)
RR 3 and 5 No appearance

JUDGMENT

The defendants 1 and 2 are the appellants in the Second Appeal.



2. The first respondent/plaintiff filed the suit seeking for the relief of partition and for allotment of 2/8th share in the first item of the suit property and half share in the second item of the suit property.

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3. The case of the plaintiff is that the first item of the suit property jointly belonged to the father of the plaintiff namely Chennimalai Gounder and the father of the third defendant namely Nachimuthu Gounder. According to the plaintiff, both of them died intestate leaving behind their respective legal heirs. Insofar as Chennimalai Gounder is concerned, he left behind the plaintiff and the first defendant as his legal heirs. The other defendants are the legal heirs of the said Nachimuthu Gounder. It is stated that the plaintiff was seeking for partition of the suit properties and the same was evaded and hence the plaintiff proceeded to file the suit claiming for the relief of partition.

4. The defendants took a specific stand that a Will was executed by Chennimalai Gounder in the name of the first and second defendants and they claimed for absolute ownership over the suit property.

5. Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, concurrently found that the defendants have not properly proved the Will and the Courts below found that the plaintiff is entitled for the share claimed by her. Aggrieved by the same, the present Second Appeal has been filed before this Court.

6. Heard Mr. V. Raghunathan, learned counsel appearing for the appellant and carefully perused the materials available on record and also the judgments of both the Courts below.

7. The learned counsel for the appellants submitted that Ex. B7 which is the Will that was relied upon by the defendants was sufficiently proved by examining D.W.2 and both the Courts below went wrong in disbelieving the said Will. The learned counsel further submitted that Exs. B7, B9 and B10 clearly established that the defendants are entitled to the suit property and they are in possession and enjoyment of the same and that the plaintiff is not entitled for any share in the suit property.

8. The learned counsel further submitted that both the Courts below gave undue importance to some minor discrepancies that were found in the evidence of D.W.2 and rejected the entire Will without taking into consideration the fact that the attester of the Will was examined before the Court after nearly 11 years from the date of execution of the Will. The learned counsel



therefore submitted that the findings of both the Courts below warrant the interference of this Court.

9. In the considered view of this Court, this Court exercising its jurisdiction under Section 100 of the Code of Civil Procedure cannot undertake the process of re-appreciation of evidence. The scope of interference under Section 100 of the Code of Civil Procedure is only to see if the findings rendered by both the Courts below is perverse and is not in conformity with the available evidence on record. Based on the same materials, even if this Court is able to come to a different finding, that cannot be a ground for interference under Section 100 of the Code of Civil Procedure. The law on this issue is too well settled.

10. In the present case, both the Courts below have independently assessed Ex.B7 Will along with the evidence of D.W.2 and both the Courts were not satisfied with the genuineness of the Will and the suspicious circumstances that surrounded the execution of the Will. The Courts below on assessment of the evidence, found that the Will was not true. This Court is not able to find any perversity in the said findings. In view of the same, if the case that was projected by the defendants based on the Will gets rejected, the consequence will be that the plaintiff will be entitled for the share in the suit properties.

11. In the light of the above discussion, this Court does not find any ground to interfere with the judgments of both the Courts below and in any case no substantial question of law is involved in the present Second Appeal.

12. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv



To

1. The Subordinate Judge,
Dharapuram

2. The District Munsif Court,
Kangayam.

Copy To

The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.V.Regunathan, Advocate, S.R.No.11340

+1cc to M/s.S.Saravanan, Advocate, S.R.No.11035

Second Appeal No.410 of 2012
and
MP No.1 of 2012

NK (CO)
RGA (25/04/2022)