



S.A.No.670 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.670 of 2022
and
C.M.P.No.13392 of 2022

N.Thillayarkarasi

...1st Defendant/Appellant
/Appellant

Vs.

A.Subramani (died)

1.A.M.Desingh

... 2nd Defendant/2nd Respondent
/1st Respondent

2.S.Jeya

3.G.S.Monika

4.S.Hemapriya

5.S.Vignesh

... LR's of Plaintiff/Respondents 2 to 6
/Respondents 1 to 5

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 22.03.2021 in A.S.No.15 of 2016 on the file of the learned Subordinate Judge, Tirupattur, confirming the Judgment and Decree dated in O.S.No.87 of 2007 on the file of the learned Principal District Munsif, Tirupattur, Vellore District.



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S.A.No.670 of 2022

For Appellant : Mr.Muthappan

JUDGMENT

The 1st defendant is the appellant before this Court. The challenge is to the Judgment and Decree in A.S.No.15 of 2016 on the file of the learned Subordinate Judge, Tirupattur, Vellore District, in and by which the Judgment and Decree passed in O.S.No.87 of 2007 by the learned Principal District Munsif, Tirupattur, Vellore District, had been confirmed. The parties are referred to in the same rank and array as before the trial Court.

2.The brief resume of the facts that has been culminated in filing of the present appeal is narrated herein below:

The case of the plaintiff is that he had married to one Manohari in the year 1978 and that at that point of time, she was working in the Government Hospital. The 1st item of the property was purchased on 30.03.1994 in the name of Manohari and it was the plaintiff who had



contributed for the purchase. Likewise, the 2nd item of the property was purchased on 05.09.2001 by the plaintiff out of his own income from one Chinnayan and others in the name of Manohari. The case of the plaintiff is that from the year 1996, she was a chronic diabetic and taking treatment. She suffered renal failure for which she has taken treatment. She was admitted in the Billroth Hospital and thereafter, was taking treatment at M.V.Hospital. The said Manohari had submitted a letter to the Sub Treasury Officer, indicating that all her death benefits and her pensionary benefits should go to her husband. The Sub Treasury Officer has accepted the same and passed an order on 27.10.2006. The said Manohari once again fell ill on 22.11.2006 and she was admitted to the Government Hospital, Tirupattur, wherein she breathed her last. It is the case of the plaintiff that he has been taking care of late Manohari and has been spent huge amounts for her treatment. Being her sole surviving legal heir he was entitled to all her assets and death benefits. However, the defendants who have no right to the property attempted to trespass into the suit properties on 18.03.2007, thereby, constraining the plaintiff to file the above suit.



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S.A.No.670 of 2022

3.The 1st defendant has contended that the allegations contained in the Plaint were totally false. The 1st defendant had admitted that the plaintiff was the husband of Manohari. She would contend that the properties were purchased by Manohari from out of her income. The plaintiff has not contributed to anything for the purchase. The 1st defendant is none else than the sister of the Late Manohari and she was taking care of her sister. The 1st defendant would submit that the said Manohari had retired as a Nursing Superintendent and the plaintiff had studied Law only out of income earned by Manohari. It is her case that on 12.10.2006, the said Manohari had executed a Will in favour of the 1st defendant at Billroth Hospital when she was admitted for her treatment. After her death, the entire suit properties devolved on the 1st defendant as per the Will. It is also the contention of the 1st defendant that the plaintiff has married one Jaya on 17.04.1986 and has been neglecting Manohari and it was the 1st defendant who was taking care of the deceased Manohari and therefore, she sought for dismissal of the suit.



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S.A.No.670 of 2022

4.The 2nd defendant had filed a Written Statement denying the contents of the Plaint. The contention of the 2nd defendant was that the the 1st defendant had mortgaged the suit property in his favour for a sum of Rs.10,000/- on 30.11.2006 and the 1st defendant had never attempted to trespass into the suit properties.

5.Based on the pleadings, the learned Principal District Munsif, Tirupattur, Vellore District, had framed issues which was recast as follows:

“(1)Whether the suit properties were purchased by the plaintiff out of his own income, in the name of his wife as benami?

(2)Whether Manohari had executed a Will in favour of the 1st defendant with respect to the suit properties?



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S.A.No.670 of 2022

(3)Whether the Will alleged to have been executed by Manohari is sham and nominal document as claimed by the plaintiff?

(4)Whether the plaintiff has valid title, possession and enjoyment over the suit property?

(5)Whether the defendants interfered with plaintiff's possession?

(6)Whether the plaintiff is entitled to the declaration and injunction sought for?

(7)To what other relief?”

6.The plaintiff examined himself as PW1 and one Goundappan and one Ganesan as PW2 and PW3. Ex.A.1 to Ex.A.31 were marked on the side of the plaintiff. The 1st defendant had examined herself as DW1 and marked Ex.B.1 to Ex.B.5 and one Natesan was examined as DW2 and Ex.B6 were marked through him. Likewise, Ms.Bhuvaneswari, Sub Registrar, Anna Nagar, Chennai,and



Ms.Sivapriya, District Registrar (Audit), South Chennai, have been examined as DW3 and DW4, respectively, and Ex.X1 to Ex.X4 were marked through them. Dr.Rajendran and Ms.Vijaya have been examined as DW5 and DW6, respectively.

7.The learned Principal District Munsif, after considering the evidence on record held Issue No.1 against the plaintiff by stating that all the properties were self acquired properties of Manohari and that the 1st defendant was her legal representative. However, the plaintiff as the legal representative was entitled to the properties since the defendants were unable to establish the Will in the manner known to Law. Ultimately, the suit was decreed and challenging the same, the 2nd defendant had preferred A.S.No.15 of 2016 on the file of the learned Subordinate Judge, Tirupattur, Vellore District. The learned Judge on considering the evidence on record had dismissed the appeal. Challenging the concurrent Judgment and Decree, the appellant is before this Court.



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S.A.No.670 of 2022

8. Heard the learned counsel appearing for the appellant and perused the papers.

9. The case of the plaintiff is that the properties were purchased in the name of the deceased Manohari using his income and that he being her husband was her only legal representative. Since she had died intestate the plaintiff is being the husband of Manohari was entitled to her properties. The defendant has admitted the above fact of the plaintiff being Manohari's husband. The only defence of the 1st defendant is that the deceased Manohari has executed a Will dated 12.10.2006 in favour of the 1st defendant bequeathing all her properties upon her. However, the 1st defendant has not been able to prove the Will in the manner known to Law. None of the attesting witnesses have been examined and it is only the father and the mother of the 1st defendant, who are interested witnesses, who have been examined on the side of the 1st defendant. Therefore, there is no compliance of



S.A.No.670 of 2022

Section 63 (c) of the Indian Succession Act as well as Section 68 of the Indian Evidence Act. It is only the identifying witness who has been examined to prove the Will. Both the Courts below extensively considered the evidence on record had decreed the suit. Further, the Second Appeal does not give rise any substantial question of law . Therefore, I see no reason to interfere with the concurrent Judgment and Decree of the Courts below.

This Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.08.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The Subordinate Judge,
Tirupattur.

2.The Principal District Munsif,
Tirupattur.

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S.A.No.670 of 2022

P.T. ASHA, J,

mps

S.A.No.670 of 2022
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23.08.2022