



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.1048 of 2015

Jayakumar

...Appellant/Plaintiff/ Appellant

Vs.

Saroja

..Respondent/Defendant/Respondent

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree in A.S.No.12 of 2014 on the file of the Additional District and Sessions Court, Hosur, dated 12.02.2015 in confirming the judgement and decree in O.S.No.32 of 2012 on the file of the Sub Court, Hosur dated 25.04.2014.

For Appellant : Mr.M.Sathiavel

For Respondent : Mr.V.Nicholas

JUDGMENT

The plaintiff is the appellant in this second appeal.

2. The case of the plaintiff is that the suit property and other properties originally belonged to one Doorvasan Chettiyar and he had three sons. He died intestate and the property was inherited by his three sons. The suit property fell to the share of one of his son Krishna Chetty. He died on 31.10.2006 leaving behind the plaintiff and the defendant as his legal heirs. The further case of the plaintiff is that he had executed a Will on 26.05.2006 and as per this Will, the plaintiff is entitled to succeed to the property. Accordingly, the plaintiff is enjoying the property and is also paying the kist and other revenue assessments in the name of his father. It is further stated that the defendant was married and was provided adequately and she had relinquished her share. The grievance of the plaintiff is that the defendant unauthorizedly entered into the property with a surveyor and forcibly attempted to take possession of the property. Hence, the suit was filed



claiming for the relief of declaration of title and for permanent injunction.

3. The case of the defendant is that the said Krishna Chetty had executed a registered Will dated 16.06.2003 and thereby, he bequeathed the suit property in favour of his grand children viz., the daughter of the defendant and the son of the plaintiff. It is further stated that after the demise of Krishna Chetty, the Will came into force and the patta was also mutated in the names of the beneficiaries of the Will and a joint patta was also issued in Patta No.51 and 56. The defendant therefore sought for the dismissal of the suit.

4. Both the Courts below on considering the oral and documentary evidence and the facts and circumstances of the case, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed the Second Appeal.

5. Heard the learned counsel for the appellant and this Court has carefully perused the materials available on record and also the findings of both the Courts below.

6. In the present case, both the sides have marked the Will as Ex.A1 and B2 respectively. Ex.B2 Will was executed on 16.06.2003 and it was a registered Will. Ex.A1 Will was executed on 26.05.2006 and the said Krishna Chetty died on 31.10.2006.

7. Both the Courts below carefully analyzed the oral and documentary evidence and the circumstances surrounding the execution of the Will. The Courts found that the circumstances surrounding the Will marked as Ex.A1 created a suspicion since unusually the signature of the propounder of the Will was found in tamil and whereas, he always used to sign in english. That apart, there was absolutely no mention about the first Will marked as Ex.B2 in the Will that was executed and marked as Ex.A1 and through this Will, the benefit was absolutely given to the plaintiff and the benefit that was given through the earlier Will to the grand children was taken away without assigning any reasons. That apart, the propounder of the Will also died within five months from the execution of Ex.A1 Will. Both the Courts below have carefully analyzed the suspicious circumstances surrounding the Ex.A1-Will and found that the said Will is unenforceable. Ex.B2 will was held to be valid.



8. In the considered view of this Court, there is absolutely no ground to interfere with the findings of both the Courts below. This Court does not find any perversity in those findings warranting interference. In any event, no substantial question of law is involved in this second appeal.

9. In the result, this Second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Hosur

2.The Subordinate Judge
Hosur

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+2 Ccs to Mr.V.Nicholas, Advocate sr 16188, 16837.

SA.No.1048 of 2015

VGII (CO)
SP(11/05/2022)