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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.Nos.1045 of 2013 and 107 of 2014
and
M.P.Nos.1 and 2 of 2013

S.A.No.1045 of 2013:

1.C.Rukmani
2.Sridha

... Appellants/Defendants 3 & 5

Vs.

1.Marathal
2.Muthusanjeevi
3.Pushpa
4.Kannammal
5.Kumutha

... 1st Respondent/Plaintiff

... Respondents/Defendants 4,6,7,8

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 07.01.2013 made in A.S.No.12 of 2009 on the file of the Subordinate Court, Tiruppur, confirming the judgment and decree made in O.S.No.682 of 2004 on the file of District Munsif Court, Tiruppur.

For Appellants : Mr.K.Mohanamurali

For Respondents : Mr.N.S.Sivakumar for R3
Mr.K.Vignesh Karthik for R4 and R5

R1 - Died

R2 - Not ready in Notice

S.A.No.107 of 2014:

1.Kannammal
2.Kumutha

... Appellants/Defendants 7 & 8

Vs.

1.Marathal
2.Rukmani
3.Muthu Sanjeevi
4.Sridhar
5.Pushpa

... 1st Respondent/Plaintiff

... Respondents/Respondents 3 to 6

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 07.01.2013 made in A.S.No.1 of 2009 on the file of the Subordinate Court, Tiruppur, confirming the judgment and decree dated 20.08.2008 made in O.S.No.682 of



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2004 on the file of District Munsif Court, Tiruppur.

For Appellants : Mr.K.Vignesh Karthick

For Respondents : Mr.K.Mohanamurali for R2 and R4
Mr.N.S.Sivakumar for R5

R1 - Died

R2 - No Appearance

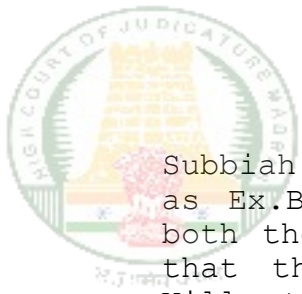
J U D G M E N T

These Second Appeals have been filed by defendants 3 and 5 and 7 and 8.

2. The 1st respondent/ plaintiff filed a suit before the Court below seeking for the relief of partition and for allotment of 1/2 share in the suit property. The plaintiff based her entire case on a registered Will dated 26.08.1996, marked as Ex.A3. The defence taken by the contesting defendants is that the original owner Subbiah Gounder subsequently executed three registered Wills dated 25.06.1999, marked as Exs.B8 to B10 and according to the defendants, by virtue of these Wills the earlier Will dated 26.08.1996 was automatically cancelled. Therefore, according to the defendants, the subsequent Will only gave a life estate to the plaintiff and her mother and vested remainder was given to the sons of late Subbiah Gounder. The contesting defendants therefore sought for the dismissal of the suit.

3. Both the Courts below on considering the facts and circumstances of the case and after marshalling the oral and documentary evidence, found that the subsequent Wills came to be executed under suspicious circumstances and the same has not been properly proved by examining the witness and hence both the Courts below concurrently upheld the Will dated 26.08.1996 and granted the relief as sought for by the plaintiff and passed a preliminary decree. Aggrieved by the judgment of the trial Court, two appeals came to be filed in A.S.No.1 of 2009 and A.S.No.12 of 2009 by the defendants 3 and 5 and 7 and 8. Both the appeals were dismissed and the judgment of the trial Court was confirmed. Aggrieved by the same, the present Second Appeals have been filed before this Court.

4. The learned counsel appearing on behalf of the appellants submitted that Ex.A3 Will was duly cancelled by



Subbiah Gounder by virtue of subsequent Wills which were marked as Ex.B8 to B10 and the same was not properly appreciated by both the Courts below. In order to substantiate the contention that the subsequent Will automatically cancelled the earlier Will, the learned counsel relied upon Section 70 of the Indian Succession Act and also relied upon the judgment of the Hon'ble Supreme Court in Mahesh Kumar (Dead) by Lrs Vs. Vinod Kumar and others reported in 2012 (4) SCC 387. The learned counsel further submitted that Ex.B8 to B10 are registered Wills and that by itself gave an authenticity to those Wills and hence those Wills ought not to have been rejected by merely citing some suspicious circumstances. The learned counsel therefore submitted that the judgments of both the Courts below warrants interference of this Court.

5. This Court carefully considered the submissions made by the learned counsel for the appellants and also perused the findings of both the Courts below.

6. On a careful reading of the judgments passed by both the Courts below, it can be seen that Ex.A3 was analysed with the help of the evidence of PW3 who was the attesting witness. Insofar as Ex.B8 to B10 are concerned, the same was analysed with the evidence of DW3 to DW5. Both the Courts below elaborately assessed each and every suspicious circumstance and came to a categoric conclusion that Ex.B8 to B10 is shrouded in mystery and it has not been proved beyond suspicion. The appellate Court in fact took the pains of analysing each and every suspicious circumstance and also took into consideration the evidence of PW3 and DW3 to DW5 and came to the conclusion that the earlier Will dated 26.08.1996 alone can be acted upon. The lower appellate Court analysed each and every finding of the trial Court and proceeded to concur with the findings of the trial Court.

7. In the considered view of this Court, the jurisdiction vested under Section 100 of the Code of Civil Procedure cannot be used to re-appreciate the evidence. At the best, this Court can only see if the finding rendered by both the Courts below is perverse and is not in line with the evidence available on record. This Court does not find any perversity in the findings of both the Courts below. The findings are based on the evidence available on record. In any event, this Court does not find any substantial question of law involved in both the Second Appeals.

8. In the result, both the Second Appeals are dismissed. Considering the facts and circumstances of the case, there shall



be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

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

Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to Mr.K.Mohanamurali, Advocate, S.R.Nos.12275, 12810

+2ccs to Mr.N.S.Sivakumar, Advocate, S.R.Nos.12202, 12203

S.A.Nos.1045 of 2013 and 107 of 2014

BS (CO)
SU(30/03/2022)