



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.469 of 2022
and
C.M.P.No.9560 of 2022

Thirumoorthy

... Appellant

Vs.

1.Palaniammal
2.Subbulakshmi

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 17.11.2021 passed in A.S.No.51 of 2019 on the file of the Principal District Court, Tiruppur confirming the Judgment and Decree dated 15.02.2019 passed in O.S.No.484 of 2016 on the file of the Sub Court, Avinashi.

For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.C.S.Saravanan
Caveator for R1



J U D G M E N T

WEB COPY The second defendant in the suit O.S.No.484 of 2016 on the file of the Sub Judge, Avinashi is before this Court challenging the concurrent Judgments and Decrees against him.

2. The parties are referred to in the same rank as before the Trial Court.

3. The brief facts are as follows:

The plaintiff had filed the above referred suit for partition and permanent injunction in respect of the suit scheduled properties. It is her case that she and the defendants are siblings and she is the elder sister. They are the son and daughters of one Avinashi Gounder. The suit properties are the ancestral properties by virtue of Partition Deed dated 05.10.1959. Under this partition, “A” schedule property was allotted to Avinashi Gounder. He died intestate leaving behind his wife Karunaiammal, plaintiff and defendants and each were entitled 1/4th share in the suit schedule properties.



4. The plaintiff would further contend that she and the defendants have together sold a portion of the properties i.e., 62 cents to third parties and the remaining portion is kept available for partition. After their mother's death, her 1/4th share also devolved upon the plaintiff and the defendants and each entitled for 1/3rd share in the suit scheduled properties.

5. The plaintiff would submit that despite her repeated requests to partition the properties, the same was not heeded to by the defendants. In fact, the second defendant threatened her to execute a release deed in his favour. The plaintiff refused the same and since the defendants were taking steps to encumber the properties, the plaintiff has been constrained to file the suit for partition and separate possession.

6. The first defendant, who is the sister of the plaintiff also supported the case of the plaintiff and she would also pray for a decree of partition.

7. The second defendant, who is the contesting defendant had filed a written statement *inter-alia* denying the allegations of the plaintiff and first defendant and contending that Avinashi Gounder, prior to his death on



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18.01.1979 had executed an unregistered Will in favour of the second defendant out of his free will and in a sound disposing state of mind. On the death of Avinashi Gounder on 30.10.1979, the Will had come into effect. He would submit that he alone had sold the properties to third parties. Since the purchasers have insisted upon the signature of the plaintiff and the first defendant, the same was obtained though they had no right to the said properties. The second defendant further contended that the Will was made public on the 16th day of the death of their father. Therefore, he would deny the right of the plaintiff and the first defendant to a share in the properties.

8. Before the Trial Court, the plaintiff had examined herself as P.W.1 and one A.Palanisamy as P.W.2 and marked Exs.A1 to A4. The first defendant examined herself as D.W.1 and the second defendant as D.W.2. D.W.3 to D.W.5 were also examined on their side and Exs.B1 to B24 were marked.

9. The learned Subordinate Judge had framed the following issues:

(i) Whether the plaintiff is entitled to preliminary decree of partition of 1/3rd share in the suit property?



(ii) Whether the 2nd defendant is the absolute owner of the property by virtue of Will dated 18.01.1979?

(iii) To what other reliefs?

10. Ultimately, the learned Judge had returned a finding that suspicion shrouded the execution of the Will, particularly when taking into consideration the fact that Exs.B2 to B6 which are Sale Deeds executed much after coming into force of the Will do not refer to the Will but the properties are referred as a joint family property and these documents have been executed by the plaintiff and the defendants along with their mother. Therefore, the learned Judge had held that the Will dated 18.01.1979 is shrouded in suspicion and not established. Since the properties are ancestral properties, partition was granted. This order was taken up on Appeal by the second defendant before the Principal District Judge, Tiruppur.

11. The Principal District Judge, Tiruppur, by his Judgment and Decree dated 17.11.2021, confirmed the Judgment and Decree of the Trial Court. The learned Judge upheld the findings of the Court below. Challenging this concurrent Judgments and Decrees, the Appellant/ second



defendant is before this Court.

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12. The plaintiff has entered caveat through counsel. Heard the learned counsels appearing on either side and perused the materials available on record.

13. The Appellant / second defendant seeks to deny the plaintiff a right to the properties on the ground that Avinashi Gounder had executed a Will in his favour on 18.01.1979. The lower Courts have considered the signature of Avinashi Gounder in the earlier Partition Deed (Ex.B8) in which his thumb impression is also obtained. The signature in Ex.B7 was also compared and the Courts found that the signatures in Ex.B7 and Ex.B8 tallied. However, signature in Ex.B20, when compared with the signatures in Ex.B7 and Ex.B8, was totally different. The learned Judge has observed that the signatures in Exs.B7 and B8 appear to be that of an illiterate person whereas the signature in Ex.B20 was of a literate person. The learned Judge has further observed that D.W.3 to D.W.5 have spoken about the signature of the attesting witnesses and the scribe but nobody has spoken about the testator's signatures as well as the disposing state of mind of the testator on the date of the execution of the document. In addition to the above, it is also



to be seen that over a period of time from 1984 to 1995, under five Sale Deeds, portions of the suit properties have been sold to different persons, these Sale Deeds have been executed by the plaintiff, the defendants and their mother jointly. The Sale Deeds describe the properties as a joint family properties. All these Deeds have been come into existence after the alleged Will. There is no explanation as to how the signature of the plaintiff and the first defendant had been obtained if the properties have been bequeathed on the second defendant under the Will. Therefore, suspicious circumstances held by the Courts below appear to be in tune with the exhibits and the Appellant has not been able to establish any ground for overturning these findings. No substantial question of law is also made out.

14. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

21.06.2022

Index : Yes/No
Speaking Order : Yes / No
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To

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1. The Principal District Court, Tiruppur.
2. The Sub Court, Avinashi.
3. The Section Officer,
VR Section, Madras High Court,
Chennai.



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P.T. ASHA, J.

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