



S.A.No.886 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.886 of 2022

1.Tmt. Saroja
2.Ms.Yamuna Devi
3.Ms.N.Nandhini
4.Ms.N.Jeevananthi

...Appellants

Vs

Tmt.V.Nallammal

... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam made in A.S.No.16 of 2019 dated 22.09.2020 confirming the Judgment and Decree made by Sub-Ordinate Judge, Gobichettipalayam in O.S.No.32 of 2010 dated 10.12.2018.

For Appellants : Mr.R.N.Amarnath



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JUDGEMENT

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The defendants are the appellants before this Court challenging the judgment and decree in A.S.No.16 of 2019 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam, confirming the judgment and decree in O.S.No.32 of 2010 on the file of the Subordinate Judge, Gobichettipalayam.

2. The facts in brief is herein below narrated and the parties being referred to in the same ranking as before the Trial Court.

3. It is the case that the plaintiff had filed a suit claiming partition and separate possession of their 4/8 share in the suit schedule property. It is the case of the plaintiff that she and one Nallasamy are the children of Arumuga Gounder and Marayal. Arumuga Gounder and 11 others had jointly purchased the properties. On 26.07.1969 there was a registered partition between themselves in respect of the property, in which, the schedule "A" property comprising 10 Acres was allotted to the father of the plaintiff



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Arumuga Gounder. On 06.11.1975, Arumuga Gounder had settled an extent of 2 acre to the plaintiff under a settlement deed. The remaining 8 acres remained with Arumuga Gounder who died intestate on 17.05.1984. His wife Marayal died on 09.10.1995. Therefore, the plaintiff and her brother Nallasamy became jointly entitled to the extent of 8 acres in S.F.No.35/1A1 Akkarai Kodiveri Village, Gobichettipalayam. the plaintiff's brother Nallasamy died on 25.09.2002, leaving behind him surviving the defendants as his legal representatives. The plaintiff is entitled to a $\frac{4}{8}^{\text{th}}$ share and the defendants are each entitled to a $\frac{1}{8}^{\text{th}}$ share.

4. It is the case of the plaintiff that when the brother of the plaintiff Nallasamy was alive, he was cultivating the land till 2009. Apparently, he had instigated the 1st defendant to transfer all the revenue records in his favour. The plaintiff had sought for partition on 10.01.2010 and therefore legal notice was issued on 08.04.2010. To this, the defendants had sent a reply on 12.04.2010 contending false allegations. Therefore, the suit.



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5. The defendants had filed written statement *inter-alia* admitting the relationship between the parties and the fact that the partition was entered in to on 26.07.1969 and the settlement deed dated 06.11.1975. However, the defendant would contend that Arumuga Gounder did not die intestate but had executed a Will in favour of his son Nallasamy in and by which he was given an interest for his life time and thereafter, the property was to devolve on his legal representatives. Accordingly, Nallasamy enjoyed the suit property till 25.09.2002. After his life time, the defendants took possession of the suit property, paying tax to the Government and enjoying the same without any interruption and the revenue records has been in the name of the defendants. The plaintiff had no right, title or interest to the suit property.

6. On considering the pleadings, the learned Subordinate Judge, Gobichettipalayam, had framed the following issues:

1. Whether the plaintiff is entitled for Partition and Separate Possession as prayed for?



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2. Whether the plaintiff is entitled for Permanent Injunction as prayed for?

3. To what other reliefs?

7. Before the Trial Court, the plaintiff had examined herself as PW1 and marked Exs.A1 to A8. On the side of the defendants, the 1st defendant had examined herself as DW1 and also examined six other witnesses and marked Exs.B1 to B8. Exs.C1 to C3 were marked as Court Exhibits.

8. On considering the evidence, the learned Subordinate Judge had decreed the suit as prayed for. Challenging the same, the defendants had filed A.S.No.16 of 2019 on the file of the III Additional District and Sessions Judge, Erode.

9. The learned Appellate Judge by judgment and decree dated 22.09.2020 was pleased to dismiss the appeal and confirmed the judgment and decree of the Trial Court.



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10. The learned Judge has taken into account the discrepancies in the evidence of the defendants' side witnesses with reference to the Will. The learned Judge had agreed with the findings of the trial Court that the execution of the Will has not been satisfactorily proved by the defendants. The learned Judge has held that execution of the Will is shrouded in suspicious circumstances and therefore, once the Will is not proved then the succession to the property would be an intestate succession and therefore, the suit has to be decreed. Challenging the said judgment and decree, the defendants are before this Court.

11. Heard the learned counsel for the appellants.

12. The only issue for consideration is whether the Will which has been marked as Ex.B5 has been executed by the said Arumuga Gounder and the same has been executed in sound and disposing state of mind. The plaintiff's case is that Arumuga Gounder was bed ridden two years prior to his death. Therefore, the chances of his going to Advocate Office for



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preparing the Will is rather remote. PW2, in his cross examination has himself admitted that the said Arumuga Gounder could have been bed ridden for over two years. He has in respect of a question regarding the above answered as follows:

"ஆறுமுக கவுண்டர் கை கால் வராமல் சுமார் எத்தனை வருடம் படுத்திருந்தார் என்றால் அதுபற்றி எனக்கு தெரியாது. சுமார் 2 வருடங்கள் அவ்வாறு படுத்திருப்பாரா? என்றால் அதற்கு மேலும் இருக்கும்."

13. It is also seen that under the Will only a life interest has been given to Nallasamy and it is not shown that Nallasamy and his father were at loggerheads or that Nallasamy was a man of weak morals. Therefore, bequeathing of only life interest in favour of Nallasamy appears to be one of the suspicious circumstances. The Will also does not make any provision for the wife of the testator. This also constitutes a suspicious circumstance.



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14. The Courts below has also found the active involvement of the 1st defendant in execution of the Will since the Advocate who has prepared the Will is the Advocate of her brother for a very long period. That apart, PW2 is also closely associated with the 1st defendant but had come into contact with the testator only at the time of marriage of Nallasamy with the 1st defendant. There is a discrepancy between the evidence of PW2, PW3 and PW4 with reference to the execution and attestation of the Will Ex.P5. The trial Court has carefully considered and rendered the finding holding that the Will is not proved in the manner known to law and is shrouded in suspicious circumstances and this finding is being confirmed by the Appellate Court. Therefore, this Court sitting in the Second Appeal has a very limited role and the appellants have not been able to show that the findings of the Courts below are perverse or contrary to the records and they have not made out any substantial questions of law arising in the above second appeal.



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15. In the result, this Second Appeal is dismissed and the Judgement and Decree of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam made in A.S.No.16 of 2019 dated 22.09.2020 confirming the Judgment and Decree made by Sub-Ordinate Judge, Gobichettipalayam in O.S.No.32 of 2010 dated 10.12.2018 is confirmed.

No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssn

To

1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
2. The Sub-Ordinate Judge,
Gobichettipalayam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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P.T.ASHA, J.,

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