



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

S.A.No.757 of 2016

1.Anbhazhgan
S/o.Sundaram

2.Selvakumar
S/o.Sundaram

... Appellants/Respondents/Plaintiffs

..Vs..

1. Thangamani
W/o. (late) Chandramohan

2. Vaijayanthi
W/o.Rajamanikam

... Respondents/Appellants/ Defendants

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed by the learned Principal Subordinate Judge of Salem on 22.01.2016 in A.S.No.56 of 2015 reversing the judgment and decree passed by the I Additional District Munsif of Salem on 8/10/2014 in O.S.No.1154 of 2008.

For Appellants : Mr.S.Balasubramanian

For Respondents : Mr.T.M.Harharan
for R 1, R 2

JUDGMENT

The plaintiffs are the appellants. The plaintiffs filed a suit seeking for the relief of declaration and permanent injunction based on a Will dated 19.06.1996. According to the plaintiffs, the suit property was originally owned by one Sreenivasa Chettiar, who is the father of the defendants. The said Sreenivasa Chettiar gave both his daughters on marriage and he and his wife were taken care by the plaintiffs who are none other than the sons of the younger brother of the said Sreenivasa Chettiar. Considering the help rendered by the plaintiffs, the said Sreenivasa Chettiar is said to have executed a Will dated 19.06.1996 in favour of the plaintiffs and



thereby had bequeathed the suit property in their favour. According to the plaintiffs, the said Sreenivasa Chettiar died on 15.04.1997 and thereafter the Will started operating in favour of the plaintiffs. However, the defendants started claiming right over the property and were not willing to act upon the Will that was executed in favour of the plaintiffs. Left with no other alternative, the suit came to be filed by the plaintiffs seeking for the relief of declaration and permanent injunction.

2.The defendants have denied the factum of the execution of Will dated 19.06.1996 by their father Sreenivasa Chettiar in favour of the plaintiffs. The defendants have taken a categorical stand that the plaintiffs are attempting to knock of a valuable property by means of a fabricated and forged Will and hence they have sought for the dismissal of the suit.

3.The Trial Court on appreciation of the facts and circumstances of the case and oral and documentary evidence, decreed the suit as prayed for. Aggrieved by the same, the defendants filed an appeal before the Lower Appellate Court and the appeal was allowed by judgment and decree dated 22.01.2016. The plaintiffs aggrieved by the judgment of the lower Appellate Court have preferred the present Second Appeal.

4.This Court heard the learned counsel appearing on either side and carefully went through the findings rendered by the Lower Appellate Court.

5.The source of the right for the plaintiffs is the Will dated 19.06.1996 which is said to have been executed in their favour by the father of the defendants viz., Sreenivasa Chettiar. The Indian Evidence Act, mandates the Will to be proved in accordance with Section 68 of the Indian Evidence Act. Unless the Will is proved in line with the requirements of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, the same cannot be taken into consideration. The provision mandates the Will to be proved through attesting witness. In the present case, the attesting witnesses are said to be the respective husbands of the defendants. According the plaintiffs, the husband of the 1st defendant had expired and hence the husband of the 2nd defendant was examined as PW-4. Unfortunately this witness made a statement to the effect that the signature found in the Will as a attesting witness is not his signature. A further statement is made by PW-4 to the effect that he did not see Sreenivasa Chettiar signing the Will in his presence.

6.It is also seen from evidence that the scribe of the Will was examined as PW-3. He has stated that the Will was prepared on the request made by Sreenivasa Chettiar and two attesting



witnesses. However, this witness has stated that he did not see Sreenivasa Chettiar signing the Will.

7. It is therefore clear from the evidence of PW-3 and PW-4 that there was no witness who had spoken about Sreenivasa Chettiar subscribing his signature to the Will. Even though PW-3 had stated that the Will was prepared on the request made by Sreenivasa Chettiar, he cannot be taken to be an attesting witness as defined under Section 3 of the Transfer of Property Act. The actual attesting witness namely PW-4 also did not support the case of the plaintiffs.

8. Even the evidence of PW-5 did not in any way satisfy the requirements for the proof of Will. This witness has further stated that only after Sreenivasa Chettiar had signed the Will, it was taken to the scribe and his signature was obtained.

9. The Lower Appellate Court has also found that even though the Will is said to have been executed in the year 1996, it was never acted upon by the plaintiffs and no steps were taken even to change the revenue records.

10. In the considered view of this Court, the Lower Appellate Court had appreciated the evidence available on record in the right perspective. This Court exercising its jurisdiction under Section 100 of CPC., cannot reappreciate evidence. This Court does not find any substantial question of law involved in the present Second Appeal. Accordingly, this Second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Principal Subordinate Court, Salem.
2. The District and Sessions Court,
Salem.
3. The Additional District Munsif Court, No-1,
Salem.



4. The Section Officer
V.R.Section, High Court, Madras.

+1cc to Mr.S.Balasubramanian, Advocate, S.R.No.7778

+1cc to Mr.T.M.Harharan, Advocate, S.R.No.8192

S.A.No.757 of 2016

RSV(CO)
CT(02/03/2022)