



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.770 of 2016
and CMP No.14477 of 2016

K.Palaniammal

...Appellant

Vs.

K.Veluchamy

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 08.01.2016, made in AS No15 of 2014 on the file of the Principal District Court, Coimbatore confirming the Judgment and Decree dated 08.10.2013 made in O.S.No.1270 of 2010, on the file of III Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.R.Krisnna Prasad
for M/s.Sarvabhauman Associates

For Respondent : Mr.P.R. Bala Subramanian

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2. The case of the plaintiff is that the suit properties are the absolute properties of her father Krishna Chetty, through Exs.A2 and A3. The said Krishna Chetty died and thereafter the plaintiff is entitled for half share in the suit properties. The further case of the plaintiff is that the defendant, who is her brother, was refusing to give any share in the property. Hence the suit came to be filed seeking for the relief of partition and for allotment of half share in the suit property.

3. The defendant filed a written statement. Insofar as the relationship between the parties and the fact that there were two Partition Deeds in favour of Krishna Chetty is concerned, it was not disputed. However, the defendant took a



stand that his father Krishna Chetty and the defendant entered into a Partition Deed dated 05.03.2003, marked as Ex.B1 whereby the 'A' Schedule Property and Item I in the 'B' Schedule Property was allotted in favour of the defendant. Even though Item II of the 'B' Schedule Property was allotted in favour of the father under the Partition Deed, this item of property was also bequeathed in favour of the defendant through a Will marked as Ex.B10. Thereby the defendant was claiming to be the absolute owner of the suit property after the demise of his father and according to the defendant, the plaintiff had no right to claim for any share in the suit properties. Accordingly, the defendant sought for the dismissal of the suit.

4. Both the Courts below after considering the oral and documentary evidence and also 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 present Second Appeal.

5. Heard Mr.R.Krisnna Prasad, learned counsel appearing for M/s.Sarvabhauman Associates for the appellant and Mr.P.R.Bala Subramanian, learned counsel appearing for the respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

6. The learned counsel appearing for the appellant focused his arguments on the suspicious circumstances surrounding the execution of the Will and the learned counsel also questioned the so called Partition Deed that was entered into by the defendant and the father. According to the learned counsel for the appellant, the following were the suspicious circumstances which were not taken into consideration by both the Courts below:

a) The defendant who was the prepounder of the Will had taken active participation in the execution of the document;

b) The father who normally puts his signature in the document had affixed his thumb impression;

c) The health condition of the father was specifically spoken to by D.W.3 and D.W.5 and it was found that his hands were shaking and he was not in a proper state of mind;

d) The Partition Deed as well as the Will were executed on the same day and registered ; and



e) No reason was assigned in the Will as to why no share was given in favour of the plaintiff who was the daughter.

7. Both the Courts below have taken into consideration the suspicious circumstances that were raised by the plaintiff/appellant and held that the execution of the Will is not vitiated due to any suspicious circumstances. In order to arrive at such a conclusion, it was held that the plaintiff was married 50 years ago and she was living in the matrimonial home. It was the defendant who was living with the father. Both the Courts also took into consideration the fact that there was absolutely no proof to show that the testator was not in a fit state of mind while executing the document. Both the Courts below held that since the father was facing a health condition whereby his hands were shivering, he had affixed his thumb impression and therefore, there was sufficient reason as to why he did not sign in the documents. That apart, the Courts below also took into consideration the fact that the testator had died nearly after 1½ years from the date of execution of the Will. Insofar as the plea raised by the plaintiff to the effect that no share was given under the Will and no reasons were given for not allotting a share, both the Courts found that the plaintiff was married 50 years before and she had already been provided sufficiently and the father wanted to take care of his only son, who was the defendant and accordingly, the non allotment of any share to the plaintiff was not taken to be a suspicious circumstance.

8. Both the Courts below also took into consideration the evidence of the witnesses and found that the plaintiff was not maintaining her father and he was living only with the son and therefore, there was sufficient reason for the father to have executed the Will in favour of the defendant. Even otherwise, the plaintiff did not take any steps to examine any witness in order to prove the health condition and the mental status of the father, if really he was suffering from any serious ailment.

9. In the considered view of this Court, the suspicious circumstances that were raised by the plaintiff has been considered by both the Courts below and a finding has been rendered by taking into consideration the oral and documentary evidence. Just because an alternative view can be taken on the very same evidence, that does not create a ground for this Court to interfere with the findings of the Courts below in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. In any case this Court does not find any perversity



in the findings of both the Courts below. No substantial questions of law are involved in the Second Appeal.

10. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv
To

1.The Principal District Judge
Coimbatore.

2.The III Additional Subordinate Judge,
Coimbatore.

3. The Section Officer
VR Section,
High Court Madras.

+1 CC to M/s.Sarvabhuman Associates, sr 20481

+1 CC to Mr.P.R.Bala Subramanian, Advocate sr 20212.

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SKM(CO)
SP(25/04/2022)