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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NOS.269, 270 AND 271 OF 2014

AND

MP NOS.1 AND 1 OF 2014

N.Natarajan

...Appellant in all Sas'/D4

VS.

1.Devirammal

...R1/Plaintiff

2.Nanjammal

3.Nagarathinam

4.Rukmani

...Respondents 1 - 4 in all Sas'/
D1 to D3

COMMON PRAYER: Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 01.08.2013 made in A.S.Nos.124 of 2012, 125 of 2012 and Cross Appeal in A.S.No.125 of 2012 respectively, on the file of Principal District Judge, Erode, reversing the judgment and decree dated 11.07.2012 made in O.S.Nos.82 of 2010, 15 of 2011 and O.S.No.15 of 2011 respectively, on the file of Subordinate Judge, Sathyamangalam.

For Appellant : Mr.R.T.Doraisamy
(in all SAs')

For Respondent-1: Mr.T.V.Krishnakumar
(in all SAs') for Mr.N.Chinnaraj

R2 to R4 : No Appearance

COMMON JUDGMENT

These Second Appeals arise out of a common judgment passed in A.S.Nos.124 and 125 of 2012 and Cross Appeal in A.S.No.125 of 2012 respectively, dated 01.08.2013 on the file of Principal District Judge, Erode.

2.The plaintiff in O.S.No.15 of 2011 and the fourth defendant in O.S.No.82 of 2010 has preferred these Second



Appeals.

3.The admitted facts are that originally, the Suit property belong to one Kemba Thiruma Gowder. After his death, his son Nanjunda Gowder inherited the properties and enjoyed the same. The said Nanjunda Gowder married one Kittnammal and got one daughter through her, namely, Devarammal, who is the plaintiff in O.S.No.82 of 2010. After the demise of his first wife Kittnammal, Nanjunda Gowder married one Devirammal, as second wife. Through the second wife, he got four children, namely, Nanjammal, Nagarathinam, Rukmani and N.Natarajan, who are the defendants in O.S.No.82 of 2010. The daughters are the defendants in both the suits. The present appellant was arrayed as fourth defendant in O.S.No.82 of 2010 and plaintiff in O.S.No.15 of 2011.

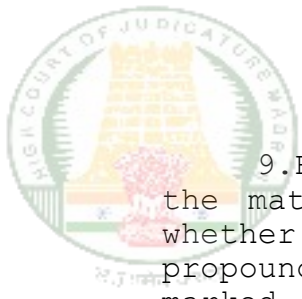
4.The said Devarammal filed a Suit in O.S.No.82 of 2010 for partition claiming 1/5th share in the suit properties, denying the WILL said to have been executed in favour of the fourth defendant, on 12.03.1984.

5.Thereafter, the son of Nanjunda Gowder, who born through his second wife, namely N.Natarajan, filed a Suit in O.S.No.15 of 2011 for declaration of title on the basis of the registered WILL dated 12.03.1984 and for permanent injunction.

6.Since the subject matter in both the Suits are one and the same, the Trial Court has conducted a joint trial and dismissed the prayer sought for in O.S.No.82 of 2010 and the decreed the Suit in O.S.No.15 of 2011. In view of the succession, the entire suit property absolutely belong to the plaintiff in O.S.No.15 of 2011 and also held that he is not entitled to succession through WILL as it was not proved to be true, valid and genuine.

7.Aggrieved over the judgment of the Trial Court, the plaintiff in O.S.No.82 of 2010, the first defendant in O.S.No.15 of 2011, filed two appeals. Aggrieved over the findings that the WILL is not a genuine one, the present appellant has preferred a Cross Appeal. All these appeals were heard together and by a common judgment, the First Appellate Court has allowed the appeal preferred by Devarammal and dismissed the Cross Appeal preferred by N.Natarajan. Thus, three Second Appeals came to be filed by the said N.Natarajan.

8.Notice of admission was ordered by this Court on 10.03.2014. The respondents entered appearance. Both sides advanced their arguments on the questions of law raised in the Memorandum of Appeals.

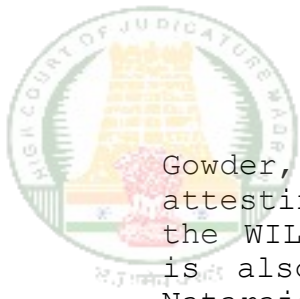


9.Both the parties made a request on 23.08.2021, to take up the matter for final hearing on the substantial issue "as to whether the Courts below are correct in holding that the propounder has not proved the voluntary execution of the WILL marked as Ex.B16 and the testamentary capacity of the testator ignoring the fact that the WILL is registered as per law".

10.Heard the submissions made on either side and perused the materials available on record.

11.The facts are admitted. Now that it has to be analysed as to whether the testator had executed the WILL in a sound and disposing state of mind voluntarily or not? The plaintiff in O.S.No.82 of 2010 Devarammal would aver that the WILL is a fraudulent one and while filing written statement in O.S.No.15 of 2011, she elaborately denied the execution of the WILL and would contend that the WILL was not acted upon. Further, the WILL raised suspicion over the sound and disposing status of mind of the testator and that the testator was not conscious and bed-ridden and therefore, it is not probable for him to execute a WILL voluntarily and on the other hand, it is a fabricated document created by his brother N.Natarajan fraudulently. In such circumstances, when a suspicion is raised over the execution of the WILL, it is the burden of the propounder of the WILL to dis-spell all suspicious circumstances.

12.In that view of the matter, the evidence of D.W.2, who deposed in favour of the propounder attracts importance. D.W.2 was the attesting witness to the WILL. During his cross examination, he would depose that the testator Nanjunda Gowder was bed-ridden for two months before his death. He visited him before one month of his death and he was lying unconscious in his bed. He would depose that his son N.Natarajan, would state that before the death of his father, they can execute a WILL and he prepared a WILL from a document writer and brought it. D.W.2 along with D.W.1 - Natarajan, the propounder of the WILL and other attesting witness Thimmaiya Gowder took the testator in a Car to the Registrar's office. He would further depose that at the time when he was carried in the Car, he was not conscious. Though he was not fully conscious, he was in a position to understand to an extent. The said Natarajan took the hand of his father and put the thumb impression in Ex.B16 - WILL for the purpose of getting clear impression. The said Nanjunda Gowder affixed his thumb impression sitting inside the Car and he has not entered the Registrar's Office. An official from the Registrar's Office brought a register and took the thumb impression from the Nanjunda Gowder who was in the Car. Natarajan paid all the fees and charges for registration of the WILL. He has not seen as to when the document writer signed in the WILL. Apart from D.W.2, none other than Natarajan, Nanjunda



Gowder, Thimmaiya Gowder, were present. He signed as an attesting witness sitting inside the Car. After registration of the WILL, the said Nanjunda Gowder died within twenty days. It is also deposed by D.W.2 that the propounder of the WILL Natarajan had not disclosed about the WILL at the time of death, funeral or obsequies to anyone.

13.The above evidence of D.W.2 would categorically show that the testator of the WILL was not fully conscious or he was semi conscious. The testator has not provided information for preparing the WILL. On the other hand, it was already prepared by the propounder of the WILL. The thumb impression was obtained while the testator was sitting inside the Car. Crucially, it was made by the propounder by taking the hand of the testator and putting his thumb impression in the document. The Sub-Registrar has not come to the Car and enquired as to whether it is voluntarily executed or not. A thumb impression was obtained by one of the Officials from the Sub-Registrar's Office in the register while the testator was sitting inside the Car. These circumstances clearly prove that the testator was not in a sound and disposing state of mind to execute the WILL. The other attesting witness was not examined before the Court. Both the Courts have elaborately discussed about the valid execution of the WILL.

14.The learned counsel for the appellant would vehemently contend that the WILL was admitted by the plaintiff Devarammal in her evidence. A reading of the deposition made during the cross examination of Devarammal reveals that she admitted the contents of the WILL which was produced to her. The evidence of P.W.1 does not admit the valid execution of the WILL, but the factual matrix for the WILL which was shown to her. Only because she met the attesting and identifying witnesses for arriving at a compromise, it would not automatically prove that the WILL was validly executed.

15.It is well settled legal proposition that the propounder shall dis-spell all the suspicious circumstances surrounding the WILL. In that view of the matter, as concurrently held by the Courts below, the appellant has not proved beyond doubt that the WILL was executed by his father in a sound and disposing status of mind and that he has voluntarily executed the same.

16.The other point raised by the learned counsel for the appellant is that the Suit is barred by limitation. The First Appellate Court has rightly discussed the issue. The revenue documents till 2009 were standing in the name of Nanjunda Gowder, the father of the parties. It was not mutated after the execution of the WILL in the year 1984. In that event, the co-owners shall be construed to be in joint possession and one of



the co-owners stood as a Trustee of the property and therefore, the Suit is not barred by limitation. By not disclosing the WILL at the time of death of the testator or during the subsequent rituals conducted or at any time thereafter, it shall be construed that the WILL was not acted upon and the finding of the First Appellate Court in this regard is based on materials and based on legal evidence. Therefore, all the questions of law are answered against the appellant.

17. In fine, all the Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Principal District Judge
Erode.
2. The Subordinate Judge
Sathyamangalam.

+1cc to Mr.R.T.doraisamy, Advocate, S.R.No.2949

+1cc to M/s.N.Chinnaraj, Advocate, S.R.No.2887

SA NOS.269, 270 AND 271 OF 2014

SJ(CO)
RGA(23/05/2022)