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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SECOND APPEAL NO.359 OF 2014

AND

MP.NOS.1, 2 OF 2014

1. Rukkmani

2. Munisamy Chetty

... Appellants/
Appellants/Defendants

.Vs.

1. Gajendran

2. Rajavelu (Deceased)

3. Lakshmi

4. Santhi

5. Minor Balaji

... Respondents/
Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2013 made in A.S.No.43 of 2010 on the file of the Subordinate Judge, Gudiyatham, Vellore District in confirming the Judgment and Decree dated 26.10.2010 made in O.S.No.423 of 2004, on the file of the District Munsif Court, Gudiyatham.

For Appellants : Mr.G.Vinodh Kumar

For Respondents : Mr.K.A.Ravindran
for R1 & R 4

JUDGMENT

The defendants are appellants in this Second Appeal.

2.The respondents/plaintiffs filed a suit seeking for the relief of partition and for allotment of $\frac{1}{2}$ share in the suit property.



3.The case of the plaintiffs is that they are brothers and sons of one Anjaneyulu Chetty. The 2nd defendant is the brother of the said Anjaneyulu Chetty and the 1st defendant is the wife of the 2nd defendant. The further case of the plaintiffs is that the suit property originally belonged to Murugappa Chetty and Muniyammal, who were the grand father and the grand mother of the plaintiffs. They executed a registered Will dated 27.4.1981, marked as Ex.B-1 in favour of the 1st defendant and bequeathed the entire suit property in her favour.

4.It is stated that the grandmother Muniyammal with a sound and disposing state of mind executed a registered settlement deed dated 29.11.1993 in favour of the plaintiffs, marked as Ex.A-1 and she settled $\frac{1}{2}$ share in the suit property in favour of the plaintiffs. The 1st defendant had instituted proceedings against the plaintiffs and their father by questioning the settlement deed on the ground that the said Muniyammal had executed the document when she was in an unsound state of mind. This suit was not prosecuted by the 1st defendant and it was dismissed as not pressed.

5.The grievance of the plaintiffs was that the 1st defendant was evading to partition the property by metes and bounds and left with no other alternative, the suit came to be filed seeking for $\frac{1}{2}$ share in the suit properties.

6.The 1st defendant filed a written statement and took a stand that the settlement deed dated 29.11.1993 is unsustainable in law since Muniyammal was in an unsound state of mind and she was actually taking treatment in a mental hospital at Vellore during the relevant point of time. The 1st defendant took a further stand that she is the absolute owner of the suit property by virtue of Ex.B-1 Will and the 1st defendant denied the very claim made by the plaintiffs seeking for $\frac{1}{2}$ share in the suit properties. Accordingly, the 1st defendant sought for the dismissal of the suit.

7.Both the Courts below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, concurrently held in favour of the plaintiffs and decreed the suit. Aggrieved by the same, the defendants have filed this Second Appeal.

8. Heard Mr.G.Vinodh Kumar, learned counsel for the appellants and Mr.K.A.Ravindran, learned counsel for the respondents 1 to 4. This Court also carefully perused the materials available on record and the findings of both the Courts below.



9.The main issue that requires the consideration by this Court is as to whether the settlement deed dated 29.11.1993 executed by Muniyammal in favour of the plaintiffs was executed when she was suffering from unsound mind as claimed by the 1st defendant. While dealing with this issue, both the Courts below took into consideration the earlier proceedings that were initiated by the 1st defendant. The 1st defendant had filed OS.No.1023/1993, wherein, the 1st defendant claimed to be the absolute owner of the suit properties by virtue of Ex.B-1 Will and she had claimed for the allotment of the suit properties in her favour. In this suit, the said Muniyammal was made as a party and it was shown as if, she is represented by a guardian since she was suffering from unsound mind. This suit was dismissed for non-prosecution and the same is evident from exhibits B-3 to B-5.

10.The 1st defendant also instituted a suit in OS.No.55/1994 seeking for a declaration to declare the settlement deed dated 29.11.1993 as null and void since it was executed by Muniyammal, when she was suffering from unsound state of mind. This suit was also not prosecuted and it was dismissed as not pressed.

11.Both the Courts below took into consideration these proceedings initiated by the 1st defendant and found that the 1st defendant never took any steps to prove that Muniyammal was suffering from unsound mind during the relevant point of time.

12.The Courts below also took into consideration exhibits B-14 and B-15 which were the receipts issued by the C.M.C., Hospital at Vellore. On going through these receipts, both the Courts found that there was absolutely no indication that the said Muniyammal was taking treatment on account of her unsound state of mind.

13.Both the Courts below also took into consideration the evidence of DW-1 and DW-2 and found that they have taken such a stand only with a view to claim a right over the entire suit property.

14.In the considered view of this Court, the findings rendered by both the Courts below are factual in nature and those findings have been rendered on appreciation of oral and documentary evidence. This Court does not find any perversity in those findings and it does not warrant interference of this Court. In any event, no substantial questions of law are involved in this Second Appeal.



15. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case there shall be no order as to costs. Consequently, connected miscellaneous petitions are dismissed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Subordinate Judge, Gudiyatham
2. The District Munsif Court, Gudiyatham.
3. The Section Officer
V.R.Section, High Court, Madras.

+1cc to M/s.G.Vinodh Kumar, Advocate, S.R.No.27444

+1cc to Mr.K.A.Ravindran, Advocate, S.R.No.27035

Second Appeal No.359 of 2014

SJ(CO)
RLP(06/05/2022)