



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

S.A.No.455 of 2014

Saravanan
S/o.Rasianna

..Appellant/Appellant/Defendant

.Vs.

1.Pavathal
W/o.Rasianna Gounder

2.Annakkodi
W/o.K.S.Chandran

..Respondents/Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal District Judge, Erode in A.S.No.127 of 2012 dated 06.03.2013 confirming the Judgment and Decree passed in O.S.No.188 of 2006 dt.27.07.2012, on the file of II Additional Sub Judge, Erode, Erode District.

For Appellant : Mr.V.Kadirvelu

For Respondents : Mr.R.Selvakumar
for R1 & R 2

JUDGMENT

The defendant is the appellant in the present Second Appeal. The respondents filed a suit for partition claiming for 2/3rd share in the suit property. The case of the respondents is that the property belonged to one Rasianna Gounder, who is none other than the father of the appellant, husband of the 1st respondent and father of the 2nd respondent. On his demise, the respondents are claiming a share in the property. Since the appellant was not accepting for a partition, the suit came to be filed.



2.The appellant took a defense to the effect that his father executed a Will in his favour and bequeathed the entire property in his favour and hence, both the plaintiffs are not entitled for any share in the property. Both the Courts below on considering the facts and circumstances of the case and the oral and documentary evidence, came to a conclusion that the Will was not proved by the appellant and hence, proceeded to pass a preliminary decree by granting 1/3 rd share for each party. Aggrieved by the same, the present Second Appeal has been filed before this Court.

3.The learned counsel for the appellant submitted that the Will which was marked as Ex.B-1 was sufficiently proved through the evidence of DW-2 to DW-4. The learned counsel further submitted that even the thumb impression in the Will was found to be genuine by the hand writing expert, who was examined as DW-2. It was further submitted that there were two attesting witnesses to the Will and one of them died and the other attesting witness was not able to be summoned since he was not available in the given address. The learned counsel therefore submitted that Section 71 of the Indian Evidence Act, 1872 will come in aid of the appellant and the evidence of DW-3 has a lot of significance since he deposed that he saw Rasianna Gounder executing the Will and putting his thumb impression. The learned counsel therefore submitted that the judgments of both the Courts below requires the interference of this Court. The learned counsel concluded his arguments by submitting that the parties are close relatives and it may also be possible for the parties to arrive at a compromise.

4.This Court carefully considered the submissions of the learned counsel for the appellant and went through the findings rendered by both the Courts below.

5.It is seen from the findings rendered by both the Courts below that the appellant failed to prove the Will in accordance with Section 68 of the Indian Evidence Act, 1872. The Courts below have given a finding to the effect that the appellant did not prove that one of the attesting witness had died and insofar as the other attesting witness is concerned, the appellant did not take proper steps to serve summons. The Courts below found that the deposition of DW-3 will not in any way satisfy the requirements of Section 68 of the Indian Evidence Act, 1872 since he will not fall within the definition of "attestation" as defined under Section 3 of the Transfer of Property Act, 1882.



6. In the considered view of this Court, both the Courts below have properly appreciated the oral and documentary evidence and have given cogent reasons while passing the preliminary decree. This Court does not find any ground to interfere with the same. There are no substantial questions of law involved in the present Second Appeal. If at all any compromise is attempted, it can even be done at the stage of final decree proceedings and that need not stop this Court from proceeding further to pass orders in this Second Appeal.

7. 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 petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

KP

To

1. Principal District Judge,
Erode, Erode District.

2. II Additional Subordinate Judge,
Erode, Erode District.

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

+1 CC to Mr. R. Selvakumar, Advocate sr 8810.

S.A.No.455 of 2014

CP(CO)
SP(25/02/2022)