



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.Nos.569 & 677 of 2014
and M.P.Nos.1 of 2014

Kamatchiammal ...Appellant/Appellant/Defendant
in both Second Appeals
Vs.

1.P.Rajarajan
2.P.Rajeswara Manickam
...Respondents/Respondents/Plaintiffs
in both Second Appeals

PRAYER in S.A.No.569 of 2014: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 25.07.2013 made in 1st Appeal Suit No.47 of 2011 on the file of the I Additional District Judge, Salem, confirming the judgment and decree dated 22.07.2010 made in I.A.No.607 of 2006 in Original Suit No.50 of 1998 on the file of the I Additional Sub-Judge, Salem.

PRAYER in S.A.No.677 of 2014: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 25.07.2013 made in 1st Appeal Suit No.76 of 2010 on the file of the I Additional District Judge, Salem, confirming the judgment and decree dated 22.07.2010 made in Original Suit No.50 of 1998 on the file of the I Additional Sub-Judge, Salem.

For Appellant : Mr.K.Chakrapani
in both Appeals

For Respondents: No Appearance for R1 & R2
in both Appeals (Notice Served)

JUDGMENT

Both the Second Appeals arise out of a common judgment passed in A.S.No.76 of 2010 and A.S.No.47 of 2011 and hence a common judgment is passed in these Second Appeals.



2.The appellant was the defendant in the suit filed in O.S.No.50 of 1998. The respondents/plaintiffs filed O.S.No.50 of 1998 seeking for the relief of partition and allotment of one share each to the 2nd and 3rd plaintiffs. The appellant filed a counter claim and sought for 1/24th share in the first floor of the suit property and for a permanent injunction restraining the plaintiffs from interfering with her possession and enjoyment of the property.

3.Both the Courts concurrently decreed the suit and passed the preliminary Decree directing the division of the suit property into two equal shares and to allot one share each to the plaintiffs 2 and 3. Insofar as the counter claim is concerned, the same was dismissed. Aggrieved by the same, the appellant filed two appeals before the I Additional District Judge, Salem. Both the appeals were dismissed by a common judgment dated 25.07.2013. Aggrieved by the same, the defendant has filed two second appeals before this Court.

4.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

5.This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.

6.On a careful reading of the findings rendered by both the Courts below, it is found that both the parties admitted to the compromise decree dated 17.09.1990, wherein, the 1st plaintiff was allotted $\frac{1}{4}$ th share and the 2nd and 3rd plaintiffs were allotted $\frac{1}{4}$ th share and the defendant was allotted $\frac{1}{2}$ share in the suit property. Hence, at the time of filing the suit, the defendant is having $\frac{1}{2}$ share in the suit property. It was further found that the 2nd and 3rd plaintiffs were claiming the $\frac{1}{4}$ th share of the 1st plaintiff on the basis of the Will dated 23.11.1989. The defendant is denying the Will on the ground that it is vitiated on the suspicious circumstances surrounding the Will. Therefore, the defendant wanted the Will to be disregarded and sought for 1/24th share in the $\frac{1}{4}$ th share of the 1st plaintiff.

7.Both the Courts below found that Ex. A2 Will has been properly proved by examining the attesting witness PW2. The evidence of PW2 reveals the fact that the 1st plaintiff was in a sound state of mind at the time of execution of the Will. The Courts below also took into consideration the fact that the defendant was a party to the earlier compromise decree in which



the 1st plaintiff was also a party and at that point of time, the defendant did not have any complaint on the mental state of the 1st plaintiff. Both the Courts below dealt with the ground of suspicious circumstances raised by the defendant and found that the Will is valid and there are no suspicious circumstances to suspect the execution of the will by the 1st plaintiff. Both the Courts below also found as a matter of fact that the respective parties were in possession and enjoyment of their respective portions as per the earlier Compromise Decree. In view of these findings, the suit filed by the plaintiffs was decreed and the counter claim of the defendant was dismissed.

8. In the considered view of this Court, the findings of both the Courts below does not suffer from any perversity and it does not warrant the interference of this Court. No substantial questions of law are involved in these second appeals.

9. In the result, both the Second Appeals are dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssr

To

1. The I Additional District Judge, Salem.
2. The I Additional Subordinate Judge, Salem.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+2 Ccs to Mr.K.Chakrapani, Advocate sr 9731, 9732.

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PL(CO)
SP(11/04/2022)