



S.A.No.808 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.808 of 2022

Ellammal

...Appellant

Vs

Indirani (Died)

1.Prema

2.Shanthi

3.Thilagam

4.Jayanthi

5.Sadasivam

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil

Procedure against the Judgement and Decree dated 07.04.2022 made

in A.S.No.2 of 2019 on the file of the Sub Court, Arakkonam, which



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confirming the Judgement and Decree dated 22.07.2019 passed in O.S.No.19 of 2014 on the file of the District Munsif, Arakkonam.

For Appellant : Mr.G.Poonkundran

JUDGEMENT

The unsuccessful plaintiff before the Courts below has filed the above Second Appeal challenging the Judgement and Decree in A.S.No.2 of 2019 of the Sub Court, Arakkonam, in and by which the learned Subordinate Judge, Arakkonam has confirmed the Judgement and Decree passed by the District Munsif, Arakkonam in O.S.No.19 of 2014.

2. The said suit was filed by the plaintiff for a grant of permanent injunction restraining defendants 1 to 6 from alienating,



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encumbering, transferring the suit property and to grant permanent injunction to restrain defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. The parties are being referred to in the same rank as before the Trial Court in the narration herein below.

3. The plaintiff's case is that the defendants are his sister-in-law, her sons and her daughters-in-law. The plaintiff would submit that she is the absolute owner of the suit property and is in exclusive enjoyment of the suit property. The property was owned by her husband Kulasekaran under sale deeds dated 27.09.1962 and 29.09.1962 and her husband had enjoyed the property over a decade and had thereafter sold the same to one Palanivel, who is his brother-in-law, i.e., sister's husband under a sale deed dated 17.04.1973.

4. The said Palanivel died on 09.01.1988. After his death the



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plaintiff's husband came to learn that the suit schedule property along with the other properties was transferred to the name of the plaintiff's husband by way of an unregistered will dated 08.01.1998 as B Schedule therein and some of the properties in A Schedule was transferred to the 1st defendant who is the wife of Palanivel. Since 1988, the plaintiff's husband was enjoying the suit property.

5. The plaintiff's husband had in the year 2008 transferred the suit property to the plaintiff through a settlement deed dated 28.02.2008 and since then she is in possession and enjoyment of the property. The defendants are the legal heirs of the deceased Palanivel. The 1st defendant was enjoying certain properties described as B schedule in the will. For the past five years, the defendants had never raised any objection to the plaintiff's enjoyment of the suit property. However, after the death of Palanivel, defendants are attempting to alienate the properties to third parties. Therefore, the plaintiff had



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come forward with the above suit.

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6. The defense raised by defendants was that the suit filed for bare injunction without seeking relief of declaration is not maintainable. The suit property has also not been described properly. The plaintiff's husband has created false documents for the purpose of claiming a title to the property. The defendants would contend that they are the absolute owner of the suit property and in possession and enjoyment of the same. In fact, the plaintiff has admitted that her husband had sold the property to Palanivel.

7. The defendants would contend that the plaintiff has falsely stated that a day prior to the death of the said Palanivel i.e., on 08.01.1988, he has executed an unregistered Will in favour of the plaintiff's husband, allotting the suit properties in his favour as the B-Schedule property. The defendants would submit that their father's



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age has been wrongly given in the will, which would clearly show that the document is a fabricated one.

8. The Trial Court had framed the following issues and an additional issue:

1. Whether the plaintiff is entitled for relief of permanent injunction restraining the defendants, their men and agents from interfering with plaintiff's peaceful possession in the suit property?

2. Whether the plaintiff is entitled for relief of permanent injunction restraining the defendants from encumbering the suit property?

3. To what other relief the plaintiff is entitled to?

Additional issues:

4. Whether the unregistered will dated 08.01.1988 executed by Palanivel is true and proved in accordance



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with law by plaintiff?

9. The plaintiff has examined herself as P.W.1 and three others were examined as P.W.2 to P.W.4. Ex.A.1 to Ex.A.10 were marked on the side of the plaintiff. The 3rd defendant has been examined as D.W.1 and Ex.B.1 to Ex.B.14 were marked on their side. Ultimately, the suit was dismissed.

10. Challenging the same, the plaintiff had filed A.S.No.2 of 2019 on the file of the Sub Court, Arakkonam. The learned Subordinate Judge, Arakkonam also confirmed the Judgement and Decree of the Trial Court by her Judgement dated 07.04.2022.

11. Challenging the same, the plaintiff is before this Court.

12. From a perusal of the Judgement and considering the



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argument made by the learned counsel appearing for the appellant, it is seen that admittedly the suit property had been conveyed to the said Palanivel, the 1st defendant's husband under Ex.A.4 and Ex.A.6. The plaintiff would seek right under a will, which is stated to have been executed by the said Palanivel a day prior to his death. In order to prove the same, the plaintiff has examined P.W.2.

13. However, both the Courts found lot of contradiction in the statement of P.W.2, with reference to the execution, attestation etc.,. P.W.2 had deposed that the will was a registered one with the Sub-Registrar, Arakonam, and that the 1st defendant was present at the time of the registration of the sale deed. P.W.3, the 2nd attesor of the will would depose that the will was written in the Sub-Registrar Office. However, P.W.4 would state that the 1st defendant was not present and he would state that the will was not registered. The evidence of P.W.2, P.W.3 and P.W.4 were running contrary to each other. On the



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strength of the said will, the plaintiff's husband has thereafter executed a sale deed in her favour on 28.02.2008. Further, the suit is of the year 2014 and the death took place in the year 1988.

14. The Courts below have concurrently held that the Will has not been proved and accordingly dismissed the suit and I see no reason to interfere with the same. The Second Appeal stands dismissed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

To,

1. The Sub Court,
Arakkonam.

2. The District Munsif,
Arakkonam

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P.T.ASHA, J.,

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