



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 25 of 2010

WEB COPY

1. Raman (Died) ... Appellant/ Appellant / Plaintiff

2. Saraswathi

3. Kumuthalakshmi

4. Amuthalakshmi

5. Karthigai Selvi

6. Allishwari

7. Akiladevi

8. Kayathri Devi

(Appellants 2 to 8 were brought on record as LRs.
of the deceased sole appellant vide Order dated
04.10.2019 in C.M.P. (MD) Nos. 1382 and 1383 of 2016)

... Appellants

Vs.

Sankilithevar (Died)

1. Ponnuthai

2. Peria Sivanandi

Mokkasamy (Died)

3. Annathayammal

4. Kannaiah

5. Sakthivel

6. Akkammal

Azhagammal (Died)

7. Guruvammal

8. Ponnammal

9. Chellammal

<https://hcservices.ecourts.gov.in/hcservices/>



10. Mayakkal

11. M. Palani

Vellammal (Died)

12. Murugathammal

13. Ramuservai

Sethu (Died)

14. Santhi

15. Perumal

16. Pitchai Thevar

17. Ravi

18. Raguraman

... Respondents / Respondents /
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 27.08.2008 in A.S.No.69 of 2000 on the file of the I Additional Sub Court, Madurai, confirming the Judgment and Decree dated 20.07.1999 in O.S.No.231 of 1985 on the file of the District Munsif Court, Thirumangalam.

For Appellants

: Mr.N.Vallinayagam

For R-2 & R-3

: Mr.R.G.Sankar Ganesh

For R-14

: Mr.H.Velavadhas

For R-1, R-4, R-5, R-7, R-9

to R-11 & R-15 to R-18

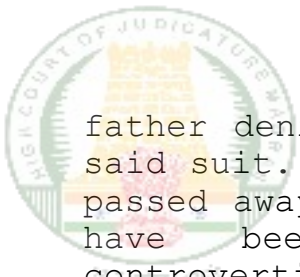
: No appearance.

J U D G M E N T

The plaintiff in O.S.No.231 of 1985 on the file of the District Munsif Court, Thirumangalam, filed this second appeal.

2. During the pendency of the second appeal, he passed away and his legal heirs have come on record.

3. The suit was filed for the relief of declaration and recovery of possession. The case of the plaintiff is that the suit property belonged to his father-in-law, namely Muthurama Thevar. The said Muthurama Thevar is said to have sold the suit property in favour of the plaintiff's father Sankili Thevar under the sale deed dated 06.12.1965. The plaintiff would make a specific claim that his father Sankili Thevar settled the suit property in his favour under Ex.A.5 dated 27.11.1980. Ex.A.5 is a registered document. Since his



father denied his title, the plaintiff was constrained to file the said suit. During the pendency of the suit, the said Sankili Thevar passed away and his other legal heirs were brought on record. They have been shown as defendants. Written statements were filed controverting the plaint averments. Based on the same, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and Ex.A.1 to Ex.A.25 were marked. Two witnesses were examined on the side of the defendants. Ex.B.1 to Ex.B.30 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 20.07.1999 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.69 of 2000 before the I Additional Sub Court, Madurai. The first Appellate Court by the impugned judgment and decree dated 27.08.2008 dismissed the appeal and confirmed the decision of the trial Court. Aggrieved by the same, this second appeal came to be filed.

4. Though the second appeal was filed way back in the year 2009, only notice was ordered and it has not been admitted till date.

5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and he took me through the provisions of The Registration Act 1908, particularly, Section 75(4) and contended that the Courts below failed to take note of the orders passed by the registering authority. He called upon this Court to frame substantial questions of law on that basis and admit the second appeal and take up the same for disposal later.

6. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

7. I carefully considered the rival contentions and went through the evidence on record.

8. The entire case of the plaintiff was anchored on Ex.A.5 settlement deed dated 27.11.1980. It is no doubt a registered document. But mere registration of the document will not authorise a party to a case to dispense with the requirements set out in Sections 68 and 69 of The Indian Evidence Act, 1872 regarding proof of a document that is required to be attested. The mandate set out in Section 68 of the Indian Evidence Act, 1872 will have to be complied with. Section 68 is as follows:-

Proof of execution of document required by law to be attested - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving



evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

9. In the case on hand, the execution of Ex.A.5 has been specifically denied not only by the first defendant but also the other defendants. It is well settled that not only the executant but any person against whom such a document is projected can deny its execution. Hence, the plaintiff was required to prove Ex.A.5 by examining at least one of the attesting witnesses. If according to the appellant, the attesting witnesses were not alive, then Section 69 of The Indian Evidence Act, 1872 will come into play. Section 69 is as follows:-

Proof where no attesting witness found - If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.

The plaintiff failed to examine any witness to prove that the attestation of one attesting witness in Ex.A.5 is in his handwriting. The Courts below have concurrently held that the plaintiff failed to comply with the statutory mandate set out in the aforesaid provisions. The Courts below held that the signature found in Ex.A.5 has not been proved. In other words, the concurrent finding of the Courts below is that the plaintiff failed to prove the due execution of Ex.A.5. In that view of the matter, the suit came to be dismissed. The provisions set out in the Registration Act referred by the learned counsel appearing for the appellants will not come to his rescue in any manner to overcome the statutory barrier erected in Sections 68 and 69 of The Indian Evidence Act, 1872. No case has been made out for interference. No substantial question of law arises for determination. The impugned judgment and decree are confirmed.

10. This second appeal is dismissed. No costs.

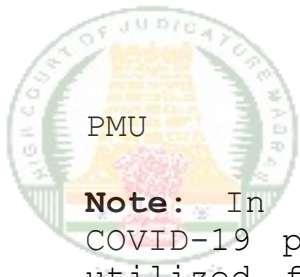
Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The I Additional Sub Judge,
Madurai.

2. The District Munsif,
Thirumangalam.

3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-15234[F] dated 30/03/2022)

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-15408[F] dated 30/03/2022)

+1 CC to M/s.R.G.SHANKAR GANESH, Advocate (SR-15801[F] dated 31/03/2022)

S.A. (MD) No.25 of 2010
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KB(28.04.2022) 5P 8C