



S.A(MD).No.121 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.121 of 2012

Thirumalaiachiammal

....Appellant/Appellant/Plaintiff

Vs.

1. Mohamed Pannaiyar

2. Sheik Syed Ali

3. Azarutheen

... Respondents/Respondents/Defendants

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 12.08.2011 in A.S.No.49 of 2010 on the file of the Principal Sub Court, Tenkasi confirming the judgment and decree dated 05.03.2010 in O.S.No.59 of 2008 on the file of the District Munsif Court, Shenkottai.

**For Appellant : Mr.G.Prabhurajadurai
for Mr.I.Robert Chandrakumar**

For Respondents : Mr.N.Balakrishnan



S.A(MD).No.121 of 2012

JUDGMENT

The plaintiff, who was unsuccessful in her suit for declaration of title and for bare injunction in O.S.No.59 of 2008 and also in the appeal preferred against the said decree in A.S.No.49 of 2010, is the appellant herein. For narrative convenience, the parties would be referred to as per their rank before the trial court.

2. The appeal is not yet admitted and only notice was ordered, pursuant to which, the defendants/respondents had entered appearance.

3. According to the plaintiff, her father Velaiah Devar @ Velayutha Devar owned 1.21 acres in S.No.47 at Piraanoor Village in Shencottah Taluk. She would further say that Vide Ext.A.2 = Ext.B.1 dated 20.11.1950, her father settled northern 30 cents to her sister Muthathaal. The remaining 91 cents continued to remain with her father and was in his continuous occupation. Thereafter, the plaintiff occupied the same. When the plaintiff faced obstruction to her title, she laid the suit.



S.A(MD).No.121 of 2012

3.1 The case of the defendants is that Muthathaal, the settlee, under Ext.A.2 = Ext.B.1 settlement deed, had sold the same to one Muthaiasamy Thevar.

After execution of Ext.A.2 = Ext.B.1 settlement deed, the plaintiff's father had sold an extent of 56 cents under Ext.B.2 sale deed dated 06.08.1951 and another plot of 35 cents under Ext.B.3 sale deed dated 06.07.1953 to the aforesaid Muthaiahsamy Devar's father Kuthalinga Devar. Thus, the entire property which the plaintiff's father owned was parted by him under Ext.A.2, Ext.B.2 and Ext.B.3 either to Kuthalinga Devar or his son Muthaiahsamy Devar, as the case may be. This property ultimately came to be sold to the defendants Vide Ext.B.6, Ext.B.7 and Ext.B.8 and they opposed the title of the plaintiff to the suit property.

4. The response of the plaintiff was that Ext.B.2 and Ext.B.3 were fabricated documents, wherein the plaintiff's father had signed as Velayutha Thevar, whereas in Ext.A.2 = Ext.B.1 the settlement deed, he had signed as Velaiah Thevar and hence Ext.B.2 and Ext.B.3 were fabricated.

5. When the matter went to trial, the trial court had appreciated the evidence and dismissed the suit. Its line of reasoning is:



S.A(MD).No.121 of 2012

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- The plaintiff herself has admitted that her father was known by two names, Velaiah Thevar and also Velayutha Thevar, and with no other material available to compare the signature, the trial court itself proceeded to compare the signatures available in Ext.B.1, Ext.B.2 and Ext.B.3 and found that the signatures of the executor are substantially same in all the documents notwithstanding the fact that the names are not identically stated in all of them;
- that the plaintiff has not produced any documents whatsoever to show that notwithstanding Ext.B.2 and Ext.B.3 the sale deeds, the plaintiff's family was continuously enjoying the property.

6. This decree came to be challenged before the First Appellate Court, which confirmed the decree of the trial court and hence, the plaintiff is before this Court.

7. The learned counsel for the appellant made a valiant effort to convince this Court that there indeed is an arguable point and submitted that no one can be benefited by fabricated documents and the courts below were in



S.A(MD).No.121 of 2012

egregious error in comparing the signatures by exercising its power under Section 73 of the Indian Evidence Act. This Court though appreciates an effort in what it may term as a plea in desperation, it has to be noted that the plaintiff has made a statement impeaching Ext.B.2 and Ext.B.3, some 53 years after they were executed. Secondly, and as has been rightly held by the courts below that the plaintiff herself concedes that her father was known both as Velayutha Thevar and also Velaiah Thevar. Therefore, the only thing that is left is whether the signature of the plaintiff's father in Ext.B.2 and Ext.B.3 reconcile with any of the admitted signature of the plaintiff's father, where he might have signed as Velayutha Thevar. Now, the plaintiff has created a situation, where she comes to the court alleging her father continued to own 91 cents, and when she faced obstruction to this 91 cents in the form of Ext.B.2 and Ext.B.3, she suddenly changed gears and alleges that these documents were fabricated. She appears to believe that when she challenges Ext.B-2 and B-3, the burden would automatically shift to the defendant to establish its genuineness. Not, when it was challenged after half a century.

8. Section 90 of the Indian Evidence Act provides that where a document is



S.A(MD).No.121 of 2012

more than 30 years old, then there is a presumption that the signature and the handwriting in the document belonged to the person by whom it is purported to have been signed or written. This will apply here. Given the fact that the plaintiff has also admitted that her father was known by two names, the burden is on her to establish that the signatures in Ext.B.2 and Ext.B.3 did not belong to her father, and to rebut the presumption under Sec. 90 of the Indian Evidence Act. There is hardly attempt by the plaintiff at that.

9. In fine, this Court does not find that there is any merit in this appeal which is worthy of contemplating any interference. This Appeal is dismissed. Accordingly, the judgment and decree dated 12.08.2011 in A.S.No.49 of 2010 on the file of the Principal Sub Court, Tenkasi confirming the judgment and decree dated 05.03.2010 in O.S.No.59 of 2008 on the file of the District Munsif Court, Shenkottai, is confirmed. No costs.

18.07.2022

Index : Yes/No

Internet: Yes/No

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S.A(MD).No.121 of 2012

To

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- 1.The Principal District Judge, Tirunelveli,
- 2.The First Additional District Munsif, Tirunelveli.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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S.A(MD).No.121 of 2012

N.SESHASAYEE, J.,

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S.A(MD).No.121 of 2012

18.07.2022