



SA(MD)No.440 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.11.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.440 of 2004

1.Mariyayee (Died)	...Appellant/Respondent/Plaintiff
2.Karuppiah	
3.Rajakumar	
4.Renganathan	LR's of 1 st Appellant

[Appellants 2 to 4 are brought on record as LR's of the deceased sole appellant vide order dated 18.07.2012 made in M.P(MD).No.1 of 2012 in S.A(MD).No.440 of 2004]

Vs.

Malaiyappan	...Respondent/Appellant/Defendant
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Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree of the Subordinate Court, Pudukottai passed in A.S.No.7 of 2003 and Cross Appeal No.7 of 2003 dated 24.12.2003 reversing the decree and judgment of the District Munsif Court, Aranthangi passed in O.S.No.120 of 1988 dated 31.01.2001.

For Appellants : Mr.N.Balakrishnan

For Respondent : Mr.K.Baalasundharam



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J U D G M E N T

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1.1. The plaintiff in O.S.No.120 of 1988 is the appellant herein. The suit was laid by her for declaration of her life estate in six items of the suit properties based on Ext.A.3-Will dated 29.08.1985 executed by her husband.

1.2. The trial Court vide its judgment dated 13.09.1993 partially decreed the suit. As against the same, the plaintiff preferred A.S.No.180 of 1993. The First Appellate Court vide its judgment and decree dated 24.11.1994 remanded the matter back to the trial Court. Thereafter, on 31.01.2001, the trial Court dismissed the suit as regards item No.2 but granted a decree declaring her right over item Nos.1, 4 and 5 of the properties in entirety and partially over item Nos.3 and 6 of the properties. This decree came to be challenged before the first appellate Court by the defendant. As regards the decree dismissing the suit pertaining to item No.2, the plaintiff had preferred the cross-objection. The first appellate Court allowed the appeal and dismissed the cross-objection. Hence, the plaintiff is before this Court.



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2. The brief facts are:-

- The suit properties and others originally belonged to a certain Adhimoola Konar and his brother Ramakonar. On 19.08.1935, under Ext.B1, they entered into a partition in which Adhimoola Konar was allotted some properties. Subsequently, on 17.07.1952, Ramakonar borrowed a sum of Rs.500/- from his brother Adhimoola Konar and executed Ext.A.1 document which is styled as '*Varthamana kai kaditham*'. In this document, Ramakonar had made a statement that in case of his failure to repay the amount, the lender would be entitled to take his entire share of properties. According to the plaintiff, Ramakonar never paid the money and Adhimoola Konar came to enjoy the properties as his own properties.
- Adhimoola Konar was married twice. His first wife was one Malayathal through whom he had two daughters and a son, the defendant herein. After the demise of Malayathal, Adhimoola Konar married the plaintiff as his second wife through whom he had two sons and a daughter.
- While so, Adhimoola Konar and his three sons including the defendant herein have entered into an oral partition in which the properties he held



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were partitioned and allotted to all the parties. And, the properties involved in the present litigation were allotted to the share of Adhimoola Konar.

- While so, on 29.08.1985, Adhimoola Konar executed an unregistered Will as regards the properties allotted to him (suit properties). This Will was marked as Ext.A.3. Under this Will, Adhimoola Konar had granted life estate to his second wife, the plaintiff herein and thereafter directed that the properties would go absolutely to his two sons born through the plaintiff. When the plaintiff faced certain obstruction to her enjoyment of the properties, she laid the suit for declaration of her life estate over the properties.

3. In his written statement, the defendant *inter alia* disputed the genuineness of Ext.A.3-Will.

4. The dispute went to trial Court before which both sides adduced oral and documentary evidence. For proving the Will-Ext.A.3, the plaintiff had examined both the attestors as P.W.2 and P.W.3. On appreciating the evidence, the trial Court had upheld the Will. Turning to the right claimed by the



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plaintiff, the trial Court found that the plaintiff would not be entitled to a declaratory relief as regards the item No.2 of the properties and dismissed the suit. Of the remaining items, the trial Court granted a decree regarding item Nos.1, 4 and 5 of the properties upholding her life estate over the same based on Ext.A.3. So far as item Nos.3 and 6 of the properties are concerned, the trial Court declared the plaintiff's right only to the extent of 21.5 cents in item No.3 and 18 cents in item No.6. When the matter reached the First Appellate Court, the First Appellate Court disbelieved the genuineness of Ext-A.3-Will.

5. This appeal was admitted for considering the following substantial questions of law:-

i. On the facts and circumstances, in view of the contentions of parties and evidence adduced by them was the dismissal of suit filed by the appellant for declaration and injunction by the Lower Appellate Court sustainable in law?

ii. Was the finding of Lower Appellate Court that the Will under Exhibit A-3 was not proved tenable in law when P.W.2 and P.W.3 were examined to prove due execution?

iii. Whether the Lower Appellate Court was correct in holding that Exhibit A-1 was invalid and unenforceable?

iv. Whether the finding of the Lower Appellate Court that the suit filed by the appellant in respect of item No.4 was barred as



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per Order 22 Rule 9 CPC sustainable?

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5. Was the Lower Appellate Court right in concluding that certain items of properties shown in the suit schedule remain undivided as contended by the respondent when the contention was not proved by him and when the said contention was against the presumption in respect of partition under Hindu Law?

6. This Court does not consider it necessary to hear the matter elaborately for the reasons that the First Appellate Court has blindly lifted paragraph after paragraph of the notes of argument provided by the learned counsel for the defendant from paragraph Nos.11 to 33 of its judgment and paragraph Nos.34 and 35 alone were its original making. It essentially conveys nothing because the plaintiff has preferred a cross-objection. What the learned Subordinate Judge intends to convey possibly is only he can explain. Only the decree conveys what the learned Subordinate Judge intended to convey, but then, the decree ought to reflect and the judgment cannot operate independently. In these circumstances, this Court is left with no option but to set aside the judgment and remand the case back to the First Appellate Court for *de novo* consideration.



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7. In the meantime, there is a change of circumstance in that the plaintiff has passed away. Admittedly, the suit was laid only for declaration of the plaintiff's life estate. As already indicated, she claims this based on Ext.A.3-Will. Now if Ext.A.3-Will is genuine, then the properties will devolve on the plaintiff's two sons, namely, Renganathan and Karuppiah. If Ext.A.3-Will is not genuine, then the defendant may also have a claim over the properties. And the daughters of Adhimoola Konar may not be ignored. Since the dispute pertaining to these properties is pending adjudication from 1988, and inasmuch as a finding as to the genuineness of the Will has to be made, this Court only deems it appropriate that the parties are allowed to amend their pleadings within a time to be stipulated herein, and the first appellate Court may decide the issue and take evidence on its record if it becomes necessary and dispose of the appeal again within a time to be stipulated herein.

8. In fine, this appeal is allowed and the judgment and decree of the Subordinate Court, Pudukottai passed in A.S.No.7 of 2003 and Cross Appeal No.7 of 2003 on 24.12.2003 is set aside and the matter is remanded back to the Subordinate Court, Pudukottai. Both sides are required to appear before the Subordinate Court, Pudukottai on **05.12.2022** and are required to amend their pleadings if they are so interested within 60 days from **05.12.2022**. The



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Subordinate Court, Pudukottai, is required to dispose of the matter within a period of six months after filing the written statement. No costs.

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ssb

Note: Registry is directed to issue order copy on **14.11.2022.**

To

1. Sub Court, Pudukottai
2. District Munsif Court, Aranthangi
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court.



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N.SESHASAYEE., J.

ssb

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