



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.03.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S(MD).No.212 of 2018

Sabi Ammal

.. Appellant/2nd defendant

Vs.

1.Julaiha

.. 1st respondent/Plaintiff

2.Meharunnisa

.. 2nd Respondent/1st Defendant

Prayer : This Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 of the Civil Procedure Code, against the judgment and decree passed in O.S.No.84 of 2013 dated 30.10.2015 on the file of the 2nd Additional District and Sessions Judge, Thanjavur.

For Appellant : Mr.K.Vaithilingam

For Respondents : Mr.G.Karnan

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree in O.S.No.84 of 2013 dated 30.10.2015 passed by the learned II Additional District and Sessions Judge, Thanjavur.

2. The appellant is the second defendant. The first respondent/plaintiff has filed the suit for the relief of declaration in respect of the $\frac{1}{2}$ share in the suit property and also for partition and separate possession of $\frac{1}{2}$ share of the suit property. According to the case of the plaintiff, the suit and other properties situated in Eduthupattarai Theru, Ammapettai belonged to her father late. Mahamed Salih; the plaintiff and the defendants 1 and 2 are the children of late Mahamed Salih; the father of the plaintiff gifted the property situated in Eduthupattarai Theru in favour of the first defendant and he gifted the suit property in favour of the defendants 1 and 2 by way of Hibas; the gift was executed in a form of written document; apart from that, the father of the plaintiff had deposited a sum of Rs.6,00,000/- (Rupees Six Lakhs only) in Indian

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Bank; the plaintiff demanded partition of her $\frac{1}{2}$ share from the second defendant by sending legal notice on 27.04.2013; the second defendant sent a reply notice stating that the father of the plaintiff had given the entire suit property and the bank deposit to herself; since the second defendant refused to come forward to partition the suit property. The plaintiff filed the suit for the above reliefs.

3. The first defendant admitted the case of the plaintiff. The second defendant contested the suit by stating that the suit property originally belonged to the father of her father, namely, Kader Badsha; he died leaving his only son Mohamed Salih who is the father of the parties in the suit and one sister, by name, Habbibunnisa; the said Habbibunnisa did not have any issues; after the death of her grandfather, her father and his sister Habbibunnisa inherited the house properties as legal heirs; the second defendant only took care of her father and her paternal aunt - Habibunnisa; during the last days her paternal aunt - Habibunnisa pronounced a declaration of Hiba by declaring that the second defendant is entitled to get her half share in the suit property; since the second defendant is having half share by way of above said declaration of Hiba and another $\frac{1}{3}$ rd share as a legal heir of her father, the plaintiff cannot claim title for $\frac{1}{2}$ share in the suit property; though it is alleged that the father had executed another Hiba, the property involved in the said Hiba was not included in the suit property; hence, the suit is hit by partial partition; the entire properties are in the possession and enjoyment of the second defendant; even during the marriage of the plaintiff and the first defendant, they were given with sufficient jewels and 'seer varisai' by her father; when the second defendant was given in marriage, she was not presented with sufficient jewels or any other articles; the father of the plaintiff had given money in his bank deposit to his son for his education and marriage expenses; hence, the plaintiff is not entitled for the relief prayed for.

4. On the basis of the above pleadings, the learned trial Judge had framed the following issues:-

''(i) Whether the plaintiff is entitled to a partition of $\frac{1}{2}$ share in the suit properties as prayed for?

(ii) Whether the allegation that the plaintiff is not in possession of suit property and Court fee paid is not correct is true?

(iii) To what relief the plaintiff is entitled to?''



5. During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and four documents were marked as Exs.A1 to A4. On the side of the defendant, four witnesses were examined as D.W.1 to D.W.4 and four documents were marked as Exs.B1 to B4.

6. The learned trial Judge, after examining the evidence available on record, decreed the suit as prayed for in respect of $\frac{1}{2}$ share in respect of the suit immovable property and to that effect a preliminary decree was passed. In respect of 2nd item of the suit property, which is a fixed deposit, the suit was dismissed. Aggrieved over that, the second defendant has preferred this appeal.

7. During the course of arguments, the learned counsel for the appellant submitted that the father of the parties to the suit, namely, Mohamed Salih has executed two gift deeds (Hiba) on 26.11.2009. Mohamed Salih is said to have gifted certain properties to the plaintiff and the second defendant by way of gift deeds; in Ex. B1 signature is affixed but in Ex.B2 thumb impression is affixed and this itself would create doubts in the execution of the gift deeds as stated by the plaintiff; The the Notary Public who had attested the gift deeds was examined as P.W.2; in his evidence, he has deposed that he obtained signatures in both the deeds at one and the same time; he has further stated that the signatures in Ex.B1 is not clear and hence he obtained his thumb impression in the other document; Ex.B1 would show that the signatures are very clear and there is no confusion to read his signatures; and hence alleged circumstances which needed to get thumb impression in the other deed is unbelievable; further, the documents were not sent for the examination of finger print experts and hand writing experts in order to prove the genuineness of the execution of the gift deeds; the learned trial Court had overlooked all these material facts and arrived at a finding that gift deeds are genuine and decreed the suit partially in favour of the plaintiff and hence, it has to be set aside.

8. The learned counsel for the respondent stated that the Notary Public himself has explained as to the circumstances under which the thumb impression was obtained from Mohammed Salih in Ex.A1 and that has been properly appreciated by the trial judge. The appellant/second defendant was examined as D.W.2, and she herself had admitted about the execution of Ex.A1 and hence, he is estopped from challenging the same now; the evidence available on record has been properly appreciated by the learned trial Judge



and it warrants no interference.

9. On the basis of the rival submissions made by the parties, I feel that the following points for consideration are relevant for the disposal of this Appeal:

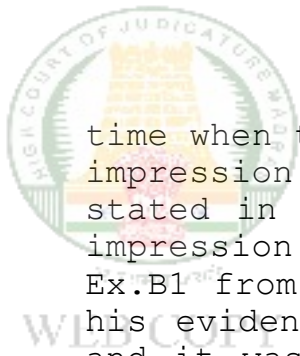
i) Whether the finding of the trial Court that the gift deeds Exs.A1 and B1 are genuine and valid, is correct?

ii) Whether the judgment and decree of the trial Court in decreeing the suit in respect of the half share in respect of the first schedule property and passing preliminary decree to that effect, is fair and proper?

10. The relationship between the appellant/defendant No.2, first respondent/plaintiff and second respondent/defendant No.1 is not disputed. Though it is stated by the appellant/second defendant that the suit properties belonged to grandfather, namely, Kadar Badsha, during his cross-examination, he has given a proper admission that properties have been purchased by his father all his three sisters got married during the life time of his father and all are living with their respective family members. The appellant/second defendant claimed that her paternal aunt namely, Habibunnisha is also entitled to a share in the suit property and in respect of which she had declared Hiba in favour of appellant/second defendant. The fact remains that the suit properties are the self acquired properties of her father. Under such circumstances, the paternal aunt - Habibunnisha would not have any right in the suit properties. The appellant/second defendant herself admitted in her cross-examination that the copy of Ex.B1 has been given to her by the son of the first defendant during the life time of her father; despite she claims that Ex.B1 is not genuine, she did not object about the same when his father was alive. Neither she had taken any legal action to challenge the same.

11. Being a daughter of a Muslim, the appellant/second defendant would know about the impact of gift deeds. The second defendant did not challenge the same on the ground that Ex.B1 causes doubt. The appellant/2nd defendant had stated in her evidence that she has studied upto 8th standard and she is able to read the Tamil letters in the copy of the gift deed handed over to her.

12. In respect of the second item of the property which is a bank deposit, she has stated that the same was given to her by her father himself. Her evidence would show that he was alive at the



time when the Hiba is executed. With regard to the obtaining thumb impression in Ex.B1, the Notary Public who had attested Ex.B1, has stated in his evidence about the circumstances under which thumb impression was obtained in Ex.A1 and signature was obtained in Ex.B1 from the executant - Muhammad Salih. He would clarify in his evidence that Muhammad Salih affixed his signature in Ex.B1 and it was not clear and once because of that he obtained thumb impression in the other deed.

13. A perusal of the signature found in Ex.B1 would show that it is similar to the signature put by aged persons affected by senility. Even in the records maintained by the Notary Public, it is seen that Mohammed Salih has fixed his thumb impression Ex.X1 and X2; so the evidence on record and a harmonious reading of these records would show that Ex.A1 and Ex.B1 are not tainted with any suspicion.

14. The learned Trial Judge has properly appreciated the evidence available on record and arrived at a correct conclusion that the gift documents executed by the father of the respective parties are true and genuine and in consequences thereof, he granted the relief in respect of item No.1. In my considered view, the judgment and decree of the trial Court does not suffer from any factual or legal infirmity and it does not warrant any interference. **Thus, the points are answered against the appellants.**

In the result, this Appeal Suit is dismissed and the judgment and decree passed in O.S.No.84 of 2013 dated 30.10.2015 on the file of the learned 2nd Additional District and Sessions Judge, Thanjavur is confirmed. No Costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

To

1.The 2nd Additional District and Sessions Judge,
Thanjavur



2.The Section Office,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.C.PADMARAJ, Advocate (SR-11385[F] dated 11/03/2022)

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