



A.S.No.360 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE R.KALAIMATHI

A.S.No.360 of 2015

S.Saravanakumar

...Appellant/Plaintiff

Vs.

1.S.Deepak kumar

2.D.Lalithesh Saikrish [Minor]

S/o.S.Deepak kumar,

Rep. by his Father and Natural

Guardian S.Deepak kumar,

No.11/217, Bazaar Street,

Harur Town, Dharmapuri District.

[Impleaded the 2nd respondent vide Court order dated 03.02.2023 made in C.M.P.No.1204 of 2023 in A.S.No.360 of 2015]

...Respondents/Defendants

Prayer : Appeal Suit filed under Section 96 r/w. of Code of Civil Procedure against the judgment and decree dated 08.04.2015 in O.S.No.10 of 2013 on the file of the learned Principal District Judge, Dharmapuri.



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For Appellant : Mr.P.Valliappan
Senior Counsel
for Mr.N.Loganathan

For Respondents : Mr.A.K.Kumarasamy
Senior Counsel
for Mr.V.Nicholas

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The plaintiff in the suit in O.S.No.10 of 2013 on the file of the learned Principal District Judge, Dharmapuri, is the appellant in the above appeal.

2.The appellant filed the suit for partition in O.S.No.10 of 2013 for one half share in all the suit properties and for consequential reliefs.

3.The suit properties consist of several items in Dharmapuri District. The appellant and 1st respondent are brothers and sons of one Thiru.Subramaniam and Tmt.Manjula Maniam. It is admitted that the suit 'A' schedule properties items 1 and 2 are the properties of plaintiff's father,



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by name, Subramaniam. It is the further case of plaintiff that items 3 to 6 in 'A' schedule were purchased by plaintiff's mother. Item 1 in 'B' schedule is described as 100 sovereigns of gold ornaments belonged to mother and item 2 in 'B' schedule is described as the business assets of M/s.Lakshmi Corporation, run by father. It is admitted that the father, Thiru.Subramaniam, and mother Tmt.Manjula Maniam died leaving behind the plaintiff and defendants.

4.The suit was resisted only on the ground that the father Subramaniam, executed a Will in favour of the son of the 1st defendant, who has now been impleaded as the 2nd respondent in the appeal. Admittedly the Will was in respect of items 1 and 2 of suit 'A' schedule, purchased by the father.

5.The Trial Court held that the Will is proved, therefore, the suit for partition is not maintainable in respect of the items 1 and 2 of suit 'A' schedule properties, which are covered by the Will executed by Subramaniam under Ex.B1 dated 19.10.2012. It is admitted that the plaintiff



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is entitled to equal share in items 3 to 6 in suit 'A' schedule properties left by mother. Therefore the suit was decreed in respect of items 3 to 6 of suit 'A' schedule in the plaint finding that the Will executed by Subramaniam is valid and proved, the suit was dismissed in respect of items 1 and 2 of the 'A' Schedule. On the issue regarding the jewels described as first item in schedule 'B', the Trial Court found that the plaintiff failed to prove the availability of 100 sovereigns of mother's jewels and refused to grant decree. The suit was decreed only in respect of items 3 to 6 in suit 'A' schedule and item 2 in suit 'B' schedule. Aggrieved by the judgment and decree of the Trial Court dismissing the suit in respect of items 1 and 2 of suit 'A' Schedule, the above appeal is filed.

6.The learned counsel appearing for the appellant pointed out that witnesses D.W.2 and D.W.3, namely the attestors of the Will had not spoken about the due execution of Will in terms of Section 63(c) of the Indian Succession Act. The learned counsel appearing for the appellant submitted that the attestors have not witnessed the testator signing the Will and that the evidence of P.W.2. to P.W.4 do not satisfy the requirements of Section



63(c) of Indian Succession Act.

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7.The learned counsel also relied on a few other circumstances and contended that the Will is surrounded by suspicious circumstances and was not duly proved. The Will is a registered Will. It is to be noted that the Will is in favour of the 2nd respondent, the son of 1st respondent who is not a party to the suit. Pursuant to the argument of the learned counsel appearing for the appellant, this Court directed the parties to implead the 2nd respondent and the validity of Will cannot be decided conclusively against the 2nd respondent without making the 2nd respondent as a party. Since the 2nd respondent has now been impleaded as a party to the proceedings, we have to give him a reasonable opportunity to prove the due execution and validity of the Will stated to have been executed by the father of plaintiff Subramaniam in favour of the 2nd respondent.

8.In view of the fact that the appeal is allowed for the reason that the 2nd respondent was not made a party to the proceedings and this Court expressed its view that the 2nd respondent should be given an opportunity to prove the due execution of the Will, the correctness and findings of the Trial



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Court on the proof of Will are not discussed by this Court. However, the findings of the Trial Court dismissing the suit in respect of items 1 and 2 of 'A' schedule is set aside. The findings of Trial Court regarding other items are confirmed. Therefore, the matter is remitted to the Trial Court only regarding items 1 and 2 in suit 'A' schedule with liberty to both sides to recall witnesses and lead further evidence particularly to give opportunity to the 2nd respondent who shall be shown as 2nd defendant in the suit to file written statement.

9.The parties shall appear before the Trial Court on 06.03.2023. No costs.

(S.S.S.R., J.) (R.K.M., J.)
07.02.2023

cda

Internet : Yes

Index : Yes / No



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To

- 1.The Principal District Judge, Dharmapuri.
- 2.The Section Officer,
VR Section, High Court,
Chennai.



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S.S.SUNDAR, J.,
and
R.KALAIMATHI, J.,

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