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S.A.No. 1597 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.04.2023**

CORAM

THE HONOURABLE **MR. JUSTICE V. LAKSHMINARAYANAN**

S.A.No. 1597 of 2000

1. D.Mani (died) ... Appellant/1st Appellant/1st Defendant
2. K.Jayanthi
3. M.Dinakaran
4. M.Suseela ... Appellants/Appellants

Vs.

1. Saroja (died) ... 1st Respondent/Respondent/Plaintiff
2. Neelavathi ... 2nd Respondent/2nd Respondent/2nd Defendant
3. Kumar
4. Vijayasankar
5. Sampath
6. Gunasekar ... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgement and Decree dated 18.08.2000



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passed in A.S.No. 53 of 1990 on the file of the Subordinate Judge, Vellore, as confirmed in the Judgment and Decree dated 09.10.1990 in O.S.No. 198 of 1985 on the file of the Additional Appellate Court, Vellore.

For Appellants : Mr.R.Jagadeesan
for Mr.A.Abdul Wahab

For Respondents : No appearance

JUDGMENT

The appellant is the first defendant in the suit.

2. This Appeal arises out of the Judgment and Decree of the Court of the Additional District Munsif at Vellore, dated 09.10.1990 in O.S.No. 198 of 1985 as confirmed by the learned Subordinate Judge at Vellore, dated 18.08.2000 in A.S.No. 53 of 1990.

3. The parties are referred to as the rank in the suit.

4. The appellant was the first defendant. The plaintiff is his maternal aunt Saroja. The relationship between the parties are not denied. Saroja presented a suit for declaration of her title and for recovery of



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possession. The parties have admitted that the properties belong to one Shanmugam, who passed away on 16.08.1978. Shanmugam was married to one Maharani, who expired on 03.07.1982. The marriage did not produce any surviving issues. Evidence shows a child was born to the couple but expired in its infancy. According to the plaintiff, Shanmugam died intestate and so did Maharani and that on the death of Shanmugam and Maharani, the property, as per the Hindu Succession Act, would vest with her and therefore, she claimed her right as a legal heir of Shanmugam.

5. The case of the defendant is that Shanmugam had executed a Will on 13.08.1978 whereby he bequeathed the property in his favour. According to him, Shanmugam executed the document, two days prior to his admission, at CMC Hospital at Vellore and despite treatment having been given, he passed away on 16.08.1978. The first defendant would plead that he had been residing in the same property right from his birth. In fact, he would further plead that Shanmugam, due to his acute sickness, was not working for the last 10 years before his death and it was the first defendant, who was taking care of him. He would further plead that on account of the Will, he became the owner of the house property as well as the vacant land abutting the property.



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6. It is pertinent to point out the Will does not give any schedule at all and even assuming he deals with the house, there is nothing in the Will to show that the vacant land fell to the share of the first defendant. Be that as it may, on the strength of the Will on 28.09.1983, the first defendant executed a sale deed in favour of the second defendant.

7. The learned trial Judge as well as the Lower Appellate Court, after detailed examination of the evidence, before them and the documents filed came to the conclusion that the Will is a fabricated one and therefore, decreed the suit.

8. Aggrieved by these concurrent finding, the defendant is before this Court. At the time of admission, the following substantial questions of law were framed for consideration:-

“1) Whether the courts below are right in rejecting the cogent evidence of the attesting witnesses and the scribe in the execution of the Will when absolutely no reason was given for its rejection?;



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2) Whether the Courts below are right in stating that the Will is an unnatural one, especially when the testator's wife was declared as lunatic and was living separately from her husband for the last fifteen years?"

9. Pending the Appeal, Saroja had died and her legal heirs have been brought on record. None represents the respondents. Mr.R.Jagadeesan, learned counsel representing for Mr.A.Abdul Wahab, for the appellants was heard at length.

10. The learned counsel would argue that cogent evidence had been given by the attesting witness DW-3 and when it is read with the evidence of DW-2, the scribe, the Courts below should come to an irresistible conclusion that the Will had been proved and the decreeing of the suit is erroneous. He would further state that the testator's wife had deserted him and therefore, there is nothing unnatural in the testator not giving her any properties.



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11. I have carefully considered the arguments made by the learned counsel for the appellants. I have gone through the pleadings, evidence and the documents.

12. I am not willing to go along with the learned counsel for the appellants for the following reasons:

(1) Though the appellant has pleaded that he has been residing in the same property along with Shanmugam and Maharani and that he had put up superstructure, in which they had been residing, there is absolutely no evidence which has been forthcoming to show that Shanmugam had permitted the first defendant to reside with him. This looms large because according to the first defendant since Shanmugam and Maharani did not have any child, after the death of their only child, they brought him up as their own. The trial Court as well as the Lower Appellate Court has taken note of the fact that the first defendant has not produced the family ration card or any electoral card or any other tangible documents to prove that Mani, Shanmugam and Maharani had been residing together. Concocted stories have been brought out in order to show that Shanmugam had executed a document out of natural love and affection in favour of Mani. Therefore, the first defence put up by the defendants fails.



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(2) Secondly and more importantly, the parties agreed that Maharani, wife of Shanmugam was mentally challenged. It is but natural for a person, who has a mentally challenged dependent, to make a provision for the said person in a Will. Surprisingly in the Will that has been projected by the first defendant, the testator seems to have been totally excluded her and no reasons have been given for the same. Writing a Will necessarily interferes with the natural line of succession. However, when the natural line of succession is not preferred, the Court, sitting as a court of conscience while dealing with a Will, should demand from the propounder as to why no reasons have been given for exclusion of natural legal heir.

13. Further this is a case of shy Will. The Will did not surface immediately after the death of Shanmugam. It did not surface even when Shanmugam's brother-in-law had initiated proceedings before the District Court for the purpose of appointing himself as a guardian for Maharani to manage the suit property, which according to him fell to the share of Maharani. It is after the publication is made in the said proceedings before the District Court, has the Will been produced. The propounder has stated one of the attesting witnesses, DW-3 came to him and said that he is in



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possession of the Will. DW-1 would plead ignorance of the Will at the time, it was written. He would state in the original petition proceedings before the District Court that he came to know about the Will only when a paper publication was made in “The Daily Thanthi” with respect to those proceedings. However, he would state in this proceedings that he came to know about the Will soon after the funeral was performed for Shanmugam and he had requested DW-3 to retain the Will and that he would collect it at the appropriate time. The Courts below have concentrated on the inherent contradictions in the evidence of DW-1 and DW-3, thereafter have come to the conclusion, and in my view rightly, that the Will has been fabricated. It is so unnatural that a person who does not have a right to the property, if not for a Will, would request an utter stranger to the family to retain the Will and that he will collect that an appropriate time.

14. I find that the evidence of the propounder is artificial. I am not able to agree merely because DW-2 and DW-3 have spoken about the Will, I have to accept the same. The suspicious circumstances surrounding the Will also should have been explained to the satisfaction of the Court and that not having been done, the plea on the Will has to fail. In other words,



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the substantial questions of law are answered against the appellants and in favour of the respondents.

15. The Second Appeal is dismissed. The Judgment and Decree of the Court of Subordinate Judge at Vellore in A.S.No. 53 of 1990 dated 18.08.2000 in confirming the Judgment and Decree in O.S.No. 198 of 1985 of the Additional District Munsif at Vellore, dated 09.10.1990 stands confirmed. No costs.

24.04.2023

Index :Yes/No
Internet:Yes/No
vsg

To

1. Subordinate Court, Vellore.

2. Additional District Munsif, Vellore.



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