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S.A.No.1105 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29..03..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1105 of 2009

and

C.M.P.No.1 of 2009

1. Jansirani

2. Jakkuvin Rani

..... Appellants

-Versus-

1. L.Sugumaran

2. L.Chinnaiyan

..... Respondents

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 17.04.2019 made in A.S.No.10 of 2007 by the learned Principal Subordinate Judge, Tiruvannamalai, confirming the judgement and decree dated 19.12.2006 made in O.S.No.408 of 2005 by the learned Additional District Munsif, Tiruvannamalai.

For Appellants : Ms.Mahamandra Rajalakshmi

For Respondents : Mr.K.Selvakumar for
Mr.T.R.Rajaraman for R1
No Appearance for R2



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JUDGEMENT

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This Second Appeal arises against the judgement and decree dated 17.04.2019 made in A.S.No.10 of 2007 by the learned Principal Subordinate Judge, Tiruvannamalai, in confirming the judgement and decree dated 19.12.2006 made in O.S.No.408 of 2005 by the learned Additional District Munsif, Tiruvannamalai.

2. The case of the plaintiffs is that, their mother Soundari and Dhaneswari Ammal were sisters. Their grandfather Appendai Nainar had purchased a property in the name of Dhaneswari Ammal on 23.02.1985. Dhaneswari Ammal was a patient suffering from Asthma and heart ailments. She passed away on 01.01.1994. Dhaneswari Ammal had married the 1st defendant Sugumaran and through the wedlock, they had no issues. According to the plaintiffs, on 18.12.1993, Dhaneswari Ammal executed a Will in favour of the plaintiffs viz., (1) Jansirani and (2) Jakkuvini Rani. As the husband of Dhaneswari Ammal, the 1st defendant herein, sought to interfere with the possession, the present suit for declaration of title and injunction.

3. In the written statement the respondents contended that the 1st defendant had purchased the property in the name of Dhaneswari Ammal and it was not purchased by his father-in-law Appendai Nainar. The defendants have specifically pleaded that the alleged Will dated 18.12.1993 is a rank forgery.



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4. Based on the above pleadings, the trial court framed the following

issues:-

(1) whether it is true that the father of Dhaneswari Ammal had purchased the suit property on 23.02.1985 in the name of Dhaneswari Ammal to gift as Sreedhana property?

(2) Whether it is true that Dhaneswari Ammal had executed the will on 18.12.1993 in respect of the suit property in favour of the plaintiff in a sound disposing state of mind?

(3) Whether the suit property is in possession and enjoyment of the plaintiffs?

(4) Whether the plaintiff is entitled to the relief of declaration as prayed for in the suit?

(5) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the suit?

(6) To what other reliefs, the plaintiff is entitled?

5. On the side of the plaintiff 3 witnesses were examined viz., Jansirani, the 1st plaintiff as P.W.1, Jayaramapillai, the alleged scribe of the Will as P.W.2 and Thulasi Gounder, the attesting witnesses to the Will as P.W.3 and 7 documents were marked. On the side of the defendants, L.Sugumaran, the 1st defendant examined himself as D.W.1 and marked 14 documents.



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6. After a detailed consideration, the trial court dismissed the suit against which an Appeal Suit in A.S.No.10 of 2007 had been preferred before the Principal Subordinate Judge, Tiruvannamalai, and the Appeal Suit, as stated above, was dismissed confirming the decree and judgement of the trial court. Both the courts below have found that Dhaneswari Ammal is the owner of the property and it was not purchased by Appendai Nainar or by Sukumaran, the 1st defendant. Therefore, I need not venture into the plea of benami raised by the 1st defendant Sugumaran. The 1st defendant Sugumaran has not filed any cross objection as against the adverse finding made against him and therefore, he is debarred from arguing to the contrary in this appeal.

7. Insofar as the WILL dated 18.12.1993 is concerned, the same was marked as Ex.P.2. The onus of proving the Will and the absence of the suspicious circumstances is on the plaintiffs. They are the propounders of the Will. This is especially so in this case since the specific case of the 1st defendant is that the Will is fabricated and a forged one. One of the suspicious circumstances in the Will is lack of the reason for excluding Sugumaran with whom Dhaneswari Ammal was residing from the time of her marriage in 1976 till her death in 1994. Exclusion of a legal heir is a suspicious circumstance. P.W.3 the attesting witnesses to the Will as well as P.W.2, the Scribe of the Will are not in a position to state whether the marital relationship between



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the plaintiffs' aunt and uncle were on the rocks. Apart from this , no other evidence has been let in by the parties.

8. Further, signatures of the testator has to be proved in a convincing manner. The trial court as well as the first appellate court have compared the signatures in the Will (Ex.A2) and the admitted evidence in the form of correspondence under Ex.A.5, A6 & A8. They have come to a conclusion that the signatures were not similar with the signatures found in Ex.A.2 Will.

9. The plaint as well as the evidence of parties proceed that Dhaneswari Ammal was not in the pink of her health but was literally taken from one hospital to another for treatment. Therefore, a duty cast on them to show that it was Dhaneswari Ammal who had written the Will. The Signature of Dhaneswari Ammal found in a contemporaneous document of 10.05.1992 and under Ex.A.5 which have been produced by the plaintiffs in the cross examination of the 1st defendant do not tally.

10. The further finding has been shown that Ex.A.1 is the certified copy of the sale deed and the stamp papers were purchased in Gudiyatham on 24.11.1993. The copy application itself was presented on 22.12.1993 and the copy was obtained on 27.12.1993. Whereas the Will had been executed much before the copy application was presented to the Sub Registrar on 18.12.1993.

In other words, on the date of execution of the alleged Will (Ex.A2), copy of



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the Sale Deed (Ex.A.1) was not even in existence. This is an other burden on the plaintiff which has not been satisfactorily discharged.

11. Both the courts below have compared the signature with the admitted signature found in the other documents and have come to a conclusion that Ex.A2 Will is forged one and that the plaintiffs have not explained the suspicious circumstances surrounding Ex.A.2 Will. These are findings of fact which have been endorsed by the first appellate court which is final court of appeal on facts. This second appeal has not been admitted. I am not inclined to admit it. No question of law, much less substantial question of law, arises for consideration in this second appeal and as such this second appeal is liable to be dismissed.

In the result, the Second Appeal is dismissed and the judgement and decree of both the courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

- 1.The Principal Subordinate Judge, Tiruvannamalai, Tiruvannamalai District.
- 2.The Additional District Munsif, Tiruvannamalai, Tiruvannamalai District.



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V.LAKSHMINARAYANAN, J.

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