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S.A.No.773 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.773 of 2021
and
C.M.P.No.26190 of 2023

1.Luckas
2.Pilavendran

... Appellants

Vs.

1.Kaanikaimeri
2.Arokiyasamy

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree passed in A.S.No.11 of 2017 on the file of the Principal Sub Court, Virudhachalam, dated 28.02.2020 confirming the judgement and decree passed in O.S.No.453 of 2009 on the file of the II Additional District Munsif Court, Virudhachalam dated 11.04.2017.

For Appellants : Mr.R.Babu

For Respondents : Mr.B.K.Girishneelakantan [R.1]



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JUDGEMENT

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The defendants 1 and 2 in the suit O.S.No.453 of 2009 on the file of the II Additional District Munsif Court, Virudhachalam are the appellants before this Court. They seek to challenge the concurrent judgment and decree that they have suffered. The facts which have given rise to this Second Appeal are herein below set out and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiffs had filed the above-referred suit seeking a declaration of their title to the suit schedule property and for a recovery of possession together with a prayer for mesne profit.

3. It is the case of the plaintiffs that the suit schedule properties belonged to one Chinnappan, son of Mariasusai. The said Chinnappan had a son Anthonysamy and daughters, Sauriyammal, Victoria, Ranjithammeri and Adhikalammeri. The son, Anthonysamy had got into bad company and was not taking care of the family. It is the



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daughters who were taking care of the parents. Apart from the suit schedule properties, the said Chinnappan had other properties which he had Willed in favour of his grandsons, the sons of Anthonysamy, who had been arrayed as defendants 1 and 2 in the suit.

4. Since the daughters were taking care of Chinappan and his wife, Amrthammal, the said Chinappan had divided the suit property into 5 items A, B, C, D, and E. Under a registered Will dated 10.06.1989, A schedule property was given to his eldest daughter Sauriyammal, B schedule to his 2nd daughter Victoria, C schedule to his 3rd daughter, Ranjithammeri and D schedule to his 4th daughter Adhikalammeri.

5. It is the contention of the plaintiffs that the extent of the properties comprised in the subject matter of the registered Will was one acre. In this one acre of land, in the north-west corner, there was a



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well which was situate on a land measuring 1 cent which has been described as the E schedule. In the said Will, Chinnappan had provided that the E schedule property (well) shall be enjoyed in common by the 4 daughters. They could draw the water from this well and irrigate the lands comprised in Schedules A to D properties measuring 99 cents. The Will had clearly described the properties that had been allotted to each of the daughters. This Will was the last testament executed by the said Chinnappan, who thereafter passed away on 03.11.1989. His wife Amrithammal survived him and it was her daughter Adhikalammeri who was taking care of her mother. Since Adhikalammeri was taking care of the mother, her sisters had relinquished their respective shares in her favour.

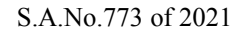
6. The said Amrithammal, wife of Chinnasamy, died in the year 1991. After the death of Amrithammal, the said Anthonysamy tried to trespass into the properties in which he had no right. The sisters had therefore filed O.S.No.301 of 1992 for a declaration and injunction. In



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the said suit Anthonymsami had filed a counter claim. Pending the suit the defendants 1 and 2 had approached Sauriyammal and entered into a settlement talk in and by which they had taken on lease the suit properties on a yearly rental of Rs.4,000/-. They had also acknowledged the title of the daughters of the said Chinnasamy to the property. Therefore, since they had compromised the issue and they were not aware that they had to represent the same to the Court, they allowed the suit O.S.No.301 of 1992 to be dismissed for default.

7. The 1st and the 2nd defendants had cultivated the land and were regular in the payment of the lease rent for the first 3 years. Thereafter, they had stopped paying the rent and considering the default, the sisters had taken back the property. Thereafter, the sisters had decided to sell the properties and they had appointed the plaintiff's husband and son of Victoria, Ballavadas as their authorized power agent on 19.09.2006. Thereafter the power agent had sold the property to his wife under a sale deed dated 31.03.2008 with the consent of the principals. Since



there was mis-description of the boundaries, a rectification deed dated 05.08.2009 came to be executed and registered.

8. It is the case of the plaintiffs that when the defendants had come to know that the power agent had been appointed to alienate the property, they had sought to purchase the same at a rock bottom price. The power agent refused to sell the property at that rate to defendants 1 and 2. Thereafter, the defendants 1 and 2 had proclaimed that they would not permit any other persons to purchase the property. It is for this reason that the power agent had sold the properties to his wife for a total sale consideration of Rs.1,00,000/-.

9. The plaintiffs would submit that the defendants had put across a case that Anthonysamy had executed a registered settlement deed dated 28.01.2009 in favor of defendants 1 and 2. In the said settlement deed, there is a reference to an unregistered Will executed by the said Chinnappan in an by which he had given the suit property to



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Anthonisamy. The plaintiffs would however submit that the deceased Chinnappan had not executed any Will in favour of Anthonysamy. On the strength of the settlement deed dated 28.01.2009, the 1st and the 2nd defendants had mortgaged the property in favour of the 3rd defendant on 22.05.2009. Therefore, the plaintiffs had come forward with this above suit.

10. The defendants had contested the case on the strength of the settlement deed that has been executed by Anthonysamy in favour of the defendants 1 and 2. They would state that it was only Anthonysamy who had taken care of Chinnappan and his wife Amrithammal till their death. They would contend that the Will dated 10.06.1989, which has been projected by the plaintiffs, has been created by the daughters of Chinnappan by taking advantage of his frail health.



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11. The defendants would submit that Chinnappan who was residing with his son had been taken away by the 2nd daughter Victoria on the pretext of taking him to Church. It is during this brief stay that the Will dated 10.06.1989 had been fraudulently executed. Thereafter, the said Chinnappan once again returned to his son Anthony's house. They would therefore contend that the Will dated 10.06.1989 has not been executed in a sound and disposing state of mind and therefore no rights would flow to the plaintiffs on the strength of the same. On the basis of this Will, the Sale deed in favour of the plaintiffs has been created and the same is not binding on the defendants. They would therefore seek to have the suit dismissed.

12. The learned II Additional District Munsif, Vridhachalam had framed 7 issues and 2 additional issues. On the side of the plaintiffs, six witnesses were examined and Ex.A.1 to A.9 were marked. On the side of the defendants, five witnesses were examined and Ex.D.1 to D.12 were marked.



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13. Ultimately, the learned Trial Judge had upheld Ex.A.1, Will deed dated 10.06.1989, which Chinnappan had executed in favour of his daughters and consequently, upheld the sale in favour of the plaintiffs. The Trial Judge had also held that Ex.B.3, Will dated 01.10.1989 which has been put forward by the defendants was a rank forgery and ultimately decreed the suit as prayed for. This judgement and decree was taken up on appeal by defendants 1 and 2 in A.S.No.11 of 2017 on the file of the Principal Sub Judge, Vridhachalam.

14. The learned Appellate Judge concurred with the findings of the Trial Court and dismissed the appeal. Challenging this concurrent judgement and decree the defendants 1 and 2 are before this Court.

15. Heard the counsels on either side.

16. The issue revolves around two Wills, first Ex.A.1 Will dated 10.06.1989 and the second Ex.B.3 Will dated 01.10.1989. Ex.A.1, Will



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dated 10.06.1989, had been executed by Chinnappan bequeathing the properties on his four daughters. Defendants 1 and 2 have projected Ex.B.3 ,Will dated 01.10.1989 and stated that the said Will has been executed by the said Chinnappan in favour of their father, Anthonysamy and this Will being the last Will would override the plaintiff's Will.

17. A reading of the judgments of the Courts below would clearly show that the Ex.A.1 Will had been proved in the manner known to law by the plaintiffs. As regards Ex.B.3 Will that had been put forward by the defendants 1 and 2, the Courts below have held that the same had not been proved in the manner known to law. That apart, the defendants have failed to examine the attesting witness to prove the execution of the Will, Ex.B.3. The Courts below have taken note of the admission of D.W.1 that in the suit O.S.No.301 of 1992 which was instituted by the daughters of Chinnappan, a compromise had been arrived at where these defendants 1 and 2 had undertaken to pay yearly



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rent of Rs.4,000/- to the daughters of the said Chinnappan and they have also acknowledged the title of the daughters of Chinnappan to the suit properties.

18. Therefore. in the light of the above discussion and the fact that the Courts below have exhaustively considered the evidence on record and decreed the suit, I see no reason to interfere with this concurrent judgment and decree of the Courts below. Consequently, the Second Appeal is dismissed. Further, the defendants/appellants have not made out any substantial question of law which requires re-consideration of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Sub Court, Virudhachalam
2. The II Additional District Munsif Court, Virudhachalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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