



S.A.No.739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.739 of 2023

Rayappan

... Appellant

Vs.

1.Aarokiyadass

2.Annammal

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 01.11.2018 made in the First Appeal No.25 of 2014 on the file of the Subordinate Judge of Kallakurichi, confirming the Judgement and Decree dated 08.01.2014 made in O.S.No.767 of 2004 on the file of the II Addl. District Munsif Court, Kallakurichi.

For Appellant : Mr.P.Dinesh Kumar



S.A.No.739 of 2023

WEB COPY

JUDGEMENT

The defendant is the appellant before this Court challenging the concurrent judgement and decree in O.S.No.767 of 2004 of the II Additional District Munsif, Kallakurichi which has been confirmed by the Subordinate Judge, Kallakurichi in A.S.No.25 of 2014.

2. The facts in brief are as follows and the parties are referred to in the same rank as before the Trial Court.

3. The plaintiffs had filed the suit for declaring the 1st plaintiff's right to the A schedule property and the 2nd plaintiff's right to the B schedule property and for an injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment of their respective properties.



S.A.No.739 of 2023

WEB COPY

4. It is the case of the plaintiffs that originally the A schedule property belonged to one Mariyasoosaiammal, the paternal grand mother of the 1st plaintiff. She had purchased the property on 22.04.1961 for a sale consideration of Rs.4,000/- and a registered sale deed was executed in her favour (Survey No.379/3 which forms part of the A schedule property) and patta was mutated in the name of Mariyasoosaiammal in patta No.295. The plaintiffs' case is that his grandmother has been enjoying the properties since then.

5. Under the Land Development Scheme, the property purchased by Mariyasoosaiammal was sub-divided as Survey No.379/3A measuring 0.59.5 Ares and she was granted fresh patta bearing no.537. On 17.02.21988, under a registered Will, the said Mariyasoosaiammal had bequeathed the A schedule property on the 1st plaintiff who is her grandson through her son, Kuzandaiyesu. The said Mariyasoosaiammal

3/13



S.A.No.739 of 2023

passed away on 03.04.2002 and with effect from the date of her death, the 1st plaintiff became the absolute owner of the property as per the terms of the Will. The 1st plaintiff has also been granted a separate patta bearing no.1375.

6. As regards the B schedule property, which consists of 4 items of properties, the same belongs to the 2nd plaintiff the wife of Kuzandaiyesu and she is in possession and enjoyment of the same. The 1st and the 2nd items therein belong to Mariyasoosaiammal who is the mother-in-law of the 2nd plaintiff. This property was purchased by Mariyasoosaiammal under a registered sale deed dated 25.03.1953. The 3rd item of the property in the B schedule property was purchased by Mariyasoosaiammal from one Subbalakshmi ammal under a sale deed dated 09.02.1954. Similarly, the 4th item of property was purchased by her on 14.04.1976.



S.A.No.739 of 2023

WEB COPY

7. Under the Updating Register Scheme, the said Mariyasoosaiammal had been allotted patta no.718 as against the old patta no.19. On 27.05.1993, the said Mariyasoosaiammal had executed a Will in favour of her daughter-in-law bequeathing the B schedule property. The patta was thereafter mutated in the name of the 2nd plaintiff. In respect of items 1, 2 and 4, she was granted patta no.722 and in respect of item no.3, she was granted patta no.1256.

8. It is the case of the plaintiffs that the defendant has no right, title or interest over the said property. However, they would question the validity of the Will. In fact, on 10.03.2004, the defendant had attempted to trespass into the suit property. Hence, the suit.



S.A.No.739 of 2023

WEB COPY

9. The defendant had entered appearance and filed a written statement in which he would contend that he is the brother of the 1st plaintiff's father, Kuzandaiyesu.

10. It is the case of the defendant that their ancestor Rayappa Gounder, his namesake, had possessed properties in Survey No.510/14B measuring an extent of 27 cents of Nanja lands and half a Cawnie of land as well and further in Kachirayapalayam Village, the Rayappa Gounder also possessed 3 and a half acres of Punja lands. The said Mariyasoosaiammal is none else than the daughter of the said Rayappa Gounder.

11. It is the further case of the defendant that on 18.02.1954, the said Rayappa Gounder had executed a registered Will. As per the recitals of this Will, after the lifetime of the said Rayappa Gounder, the property was to be devolved on his wife Anjeel Ammal without any



S.A.No.739 of 2023

right of alienation for life. After the demise of Anjeel Ammal, the property was to be devolved on her daughter, Mariyasoosaiammal for life and after her demise, the property was to devolve on her sons Arokiyam, Kuzandaiyesu i.e., the 1st plaintiff's father and Rayappan, i.e. the defendant herein. Therefore, it is the contention of the respondent that the Will that has been put across by the plaintiffs is absolutely false and he also has a right to the property.

12. It is also his case that Mariyasoosaiammal, after the death of her father enjoyed the properties and purchased the suit properties from out of this income. He has denied the registered Will said to have been executed by Mariyasoosaiammal. Therefore, when the defendant who is a male descendant was alive, Mariyasoosaiammal contrary to the terms of the Will dated 10.12.1965 had no right to bequeath the properties on the plaintiffs. Therefore, he sought for a dismissal of the suit.



S.A.No.739 of 2023

WEB COPY

13. An additional written statement had also been filed wherein the defendant would submit that his maternal grandfather Rayappa Gounder had ancestral properties and these properties were bequeathed to his daughter Mariyasoosaiammal, who is the mother of the defendant. The defendant had two brothers Kuzandaiyesu, the father of the 1st plaintiff and Arokiyam another brother. The said Arokiyam had died a bachelor leaving behind no issues. Therefore, after the death of Mariyasoosaiammal, the properties belonged equally to the 1st plaintiff's father as well as to the defendant and therefore, the defendant is entitled to a share in the property.

14. The Trial Court had framed 5 issues and on the side of the plaintiff 3 witnesses were examined and Ex.A.1 to A.26 were marked. On the side of the defendant, 3 witnesses were examined and Ex.B.1 alone was marked which is the Will dated 22.03.2002 alleged to have



been executed by the said Mariyasoosaiammal in favour of the defendant. The hand writing expert's report was marked as Ex.C.1.

15. Ultimately, the Trial Court had decreed the suit as prayed for. Challenging the same the defendant had filed A.S.No.25 of 2014 on the file of the Sub Court, Kallakurichi. The learned Judge has also confirmed the judgement and decree of the Trial Court and dismissed the appeal, against which the present Second Appeal has been filed.

16. Heard the learned counsel for the appellant.

17. A perusal of the records would show that both parties are ad-idem on the fact that the properties belong to Mariyasoosaiammal. The plaintiffs would contend that Mariyasoosaiammal had executed two Wills which have been marked as Ex.A.5 and A.20 in favour of the plaintiffs 1 and 2 respectively and after her demise on 03.04.2002, the



S.A.No.739 of 2023

property had devolved on them. The defendant has set up a case in the original written statement that Mariyasoosaiammal, his mother had executed Ex.B.1, Will bequeathing the properties on him. However, in the Additional written statement, he has taken out a stand that he and the 1st plaintiff's father Kuzandaiyesu were equally entitled to the property as Mariyasoosaiammal's sons. The plaintiffs have proved both the Wills by not only examining the attesting witnesses but also by sending the documents for comparison with the admitted signatures of the deceased Mariyasoosaiammal. The Court belows have also found that the Will set up by the defendant was a fabricated one taking into account the unclear thumb impression and the fact that there were contradictions in the evidence of D.W.2 and D.W.3.

18. In the light of the overwhelming evidence, the Courts below have proceeded to decree the suit and I see no reason to interfere with this concurrent judgment and decree more particularly when the

10/13



S.A.No.739 of 2023

WEB COPY

appellant has not made out any question of law much less a substantial question of law. Accordingly, the Second Appeal stands dismissed. No costs.

18.10.2023

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



S.A.No.739 of 2023

WEB COPY

To

1. The Subordinate Judge of Kallakurichi
2. The II Addl. District Munsif Court, Kallakurichi.
3. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



S.A.No.739 of 2023

P.T.ASHA, J.,

shr

S.A.No.739 of 2023

18.10.2023