



S.A No.1103 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01 .2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

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1.Revathy

(cause title accpeted vide order of Court dated 03.11.2014 made in M.P o.
1/2014 in S.A Sr. No.86324/14)

... Appellant

Vs.

K.R.Velumani (died)

1.Nagarajan

2.Selvarani

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree dated 22.01.2014 passed in A.S No. 8 of 2013 on the file of the Principal District Court, Namakkal, confirming the judgment and the decree dated 09.01.2013 passed in O.S No. 70 of 2009 before the Sub Court, Tiruchengode.

For Appellant: MR. Hema Sampath, Senior Counsel.

For R1 : Mr.V.Sreekanth
for Mr. R.Prabakar



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For R2

:Mr.R.Palanisamy

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JUDGMENT

The appellant herein is the second defendant in suit O.S No. 70 of 2009 on the file Sub Court, Tiruchengode, filed by the plaintiff/defendant's father for the relief of partition and other consequential relief in respect of suit properties against his son and daughter, the first item of the suit property was ancestral property and second item of the suit property was self acquired property of the plaintiff, in which, the plaintiff claiming $\frac{1}{4}$ share along with other shares. Hence, he prayed for division of properties by means of partition. The first defendant is the son of the plaintiff who denied his father's right over the suit property stated that as per the family arrangement in the year 1988 his shares were allotted to his father/plaintiff and the share allotted to the first defendant is shown as first item of the suit property in which neither the plaintiff nor his sisters/second defendant and third defendant have no share for the reason that after family arrangements this property i.e., first item of the suit property became a absolute property of the first defendant thereby he denied the plaintiffs claim. In respect of second item of the suit property which was purchased by his mother and father later it was gifted in favour of him through



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settlement deeds therefore the plaintiffs has no right to claim share in the property, as per the gift deed he became the absolute owner of the property.

With regard to sisters share in the suit property already his father gifted around 40 cents each to them in the ancestral property through family partition. The second defendant/appellant herein submitted his written statement in which she was stated that properties are joint family property in which she is entitled to $\frac{1}{4}$ share along with other sharers. On considering the oral and documentary evidence as well as documents adduced on either side the Trial Court held that plaintiff sold portion of the ancestral property and gifted other portions of the ancestral property in favour of her daughters with specific boundaries are **probablise** the defence taken by the first defendant that there was family arrangement in the family and the shares allotted to the first defendant is shown as first item of the suit property, in which, neither the plaintiff nor second and third defendants have no rights. Accordingly, the plaintiff claim was rejected in respect of first item of the suit property. With regard to second item of the suit property the trial Court held that through gift deed executed by defendant's parents the first defendant became the absolute owner thereby the plaintiff has no right over



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the property and dismissed the suit.

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2. Challenging the same the plaintiff preferred an appeal in A.S No. 8 of 2013 before the District Judge, Namakkal, the lower appellate Court independently analysed the facts and evidence finally held the first item of the suit property is belongs to the first defendant as per the family arrangement. With regard to second item of the suit property gift deed stands in the name of the first defendant was accepted and held that it is absolute property of the first defendant hence the findings the Trial Court was confirmed and dismissed the appeal.

3. Aggrieved over the same as a legal heir of deceased plaintiff the second defendant preferred this second appeal. This Court admitted the appeal with the following substantial questions of law:

i. Whether in law the Courts below are right in failing to see that when all the evidence proved joint enjoyment of the suit properties, the first respondent's case of a family arrangement in 1988 had to fail?

ii. Whether in law the Courts below are right in finding that Exhibit B2 Will of the mother of the parties was proved as mandated under the Indian Succession Act and the Evidence Act?



4. The brief facts of the case are as follows:

The defendants are sons and daughter of the plaintiff.

The suit properties are ancestral and self acquired property of the plaintiff. The first item of the suit property is an agricultural land and the second item of the suit property is a house property. The properties are originally belonged plaintiff's grand father Seeranga Gounder. After his death, his wife Kuppayammal has executed a settlement deed in favour of Natesa Gounder, who is younger brother of the plaintiff's father Rangasamy, and also in favour of Muthu, who is brother of the plaintiff in respect of share in the ancestral property. Later the said Natesa gounder, Muthu and the plaintiff have partitioned the properties involved in the ancestral properties and also involved in settlement deed executed by the sad Kuppayammal separately by way of partition deeds dated 21.08.1968 and 03.08.1968 respectively. As per the above partition deed dated 03.08.1968, the Muthu was allotted second item of the suit property and then it was purchased by the plaintiff and his wife Kamala in the year 1976 out of the income derived from the first item of the suit property. During the time of marriage held to the defendants, the plaintiff has sold some part of ancestral property and also executed a settlement deed in favour of both the defendants 2 and 3. Further,



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since the first defendant has incurred loss in rig business and in order to clear the said debt, he has sold an extent of 85 cents in S.No. 41/9C. So, all the above said deed are executed by the plaintiff for the welfare of the defendants. The available extent of ancestral property is the first item of the suit property herein. Further, the plaintiff submitted that his wife was died on 01.01.2008 after her demise the first defendant incurred heavy loss in his business and he insisted the plaintiff to sell the suit property. The defendant has no right to get the entire suit property and he entitled to only $\frac{1}{4}$ share. In a bid swindle the suit property he disturbed the possession and enjoyment of the plaintiff. Hence the suit.

5. The brief averment stated in the written statement filed by the first respondent are as follows:

The first defendant completely denied the plaintiff's claim except his relationship with the plaintiff. He stated that his family owned 4.30 acres of ancestral property out of which the plaintiff sold one acre of land to repay his debt incurred by him and not used that amount for joint family. Further in the year 1988 there was family arrangement between their family and allotted 40 cents each to the second and third defendant and 85 cents allotted to the plaintiff and 1.65 acres allotted to the first defendant



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which is 1st item of the suit property herein. While so, the plaintiff's sold her 85 cents share through sale deed dated 04.03.1996 and 16.09.1999.

Therefore, the first defendant is in possession of the first item of the suit property not the plaintiff. Further, the second item of the suit property was purchased by his mother/Kamalam out of her own proceeds derived from her parent home while executing sale deed the plaintiff's cunningly include himself as a co-purchaser despite the defendant allotted 754 square feet in the second item of the suit property through registered settlement deed dated 09.10.2000. Further the first defendant mother executed a Will on 25.11.2007 and bequeathed the remaining property in the second item of the suit property in favour of the defendant. Hence he prayed to dismiss the suit.

6. The brief averments stated in the written statement filed by the second respondent are as follows:

The second defendant stated that she is entitled to $\frac{1}{4}$ share in the suit property and admitted the prayer of the suit and prayed to decree the suit.

7. The learned counsel appearing for the appellant submitted that first defendant not established the family arrangement held between the family members in the year 1988 with sufficient evidence, in such



circumstances the properties being a ancestral property in which the plaintiff is having $\frac{1}{4}$ share but the Court below failed to appreciate this facts and wrongly dismissed the suit and those findings are liable to be set aside. Further, with regard to execution of Will in favour of the first defendant by his mother/Kamalam also not proved by the first defendant with material evidence as required under Section 68 of Evidence Act, but the Court below failed to take note of the facts and erroneously held that second item of the property is also absolute property of the first defendant through gift deed executed by his parents. To support his contention he relied the judgement in the case of Janki Narayan Bhoir Vs Narayan Namdeo Kada reported in 2000 (2) SCC 91:

The view taken in Mt. Manki Kaur v. Hansraj Singh & Ors. [(AIR) 1938 Patna 301], on which heavy reliance was placed by the learned counsel for the respondent, in our view is not a correct view as to the scope and effect of [Section 71](#) of the Evidence Act. That case related to an action taken on mortgage bond and not on a Will. There were four attesting witnesses. One of them was dead, two others, who were called, denied execution. But the absence of fourth from Court was not explained. On the facts of that case, the High Court took the view that the execution of the mortgage bond could be proved by other evidence having recourse to [Section 71](#) of the Evidence Act. In our opinion, the position of law explained in relation to [Section 71](#) of the Evidence Act in the judgment of Bombay High Court aforementioned is a correct view which we approve. In the case on hand it was not established that the two witnesses attested the Will. The High Court committed a serious error in reversing the judgment and decree of the first appellate court on a finding of fact, which was based on proper and objective



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appreciation of evidence. The High Court was also wrong in treating the scribe of the Will, Raikar, as an attesting witness without any basis. Further, the High Court while reversing the judgment and decree of the first appellate court did not indicate as to any substantial question of law that arose for consideration between the parties to deprive the suit properties to the only daughter of deceased Honaji Dama Kadam.

8. By way of reply the learned counsel for the respondent submitted that through family arrangements the first item of the suit property was allotted to him and with regard to second item of the suit property it was settled in his favour through settlement deed dated 09.10.2000. Therefore both the Court below rightly appreciate this aspects which need no interference.

9. On considering the oral and documentary evidence and on Perusal of recitals in the settlement deed Ex.B1 a portion of the properties belongs to the plaintiff was sold by him with specific boundaries to the third parties. Moreover, the plaintiff executed gift settlement deeds in favour of his daughters/second and third defendant with specific boundaries for a extent of 40 cents each which make it clear that he dealt with properties independently. If really the properties are joint in nature he ought to have get signature from his son/first defendant while settling the property to his



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daughter or other parties. But no reason was offered on the side of the plaintiff about the selling of the properties with four boundaries without a consent of the son/first defendant. Furthermore, as Kartha of the joint family the plaintiff not transferred those properties but in the recitals of the deeds shows that he dealt with properties independently. Therefore, the contention of the appellant that properties are dealt with by the plaintiff as kartha of the family not been proved with sufficient evidence. At the same time, while family arrangement between the family members which confer power to him to deal with certain portion of the properties. Thereby he independently sold some of the portion of the properties and executed gift deed in favour of his daughters and same was not objected by the first defendant. Further, during the cross examination of P.W.1 himself not able to confine the Court as what would necessitate him to execute gift deed in favour of his daughters. Moreover, as rightly pointed out by the first defendant's counsel the plaintiff has not whispered about the gift deed in the plaint and suppressed those facts at the time of the filing of the suit though the conduct of the plaintiff proved that there was family arrangement and some share of property was allotted to him and share allotted to the first defendant is shown as the suit property herein and the defence of the first defendant



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probablise from the execution of the sale deed and gift deeds by the plaintiff

independently both the Court below rightly appreciated this aspects which needs no interference.

10. Further the learned counsel for the appellant contended that earlier Court not assigned reasons independently while dismissing the appeal. On Seeing the findings of the lower appellate Court assigned reason is sufficient needs no interference. Hence objection in respect of finding of the lower appellate Judge is unsustainable. Accordingly question of law 1 is answered.

11. With regard to the second question of law the first defendant stated that portion of the property in the second item of the suit property was gifted by his father through gift settlement deed and the remaining extent of the property was bequeathed by his mother since property belongs to his parents absolutely portion of the property gifted by his father through Ex.B1 gift deed and remaining portion of the property bequeathed by his mother through Ex.B2 Will dated 25.11.2000 but the learned counsel for the appellant submitted that Will was not proved by the first defendant by examining witness as required under Section 68 of Evidence Act, so also the gift deed. In respect of Will/Ex.B2 the first



defendant examined attesting witness of the will/Ex.B2 as D.W.2 and D.W.3

both of them cogently gave evidence and stated that Will was executed by the Kamalam/mother of the first defendant and she was is in sound state of mind and also she signed in the presence of the notary public advocate E.M.Sivaraman. It is pertinent to note that the plaintiff has not submitted any of the suspicious circumstances with regard to execution of Will. Hence, as a mother/Kamalam she executed the Will in favour of the son/first defendant and the same was proved by examining two of the attestor thus the Will is proved beyond reasonable doubt. Only contention raised by the plaintiff is that she was residing Tiruchengode but the will was executed at Erode, as rightly pointed out by the Court below she can execute Will anywhere in India unless it is surrounded by suspicious circumstances. Further, the Judgment relied by the first defendant is not applicable to the fact of the present case. Moreover, in Will photograph of testator was affixed and he put her signature in the photograph in the presence of the notary Advocate which has not been disputed by the plaintiff hence the findings of the Court below with regard to Will is acceptable one which needs no interference accordingly the second question of law is answered. As discussed above, the plaintiff failed to prove his case. Therefore,



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findings rendered by the Court below is confirmed.

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12. In the result, the Second Appeal is dismissed. No Merit.

There shall be no order as to costs.

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T.V.THAMILSELVI,J.

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To

1. The Principal District Court, Namakkal.
2. The Sub Court, Tiruchengode.
3. The Section Officer,
V.R Section,

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