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AS No.518 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.09.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **R.KALAIMATHI**

A.S.No.518 of 2019

1. N. Pandian

2. Tmt. N.Pushpavalli

... Appellants/Plaintiffs

Vs

N.Ragasamy

... Defendant/Respondent

This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgement and decree dated 30.08.2017 and made in O.S.No.407 of 2015 on the file of the First Additional District Judge, Coimbatore in so far not granting relief as to suit schedule A property.

For Appellants : Mr.N.Ishitiaq Ahmed

For Respondent : Mr.S.Mukunth, Senior Counsel
for Mr.P.Kannankumar



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J U D G E M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The plaintiffs in OS No.407 of 2015 are the appellants. The suit was filed by them seeking partition and separate possession of their 1/3rd share each in the suit property.

2. The plaintiffs claim that the property belonged to one Nanjappan, the father of the plaintiffs and the defendant, who died on 17.03.2015, his wife Velathal predeceased him even in the year 2004. Contending that the suit property is ancestral property and therefore, the plaintiffs would acquire a right by birth over the property and on the death of Nanjappan, they would each get 1/3rd share in the suit property.

3. The suit was resisted by the defendant contending that the entire property is not ancestral property and it is only the property that was allotted to Nanjappan at the partition that took place on 11.08.1971 between him and his brothers which could be characterised as ancestral property. After the said partition, Nanjappan had acquired title to an extent of 4 cents and 248 sq. feet, under the Partition Deed itself and



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under a Sale Deed dated 28.01.1972. Therefore, according to the defendant, if at all the plaintiffs could claim a share it could be only in the 2 cents and 124 sq. feet which was allotted to Nanjappan at the partition that took place on 11.08.1971.

4. It was the further contention of the defendant that the deceased Nanjappan had left a Registered Will dated 24.05.2007, in and by which, he had bequeathed the property that was acquired by him viz. 4 cents and 248 sq. feet described a Schedule 'A' in the Will to the defendant absolutely. As regards the property that was allotted to him at the partition described in 'B' Schedule to the Will, Nanjappan has bequeathed his 1/4th share to the defendant. Therefore, according to the defendant, the plaintiffs would be entitled to only 1/4th share in the 'B' Schedule property to the Will measuring 2 cents and 124 sq. feet.

5. On the above pleadings, the learned Trial Judge framed the following issues:

1. Whether the suit property is self acquired property of Nanjappan or joint family property;

2. Whether the will dated 24.05.2007 is true, valid



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and binding on the plaintiffs; and

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3. Whether the plaintiffs are entitled for partition of the suit property and 1/3 share each in it.

6. At Trial, the first plaintiff was examined as P.W.1 and Exhibits A1 to A7 were marked. The defendant was examined as D.W.1 and one of the attesting witnesses to the Will dated 24.05.2007 viz. one Mr.N.Mohanraj was examined as D.W.2 and Exhibits B1 to B19 were marked. The Will was marked as Ex.B1.

7. The learned Trial Judge found that the property in the hands of Nanjappan was only his separate property and not ancestral property. This finding was arrived at on the basis of the recitals in Ex.A1 Partition Deed, wherein it was shown that if the property subject matter of Partition was purchased by Pongiyya Gounder, father of Nanjappan. On the validity of the Will also, the learned Trial Judge held that the execution of the Will has been proved as required under Section 68 of the Evidence Act and concluded that the Will has been proved in accordance with law.



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8. On the said conclusions, the learned Trial Judge held that the plaintiffs would be entitled to 1/2 share in the 'B' Schedule Property (1/4th share each). On the said findings, the learned Trial Judge granted a preliminary decree declaring that the plaintiffs would be entitled to 1/4th share each in the property shown in 'B' Schedule to the Will dated 24.05.2007. Aggrieved the plaintiffs are on Appeal.

9. We have heard Mr.N.Ishtiaq Ahmed, learned counsel appearing for the appellants and Mr.S.Mukunth learned Senior Counsel appearing for Mr.P.Kannan Kumar, for the respondent.

10. The learned counsel appearing for the appellants would submit that the Trial Court erred in concluding that the Will has been proved. He would draw our attention to the evidence of D.W.1, who has deposed that he found the Will in the house two days after the death of Nanjappan and he informed the others after 15 days. He would also contend that there are differences in the signatures of Nanjappan found in the Will.



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WEB COPY 11. Contending contra, the learned Senior Counsel appearing for the respondent would submit that the difference in the signatures has been explained by the attesting witness viz. D.W.2. He would also submit that the very pleading in paragraph 12 of the plaint itself would show that the plaintiffs were aware of the execution of the Will by Nanjappan. He would draw our attention to the specific contention that Nanjappan was bedridden and totally sick for many years since 2007. This plea, according to the learned Senior Counsel, would definitely indicate that the plaintiffs had knowledge of the Will.

12. On the arguments of the learned counsel appearing on either side, the only question that arises for determination in the Appeal is,

*Whether the Trial Court was right in concluding
that the Will was proved.*

As regards the testamentary capacity of Nanjappan, there cannot be any doubt, inasmuch as the recitals in Ex.A1 clearly show that the property was purchased by Pongiyya Gounder, father of Nanjappan.

13. In view of such specific recitals in a document of the year 1971



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which emanated long before the present dispute, one has to necessarily conclude that the property that was allotted to Nanjappan at that partition would also be his self acquisition. Since Nanjappan had very categorically in the Will stated that the property is ancestral and he has chosen to bequeath only his share in that property which was allotted to him in the partition, we are unable to fault that the Trial Court for treating that portion of the property as ancestral property and concluding that the share of the plaintiffs in that property shown in 'B' Schedule to the Will would not be covered by the bequest made under the Will.

14. As far as the genuineness and validity of the Will, we find that the evidence of the attesting witness is cogent and convincing. Further it is a registered instrument which is entitled to certain presumptions under Section 60(2) of the Registration Act. We do not find any evidence to dislodge the said presumptions and to conclude that the Will is not proved. The attesting witness viz. D.W.2 has spoken about the execution and attestation of the Will and his evidence in Chief-examination has not been shattered in cross examination.



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WEB COPY 15. In the light of the above, we concur with the conclusion of the learned Trial Judge that the Will is true and valid. Therefore, the point framed for consideration in the Appeal is answered against the appellant and we see no ground to interfere in the Appeal. The Appeal fails and it is accordingly dismissed. Considering the relationship between the parties, we do not impose any costs.

(R.SUBRAMANIAN, J .) (R.KALAIMATHI, J.)
13.09.2023

jv
Index : No
Internet : Yes
Speaking order
Neutral Citation: No

To
The I Additional District Judge,
Coimbatore.



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and
R.KALAIMATHI, J.

jv

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