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S.A.No.45 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.01.2023

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.45 of 2023
and
CMP.No.1423 of 2023

1. Savithiri
2. Kanchana
3. Satheesh @ Thirupathi ... Appellants

Vs

1. Periyathayee
2. Santhi
3. Lakshmi
4. Palaniammal
5. Nagaraj ... Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 22.11.2016 made in A.S.No.68 of 2015 on the file of the I Additional District and Sessions Judge, Salem, confirming the Judgment and Decree dated 17.04.2015 made in O.S.No.16 of 2013 on the file of the Principal Subordinate Judge, Salem, by allowing the present second appeal.

For Appellants : Mr.R.Marudhachalamurthy

JUDGMENT

This Second Appeal is directed as against the Judgment and Decree dated 22.11.2016 passed in A.S.No.68 of 2015 on the file of the



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I Additional District and Sessions Judge, Salem, confirming the Judgment and Decree dated 17.04.2015 passed in O.S.No.16 of 2013 on the file of the Principal Subordinate Judge, Salem, thereby decreeing the suit for partition.

2. The appellants are the defendants in the suit filed by the respondents 1 to 3 for partition. The case of the respondents 1 to 3 is that their father viz., Marimuthu Gounder owned property allotted in the partition deed dated 06.12.1973. Immediately after partition deed, he was given the share and he was in possession and enjoyment of the entire property. The respondents 1 to 3 are the daughters of the said Marimuthu Gounder. The fourth respondent is the wife of the said Marimuthu Gounder and one Kasilingam is the another son of the said Marimuthu Gounder. The said Kasilingam died. The appellants are the legal heirs of the said Kasilingam. The said Marimuthu died in the year 2001 and therefore, after his demise, the respondents 1 to 3 have equal share in the suit property.

3. The respondents resisted the suit and filed written statement stating that the suit properties were already bequeathed by their father Marimuthu Gounder by executing a Will dated 04.03.1998.



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4. Based on the pleadings, the Trial Court framed the following issues :-

(i) Whether the Will dated 04.03.1998 executed by the Marimuthu Gounder in favour of Kasilingam binds the plaintiffs ?

(ii) Whether the plaintiffs are entitled to any share in the suit property ? If so what is the share ?

(iii) To what relief ?

5. On the side of the respondents 1 to 3, they had examined P.Ws.1 & 2 and marked Exs.A1 to A4. On the side of the appellants, D.W.1 was examined and marked Exs.B1 to B12.

6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit. Aggrieved by the same, the appellants preferred an appeal in A.S.No.68 of 2015 before the I Additional District and Sessions Judge, Salem and the same was also dismissed and the Judgment and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.



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7. The learned counsel for the appellants has raised the following substantial questions of law:

(i) Whether the Courts below are right in decreeing the suit for partition in favour of the plaintiffs by ignoring the Will Ex.B1 dated 04.03.1998 ?

(ii) Whether the Will requires to be registered in order to be admitted as evidence, as observed by the Courts below ?

8. Heard, Mr.R.Marudhachalamurthy, the learned counsel appearing for the appellants and this Court considered the submission made by the learned counsel for the appellants.

9. The learned counsel appearing for the appellants would submit that both the Courts below decreed the suit on the ground that the appellants failed to prove the Will dated 06.12.1973, which was marked as Ex.B1. The recital of the Will categorically proved that the entire property was bequeathed in favour of his only son Kasilingam. Though the Will was unregistered one, it requires no compulsory registration as contemplated under Section 17 of the Indian Registration Act. In fact, one of the witnesses was summoned in order to prove the Will dated 18.03.2015.



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However, the witness has not appeared on 26.03.2015 and immediately, the Court below closed the evidence of the appellants. Therefore, they could not examine the attester of the Will. The appellants also produced Ex.B1 before this Court and the recital proves that entire property has been bequeathed in favour of their father viz., Kasilingam.

10. A perusal of the records reveals that though the appellants had taken a specific stand that the entire property was bequeathed in favour of their father by a Will dated 06.12.1973, which was marked as Ex.B1, it was not proved before a Court in the manner to law. No one was examined in order to prove the same. That apart, the said Will was unregistered one and as such, the appellants failed to prove that the property was bequeathed to their father by their grandfather. Admittedly, the said property was allotted by partition to their grandfather dated 06.12.1973, which was marked as Ex.B1. Therefore, the respondents 1 to 3 are entitled to have equal share in the suit property.

11. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail, and by giving cogent reasons, concluded rightly and decreed the suit. Accordingly, this Court is of



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the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 22.11.2016 made in A.S.No.68 of 2015 on the file of the I Additional District and Sessions Judge, Salem, confirming the Judgment and Decree dated 17.04.2015 made in O.S.No.16 of 2013 on the file of the Principal Subordinate Judge, Salem, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To

1. The I Additional District and Sessions Judge, Salem
2. The Principal Subordinate Judge, Salem.



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G.K.ILANTHIRAIYAN, J.

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