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S.A.No.606 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.606 of 2018
and C.M.P.No.18370 of 2018

1. G.Kumaresan
2. G.Sivan

...Appellants

Vs.

1. Suriya Prabha
2. Shanmugavadivu
3. Hemalatha
Palaniammal (died)
4. Saraswathi
5. Eswari
Krishnamurthy (died)
6. Jagadeswaran
7. Deepa
8. Minor Sriya
Represented by Guardian/mother Deepa

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 11.07.2018 made in A.S.No.5 of 2017 on the file of the learned Fourth Additional District Court, Bhavani confirming the judgment and decree dated 17.10.2016 made in O.S.No.86 of 2010 on the file of the learned Sub Court, Bhavani.

For Appellants : Mr.N. Manokaran
For Respondents 1 to 3 : Mr.R.Prabakar



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J U D G M E N T

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The defendants 4 & 5 who suffered a decree for partition are the appellants. The respondents 1 to 3 filed a suit seeking partition of ½ share in the suit properties. The suit was decreed by the Trial Court and the findings of the Trial Court was confirmed by the First Appellate Court. Aggrieved by the concurrent findings against them, the defendants 4 & 5 have come before this Court by way of this second appeal.

2. The respondents 1 to 3/ plaintiffs filed the above suit for partition claiming that the suit properties originally belong to one Nanjappa Devar and after his death, it devolved upon his wife Angayammal and sons A.N.Gurusamy and A.N.Karuppannan. The respondents 1 to 3 are the wife and daughters of said A.N.Karuppannan and the appellants and other respondents are the legal representatives of A.N.Gurusamy. Thus, the respondents 1 to 3 claimed 1/2 share in the suit properties of Nanjappa Devar and his wife Angayammal.

3. The written statement was filed by the 4th defendant and the same



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was adopted by other defendants. It was the case of the appellants and other defendants that the suit properties originally belong to the wife of Nanjappa Devar, namely Angayammal and she had executed a Will bequeathing the suit properties in favour of the appellants. Therefore, the appellants claimed that the respondents 1 to 3 were not entitled to any share in the suit properties.

4. Before the Trial Court, the 1st respondent/plaintiff was examined as P.W.1. On behalf of the plaintiffs, 13 documents were marked as Ex.A.1 to Ex.A.13. The 1st appellant was examined as D.W.1 and the daughter of one of the attesor of the Will relied on by the appellants was examined as D.W.2 and 16 documents were marked on their behalf as Ex.B1 to Ex.B16.

5.The Trial Court, on appreciation of the oral and documentary evidence available on record, came to the conclusion that the suit properties were originally purchased by Nanjappa Devar and the Will relied on by the appellants, in support of their claim, was not proved. Hence, the suit was decreed by the Trial Court. Aggrieved by the same, the appellants preferred an appeal in A.S.No.5 of 2017 on the file of IV Additional District Court, Bhavani. The 1st Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the said judgment, the



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unsuccessful appellants preferred the second appeal before this Court.

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6. The learned counsel appearing for the appellants submitted that the Will relied on by the appellants dated 09.08.1979, which was marked as Ex.B5, was not at all specifically denied by the respondents in the plaint averments. The Will, being a registered one, is entitled to statutory presumption under Sections 90 and 114 (e) of the Evidence Act, 1872 and consequently, both the Courts below erred in rejecting the Will relied on by the appellants. The learned counsel further submitted that the Will of A.N.Gurusamy dated 24.04.1978, was admitted by the respondents themselves in an earlier proceedings and therefore, they are not entitled to dispute the title of Angayammal over the suit properties now.

7. It is the specific case of the respondents 1 to 3 that the suit properties originally belong to Nanjappa Devar. The sale deeds in favour of Nanjappa Devar were marked as Ex.A1 and Ex.A2. The Court below on perusal of Ex.A1 and Ex.A2, sale deeds in the name of Nanjappa Devar dated 24.09.1925 and 03.08.1931, rightly came to the conclusion that the suit properties belonged to Nanjappa Devar and were originally purchased by Nanjappa Devar. The said findings of the Trial Court, based on the documentary evidence available on record, do not require any interference by



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this Court.

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8. The appellants herein contended that the suit properties belonged to Angayammal, wife of Nanjappa Devar. However, the appellants have not produced any acceptable evidence to prove the said contention. The appellants also relied on two Wills allegedly executed by Angayammal. According to the appellants, earlier Angayammal executed a Will dated 24.04.1978 and thereafter, she executed another Will on 09.08.1979, cancelling the earlier Will and bequeathing the suit properties in favour of the appellants. Angayammal died on 25.08.1979.

9. In order to prove the execution of the 1st Will referred to by the appellants, no evidence was let in by them before the Trial Court. As far as the 2nd Will dated 09.08.1979 is concerned, the appellants failed to file the original Will before the Courts below and only a certified copy of the said Will was produced and marked as Ex.B5. In order to prove the due execution of Will, the appellants failed to examine the attestors to the Will as witnesses. It was argued by the learned counsel for the appellants that both the attestors to the Will were dead and one of the daughter of the attestor was examined as D.W.2.



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10. The Trial Court, on consideration of the evidence of D.W.2 observed that she failed to depose before the Court regarding the death of attestors. No documentary evidence has produced before the Courts below to prove the death of attestors to the Will. Even assuming that the attestors to the Will died, the Will has to be proved by examining any one of the persons having acquaintance with handwriting of attestors. In the case on hand, the daughter of the alleged attestor, who was examined as D.W.2, deposed in her evidence that one Shanmugam and Krishnan attested the Will Ex.B5 and she was present when the Will was executed. However, the Court below, on perusal of Ex.B5, observed that the signatures of Shanmugam and Krishnan were not available in Ex.B5. In such circumstances, the Courts below rightly came to the conclusion that the evidence of D.W.2 was not useful to prove the execution of Ex.B5. Therefore, the Will relied on by the appellants was also rejected by the Courts below after proper appreciation of evidence available on record and the same does not require any interference by this Court.

11. In such circumstances, I do not find any substantial questions of law arising for consideration in this second appeal calling for interference



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while exercising the jurisdiction under Section 100 of Civil Procedure Code.

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12. In view of the discussions made earlier, the second appeal stands dismissed;

a) by affirming the judgment and decree dated 11.07.2018 passed by the IV Additional District Court, Bhavani in A.S.No.5 of 2017 confirming the judgment and decree dated 17.10.2016 passed by the Subordinate Court, Bhavani in O.S.No.86 of 2010; and

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The IV Additional District Court, Bhavani.
2. The Subordinate Court, Bhavani.



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S.SOUNTHAR, J.

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