



S.A.(MD) No.653 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.(MD) No.653 of 2023
and
C.M.P.(MD) No.15313 of 2023

1.Kannusamy Thevar

2.Sathyaraj

3.Mahalakshmi

4.Rajalakshmi

5.Deivanayaki

6.Janaki

7.Jothi Basu

..Appellants

Vs.

1.Rajathi

2.Soundranayagi

3.Vellaiammal

4.Kupputhai

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 11.11.2020 made in A.S.No.20 of 2010 on the file of



S.A.(MD) No.653 of 2023

the Additional District Judge, Dindigul, reversing the judgment and decree dated 23.02.2010 made in O.S.No.240 of 2008 on the file of the Subordinate Judge, Palani.

For Appellants : Mr.Raguvaran Gopalan

For R1 : Mr.S.Meenakshi Sundaram formulated
Mr.M.Senguvijay

JUDGMENT

This second appeal is filed challenging the judgment in A.S.No.20 of 2010 on the file of the learned Additional District Judge, Dindigul in O.S.No. 240 of 2008 on the file of the learned Subordinate Judge, Palani.

2.The appellants are the defendants 3 to 9 in the suit. The respondents 1 and 2/plaintiffs filed the suit against the appellants/defendants 3 to 9 and the respondents 3 and 4/defendants 1 and 2 seeking the relief of partition of 1/3rd share in the suit properties. The case of the plaintiffs, in brief, is as follows:

3.The suit properties ancestrally belonged to one Sinnakaruppanna Thevar. Sinnkaruppanna Thevar died 30 years back and his wife, Karuppayammal died 25 years back. After the death of Sinnakaruppanna Thevar and Karuppayammal, their children, Duraisamy Thevar, Solai Thevar and Kannuchamy Thevar, had been enjoying the suit properties keeping them in joint



S.A.(MD) No.653 of 2023

enjoyment. From 2001, Duraisamy Thevar had been taking treatment for Cancer.

He died on 14.10.2002 leaving the plaintiffs as his legal heirs. The plaintiffs are entitled for 1/3rd share in the suit properties as legal heirs of the deceased Duraisamy Thevar.

4.Solai Thevar had predeceased Duraisamy Thevar leaving his wife and daughters, namely the defendants 1 and 2 as his legal heirs. The fourth defendant is the wife of the deceased son of the third defendant, Sethuramalingam. Sethuramalingam was dead. The defendants 5 to 7 are the children of Sethuramalingam. The defendants 8 and 9 are the children of the third defendant. The defendants 3 to 9 are entitled to 1/3rd share in the suit properties. When Duraisamy Thevar was suffering from illness, a Will dated 27.08.2002 had been fabricated. In the Will, the plaintiffs' signatures were forged. The Will dated 27.08.2002 is not a true and genuine Will and this Will had been created by the third defendant, late.Sethuramalingam, and the defendants 8 and 9. The defendants 3 to 9 were trying to usurp the property of the plaintiffs. In the said circumstances, the suit for partition was filed.

5.In the written statement filed by the 9th defendant, the relationship between the parties is admitted. It is claimed that after the death of Sinnakaruppanna Thevar, his sons had partitioned the properties. Accordingly,



S.A.(MD) No.653 of 2023

necessary mutation had taken place in the revenue records. The defendants 1 and 2 were enjoying the properties allotted to Solai Thevar. After the death of Duraisamy Thevar's wife, he was under the care and custody of his brother, Kannuchamy Thevar and his legal heirs. They had alone provided him necessary food, shelter and medical facilities. Even when Duraisamy Thevar was alive, the plaintiffs were given sridhanas. Duraisamy Thevar had executed a Will in favour of his brother's children, Sethuramalingam and Jothibashu in 2002 in respect of his properties, except the properties allotted to the plaintiffs, namely a house and 10 cents of land. Thus, in terms of the Will, necessary mutation had taken place in the revenue records and the properties are enjoyed by the defendants 3 to 9.

6.On the basis of the oral and documentary evidence, the learned trial Judge had dismissed the suit upholding the Will. In the appeal filed in AS.No.20 of 2010, the first appellate Court reversed the findings of the trial Court and decreed the suit for partition. Against the judgment, S.A.(MD) No.247 of 2015 was filed by the defendants. The appellate Court granted the decree for partition among other grounds, on the ground that original Will was not produced. In S.A. (MD) No.247 of 2015, the original Will had been produced. This Court, vide judgment dated 11.02.2020, remanded the matter to the appellate Court to consider the first appeal on merits and render its findings on the issue that arises for consideration in the appeal. The appeal was again restored in A.S.No.20 of



S.A.(MD) No.653 of 2023

2010. After hearing the parties, the learned appellate Judge had again found that the Will was not proved in the manner known to law for the reason that the Will is clouded by suspicious circumstances and that the execution is not proved. In this view of the matter, the first appellate Court set aside the judgment of the trial Court and decreed the suit for partition as prayed for. Now, this second appeal is filed challenging the judgment of the first appellate Court.

7.The learned counsel appearing for the appellant submitted that the Will is a registered one and the execution of the Will was properly proved by one of the attestors, namely the third defendant. The third defendant is not a beneficiary under the Will. Another attesor to the Will is the second plaintiff. Therefore, there is no doubt with regard to the genuineness of the Will. It is clearly recited in the Will that the testator had made all the necessary provisions for his daughters and they are sufficiently provided. Therefore, they were not given any properties. The testator had executed a Will in favour of his brother's sons for the reason that he has no male children and he is part of them and they were taking care of him during his ailment.

8.The learned counsel for the respondents 1 and 2/plaintiffs submitted that the Will is an unnatural Will in the sense that the direct legal heirs of the testator had been excluded for no reason. That apart, the Will was not proved in



S.A.(MD) No.653 of 2023

the manner known to law for the reason that the second plaintiff, who is said to be one of the attestors, had fiercely denied the attestation of the Will. The other attesting witness, namely the third defendant, is an interested witness. In the said circumstances, he prayed for confirmation of the judgment of the first appellate Court and dismissal of this appeal.

9.Considered the rival submissions and perused the records.

10.The main issue in this case is whether the Will alleged to have been executed by Duraisamy Thevar in favour of Sethuramalingam and Jothibashu is true and valid? During the trial before the trial Court, the copy of the Will was produced as Ex.B1. On the side of the defendants, the third defendant, Kannuchamy Thevar, was examined as D.W1. The first plaintiff was examined as P.W1. It is not in dispute between the parties that the suit properties are the joint family properties of Sinnakaruppana Thevar and after him, among his sons, Duraisamy Thevar, Solai Thevar and Kannuchamy Thevar. It is also not in dispute that these three are entitled to 1/3rd share in the suit properties. It is now claimed that Duraisamy Thevar had executed a Will in favour of Sethuramalingam and Jothibashu in respect of his 1/3rd share and therefore, the plaintiffs cannot claim share. The trial Court had accepted this case and dismissed the suit.



S.A.(MD) No.653 of 2023

11.As already stated, the first appellate Court reversed the findings of the trial Court and decreed the suit holding that the Will projected by the defendants had not been proved. In the second appeal, the original Will was sought to be produced and therefore, the matter was remanded back to the first appellate Court. The first appellate Court, on remand, had again considered the Will and reiterated its earlier finding that the Will was not proved.

12.As already stated, it is not in dispute that the suit properties are the ancestral joint family properties and the plaintiffs as legal heirs of Duraisamy Thevar are entitled for share in the suit properties. Therefore, the Will alleged to have been executed by Duraisamy Thevar including the share of the plaintiffs is obviously not valid in law. That apart, it is seen from the findings recorded by the first appellate Court that though it is claimed that the plaintiffs had also attested the Will, P.W1, who was examined on the side of the plaintiffs, had stoutly denied the attestation in the Will. It appears that no efforts had been taken by the defendants to prove the signature in the Will by scientific method.

13.It is seen from the evidence of D.W1 that the deceased Duraisamy Thevar was suffering from Cancer and that despite treatment, he died of the illness. It is also not disputed that there was no ill-will between Duraisamy Thevar and his daughters, namely the plaintiffs. When that be the case, the omission to



S.A.(MD) No.653 of 2023

provide any share in the properties of Duraisamy Thevar in favour of his daughters and execution of the Will in favour of sons of the third defendant certainly create a serious doubt in the genuineness of the Will. When natural inheritance is disturbed by execution of the Will, satisfying reasons have to be given for execution of the Will in favour of the brother's sons for leaving his own daughters. This suspicion is not dispelled by the defendants. One of the attesting witnesses was examined as P.W1, she had totally denied the attestation and claimed that the Will is fabricated and her signature is forged. The other attesting witness is a truly interested witness. In the said circumstances, this Court is of the view that the first appellate Court rightly rejected the Will and proceeded to decree the suit for partition as claimed by the plaintiffs. The findings of the first appellate Court, in the considered view of this Court, do not call for any interference.

14. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962* reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so**,
3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or)**



S.A.(MD) No.653 of 2023

4.The question is not free from difficulty and calls for discussion of alternative views.

15.In the case before hand, the appellants have not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

16.In fine, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

23.11.2023

mm

To

- 1.The Subordinate Judge,
Palani.
- 2.The Additional District Judge,
Dindigul.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD) No.653 of 2023

G.CHANDRASEKHARAN, J.

mm

S.A.(MD) No.653 of 2023

23.11.2023