



A.S.(MD).No.67 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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- 1.Kannammal
- 2.Valarmathi
- 3.Mallika

... Appellants/Plaintiffs

-Vs-

- 1.R.Thangavelu
- 2.T.Arivalagan
- 3.T.Anbalagan
- 4.T.Thangadurai
- 5.M.Vijayalakshmi
- 6.Minor Saranya
- 7.Minor Sowmiya
- 8.Minor Soundarya

Minor respondents 6, 7 and 8 are declared as major and the guardianship of their mother/5th respondent is discharged vide Court order dated 28.10.2022 made in C.M.P.(MD).Nos.9993 and 9994 of 2022 in A.S.(MD).No.67 of 2015.

... Respondents/Defendants

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 27.04.2010 in O.S.No.216 of 2004 on the file of the learned Additional District Judge (FTC No.1), Trichy.



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For Appellants : Mr.V.R.Shanmuganathan

For R1 to R4 : Mr.R.Sunder

J U D G M E N T

Aggrieved over the dismissal of the suit filed for partition and separate possession, the present appeal came to be filed by the appellants, who are the plaintiffs before the trial Court.

2. The brief facts leading to the filing of this appeal are as follows:

For the convenience, the parties are arrayed as plaintiffs and defendants.

The suit properties originally belonged to one Rajappa Muthuraja. It was his ancestral property. His wife is one Amirtham. He had two sons viz., one Chinnadurai and Thangavelu. The said Rajappa Muthuraja died about 40 years back. The first plaintiff is the wife of Chinnadurai. He died in the year 1969, leaving behind his wife, the first plaintiff and two daughters, the second and third plaintiffs. The first defendant is the brother of Chinnadurai and the second defendant is the purchaser of item No.1 of the property from the first defendant and the other defendants viz., the defendants 3 to 5 are the legal heirs of the first



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defendant and the defendants 6 to 9 are the legal heirs of the second defendant.

3. The case of the plaintiffs is that after the death of Rajappa Muthuraja and his wife Amirtham, the first defendant has taken a hostile attitude towards the first plaintiff and on that, she demanded partition of the suit properties. However, the first defendant did not come forward for partition. Hence, the suit has been filed.

4. The first defendant has filed a written statement admitting the relationship between the parties. It is the contention that the husband of the first plaintiff died on 16.02.1969 and his mother Amirtham died on 27.06.1988. The husband of the first plaintiff did not live with the first plaintiff and except for one year, there was no relationship between them and during the life time of the said Chinnadurai, he had executed a release deed in favour of his mother and his brother relinquishing all his rights in the suit properties. The mother of the first defendant Amirtham has executed a registered Will, dated 26.12.1976, bequeathing all the properties in favour of the first defendant's children. The first defendant has executed a registered sale deed in respect of item No.1 in favour of



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the second defendant in respect of a vacant cite. After purchase, the second defendant has put up a pucca three storied building. Hence, denying the right of the plaintiffs in the suit properties and prayed for dismissal.

5. A reply statement has been filed by the plaintiffs denying the release deed. According to them, as per the document, no right in the suit property has been released by the said Chinnadurai. Similarly, the Will executed by Amirtham also denied. Based on the above pleadings, the trial Court has framed the following issues:

- (i) Whether the plaintiffs are entitled to $\frac{1}{2}$ share in the suit property?
- (ii) Whether the plaintiffs are entitled to mense profits ?
- (iii) What relief the plaintiffs are entitled to ?
- (iv) Whether the release deed, dated 06.12.1997 executed by Chinnadurai is valid and binding on the plaintiffs?

6. On the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A4 were marked and on the side of the defendants, D.Ws.1 and 2 were examined and Exs.B1 to B7 were marked.



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7. Based on the evidence and materials, the trial Court has dismissed the suit filed by the plaintiffs for partition. Challenging the same, the present appeal came to be filed by the plaintiffs.

8. The main contention of the learned counsel appearing for the appellants before this Court is that the so called released deed / Ex.B1 is not confined to any immovable properties and there is no description whatsoever mentioned in the above document. Therefore, it is the contention that Ex.B1 / release deed, dated 06.12.1967, cannot be considered as a release deed to contend that the rights have been relinquished in the above document. It is the further contention as far as Ex.B3 / Will said to have been executed by Amirtham is concerned, the Will has not been proved, in the manner known to law. According to the learned counsel for the appellants, there is no compliance under Section 69 of the Evidence Act. Therefore, the Will cannot be relied upon to deny the valid rights of the appellants. Therefore, it is the contention that since it is an ancestral property, when the Will and the release deed have not been established under record, the plaintiffs are entitled to partition.



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9. The learned counsel appearing for the respondents would submit that the release deed has been executed in the year 1967 itself. The very content of the document clearly proves that the husband of the first plaintiff and the father of the other plaintiffs renounced their right not only in respect of the immovable property but also the movable property. Therefore, merely because the specific description is not found in the release deed, the same will not invalidate the document.

10. It is further contention as far as the release of the rights in respect of the co-owners property, there need not be any accurate details in that document. Therefore, merely on the basis of nomenclature of the document, the right relinquished cannot be revived. As far as the Will is concerned, it is the contention that the attesting witnesses already died. The death of the attesting witnesses also clearly been established and one of the sons of the attesting witnesses has been testified to prove the signature of the attesting witnesses. That apart, the execution of the Will by Amirtham also not disputed. Therefore, it is the contention that the compliance of Section 69 of the Indian Evidence Act has been



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clearly established in this case. Therefore, prays for dismissal of the suit.

11. In the light of the above submissions, now the points for consideration in this appeal are,

(i) Whether Ex.B1, dated 06.12.1967, is not a deed of release relinquishing his right by the executant?

(ii) Whether the Will / Ex.B3 has not been proved in the manner known to law?

(iii) Whether the plaintiffs are entitled to share in the suit property?

12. On a perusal of the pleadings and admissions of the parties, the relationship of the parties is not in dispute. The suit property originally belonged to one Rajappa Muthuraja. His wife is one Amirtahm. They had two sons viz., one Chinnaduri and Thangavelu. The plaintiffs are the legal heirs of Chinnadurai ie., the wife and children. The first defendant is the brother of Chinnadurai and son of Rajappa Muthuraja and the second defendant is the purchaser in respect of item No.1 from the first defendant and the defendants 3 to 5 are the children of the first defendant and the defendants 6 to 9 are the legal heirs of the second defendant.



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The relationship in respect of the parties are not disputed and the character of the properties also not disputed. It is the contention of the plaintiffs that the properties are still intact and Rajappa Muthuraja died intestate. Therefore, being the legal heirs of his son Chinnadurai, the plaintiffs are entitled to share. But the specific contention of the defendants is that the Chinnadurai has executed a release deed relinquishing all his rights in the suit properties in favour of his mother Amirtham and also the first defendant, his brother. Ex.B1, dated 06.12.1967, has been filed by the defendants to show that the deed of release has been executed. Hence, a perusal of Ex.B1 makes it clear that the nomenclature of the document indicate that it is only a release deed. On a perusal of the content of the document makes it clear that after receiving a sum of Rs.1,900/- as a consideration, the Chinnadurai has released his right not only in the immovable property but also in the movable property. He also renounced his right in the family affairs.

13. It is relevant to note that as far as the co-owner's property, anyone of the co-owner renounced his right in the immovable property, in respect of the other, the document has to be registered under the provisions of Registration Act.



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As per Section 17, such document is part take the character of the release deed, when the person has executed a document renouncing his rights in the family property in respect of other co-owner or the other member of the family, this document comes within the ambit of release.

14. Article 55 of the Stamp Act reads as follows:-

That is to say, any instrument (not being a release as is provided for by [Section 23-A](#)) or a release of benami right, whereby a person renounces a claim upon another person or against any specified property, the stamp duty payable was the same duty as a bottomry bond and this provision is not applicable to the instrument presented by the petitioner.

15. The above definition makes it clear that any person having any tangible right in the immovable property, renounce his claim or release his right in favour of the other person and the document is duly registered and proper stamp duty paid, such deed would be considered only as a release deed. Therefore, merely on the ground that Section 21 of the Indian Registration Act deals with every particulars has to be mentioned, unless the specific particulars, description



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of the property has been mentioned, the document cannot be accepted for registration. It does not mean that the very deed itself does not extinguish his right.

16. Section 21 of the Indian Registration Act deals with the procedure for registration, which contemplates specific description before accepting the document for registration, whereas, in this case, the document has been duly registered and executed by a person in respect of the family property, wherein specifically renounced his claim. Such being the position, it cannot be said that Ex.B1 cannot be considered as a release deed.

17. In such a view of the matter, the contention of the learned counsel appearing for the appellants cannot be countenanced. As far as Ex.B3 / Will is concerned, it is the specific contention of the defendants that the Will has been executed by the mother. It is relevant to note that under Ex.B1 / release deed, one of the sons Chinnadurai released his claim over the family property in favour of his mother and the brother, the first defendant. The mother of the parties viz., Amirtham has executed a registered Will on 26.12.1976 and bequeathing all share



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in favour of the first defendant's children. The Will has been registered one. Though the registration will not dispense with the proof of Will, the defendants have to take all steps to examine the attesting witnesses to comply with the mandatory requirements under Section 68 of the Indian Evidence Act. It has been established on record that the attesting witnesses already died. Therefore, in order to prove the Will, as per Section 69 of the Indian Evidence Act, when the attesting witnesses were not alive, D.W.2 one Chandramohan was examined to prove the signature of one of the attesting witnesses, the father of D.W.2. D.W.2 clearly spoken about the signature found is that of his father, who signed as a attesting witnesses in the registered Will Ex.B3.

18. In view of the above, now it has to be seen that whether the Will has been proved in the manner known to law, in the absence of any attesting witnesses or they were not alive. It must be proved that the attestation of one attesting witness at least is in his handwriting. Besides, the signature of the person executing the document is in the handwriting of that person also to be proved. Only if the twin conditions mentioned in Section 69 of the Indian Evidence Act is complied, it can be taken as a proper compliance. As far as



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proving the attesting witnesses signature, the defendant has established the same by examining D.W.2. Now, it has to be seen whether the executant signature has been proved, to comply with Section 69 of the Indian Evidence Act.

19. P.W.10, in oral evidence has stated that the signature of her grand mother is not found in the Will and in the cross - examination, it has been clearly admitted that he never seen the signature of the grand mother. Whereas, D.W.1, in the chief - examination clearly stated that the mother has executed the Will on 26.12.1976, in favour of his children. Even in the cross - examination, D.W.1 has ascertained that the mother has left the Will and she also came to know that though he was not present at the time of execution, he came to know about the family and nothing has been suggested to D.W.1 denying the signature of the mother in the Will. When D.W.1 has clearly spoken about the execution of the document and the Will was written by their mother and the same has not been denied in the cross examination, it can be easily concluded that the signature and the handwriting of the testators have been clearly established on record, which has not been denied by the other defendants and the plaintiffs in the cross-examination.



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20. In such a view of the matter, this Court is of the view that the compliance under Section 69 of the Indian Evidence Act, to prove the signature of the attestors also been complied with and in the absence of any suspicious circumstances brought on record. It has to be held that the Will has been properly executed. The Will was executed on 26.12.1976 and the mother died in the year 1988, almost 12 years after the execution of the Will and she has not raised any dispute over the Will left by her. Further, there was no circumstances brought on record even to raise any suspicion much less than the suspicious circumstances, to disbelieve the Will.

21. No circumstance was brought on record as to the suspicious circumstances existed, at the time of execution of the Will by mother Amirtham. Accordingly, all the points raised are answered and the release deed and the Will have been clearly established on record and the first plaintiff's husband and the father of the plaintiffs 2 and 3 had already renounced his right in favour of his mother and brother.



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22. In the result, the Appeal Suit is dismissed and the decree and judgment of the Additional District Judge (FTC No.1), Trichy in O.S.No.216 of 2004, dated 27.04.2010 is confirmed. No costs.

05.04.2023

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To

- 1.The Additional District Judge (FTC No.1),
Trichy.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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