



S.A.(MD) No.637 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.(MD) No.637 of 2023
and
C.M.P.(MD) No.14886 of 2023

Shanmuga Sundari

..Appellant

Vs.

1.Gandhimathi

2.Vijayalakshmi

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 03.06.2023 passed in A.S.No.78 of 2022 on the file of Additional District Court (FTC), Tenkasi, by confirming the decree and judgement dated 27.06.2022 passed in O.S.No.70 of 2020 on the file of the Principal Sub Court, Tenkasi.

For Appellant : Mr.S.Sankar



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JUDGMENT

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Challenging the concurrent judgments in A.S.No.78 of 2022 on the file of the Additional District Court (FTC), Tenkasi and in O.S.No.70 of 2022 on the file of the Principal Sub Court, Tenkasi, this second appeal is filed.

2. The appellant as plaintiff filed the suit seeking partition of 1/3rd share in the suit property. The case of the appellant is that the respondents are her sisters. The appellant and the respondents were born to their parents Paramasivam and Avudaiammal. Father Paramasivam was working in BSNL and retired 15 years back. He purchased the land in the suit property in the name of his wife in 1989 and build the house with his own income. Though the suit property stands in the name of mother Avudaiammal, in reality, it belongs to father Paramasivam. The second defendant was born mentally challenged. Father Paramasivam died on 25.08.2018. After the death of Paramasivam, appellant demanded share in the suit property from her mother. However, she has not come forward to effect any partition. Meanwhile, mother Avudaiammal died on 17.11.2019 without making any efforts to settle the suit property and the amount available in the bank. Thereafter, when the appellant demanded partition from the first defendant, the first defendant claimed that the mother had executed a Will on 29.11.2018. The Will is a forged and fabricated document and came into



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existence by exercising undue influence on the mother. The Will will not bind the appellant's right of claiming 1/3rd share in the suit property. Therefore, the suit.

3. In the written statement filed by the defendants, it is claimed that the suit property is the absolute and independent property of mother Avudaiammal. Avudaiammal was given a land as a marriage gift by her brother and that was sold for buying the suit land and constructing the building in the suit property. After marriage, the appellant had never taken care of her parents and mentally challenged second defendant. The first defendant had taken care of her parents till their last and she is still taking care of the second defendant. In fact, appellant had attempted to commit suicide in front of the house of the first defendant demanding partition. A criminal complaint was given in this regard on 29.08.2018. Mother Avudaiammal had executed a registered Will in respect of the suit property on 29.11.2018 to ensure that there should be no fight among her children after her death. She had executed the Will in favour of the first defendant for the reason that she had taken care of her and also the second defendant.

4. On the basis of the oral and documentary evidence produced in this case, the trial Court found that the suit property belonged to the mother and that she executed a Will in respect of the suit property in favour of the first defendant and thus, dismissed the suit. The first appellate Court concurred with the findings



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of the trial Court and dismissed the appeal filed in A.S.No.78 of 2022. Therefore, the second appeal is filed.

5. It is the submission of the learned counsel for the appellant that the appellant is entitled for equal right along with the respondents/defendants in respect of the suit property i.e., 1/3rd share. Her right of inheritance is disturbed by the alleged execution of Ex.B4, Will. Ex.B4, Will was executed under suspicious circumstances by exercising undue influence on the mother. Taking advantage of the fact that mother was residing with first defendant, she made her own son as attester to the Will and create the Will. Therefore, the Will cannot be relied, but the reliance based on the Will by the Courts below and dismissing the suit, is against the evidence of law.

6. Considered the submissions of the learned counsel for the appellant and perused the records.

7. The first contention of the learned counsel for the appellant is that though the suit property stands in the name of mother, in reality, the land was purchased in the name of mother Avudaiammal by the investment made by the father Paramasivan and it was the father, who had contributed funds for the construction of the building. However, it is seen from the judgments of the Courts



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below that there is no evidence produced in support of his claim. On the other hand, the case of the defendants is that the mother was provided with the land by her brother at the time of marriage and that land was sold for the purchase of the land in the suit property and for the construction of the building. It is not the denial of the fact that the suit property stands in the name of mother. When a person, who claims that the father purchased the property in the name of mother for his own benefit and there is no evidence produced in support of his claim, the submission has to necessarily fail.

8. Coming to the execution of the Will, it is seen that the Will was attested by D.W.2, the son of first defendant and that itself will not be a ground for concluding that the Will is a fabricated one, especially when PW1 has clearly admitted during the course of her evidence that the signature in Ex.B4, Will is that of her mother.

9. It is relevant to consider Ex.B4 Will, to ascertain its genuineness. After execution of the Will on 29.11.2018, mother died only on 17.11.2019. It is recited that her first daughter Vijayalakshmi was born mentally challenged. Therefore, she was not given in marriage and was taken care by mother. She claims that the suit property was her self-acquired property, she constructed building in the suit property and has been paying property tax. It is recited in the



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Will that her daughter Gandhimathi has been taking care of her and also the mentally challenged daughter, Vijayalakshmi. Therefore, she thought it fit to bequeath the suit property to her daughter Gandhimathi. It is not in dispute that the plaintiff was married and living elsewhere with her husband. Mother Avudaiammal and mentally challenged daughter Vijayalakshmi had been all along taken care of only by the first defendant, Gandhimathi. Therefore, this Court finds that there is no way to suspect the intention of the testator to bequeath her property in favour of her daughter, who was taking care of her and also the mentally challenged daughter. Merely because this Will was attested by the son of first respondent, we cannot doubt the genuineness of the Will. Both the Courts below on the basis of oral and documentary evidence, have come to a conclusion that the Will was proved by the propounder of the Will namely, the first defendant. Therefore, this Court is of the view that there is no need for interfering with the judgments of the Courts below.

10. 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)**



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

11. In the case before hand, the appellant has 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.

12. In fine, this Second Appeal is dismissed confirming the judgments of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

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

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To

1. The Additional District Judge (FTC), Tenkasi.
2. The Principal Subordinate Judge, Tenkasi.
3. The Section Officer (2 Copies),
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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