



S.A(MD)No.172 of 2004

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.172 of 2004

RM.Arunachalam

...Appellant

-Vs-

1.PL.RM.Arunachalam Chettiar,

2.AR.Muthaiah

3.PL.Arunachalam

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.43 of 2003 on the file of the District Judge, Sivagangai, dated 22.06.2004 confirming the judgment and decree in O.S.No.55 of 1994 on the file of Sub Court, Devakottai, dated 27.12.2002.

For Appellant : Mr.S.Srinivasa Raghavan

For R2 and R3 : Mr.R.Sundar Srinivasan



S.A(MD)No.172 of 2004

WEB COPY

JUDGMENT

The plaintiff is the appellant. The suit is for declaration that the Will dated 02.12.1993 executed by one A.R.Alagammai was not a valid document and hence, the suit property belongs to the appellant and for consequential injunction restraining the respondents from interfering with the appellant's peaceful possession and enjoyment over the suit property. The respondents herein filed a counter-claim seeking recovery of possession of the suit properties. The respondents also sought for recovery of profits.

2. According to the appellant, the suit properties belonged to his deceased wife A.R.Alagammai. The marriage between the appellant and the said Alagammai got solemnized 27 years back and they had no children. The first and second respondents are the father and brother of Alagammai. The third respondent is the grandson of the first respondent. It was alleged in the plaint that the appellant's wife Alagammai consumed Nitric Acid on 30.11.1993. She was admitted in hospital immediately. She died on 21.12.1993. It was also averred in the plaint that on 19.03.1994 at the instance of the respondents, the appellant was taken to the police station and his signature was obtained in certain documents.



S.A(MD)No.172 of 2004

WEB COPY

It was further averred that the Will dated 02.12.1993 allegedly executed by Alagammai was surrounded by suspicious circumstances and there was no possibility for Alagammai to execute a Will with sound disposing capacity.

3. The respondents herein filed a written statement, wherein they raised a specific plea that the appellant led a wavered life and tortured his wife all along. It was further averred that after consumption of Nitric Acid by Alagammai, she was admitted in hospital and the said fact was informed to the appellant after much difficulty, but however the appellant had not come to hospital to call on his wife. It was further averred that initially Alagammai was admitted in Intensive Care Unit and subsequently, she was shifted to ordinary ward and again she was shifted to Intensive Care Unit on 13.12.1993 and subsequently, died on 21.12.1993. The respondents also averred that during her stay at hospital, Alagammai executed a Will out of her own volition whereunder she created a trust called A.R.Alagammai Trust and appointed the respondents as its trustees. She bequeathed all of her property in favour of the trustees. It was further stated by the respondents that in view of coming into force of the Will, the appellant is bound to hand over the possession of the properties of Alagammai to the



S.A(MD)No.172 of 2004

WEB COPY

respondents. It was further averred by the respondents that though the appellant agreed to hand over all the properties of Alagammai, subsequently he refused and filed the present suit. The respondents also sought for counter-claim seeking possession of the properties covered under the Will.

4. Before the trial Court, the appellant was examined as P.W.1. The Doctor, who treated Alagammai was examined as P.W.2. One Palaniappen was examined as P.W.3. On behalf of the respondents, the first and second respondents were examined as D.W.1 and D.W.2. One of the attestors to the Will was examined as D.W.3 and the scribe of the Will was examined as D.W.4. On behalf of the appellant, five documents were marked as Ex.A.1 to Ex.A.5 and on behalf of the respondents, 11 documents were marked as Ex.B.1 to Ex.B.11. The medical case sheets maintained by Meenakshi Mission Hospital were marked as Ex.X.1 and Ex.X.2.

5. The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the Will executed by Alagammai, which was marked as Ex.B.1, was valid and consequently, dismissed the suit filed by the appellant. The



S.A(MD)No.172 of 2004

WEB COPY

counter-claim filed by the respondents seeking recovery of possession was granted in favour of the respondents. Aggrieved by the same, the appellant filed an appeal in A.S.No.43 of 2003 on the file of the District Court, Sivagangai. The learned first appellate Judge concurred with the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial question of law:-

“Whether the evidence of D.W.4 is reliable when no documents had been produced by him to establish that he had been instructed by the Alagammai Achi to prepare the Will and should it not have eschewed his evidence, when he had failed to produce records that he is bound to maintain under the provisions of Tamil Nadu Document Writers License Rules?”

7. The learned counsel for the appellant elaborating the substantial question of law framed at the time of admission, submitted that the disputed Will was allegedly executed by testatrix, when she was in hospital after consuming Nitric



S.A(MD)No.172 of 2004

WEB COPY

Acid. When there is no evidence available on record to show that the testatrix was in sound, mental and physical capacity to execute a Will, the Courts below ought not to have accepted the same. The learned counsel by taking this Court to the evidence of the Doctor submitted that nowhere in his evidence, the doctor deposed about the mental capacity of the testatrix to execute the Will on 02.12.1993. Therefore, it is the contention of the learned counsel for the appellant that when the mental capacity of the testatrix was not proved by the propounder of the Will to the satisfaction of the Court, the Will should be disbelieved.

8. The learned counsel for the respondents 2 and 3 submitted that the trial Court dismissed the suit filed by the appellant and decreed the counter-claim sought for by the respondents. The appellant filed the first appeal only against the dismissal of the suit in O.S.No.55 of 1994. However, the appellant failed to file any appeal against the decree granted in respect of the counter-claim in Cross Objection No.819 of 1994. Therefore, according to the learned counsel for the respondents, the findings rendered by the trial Court in Counter Claim No.819 of 1994 had attained finality and therefore, the same would operate as *res judicata*



S.A(MD)No.172 of 2004

WEB COPY

against the appeal filed by the appellant. In support of his contention the learned counsel relied on the judgment of this Court reported in **(1997) 1 MLJ 529** in the case of **Vediammal and Ors Vs. M.Kandasamy and Ors**. The learned counsel further by taking this Court to the evidence of attesor to the Will, namely, D.W.3 and that of the scribe D.W.4, submitted that the evidence of D.W.3 and D.W.4 are complimentary to each other and hence, the burden on the propounder was validly discharged and therefore, both the Courts below came to the conclusion that the Will was proved.

9. When a Will is produced, the initial burden on the propounder of Will is to prove the due execution of the same and in case, Will is surrounded by suspicious circumstances, the propounder should also dispel the suspicious circumstances. In the case on hand, in order to prove the due execution of the Will, the respondents examined one of the attestors to the Will as D.W.3. The scribe of the Will has been examined as D.W.4. On behalf of the appellant, the doctor, who treated the testatrix was examined as P.W.2. He talks about the mental capacity of the testatrix.



S.A(MD)No.172 of 2004

WEB COPY

10. A perusal of medical case sheets maintained by the hospital, which were marked as Ex.X1 and Ex.X2, make it clear that at the time of admission on 30.11.1993, the patient was conscious and she was answering to the commands. Initially, she was admitted in Intensive Care Unit and thereafter, on improvement of her conditions, she was shifted to ordinary ward on the night of 01.12.1993. Subsequently, on deterioration of her condition, she was again shifted to Intensive Care Unit on 12.12.1993. Subsequently, on 21.12.1993, she died. Notings in the case sheets Ex.X1 and Ex.X2 are also spoken to by P.W.2-Doctor examined by the appellant. Therefore, it is clear that when the Will was executed on 02.12.1993, she was in ordinary ward. The Doctor, who was examined by the appellant, after referring to the medical records, deposed that on 13.12.1993, the date on which the registration of the Will was done, the testatrix was conscious. He also deposed about the positive response of the testatrix to the commands of the hospital staff. He further deposed that nothing is noted in the case sheet maintained by the hospital as if the testatrix was suffering from any kind of incapacity at the relevant time.



S.A(MD)No.172 of 2004

WEB COPY

11. P.W.2-Doctor, who was examined by the appellant, also deposed that even on 30.11.1993 when the testatrix was in intensive care unit, she was hale and healthy and hence absolutely there is nothing to suspect about the mental capacity of the testatrix to execute a Will, when she was in the ordinary ward on 02.12.1993. Therefore, this Court comes to the definite conclusion based on the examination of case sheet maintained by the hospital marked as Ex.X1 and Ex.X2 and the evidence of P.W.2-Doctor that at the relevant point of time, the testatrix was in a position to execute a Will.

12. In order to comply with the mandate of Section 68 of the Indian Evidence Act, the respondents have examined one of the attestors to the Will as D.W.3 and he in his evidence had spoken about the mental capacity of the testatrix to execute the Will and his attestation and also about the presence of other attestor etc., in his evidence. D.W.3 appears to be a relative of the parties and nothing is culled out in his cross examination so as to suggest that his evidence should be disbelieved. D.W.4 is the scribe of the Will. He also deposed about the presence of both the attestors at the time of execution of the Will and he also deposed that the testatrix put her signature in the Will after going through the



S.A(MD)No.172 of 2004

WEB COPY

same. He also deposed that on 02.12.1993, the testatrix was in a good state of mind and she was able to talk with others. Therefore, the evidence of D.W.3 and D.W.4 are complementary to each other and their evidence is sufficient to come to a conclusion that at the relevant point of time the testatrix was in good state of mind to execute the Will out her own volition. Further Ex.B1-Will was executed on 02.12.1993 and the same was registered on 12.12.1993. When the testatrix was in hospital, P.W.3 identified the executant at the time of registration also.

13. Ex.B2 to Ex.B5 letters written by said Alagammai to first respondent would make it clear that relationship between Alagammai and the appellant got strained and the appellant led a wavered life. Therefore, the disposition made under the Will cannot be treated as something unnatural. The appellant is not able to point out any other suspicious circumstances surrounding the Will, except the fact that Will was executed in hospital. The said suspicious circumstance was very well dispelled by the evidence of the Doctor and Ex.X1 and Ex.X2. In these circumstances, this Court is not inclined to interfere with the conclusion reached by the Courts below that Ex.B1 Will was proved. In view of the conclusion reached by the Court with regard to the genuineness and validity of Ex.B1-Will,



S.A(MD)No.172 of 2004

WEB COPY

the substantial question of law framed at the time of admission is answered against the appellant and in favour of the respondents. Accordingly, the second appeal stands dismissed.

14. In fine,

(i) The Second Appeal is dismissed by confirming the judgment and decree in A.S.No.43 of 2003, on the file of the District Court, Sivagangai, dated 22.06.2004, confirming the judgment and decree in O.S.No.55 of 1994 on the file of Sub Court, Devakottai, dated 27.12.2002.

(ii) In the facts and circumstances, there will be no order as to costs.

15.02.2023

NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
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S.A(MD)No.172 of 2004

WEB COPY

To

- 1.The District Judge, Sivagangai.
- 2.The Subordinate Judge, Devakottai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.172 of 2004

S.SOUNTHAR, J.

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S.A(MD)No.172 of 2004

15.02.2023