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S.A.No.1052 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1052 of 2008

and

M.P.No.1 of 2008

1.N.Malliga
2.P.Nagarajan
3.P.Baskaran

... Appellants

vs.

1.Dhanalakshmi (died)
Yasoda Ammal (died)
2.P.Navaraj
3.M.Ramadass
4.S.Gnanakumar
5.Ejax
6.M.Loganathan
7.Krishnamurthy
8.Suresh
9.R.T.Mayilvahanan
10.M.Pariajatham
11.M.Oviyam
12.M.Desikam
13.M.Vimalan

...Respondents

(Respondents 9 to 13 were brought on record as LR's of
deceased R1 vide order dated 23.07.2019 in
C.M.P.Nos.5556 to 5558 of 2016)



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Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.03.2008 in A.S.No.41 of 2007 passed by the learned Principal District Judge, Vellore, reversing the judgment and decree dated 31.01.2007 in O.S.No.439 of 1995 passed by the learned Subordinate Judge, Tirupattur.

For appellants : Mr.A.Rajendra Kumar

For respondent 1 : Died

For respondents 2 to 8 : Given up

For respondents 9 to 13 : Mr.P.Veena Suresh

J U D G M E N T

The defendants 9 to 11 are the appellants herein and they were added as parties to the suit by virtue of Will executed by the 1st defendant/Yasoda Ammal. The plaintiff is the first respondent herein. After her demise, her legal heirs were impleaded as the respondents 9 to 13. The defendants 2 to 8, who are the tenants in the suit property, are the respondents 2 to 8 herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.



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The brief facts, which are necessary for the disposal of this Second Appeal, are as follows:

3. According to the plaintiff, the suit properties are the absolute properties of her father Shanmuga Mudaliar. The plaintiff Dhanalakshmi is the daughter of Shanmuga Mudaliar through his senior wife Palani Ammal. It appears that after the demise of his first wife Palani Ammal, her father Shanmuga Mudaliar married one Yasoda Ammal. While so, Shanmuga Mudaliar died on 22.10.1994. Therefore, the plaintiff, being a class one legal heir, filed the suit for partition to divide the suit properties into two equal shares and for allotment of one share in her favour.

4. The said suit was resisted by the first defendant, who is the second wife of Shanmuga Mudaliar by contending that Shanmuga Mudaliar had executed Ex.B3/Will dated 19.08.1994 and therefore, by virtue of Ex.B3, she became the absolute owner of the suit properties. Hence, she prayed to dismiss the suit.



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Evidence and documents:

5. Before the Trial Court, on behalf of the plaintiff, the plaintiff was examined as P.W.1 and no document was marked. On behalf of the defendants, 1st and 9th defendants were examined as D.W.1 and D.W.3, respectively and two more witnesses viz., Ponnusamy and Selvakumar were examined as D.W.2 and D.W.4, respectively and 12 documents were marked as Exs.B1 to B12.

Substantial questions of law:

6. At the time of admission of this Second Appeal on 13.08.2008, this Court has formulated the following substantial questions of law:

“1. Whether the finding of the Lower Appellate Court that the registered Wills Exs.B3 and B9 are vitiated by suspicious circumstance, is unsustainable more particularly in the absence of any pleadings in this regard?

2. Whether the Lower Appellate Court has failed to appreciate the evidence on record in proper perspective and its finding are vitiated?



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Finding of the Courts below:

7. The Trial Court, after having considered both oral documentary evidence, has dismissed the suit. The plaintiff, who was not satisfied with the judgment of the Trial Court, has preferred an appeal. The First Appellant Court has reversed the finding of the Trial Court and decreed the suit as prayed for.

8. Aggrieved by the same, the defendants 9 to 11 have preferred the instant Second Appeal.

Submission on both sides:

9. The learned counsel for the appellants/defendants 9 to 11 would submit that these appellants are the *legatees* of the first defendant/Yasoda Ammal through Will in Ex.B9. It is their contention that by virtue of Will, they became the owner of the entire suit properties. The learned counsel would further contend that the finding of the First Appellate Court regarding the suspicious circumstances is nothing, but, fantasy and that, there are no suspicious circumstances in the execution of the Will. It is further contended that disinheritance of



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the plaintiff cannot be termed as suspicious circumstances, since the plaintiff had already had sufficient properties in her favour. It is also the contention of the learned counsel for the appellants that the Will executed by Shanmuga Mudaliar in Ex.B3 has been proved in the manner known to law. Therefore, he prayed for allowing this Second Appeal and thereby, prayed to restore the decree of dismissal of the Trial Court.

10. Per contra, the learned counsel for the respondents 9 to 13/legal heirs of the sole deceased plaintiff would contend that there are numerous legitimate suspicious circumstances in the execution of Ex.B3/Will and the Will executed by Yasoda Ammal also shrouded with the suspicious circumstances. The learned counsel would further submit that the First Appellate Court has elaborately dealt with the suspicious circumstances and ultimately, disbelieved the case of the defendants and decreed the suit as prayed for. The learned counsel would further submit that there are no grounds to interfere with the judgment of the First Appellate Court.



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11. This Court has given its anxious consideration to the submissions made by both sides.

Analysis of the submissions:

12. The entire case revolves around the execution of the Will by Shanmuga Mudaliar in Ex.B3 dated 19.08.1994 and another Will executed by the first defendant/Yasoda Ammal in Ex.B9 dated 05.04.1995. In respect of Ex.B3/Will, it is the contention of the defendants that item no.1 of the suit property was jointly purchased by Shanmuga Mudaliar and Yasoda Ammal, and item no.2 of the suit property was the absolute property of Shanmuga Mudaliar. It is the case of the defendants that the first defendant/Yasoda Ammal was the second wife of the testator Shanmuga Mudaliar and out of love and affection, late Shanmuga Mudaliar has executed Ex.B3/Will and that, such Will has been proved by examining the attestor, who is D.W.2.

13. But, while perusing the judgment of the First Appellate Court, the First Appellate Court has found that there are certain suspicious circumstances and that the same was not dispelled by the



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propounder. According to the finding of the First Appellate Court, the suspicious circumstances are

1. the attesor, who was examined as D.W.2, was not known to the testator and he was not even summoned by the testator for attestation of the said Will. To put in nutshell, he was a chance witness.
2. the second attesting witness was also not summoned by the testator. He was an employee of the document writer.
3. Apart from the above suspicious circumstances, yet another circumstance was also relied by the First Appellate Court, viz., the disinheritance of the plaintiff and the fact of not even the reference of the name of the plaintiff in Ex.B3/Will.

14. This Court is of the firm view that whenever any suspicious circumstance is put forth by the parties, the responsibility is on the part of the propounder to dispel the suspicious circumstance. But, this Court could not find any material to dispel the above suspicious circumstances. The heavy burden upon the propounder has not at all been discharged by them.



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15. While perusing the evidence of the defendants, it is seen that there is no explanation given by the defendants to dispel the above suspicious circumstance. In the above context, the finding of the First Appellate Court that Ex.B3/Will has not been proved in the manner known to law, is bound to be accepted.

16. Similarly, Ex.B9/Will was also disbelieved by the First Appellate Court on the ground that the same was executed within two days prior to the death of the first defendant and registered after two days of the death of the first defendant. Therefore, the finding recorded by the First Appellate Court that Ex.B9/Will also has not been proved in the manner known to law is well merited.

16. Therefore, in view of the above submissions, this Court could not find any ground to interfere with the judgment of the First Appellate Court.

17. Thus, in view of above discussion, the substantial questions of law are answered in favour of the respondents.



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18. In the result, this Second Appeal is dismissed.
Consequently, connected miscellaneous petition is closed. There shall be
no order as to costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd

To

1. The Principal District Judge, Vellore.
2. The Subordinate Judge, Tirupattur.
3. The Section Officer, V.R. Section, High Court, Madras.



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C.KUMARAPPAN,J.

apd

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