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SA.No.152 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.152 of 2009

and

MP.No.1 of 2009

Ramasamy

... Appellant

- Vs -

1. Subramanian

2. Sekar

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 27.08.2008 in A.S.No.82 of 2006 on the file of the Principal Sub Court, Villupuram, reversing the judgment and Decree dated 22.06.2005 in OS.No.103 of 2004 on the file of the II Additional District Munsif, Tirukoilur.

For Appellant : Mr.K.Selvaraj

For Respondents : Mr.S.Parthasarathy
Senior Counsel
for Mr.K.A.Vimal Kumar for R1
Mr.J.Ramakrishnan for R2



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J U D G M E N T

The plaintiff is the appellant herein. The respondents are the defendants 2 and 3.

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

3. The brief facts which give rise to the instant Second Appeal is that A schedule property was originally belongs to one Irusa Gounder and the 1st defendant Chinna Gounder. They divided the said property equally and the Southern side of “A” Schedule property was allotted to Irusa Gounder. In pursuance thereof, Irusa Gounder executed a settlement deed in favour of his wife Vellachi Ammal on 31.01.1957. While so, when the first defendant interfered with the possession of Vellachi Ammal, she filed a suit in O.S.No.199 of 1971 against the first defendant and in the said suit, there was a compromise between Vellachi Ammal and this first defendant. According to the compromise, the entire “A” schedule property was allotted to the first defendant on condition that he should pay a sum of Rs.2,000/-, within the specified time, to Vellachi Ammal. Otherwise, the southern half of “A”



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schedule property will become the property of Vellachi Ammal. It is the submission of the plaintiff that, since the first defendant did not pay the amount as agreed in the compromise, “A” schedule property continued to be enjoyed by Vellachi Ammal as her absolute property. It was also the contention of the plaintiff that the said Vellachi Ammal was under the care and custody of the plaintiff. In the meanwhile, on 05.04.1991, Vellachi Ammal executed unregistered Will in favour of the plaintiff, and that by virtue of the same, the plaintiff become the owner of the “C” schedule property, which is nothing but, the property allotted to Vellachi Ammal by virtue of the compromise. However, the first defendant sold an extent of 17.5 cents in the total extent of “A” schedule property, when he had right only to 10 cents and thereby, the first defendant has attempted to encroach upon the defendant's property. Hence, the plaintiff has come forward with a suit for declaration and for permanent injunction.

4. The said suit was resisted by the first defendant by contending that Vellachi Ammal did not have any right over the property, and that by virtue of compromise in O.S.No.199 of 1971, the first defendant is the absolute owner of the entire “B” schedule property. He also stated that he paid a sum



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of Rs.2,000/- as mandated in the said compromise Memo. It was also the contention of the first defendant that the “Will” dated 05.04.1991 projected by the plaintiff is fabricated one. It is the submission of the plaintiff that Vellachi Ammal and the first defendant's wife are sisters. It was also the contention of the first defendant that by misrepresentation, undue influence and coercion, the plaintiff obtained a sale deed in respect of the suit property on 11.06.2001. Therefore, such sale deed will not bind upon the defendant. Therefore, it is the contention of the defendant that the suit property is the absolute property of the first defendant, which in turn he sold the same to defendants 2 and 3. Hence, prayed to dismiss the suit.

5. Before the Trial Court, the plaintiff examined 6 witnesses as PW1 to PW6 and marked 18 documents as Exs.A1 to A18. On behalf of the defendants, 4 witnesses were examined as DW1 to DW4 and 7 documents have been marked as Ex.B1 to B7.

6. The Trial Court, after having considered the oral and documentary evidence, decreed the suit as prayed for. Whereas, the First Appellate Court, on re-appreciation of evidence has found that the Will executed by Vellachi



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Ammal has not been proved and has ultimately, allowed the Appeal, thereby, dismissed the suit. Aggrieved with the same, the plaintiff has approached this Court by way of this Second Appeal.

7. At the time of admission on 24.04.2024, this Court has formulated the following substantial question of law:-

“1. Whether the judgment and decree of the Lower Appellate Court in reversing the well-considered judgment and decree of the Trial Court is contrary to law and against the Evidence, both oral and documentary.

2. Whether the Lower Appellate Court grossly erred in reversing the well-considered judgment and decree of the Trial Court.”

8. The learned counsel for the appellant would contend that the defendants 2 and 3, who are the subsequent purchasers cannot question the due execution of the Will executed by Vellachi Ammal. The learned counsel would further contend that by virtue of Ex.A17, the defendant himself has purchased the property from the plaintiff, which was bequeathed through Ex.A6-Will, would strengthen the execution of the Will, and that by such conduct, the defendant is estopped challenge the rights of the plaintiff over



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the suit property. The learned counsel for the appellant would further contend that according to the compromise decree dated 04.08.1975 in O.S.No.199 of 1971, though the property was allotted to the first defendant, such allotment was with a condition to pay a sum of Rs.2,000/- to Vellachi Ammal, failing which the southern portion of “B” schedule property will be allotted to Vellachi Ammal. The learned counsel would further contend that since the defendant did not comply the said presumption, the suit property vest upon her and such vesting of the property could be manifested through the execution of Ex.A6-Will, and also the acceptance of the plaintiff's ownership over the suit property, through a purchase made by the defendants in Ex.A17. Therefore, the learned counsel contended that the findings recorded by the First Appellate Court that the Will has not been proved, is contrary to the evidence and such finding is perverse. Hence, prayed to interfere with the same.

9. Per contra, the learned Senior Counsel appearing on behalf of the respondents would vehemently contend that the execution of the Will has not been proved in the manner known to law and that there are numerous suspicious circumstances and that the plaintiff has not dispelled all those



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suspicious circumstances. Therefore, the findings recorded by the First Appellate Court that the Will dated 05.04.1991 has not been proved, is well merited one and there are no ground to interfere with the said finding. Hence, prayed to dismiss the appeal.

10. I have given my anxious consideration to either side submissions.

11. From the submissions made by the learned counsel for the appellant/plaintiff, he set up title over the suit property by virtue of a Will dated 05.04.1991 executed by Vellachi Ammal. Before that, we must see whether Vellachi Ammal has got any title over the suit property. It is an admitted case that there was a suit between the plaintiff and the defendant in O.S.No.199 of 1971, wherein there was also a compromise between the parties on 04.08.1975. The said compromise petition has been filed as Ex.A5. According to the compromise, the entire A schedule property was allotted to the first defendant subject to the condition to pay a sum of Rs.2,000/- to Vellachi Ammal.



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12. It is the contention of the plaintiff that such condition has not been complied with. Therefore, as per the stipulation of Ex.A5/compromise deed, B schedule property vested with Vellachi Ammal. As rightly contended by the learned Senior Counsel, according to the construction of compromise deed the property was allotted to the 1st defendant absolutely. But, it is subject to the pre condition to pay a sum of Rs.2,000. Further, there is also a self noticing default clause to revert the property to Vellachi Ammal in default of such pre condition payment.

13. Though the first defendant contends that he has paid Rs.2,000/- to Vellachi Ammal, there are no evidence available before this Court. Therefore, in such circumstances, whether a case of the plaintiff that the amount of Rs.2,000/- has not been paid by the first defendant can be inferred through the available materials to be seen.

14. In this regard, the learned counsel for the appellant relied upon the Will dated 05.04.1991 under Ex.A6 and also Ex.A17-Sale Deed executed by the plaintiff in favour of the defendants in respect of the portion of “B” schedule property. The learned counsel would submit that, the very



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execution of the Will under Ex.A6 would demonstrate that only on account of having title over the suit property, Vellachi Ammal had executed such Will. The learned counsel would further contend that such execution of the Will and the conferment of title upon Vellachi Ammal is further vindicated through Ex.A17-Sale transaction, wherein the first defendant purchased the property from the plaintiff, which was bequeathed through the Will.

15. This Court has perused Ex.A17, wherein the portion of “B” schedule property has been purchased by the first defendant from the plaintiff. If really the first defendant had paid a sum of Rs.2,000/- and enjoying the suit property as his absolute property, there could not have been any occasion for him to purchase such property from the plaintiff. Therefore, as rightly contended by the learned counsel for the appellant, the purchase of portion of “B” Schedule property would estop the defendant to dispute the ownership of the plaintiff over the suit property. The first defendant has also admitted the purchase of portion of land through Ex.A17. However, he pleaded undue influence and coercion, whereas to prove such undue influence and coercion, he has not examined any witness and such defence not proved. Therefore, this Court is not in a position to accept the defence put forth by the defendant in this regard.

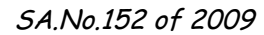


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16. However, vesting of right with the plaintiff is based upon the Will dated 05.04.1991. According to the defendants, due execution of the such Will is surrounded with suspicious circumstances. The suspicion projected was beneficiary took active part in the execution of the Will, and that the conduct of propounder of the Will in a different judicial proceeding suffered a finding that he has fabricated the promissory note. The un-registration of the Will had also been projected as the suspicious circumstances.

17. No doubt, as rightly contended by the learned Senior Counsel, these are all the suspicious circumstances. But we must look at as to who has raised such suspicious circumstances against the Will, is an important question. Here, in this case the defendants 2 and 3 is raising such a question and not the plaintiff, who is otherwise entitled to have the property. In this regard, the learned counsel for the appellant relied upon the judgment of the Hon'ble Single Judge of this Court in *Valliammal Vs. S.Arumugha Gounder and another* reported in **2001 (1) CTC 708**, wherein this Court has held that the stranger to the property cannot have any right to question the genuineness of the Will.



20. In the result, this Second Appeal is allowed, thereby, the judgment and decree of the First Appellate Court in A.S.No.82 of 2006 on the file of



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the Principal Sub Court, Villupuram is set aside and the Order of the Trial Court decreeing the suit in OS.No.103 of 2004 on the file of the II Additional District Munsif, Tirukoilur is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

30.04.2024

kmi

Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The II Additional District Munsif,
Tirikoilur.
2. The Principal Sub Court,
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C.KUMARAPPAN, J

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