



S.A.No.917 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.917 of 2023
and
C.M.P.No.29474 of 2023

1.Gnanasekaran
2.Sembayee
3.Chandiran
4.Yokeshwaran

... Appellants

Vs.

Arumugam

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree of the Principal Subordinate Court, Virudhachalam passed in A.S.No.33 of 2015 dated 30.07.2019, confirming the judgement and decree of the learned II Additional District Munsif Court, Virudhachalam, passed in O.S.No.150 of 2006 dated 30.04.2015.

For Appellant : M/s.J.Antony Jesus



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JUDGEMENT

The unsuccessful defendants in a suit for partition have filed the above Second Appeal. The facts giving rise to the above Second Appeal are herein below set out briefly and the parties are referred to in the same ranking as before the Trial Court, namely, the II Additional District Munsif Court, Virudhachalam in O.S.No.150 of 2006.

2. The plaintiff had filed the above-referred suit for a partition of his half share in the joint family properties as per oral partition made 25 years ago. It is the case of the plaintiff that the property belonged to One Mr.Rajeswaran, S/o. Mr.Manicka Padayachi. The plaintiff is the younger brother of the said Rajeswaran and the 1st defendant is the son of another brother of the said Rajeswaran. The 2nd defendant is the wife of the 1st defendant and defendants 3 and 4 are the legal heirs of the 1st defendant.



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3. It is the case of the plaintiff that the said Rajeswaran had married one Kaliyammal and through her he had a daughter. However the whereabouts of the daughter is not known for the past 25 years. The said Rajeswaran died on 25.04.1988 and after his demise, the plaintiff and defendants are jointly enjoying the suit schedule property. Therefore, it is the contention of the plaintiff that he is entitled to a half share in the suit property as per the oral partition that has been made 25 years ago, prior to the filing of the suit. The plaintiff would further submit that the defendants are attempting to sell the suit property and therefore the plaintiff had come forward with the suit in question.

4. The 1st defendant had filed a written statement was adopted by the defendants 2 to 4 stating that the said Rajeswaran before his death had executed a Will dated 08.07.1989 in favour of the 1st defendant in a sound disposing state of mind. Thereafter, he had passed away on 10.07.1989. It is the contention of the defendants that after the death of Rajeswaran, the 1st defendant had been enjoying the suit property for



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over 17 years and therefore he had obtained prescriptive title over the suit property. They would further contend that the plaintiff has not sought for a partition all these years since he was aware about the Will. Therefore, the present suit is not maintainable.

5. The Trial Court had framed the following issues which translated from the vernacular would read as follows:-

1. Whether the plaintiff and the defendant are in joint possession of the suit schedule properties?

2. Whether the plaintiff is entitled to the relief claimed by him?

3. What are the other reliefs that the plaintiff is entitled to?

6. The plaintiff had examined 3 witnesses and marked Ex.A.1 to A.3 and Ex.X.1. On the side of the defendants, 3 witnesses were examined and Ex.B.1 and B.2 were marked.



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7. The Trial Court on considering the evidence on record had ultimately decreed the suit. Aggrieved by which the defendants had filed A.S.No.33 of 2018 on the file of the Principal Sub Judge Virudhachalam.

8. The Lower Appellate Judge had also confirmed the judgment and decree of the Trial Court and consequently dismissed the appeal. Aggrieved by the said judgement and decree the defendants are before this Court.

9. Heard the learned counsel for the appellants.

10. The only defence raised by the defendants is that the plaintiff would not be entitled to a partition on account of the Will executed by the said Rajeswaran in favour of the 1st defendant dated 10.07.1989. The said Will was sought to be proved by examining D.W.2 and D.W.3. The finger print in the Will had also been sent for an expert



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opinion and the expert who had been examined as P.W.3 had opined that the Will appears to be a genuine one. However, D.W.2 and D.W.3 during their cross examination have not supported the case of the defendants. That apart, the Courts below had found that the testator was a person who would affix his signature and was not in the habit of affixing his thumb impression. There is no explanation as to why the testator had affixed the left thumb impression without affixing his signature in the Will, Ex.B.1. That apart, P.W.3 the finger print expert had also deposed that he is unable to give a definite conclusion that the signatures in Ex.A.1 and Ex.A.2 and the thumb impression in Ex.B.1 are one and the same.

11. The Courts below have therefore rightly come to the conclusion that the defendants who have set up the Will to non suit the plaintiff have failed to prove the same in the manner known to law and the witnesses who have been examined have also contradicted their evidence during their cross examination.



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WEB COPY 12. Considering the fact that the defendants have not been able to prove their exclusive right over the suit schedule property and no Substantial Question of Law arises in this Second Appeal, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.01.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Subordinate Court, Virudhachalam.
2. The II Additional District Munsif Court, Virudhachalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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