



S.A.No.361 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.361 of 2024
and CMP.No.10914 of 2024

K.A.Palanisamy ... Appellant
Vs.

1. R.Jayaseelan
2.A.Chandira
3.J.Dharani @ Sasibhadharani ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C, pleaded to allow the Second Appeal, against the judgment and decree of the III Additional District Judge, Gobichettipalayam, Erode District dated 12.10.2023 made in A.S.No.34 of 2022, confirming the Judgment and Decree of the learned Sub Court, Gobichettipalayam, Erode District dated 10.02.2020 made in o.S.No.50 of 2013.

For Appellant : Mr.V.Anandhamoorthy

JUDGMENT

The appellant is the third defendant in the suit in O.S. No. 50 2013 on the file of the Subordinate Judge, Gobichettipalayam, Erode District.



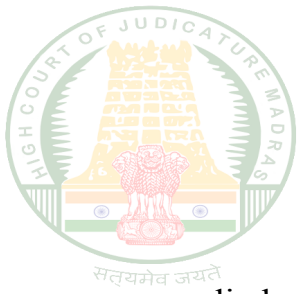
S.A.No.361 of 2024

WEB COPY

2. The first respondent herein has instituted the said suit for the relief of partition and separate possession of one half of her share. A further relief of declaration was also sought for to declare that the sale of the share of the plaintiff made by the second defendant to the third defendant on 07.02.2011 is void and it will not bind the plaintiff in any manner. The Plaintiff also sought for a consequential relief of permanent injunction restraining the defendants from in any manner interfering with the plaint described property.

3. Pending suit, the third defendant was impleaded as a party on the basis of the order dated 03.03.2016 made in I.A. No. 522 of 2015. Subsequently, as per the order dated 09.01.2017 made in I.A. No. 242 of 2016, the plaint was amended by the plaintiff.

4. As per plaint averments, the plaintiff, one Loordhuraj and Jeganathan are brothers and are sons of M.A. Royappan Loordhuraj died in the year 1982 at his young age. Mr. Rayappan, father of the plaintiff

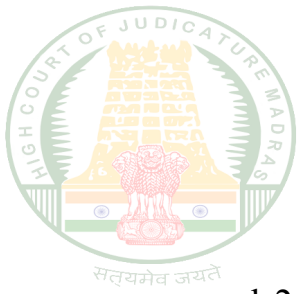


S.A.No.361 of 2024

died on 21.02.2009 and subsequently, his brother Jeganathan also died.

The defendants 1 and 2 are the wife and daughter of the said Jeganathan.

5. According to the plaintiff, his father Rayappan was employed in Indian Army and retired in the year 1946. Even after such retirement, his father served as a Teacher in Government School in the Education Department. The suit properties are the self-acquired property of his father. The first item of the property was purchased by his father through a sale deed dated 07.02.1977 where he had constructed a house in the year 1984. The second item of the property was purchased on 30.06.2004. The third item was purchased on 08.03.2005 and was in possession and enjoyment of those properties. While so, his father died intestate leaving behind the plaintiffs and defendants 1 and 2 as his legal heirs. After the death of his father, it was mutually decided that the deposits made by his father in the bank as well as the sale proceeds of the suit properties can be divided into two. Accordingly, the plaintiff approached the defendants and sought for sale of the suit properties to a prospective purchasers. However, the defendants 1 and 2 postponed it. While so, the plaintiff came to know that the suit properties have been sold by the defendants 1

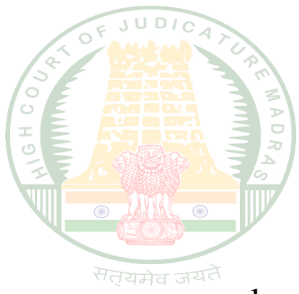


S.A.No.361 of 2024

WEB COPY

and 2 to the third defendants by way of a sale deed. According to the plaintiff, the defendants 1 and 2 are not the exclusive owners of the plaint described property and they have no right to sell the entire properties to the third defendant. The Plaintiff also came to know that his father had executed a Will on 06.07.2001 and on the basis of the same, on 07.12.2011 the defendants 1 and 2 sold the entire suit properties to the third defendant. It is in those circumstances, the plaintiff has filed the suit.

6. On notice, a written statement was filed by the first defendant contending that even when Mr.Rayappan was alive, he had executed a Will on 06.07.2001 when he was in a sound and disposing state of mind and energy. As per the Will, the deposits in the bank, his pensionary benefits and other movable properties have been bequeathed to the plaintiff, while the suit properties have been allotted to the defendants 1 and 2. On the basis of the same, on 28.07.2009, an agreement of sale was entered into between the third defendant in respect of first item of the plaint schedule. Since the defendants 1 and 2 are having a right on the basis of the Will, they need not obtain the signature of the plaintiff. As far as the item Nos. 2 and 3 of the plaint schedule, the defendants are ready



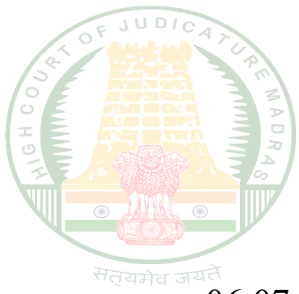
S.A.No.361 of 2024

WEB COPY

and willing to enter into a partition with the plaintiff. In any event, the agreement entered into with the third defendant, in respect of the first item of the plaint schedule property will bind the plaintiff in all respects. The suit is therefore not maintainable and it is liable only to be dismissed.

7. The third defendant also filed a written statement, after he was impleaded in the suit. According to the third defendant on the basis of the Will dated 06.07.2001 the second defendant has every right to sell the first item of the property to him. The third defendant purchased the item No.1 of the plaint schedule for a valuable sale consideration. The third defendant is a bona fide purchaser and his right in respect of item No.1 of the plaint schedule has to be protected.

8. A reply was submitted by the plaintiff contending that his father did not execute any Will on 06.07.2001, claimed that the Will is forged and fabricated. The Will might have been obtained from his father when he was in poor mental capacity to understand things. From 1999 till the date of his death his father Rayappan was not keeping good health. The third defendant is not entitled to justify the so-called Will dated



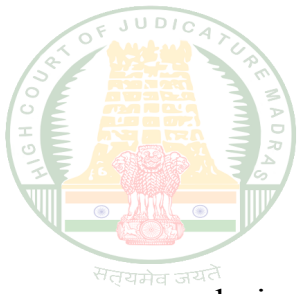
S.A.No.361 of 2024

WEB COPY

06.07.2001 inasmuch as he is a stranger to his family and he does not know anything about the so-called Will dated 06.07.2001 personally. The third defendant is also not entitled to deny the family arrangement made on 01.03.2009 between the plaintiff and defendants 1 and 2. The suit agreement for partition is in accordance with Section 17 (2) and 17 (1) (b) of The Registration Act.

9. The third defendant filed an additional written statement contending that the Will dated 06.07.2001 was executed by Mr. Rayappan when he was in sound and disposing state of mind and energy and it will bind the plaintiff. The third defendant further reiterated that the family arrangement said to have been made on 01.03.2009 is false and fabricated. The suit family arrangement is contrary to Section 17 (2) and 17 (1) (b) of The Registration Act. After filing the suit, the defendants 1 and 2 have colluded with the plaintiff and acting against the interest of the third defendant. Accordingly, the third defendant prayed for dismissal of the suit.

10. The trial Court framed issues for consideration. Thereafter,

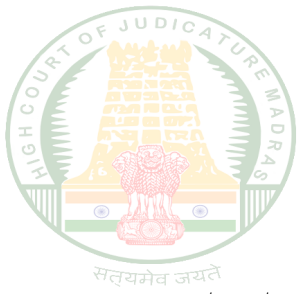


S.A.No.361 of 2024

WEB COPY

during trial, the plaintiff examined himself as PW1 along with two other witnesses as PWs 2 and 3. The plaintiff marked 11 documents on his side as Exs. A1 to A11. On behalf of the defendants, the third defendant examined himself as DW1 and two other witnesses as DWs 2 and 3. The third defendant also marked 11 documents and they were exhibited as DWs 1 to 11.

11. The trial court, on appreciation of oral and documentary evidence, concluded that at the time of executing a Will Mr. Rayappan was in good health inasmuch as he had purchased the item Nos. 2 and 3 of the plaint schedule properties thereafter, under Exs. P2 and P3. The trial court also concluded that on 21.02.2009 Rayappan died and except the plaintiff and defendants 1 and 2, he has no other surviving legal heirs to succeed to his estate. The trial Court also did not accept Ex.P11, family arrangement as it was not established by the plaintiff in accordance with law. Further it was pointed out that in Ex.P11, there is no details with regard to the movable properties said to have been partitioned among the parties. In this context, the trial court referred to the depositions of PWs 2 and 3, who are witness to Ex.P11 and concluded that their evidence is not



S.A.No.361 of 2024

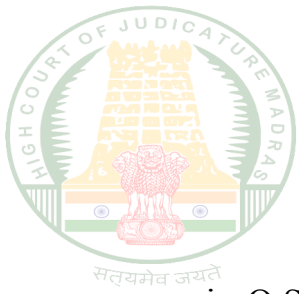
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trustworthy to conclude that Ex. P11 was validly executed. Accordingly, it was held that Ex.P11 is not valid and it will not bind the defendants 1 and 2 in any manner.

12. With respect to Ex.P10, Will said to have been executed by Rayappan on 06.09.2001, the trial court concluded that the deposition of DWs 2 and 3, as also the third defendant as DW1, is not inspiring the confidence of the Court. By referring to their cross-examination, it was concluded that the Will not genuine and it was not proved in accordance with Section 63 (c) of The Indian Succession Act.

13. On the basis of the above conclusion, the trial court passed a preliminary decree dated 10.02.2020 by directing that the plaint described properties have to be divided into two and one such share has to be given to the plaintiff. It was also held that the sale made by the second defendant in favour of the third defendant will not bind the plaintiff in any manner.

14. Aggrieved by the Judgment and Decree dated 10.02.2020 made



S.A.No.361 of 2024

WEB COPY

in O.S. No. 50 of 2013, the third defendant-appellant has filed an appeal in A.S. No. 34 of 2022. The First Appellate Court by the judgment and decree dated 12.10.2023 dismissed the appeal and confirmed the judgment and decree passed by the trial court. In such circumstances, the present appeal is filed by the third defendant, as appellant.

15. For the purpose of consideration of this appeal, the third defendant-appellant has raised the following substantial questions of law:-

- (1) Whether the courts below erred in their application of Section 63 (c) of The Indian Succession Act, 1925 in light of the evidence presented by DWs 2 and 3 regarding the execution of the Will (Ex.B10).
- (2) Whether the Appellate Court is correct in not believing the genuineness of the registered Will merely based on the absence of witnesses seeing when the attestor put his signature and the lack of information regarding the attestor's health, in violation of Section 63 (c) of The Indian Succession Act



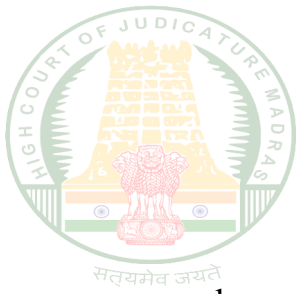
S.A.No.361 of 2024

WEB COPY

- (3) Did the Appellate Court erred in casting suspicion on the Will (Ex.B10) based on the distribution of only one item of property, contrary to the established legal principles and unsupported by evidence
- (4) Whether the courts below properly assess the validity and execution of the Will (Ex.B10) in accordance with relevant legal provisions and precedents
- (5) Whether the courts below erred in making the findings that the sale deed/Ex.B1 executed in favour of the third defendant will not bind the plaintiff.

16. The learned counsel for the appellant-third defendant submitted that to prove the due execution of Will, DWs 2 and 3 have been examined but their testimony has not been properly considered by the courts below. The trial court as well as the appellate Court ought to have held that the Will, Ex.B10 has been provided in accordance with Section 63 of The Indian Succession Act.

17. This second appeal was listed for admission and this Court



S.A.No.361 of 2024

WEB COPY

does not find any substantial question of law involved in this appeal to admit it. The questions of law raised by the appellant does not survive for consideration of this Court.

18. At the outset, it must be stated that the appellant is only purchaser of the first item of the plaint described property. Such purchase was made on the belief that the second defendant is the sole and exclusive owner of the first item of the plaint described property under Ex.B10. Therefore, the first and foremost consideration must be to examine whether Ex.B10 has been proved in accordance with Section 63 (c) of The Indian Succession Act. If the validity of Will under Ex.B10 is found to be genuine, the appellant is bound to succeed in this appeal, otherwise not.

19. For proof of Will, DWs 2 and 3 were examined. It must be stated that the second defendant, who sold the first item of plaint described property to the appellant did not participate in the trial. The appellant, if at all, can be construed as a one who might have heard the execution of the Will much later. The appellant is a subsequent purchaser,



S.A.No.361 of 2024

WEB COPY

at whose behest, the validity or enforceability of the Will under Ex.B10 need not be gone into.

20. Even otherwise, the trial court on a detailed analysis came to the conclusion that the deposition of DWs 2 and 3 are not trustworthy to hold that the Will had come into existence without any suspicion. Even though the Will, Ex.B10 is a registered Will, the proof of it's due execution is very much essential in accordance with Section 63 (c) of The Indian Succession Act. The trial court as well as the appellate Court, on a detailed analysis of the deposition of DWs 2, 3 as also the appellant, as DW1 has concluded that their deposition is not corroborative and rather is contrary to each other. It was specifically deposed that DW2 or 3 did not see the testator signing the Will, Ex.B10. This is one of the significant and essential element to prove the Will. When this is absent, this Court is of the view that the Will, Ex.B10 is not proved in accordance with Section 63 (c) of The Indian Succession Act. Both the courts below on elaborate consideration of the evidence available on record have concurrently held that the Will, Ex.B10 has not been proved and consequently, the sale



S.A.No.361 of 2024

WEB COPY

made by the second defendant, in favour of the appellant-third defendant is void.

21. In such circumstances, this Court is not inclined to issue notice to the respondents in this appeal or to hear them. The second appeal deserves to be dismissed at the stage of admission without raising any question of law for consideration. Even otherwise, if the questions of law raised by the appellant are considered, they have to be answered against the appellant and in favour of the respondents.

22. In the result, the Judgment and Decree dated 12.10.2023 passed in A.S. No. 34 of 2022 on the file of the III Additional District Judge, Gobichettipalayam, Erode confirming the Judgment and Decree dated 10.02.2020 passed in O.S.No. 50 of 2013 on the file of Subordinate Judge, Gobichettipalayam, Erode is confirmed. The Second Appeal fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.06.2024

drl

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S.A.No.361 of 2024

WEB COPY

To

- 1.The III Additional District Judge,
Gobichettipalayam, Erode District
- 2.The Sub Court, Gobichettipalayam,
Erode District



WEB COPY



S.A.No.361 of 2024

T.V.THAMILSELVI.,J.

drl

S.A.No.361 of 2024
and CMP.No.10914 of 2024

12.06.2024