



S.A.No.454 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on
22.03.2024

Judgment Pronounced on
12.04.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.454 of 2018
and C.M.P.No.12290 of 2018

K.Chandrakanthan

.. Appellant

Vs.

1.Nargis

2.I.Devavaram

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.11.2017 passed in A.S.No.13 of 2016 on the file of the Principal District and Sessions Court, Thiruvarur, confirming the judgment and decree dated 09.09.2016 made in O.S.No.62 of 2014 on the file of the Subordinate Court, Thiruvarur.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.J.Nandagopal



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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 30.11.2017 passed in A.S.No.13 of 2016 on the file of the Principal District and Sessions Court, Thiruvarur, confirming the judgment and decree dated 09.09.2016 made in O.S.No.62 of 2014 on the file of the Subordinate Court, Thiruvarur.

2.The unsuccessful plaintiff in a suit for declaration and permanent injunction is the appellant herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The brief facts that are necessary for deciding the present Second Appeal are as follows:

According to the plaintiff, the 1st item of the suit property was owned by Sellammal, she having purchased the same, under a registered Sale Deed dated 28.05.1987. The said Sellammal had constructed a RCC house along with shed and was living in the said property with her



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husband Kaliyappa Nadar. In so far as suit items 2, 3 and 4 are concerned, the said properties were originally belonging to Kaliyappa Nadar, he having purchased the same, under registered Sale Deeds dated 15.05.1985, 11.09.1997 and 31.03.1992. The said Sellammal and Kaliyappa Nadar had no issues. Kaliyappa Nadar died intestate on 18.12.2013 and consequently, the suit items 2, 3 and 4 came to be inherited by Sellammal, his wife, as his only legal heir. According to the plaintiff, his paternal grandmother, one Palaniammal and mother of Kaliyappa Nadar, namely Anandhammal are sisters and thus Kaliyappa Nadar was the maternal uncle of the plaintiff. The plaintiff took care of the needs of the Kaliyappa Nadar and Sellammal during their lifetime and it was only the plaintiff, who performed the last rites of Kaliyappa Nadar and Sellammal. The said Sellammal had executed a Will in favour of the plaintiff, bequeathing the suit properties to the plaintiff. On 08.03.2014, Sellammal died and the Will came into force. According to the plaintiff, the defendants did not raise any issue with regard to items 5 and 6 but raised dispute only with regard to items 1 to 4 and therefore, the plaintiff was constrained and necessitated to seek for relief of declaration and permanent injunction in respect of the suit properties.



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5.The defendants filed a written statement resisting the suit claim and denying the truth and genuineness of the alleged Will of the Sellammal. It is also specifically stated that the said Sellammal was not in sound and disposing state of mind and understanding even before execution of the Will and the plaintiff has brought about the Will only to defeat the rights of the defendants. The 1st defendant claims to be an adopted child of the deceased Kaliyappa Nadar and Sellammal. The plaintiff, being only a servant, Sellammal who had five brothers and four sisters, would not have executed the Will in favour of the plaintiff. The defendants also denied the claim of the plaintiff that the plaintiff was in possession and enjoyment of the suit property and that the defendants attempted to trespass into the suit property which gave rise to the cause of action for filing the suit.

6.The Trial Court dismissed the suit disbelieving the Will executed by the Sellammal. The First Appellate Court also findings suspicious circumstances, confirmed the judgment and decree of the Trial Court.



7. Aggrieved by the concurrent findings rendered by the Courts below, the plaintiff has preferred the above Second Appeal. On 10.08.2018, the above Second Appeal was admitted by this Court on the following substantial questions of law:

“[1] Whether the Plaintiff has proved the competency of Sellammal to execute Ex.A15 will in his favour and whether Ex.A15 is valid in the eye of law and proved as such?

[2] When the First Defendant has failed to prove the plea of adoption by Kaliappa Nadar and Sellammal, whether the Courts below have committed an error in rejecting the Will on the basis of exclusion of other legal heirs and for want of registration?

[3] Have not the Courts below committed an error in giving importance to all the circumstances relied upon by the Defendants, especially when the plaintiff has duly complied with the requirement of law as per Sec.63(c) of the Indian Succession Act r/w Sec.68 of the Indian Evidence Act?”

8. I have heard Mr.N.Manokaran, learned counsel for the appellant and Mr.J.Nandagopal, learned counsel for the respondents. I have carefully gone through the pleadings, oral and documentary evidence adduced by the parties before the Trial Court and judgment and decree of the Trial Court as well as the First Appellate Court.



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9. According to Mr.N.Manokaran, learned counsel for the appellant, the purpose of execution of the Will being only to defeat the line of succession, merely because the property was bequeathed in favour of the plaintiff, it cannot be a ground to suspect the genuineness of the Will of Sellammal. He would further place strong reliance on the evidence of the attesting witnesses who were examined as P.W.2 and P.W.3. According to the learned counsel for the appellant by examining both the attesting witnesses, the propounder had satisfied the requirements of the Section 63(c) of the Indian Succession Act r/w Section 68 of the Indian Evidence Act and the burden thereafter would stand shifted to the defendants who claim that the Will was fabricated/forged to prove their defense.

10. In so far as suspicious circumstance is concerned, the learned counsel for the appellant would submit that none of the circumstances that have been cited by the Courts below are actual suspicious circumstances surrounding due execution of the Will and therefore, according to the learned counsel for the appellant, the Courts have rendered perverse findings and the same was liable to be interfered with under Section 100 of Code of Civil Procedure.



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11.(a).Per contra, Mr.J.Nandagopal, learned counsel for the respondents would submit that the 1st defendant is the sister's daughter of the testatrix and the 2nd defendant is the sister of the testatrix. When the testatrix had close relatives, the testatrix would not bequeathed the entire estate to a stranger who claims to have been taking care of the deceased and her husband. He would also refer to contradictions in the evidence of P.W.2 and P.W.3. Further, the learned counsel for the respondents would submit that the propounder played an active role in brining about the Will of Sellammal and therefore, all these suspicious circumstances arose in the matter and the propounder had miserably failed to dispel the same, by leading satisfactory and cogent evidence. He would also refer to the evidence of D.W.3 and D.W.4, who were examined in support of the defense.

(b).The learned counsel for the respondents would also state that the very fact that the Will came to be executed, just a month after the death of her husband on 18.12.2013 would itself create serious suspicion, especially when the testatrix herself went to the Sub Registrar Office all alone and therefore, the learned counsel for the respondents would



submit that the Courts below had rightly adverted their attention to the various suspicious circumstances surrounding the due execution of the Will. Being concurrent findings, the learned counsel for the respondents would submit that no interference would warrant and the Second Appeal, according to the respondents, deserved to be dismissed.

12.I have carefully considered the rival submissions advanced by the learned counsel on either side.

13.In fact, the learned counsel for the appellant placed reliance on the following judgments:

1.2017 SCC Online Mad 412 (R.M.Nachiappan Vs. S.Nachammal and Others).

2.2003 (4) CTC 470 (Dr.Shantha Vs. Sharada).

3.(2002) 2 SCC 85 (Madhukar D.Shende Vs. Tarabai Aba Shedage).

4.(2005) 2 SCC 784 (Sridevi and Others Vs. Jayaraja Shetty and Others).

5.2017 SCC Online Mad 20 (J.D.Shanthi (Deceased) and Others Vs. M.L.Perumal and Others).

6.2001-2-L.W.610 (C.Nallasamy and Another Vs. Rajadurai and 4 Others).

7.2001 (3) CTC 283 (Corra Vedachalam Chetty Vs. G.Janakiraman).



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8.2015 SCC Online Mad 10407 (Dhanalakshmi and Others Vs. Mohanamurali and Others).

9.(1983) 1 SCC 35 (Madhusudan Das Vs. Smt.Narayanibai (Deceased) by L.R's and Others).

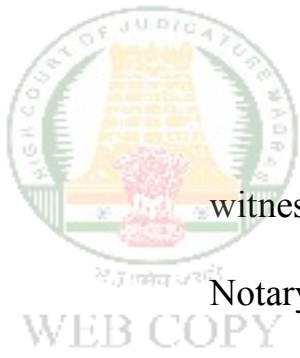
10.(2020) 5 SCC 307 (M.Vanaja Vs. M.Sarla Devi (Dead)).

14.Per contra, the learned counsel for the respondents placed the following judgments

1.(2022) 3 SCC 209 (Murthy and Others Vs. C.Saradambal and Others).

2.AIR 1976 Calcutta 272 (Suresh Darvade Vs. Arjun Ram Pandey).

15.In a testamentary dispute, the Court is dealing with the issues of a person who is not alive to come and give evidence or testify before the Court as to whether the Will executed by him was true and genuine. However, this is a very peculiar case where the testatrix herself had an occasion to put it on record that she had executed the Will in question, out of her own volition. The Will is dated 27.01.2014 and it is an unregistered Will which has been executed in the presence of two



witnesses. However, the Will was also notarized before an Advocate cum Notary Public on the same day. The testatrix has signed in all the pages of the Will (numbering 4) and her photograph is also affixed on the last page across which the Notary seal has also been affixed.

16. On the very same day of the execution of the Will, namely 27.01.2014, the 1st defendant issued a notice which has been marked as Ex.A11. The said notice has been addressed to the testatrix, Sellammal, besides other Government Authorities, namely Collector, Tahsildar, Village Administrative Officer, etc. In and by the said notice, the 1st defendant claimed that she had a right in the suit properties and sought for partition and separate possession. On 30.01.2014, the testatrix herself, namely Sellammal has issued a reply notice which has been marked as Ex.A12 before the Trial Court. In the said reply notice issued by the Advocate on behalf of the testatrix, the testatrix also affixed her signature in confirmation of the contents of the reply notice. In the said reply notice, the testatrix has asserted that she had executed a Will in favour of the plaintiff. Thus, this vital circumstance has been totally ignored by the Trial Court and the First Appellate Court. Very rarely in testamentary matters, there will be occasion for the testator or testatrix to place it on



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record that he or she as the case may be, has executed a Will.

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17. Even otherwise, I find from the evidence of P.W.2 and P.W.3 that their evidence is natural and it inspires the confidence of the Court. Their evidence clearly points to due execution and attestation of the Will by Sellammal, leave alone Sellammal herself having categorically admitted to the execution of the said Will. The contradictions which have been highlighted by the learned counsel for the respondents are very minor and they do not go to the root of the matter, namely execution of the Will which alone would be of material bearing. With regard to the suspicious circumstance also, I do not find any of the circumstances which have been projected as suspicion surrounding the execution of the Will to be actually germane suspicious circumstances.

18. The First Appellate Court has in fact found that the Will was duly proved from the evidence of P.W.2 and P.W.3, but however, has proceeded to disentitle the plaintiff only on the ground of suspicious circumstances. When the testatrix herself went on record in Ex.A12 and asserted that she had executed the Will in favour of the plaintiff, the fact that the Will was executed within a few days of the death of her husband



or that the Sellammal herself died within 40 days of the execution of the Will would pale into insignificance and cannot be stated to be a suspicious circumstances, warranting the Courts to doubt the truth and genuineness of the Will.

19. Equally, the doubt raised by the First Appellate Court as to how the Sellammal was in a position to travel from Thiagarajanpettai to Thiruvarur where the Notary Public's office is located, again becomes insignificant in the light of Ex.A12, reply notice dated 30.01.2014.

20. The attesting witnesses, being close relatives of the plaintiff cannot be suspicious circumstance by itself. In fact, I do not find any suggestion put to P.W.2 and P.W.3 attacking their motives in signing as attesting witnesses to the Will in question. Again, all references to Sellammal, calling P.W.2 and P.W.3 for attestation being improbable would of no consequence in the light of the reply notice in Ex.A12 issued by the Sellammal herself, within three days from the date of execution of her last Will. The fact that the attesting witnesses were not aware as to who furnished the information for preparation of Will is again not a suspicious circumstances. Both P.W.2 and P.W.3 have spoken about the



mental faculties of Sellammal being intact, namely sound and disposing at the time of execution of the Will and therefore, in the absence of any germane suspicious circumstances which surround due execution and attestation of the Will, the Will has to be necessarily upheld. Unfortunately, the Courts below have magnified minute deficiencies and contradictions in the evidence and projected the same as suspicious circumstances, affecting the due execution and validity of the Will of Sellammal.

21. With regard to the finding of the First Appellate Court that the Kaliyappa Nadar and Sellammal had no issues and the plaintiff admittedly not being a blood relative of the Kaliyappa Nadar, there was no special circumstance to exclude the siblings of Sellammal and no reasons have been set out in the Will for disinheriting the siblings of Sellammal, the Will has been disbelieved on these grounds that these details are lacking in the Will and that the propounder has failed to dispense the circumstances relating to the above.

22. The very purpose of executing a Will is to alter the line of succession and therefore, the mere fact that the property has been



bequeathed to the plaintiff who was taking care of the testatrix as well as her husband cannot be a suspicious circumstance to disbelieve the Will. Moreover, there is no particular form or language in which a Will is required to be written. The Will is only an expression of the wishes of a person and therefore, the strict rigors of legal knowledge of the person making the Will cannot be imputed and required to be followed. The Courts have consistently held that there is no specific form or language to be used while drafting the Will. Therefore, merely because there is no mention of any reasons as to why the siblings of Sellammal, the testatrix has been disinherited would not in any way affect the Will which has otherwise been validly proved to be duly executed and also attested.

23.In fact, a Division Bench of this Court in ***Corra Vedachalam Chetty's*** case as referred herein supra, has held that the probate Court is a Court of conscience and not a Court of suspicion and that the Court should not start with a presumption that Will is not genuine as to object of provide proceedings is not to render the Will ineffective but to make it effective and render the terms of the Will operative.

24.In ***Sridevi's*** case as referred herein supra, the Hon'ble Supreme



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Court held that mere presence of the propounder or beneficiary in the house would not be amounting to taking prominent part in the execution of the Will.

25.In ***Madhukar D.Shende's*** case as referred herein supra, the Hon'ble Supreme Court held that when there is nothing unnatural about the transaction and evidence adduced satisfies the requirement of proving the Will, then the Court would not return a finding of “not proved” merely on account of assumed suspicion. This is exactly the error committed by the Courts below and the Courts below have assumed circumstances to be suspicious, without noticing that the evidence adduced by the propounder and supported by the attesting witnesses to the Will clearly established due execution and attestation of the Will by Sellammal.

26.The Division Bench of this Court in ***Dr.Shantha's*** case as referred herein supra, held that mere disinheritance of two of legal heirs by itself would not be a suspicious circumstance surrounding execution of the Will.



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27. Similar view has been taken by a learned Single Judge of this Court in ***R.M.Nachiappan's*** case. Reliance has been placed on ***Murthy's*** case, where the Hon'ble Supreme Court held that the propounder should establish and prove the intention of the testator to make the testament and all suspicious circumstances surrounding the execution of the Will have to be dispelled by the propounder. There is no quarrel with regard to the proposition.

28. One other issue that has been raised and argued by the learned counsel is with regard to the claim of adoption of the 1st defendant. The 1st defendant has claimed that Kaliyappa Nadar and Sellammal had adopted the 1st defendant. In Ex.A12, reply notice Sellammal had denied any such adoption. In the written statement, I am able to see that the 1st defendant has specifically alleged and claimed that she is an adopted daughter of Kaliyappa Nadar and Sellammal and that her mother is the own sister of Sellammal. However, in order to prove the said adoption, no satisfactory evidence has been let in by the 1st defendant.

29. In this connection, the learned counsel for the appellant would



place reliance on the decision of the Hon'ble Supreme Court in *Madhusudan Das's* case referred herein supra where, the Hon'ble Supreme Court held that the person who seeks to displace natural succession to property by alleging adoption, must discharge the burden that lies upon him by proof of factum of adoption and its validity and that the adoption was free from all suspicion of fraud and being probable as to give no occasion for doubting its truth. Unfortunately, in the present case, the 1st defendant has not adduced any evidence in support of her adoption. Admittedly, there is also no adoption deed that is produced by the 1st defendant to fortify her contention in the written statement that she is the adopted daughter.

30.The learned counsel for the appellant would also place reliance on the decision of the Hon'ble Supreme Court in *M.Vanaja's* case referred herein supra where the Hon'ble Supreme Court has held that compliance of conditions set out in Chapter I of the Hindu Adoption and Maintenance Act, 1956, was mandatory for an adoption to be treated as valid. The Hon'ble Supreme Court also held that it is one thing to produce evidence to show that the son and daughter who has been treated as son and daughter but totally another thing to establish adoption and unless the mandate of 1956 Act is complied with, there shall be no valid



adoption in the eye of law.

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31.In this connection, the learned counsel for the respondents would place reliance on the decision of the learned Single Judge of the Chhattisgarh High Court in **Suresh Dharvade's** case, where the learned Single Judge held that mere fact that son embraced Islam religion would not disentitle him to succeed to the property of his father. I do not see how this decision would apply to the facts of the present case, since the issue in the present case is not regarding the claim of inheritance by the 1st defendant being the adopted daughter of Kaliyappa Nadar and Sellammal. But, the issues have arisen in a suit filed by a person claiming right under a Will executed by Sellammal bequeathing the suit property to the plaintiff.

32.The Courts below have acted as Courts of suspicion and disbelieved the Will which has otherwise been validly proved to have been duly executed and attested. I do not find any of the suspicious circumstances affecting the truth and genuineness of the execution of the Will. The suspicious circumstances which have been put against the plaintiff are in fact not even germane circumstances in a case of this



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nature and therefore, the concurrent findings rendered by both the Trial Court and the First Appellate Court are clearly materially irregular and perverse, thereby warranting interference under Section 100 of CPC. In fine, the substantial questions of law are answered in favour of the appellant herein.

33.In the result, the Second Appeal is allowed and the judgment and decree dated 30.11.2017 passed in A.S.No.13 of 2016 on the file of the Principal District and Sessions Court, Thiruvarur, confirming the judgment and decree dated 09.09.2016 made in O.S.No.62 of 2014 on the file of the Subordinate Court, Thiruvarur are set aside and the suit is decreed as prayed for. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

12.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI., J.

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To

1. The Principal District and Sessions Court, Thiruvarur
2. The Subordinate Court, Thiruvarur.
3. The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in

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12.04.2024