



AS. No.175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02. 2024

CORAM:

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

AS. No. 175 of 2023

R.Sundarambal (Died)

1.R.Senthil Kumar

2.R.Shanthi

...Appellants

Vs.

1.A.Arundhadhi

2.P.Gandhimathi

... Respondents

PRAYER : This first appeal is filed under Section 96 of CPC, to set aside the judgment and decree dated 18.11.2022 passed in OS No. 71 of 2016 on the file of II Additional District and Sessions Judge, Tiruppur.

For Appellants : Mr.K.Mayilsamy

For Respondents : Mr.N.Manokaran

for Mr.D.Raghu



WEB COPY



AS. No.175 of 2023

JUDGMENT

The appellants herein filed this appeal to set aside the judgment and decree dated 18.11.2022 passed in OS No. 71 of 2016 on the file of II Additional District and Sessions Judge, Tiruppur.

2. The first respondent herein filed a suit in O.S No. 71 of 2016 for partition by claiming 1/5 share in the suit property. According to the plaintiff suit property was originally belongs to father of the plaintiff namely C.Ramasamy by way of partition in the year 1975 in the C Schedule property. The first defendant is his mother and other defendants are his brothers and sisters. The said Ramamy died in the year 2001 leaving behind the plaintiff and the defendants as legal heirs. Thereafter, they were in joint possession of the suit property. In the meanwhile the defendant's 1 and 2 attempted to encumber the property. Thereafter, the plaintiff came to know that the first and second defendant filed suit in O.S No. 13 of 2014 for partition before the Sub Court, Tiruppur, claiming that their father Ramasamy executed a Will dated 03.05.2001 in their favour and collusive compromise was entered between them and obtained final decree. Thereafter, the said final decree was registered before the Tiruppur Sub-



AS. No.175 of 2023

Register No. 2 in document NO. 3302 of 2014. In fact, no such Will was executed by her father, colluding with the other defendants the defendants 1 and 2 obtained the said decree. Thereafter, the plaintiff issued a notice for partition the defendant's gave a rejoinder denied the plaintiff's claim hence she filed the present suit for partition.

3. The defendants 1 and 2 filed the written statement admitted the relationship between the parties. But they denied the allegations of the plaintiff. The defendants stated that the suit property is belongs to Ramasamy and his brother by way of purchase through sale deed dated 15.02.1965. Thereafter, they divided the property in which C schedule property was allotted to the Ramasamy that is the suit property herein. During his life time her father conducted marriage for fourth defendant, till his life time he was lived with first and second defendant and out the love and affection he executed the Will dated 03.05.2001 in favour of them. Thereafter, they feel inconvenience in enjoying the suit property hence they filed suit in O.S No. 13 of 2014 before the Sub Court, Tiruppur, based on the compromise entered between the first and second defendant the suit was decreed in their favour based on that decree they registered the suit property. Hence, they prayed to dismiss the suit.



AS. No.175 of 2023

WEB COPY

4. On considering the submissions on either and also based on the available records the Trial Court held that the defendant 1 and 2 filed the said suit without including the plaintiff and other defendant as if Ramasamy executed the Will in the year of 2001 but instead of proving the Will they colluded together and obtained a compromise decree as such is not valid and not bound by the plaintiff and also stated that the suit is joint family property thereby allotted 1/5 share to the plaintiff.

5. Aggrieved over the same, the defendant prefer this appeal. During the pendency of the appeal mother was died and her other legal heirs contested the suit.

6. The learned counsel for the appellant submitted that Trial Judge failed to appreciate the fact that as on date the decree obtained by the appellants in O.S No. 13 of 2014 is in force and the same has not been recalled by the plaintiff. Hence, the present suit challenging the compromise decree is not maintainable to that effect findings of the Trial Court is set aside. Further, he submitted that without any evidence the Trial Court concluded that earlier decree obtained by the defendants was collusive nature based on assumption only the observations was made and the same



AS. No.175 of 2023

also liable to set aside. Further, the appellants proved the authenticity of the Will by examining one of the attesting witness as required under Section 68 of Indian Evidence Act and removed the suspicious circumstances over the Will but the Trial court erroneously held that Will is not valid as such is liable to be set aside. Further, he submitted that mere reading of appellants side evidence proved the execution of the Will beyond reasonable doubt. but the court below failed to appreciate the above facts. Hence, prayed to allow this appeal.

7. By way of reply, the learned counsel for the plaintiff submitted that the plaintiff's father was died in the year 2001 but the defendants stated about the Will only in year of 2012 to the defendant at the time of delivery. Further, the suit property still in the name of legal heirs of Ramasamy which itself discloses that Will was not valid one and the same was rightly observed by the Trial Judge rightly observed by the Trial Court needs no interference.

8. For the sake of convenience the parties are denoted as per suit.



AS. No.175 of 2023

WEB COPY

9. Considering the submissions on either side and also on perusal of records it reveals that the daughter of Ramasamy/plaintiff claiming 1/5 share in the suit property and other parties are legal heirs of the said Ramasamy. Admittedly, the suit property was jointly purchased by the said Ramasamy and his brother thereafter they divided in the year 1975, which is self acquired property of the plaintiff's father Ramasamy. The said Ramasamy died intestate leaving behind the plaintiff and defendants as his legal heirs and all of them entitled to 1/5 share in the suit property. As defendants 1 and 2 take over the entire property, the plaintiff filed the suit for partition. The defendants claimed that said Ramasamy executed a Will in respect of the suit property in favour of the defendants 1 and 2, as per the Will they are the absolute owners of the suit property and they filed the suit in O.S No. 13 of 2014 before the Sub court, Tiruppur same was ended into compromise. Based on that compromise decree they divided the suit property. Admittedly, the suit was filed between the first and second defendants and the same entered into compromise and not proved the Will said to be executed by their father Ramasamy as per manner known to law. Even prior to the filing of the suit the facts reveals that there was dispute



AS. No.175 of 2023

between the family members in respect of division of property. Thereafter, the defendants 1 and 2 filed the said suit and obtained the decree which itself shows that it is collusive decree. As rightly pointed out by the Trial Judge if at all the defendants 1 and 2 wants to establish their right in respect of properties they should have proved the Will in the earlier suit by including all the legal heirs of Ramasamy without which themselves obtained the decree which itself shows the malafide intention of the defendants 1 and 2 and the Trial Judge rightly observed same and also the said decree was collusive in nature which needs no interference of this Court. In respect of execution of Will the defendants 1 and 2 examined the attesor of the Will as D.W.3 who clearly disclosed that he was not aware about as to where the Will was drafted and also stated that before going to the Register office the Will was readily available in the office. Hence, D.W.3 clearly established that at the time of the execution of the Will he was not there and the Trial Court rightly appreciated that such evidence is not sufficient to conclude the genuineness of the Will. Moreover, as per the defendants the Will was executed on 03.01.2001 but within three months father Ramasamy died but the said Will was not disclosed to the other legal heirs and the same was disclosed only in the year 2012 near about 10 years



AS. No.175 of 2023

later. Further, the revenue records are in the name of the plaintiff and the defendants, Even assuming that Will is true and valid the defendants 1 and 2 ought to have included the other parties to the suit in O.S No. 13 of 2014 but they failed to do so which itself shows that the Will surrounded with suspicious circumstances and the same was rightly appreciated by the Trial Court which needs no interference.

10. Accordingly, this appeal is dismissed as no merits suit decreed as prayed for. No costs. Consequentially, connected miscellaneous petition is closed.

16.02.2024

pbl



WEB COPY



AS. No.175 of 2023

T.V.THAMILSELVI,J.

Pb1

To

1. The II Additional District and Sessions Judge, Tiruppur.

AS. No.175 of 2023



WEB COPY



AS. No.175 of 2023

16.02.2024