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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.455 of 2013

&

M.P.No.1 of 2013

Anbalagan

.. Appellant

vs.

1. Dakshinamoorthy

2. Natanam

3. Natarajan

..Respondents

Second Appeal filed under Section 100 of CPC against the judgment and decree of Additional Sub Court, Mayiladuthurai, dated 30.03.2011 made in A.S.No.78 of 2010 confirming the judgment and decree of Principal District Munsif. Mayiladuthurai dated 9.9.08 made in O.S.No.50 of 2007.

For Appellant : Mr.B.Jawahar

For Respondents : Mr.A.Muthukumar for R1



JUDGMENT

WEB COPY There was one Kannaiyan. He had four sons and three daughters.

They are i) Dakshinamoorthy, ii) Nadanam, iii) Anbazhagan, iv) Natarajan and the daughters were i) Kokilam, ii) Vasuki and iii) Lakshmi. The properties are self-acquisitions of Kannaiyan. Kannaiyan executed a “WILL” on 27.05.1992, giving a life estate to his wife Radha Ammal and absolute estates of specified properties divided under the “WILL” to his sons and his daughter Lakshmi and granddaughter through Nadanam, Tmt.Latha. He did not grant any properties to Kokilam and Vasuki on the footing that they had been well provided for by him during his life time.

2. Soon after execution of the “WILL”, Kannaiyan died on 03.07.1992 and his wife Radha Ammal took properties in exercise of her right as life estate holder under the “WILL”. Having taken the properties as a life estate holder, she executed a “WILL” on 30.11.2002 changing the manner of division that had been given by Kannaiyan in his “WILL” dated 27.05.1992. After having executed the “WILL” on 30.11.2002, Radha Ammal passed away on 22.06.2006. The suit in O.S.No. 50 of 2007 came to be filed on 03.01.2007 seeking for the following reliefs:

“a) for a declaration declaring that the Will executed by



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Radha Ammal dated 30.11.2002 is true and valid one and binding upon the Plaintiff and defendants and consequently directing the defendants to put the plaintiff in possession of the suit properties as allotted to the share of the plaintiff as per the Will; and
b) for the costs for the suit. ”

3. A written statement was presented to the plaint denying the execution, attestation and validation of the “WILL” executed by Radha Ammal and in any event, the defendants pleaded Radha Ammal did not have the right to change the device of the “WILL” executed by Kannaiyan.

4. The learned trial Judge framed the following issues for trial:

- 1) Whether the Will dated 30.11.2002 executed by Radha Ammal was true and valid one?*
- 2) Whether the plaintiff is entitle for relief of declaration and for possession as prayed?*
- 3) To what other relief, if any?*

5. The plaintiff examined himself as PW1, one Kannan and Balaguru were examined as PW2 and PW3. Exs.A1 to A4 were marked on the side of the plaintiff. Kannaiyan's “WILL” had been marked as Ex.A4 and that of Radha Ammal as Ex.A3. The second defendant



Anbalagan, the brother of the plaintiff, examined himself as DW1 and also examined the sister Lakshmi as witness on his side as DW2. He marked Exs.B1 to B31.

6. The trial Court and the lower Appellate Court held that as Radha Ammal obtained the property as a life estate holder, the same bloomed into absolute estate by virtue of Section 14(1) of Hindu Succession Act, 1956 and held that Radha Ammal had the right to execute the “WILL” and change the device of the property that had been granted by Kannaiyan.

7. This Court had issued notice regarding admission on 30.04.2013. After service, Mr.A.Muthukumar entered appearance for the contesting respondent, namely the plaintiff.

8. Heard Mr.B.Jawahar for the appellant and Mr.A.Muthukumar for the contesting respondent. I heard the second appeal on the following substantial question of law:

“Whether the courts below were right in holding Radha Ammal who had been given a limited estate under Ex.A3 is entitled to claim the property as an absolute estate by virtue of Section 14(1) of Hindu Succession Act?”

9. The aforesaid facts would go to show that there is no dispute that the property is the absolute property of Kannaiyan, the father of



parties before me. Kannaiyan, under Section 30 of the Hindu Succession Act, 1956 has the right to determine the manner in which his properties must devolve after his death. In exercise of that right, he had written a “WILL” disposing the properties in a manner which according to him best suited the interest of his family. Having succeeded to the estate, his wife had executed another “WILL” under Ex.A3 changing the manner in which the disposition was made by her husband, who is admittedly the owner of the property.

10. The Courts below went about reading Section 14(1) of the Hindu Succession Act, 1956 and held that as Kannaiyan had granted limited estate to his wife Radha Ammal, she will take it over as an absolute estate. Such an interpretation to Section 14(1) of Hindu Succession Act ignores the provisions of Section 14(2). Section 14(2) is an exception to Section 14(1) as held by Supreme Court in *Kothi Satyanarayana vs. Galla Sithayya & Others* reported in *AIR 1987 SC 353*.

11. In a similar situation, Supreme Court of India in a recent judgment in *Jogi Ram vs Suresh Kumar and Others* reported in (2022) 4 SCC 274 held as follows:

“34. In our view the relevant aspect of the aforesaid



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conclusion is para 4 which opines where sub-section (2) of [Section 14](#) of the said Act would apply and this does inter alia applies to a Will which may create independent and new title in favour of females for the first time and is not a recognition of a pre-existing right. In such cases of a restricted estate in favour of a female is legally permissible and [Section 14\(1\)](#) of the said Act will not operate in that sphere.”

“35. We may add here that the objective of [Section 14\(1\)](#) is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of. If we were to hold so it would imply that if the wife is disinherited under the Will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator. That cannot be the objective, in our view.”

12. A perusal of this judgment is sufficient to hold that a person, who is the owner of the property, is entitled to dispose of the property in exercise of the power conferred on him under Section 30 of the Hindu Succession Act and while doing so if he grants a limited estate to his wife and absolute estate to his children, the limited estate granted does not bloom into an absolute estate. In the light of the clear and categorical pronouncement of the Supreme Court, the question of law framed in this



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second appeal has to be answered in favour of the appellant and as against the respondents. I make it clear, Radha Ammal having got the property under Ex.A4, Section 14(2) would apply and she had no right to change the disposition already granted by Kannaiyan, the original owner.

13. I further take notice of the fact that the Courts below have proceeded on the basis that a “WILL” can be proved by admission. Such a proposition of law is unknown to the Indian Succession Act as well as the Indian Evidence Act. Attestation and execution of the unprivileged “WILL” is covered under Chapter III of the Indian Succession Act, 1925 in particular Section 63. The manner of proof of such an unprivileged “WILL” is dealt with by the Indian Evidence Act, 1872 which demands atleast one attesting witness to be examined in order to prove the “WILL”. This is as per Section 68 of the Indian Evidence Act. In the case on hand, the parties to the *lis* as well as the Courts below have proceeded that since no one has disputed the “WILL”, it is deemed to have been proved. Such a finding and manner of conducting of the litigation is contrary to Section 68. Section 68 of the Evidence Act, 1872 is an exception to Section 58 of the Indian Evidence Act. The parliament when it legislated upon the Indian Evidence Act was well aware that it had inserted Section 58 which stated that admitted facts need not be



proved but had still brought into force the requirement of proof of execution of document requiring attestation in a manner known to law as contemplated under Section 68.

14. In order to prove Ex.A4 dated 27.05.1992, that is the “WILL” written by Kannaiyan neither the plaintiff nor the contesting defendants have bothered to examine the attesting witnesses. I should hasten to add that Section 69 of the Evidence Act contemplates a situation where no attesting witness is available. However, no steps were taken by the plaintiff or by the appellant/second defendant to follow the procedure under Section 69. Both the “WILL” not having been proved, the presumption of admission by the learned trial Court as well as by the lower Appellate Court for the WILL of Kannaiyan is another infirmity which is contrary to the Indian Evidence Act and Indian Succession Act.

15. I have to add that it is claimed by Mr.Muthukumar, learned counsel for contesting respondent that the properties have not yet been divided on the basis of the “WILL” dated 27.05.1992 or “WILL” dated 30.11.2002. This is stoutly disputed by Mr.Jawahar, learned counsel for appellant, who pleads that on the death of Kannaiyan, the father, the persons to whom the properties were devised, have divided the properties and are in enjoyment of their respective shares. This disputed



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question can be gone into in a regular suit for partition where all the legal heirs including Lakshmi, Kokilam, Vasuki as well as Latha will have to be necessarily impleaded as parties. It is open to the appellant or to the respondents or any of the legal heirs of Kannaiyan and Radha Ammal to bring forth such a suit.

16. In the light of the wrong interpretation that had been given to Section 14(2) read with Section 30 of the Hindu Succession Act as well as Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, I find perversity writ large in the judgments of the Courts below. Consequently, I am constrained to interfere.

17. The Second Appeal is allowed and the following judgment is passed:

i) The judgment and decree of the Court of Additional Sub-ordinate Judge, Mayiladuthurai in A.S.No.78 of 2010 dated 30.08.2011 in confirming the judgment and decree of Principal District Munsif, Mayiladuthurai in O.S.No.50 of 2007 dated 09.09.2008 are set aside.

ii) O.S.No.50 of 2007 shall stand dismissed;

iii) Considering the relationship between the parties there shall be no order as to costs.



WEB COPY The connected miscellaneous petition is closed.

30.01.2024

Index: Yes/No

Neutral Citation: Yes/No

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To

1. The Additional Sub Court
Mayiladuthurai

2. The Principal District Munsif
Mayiladuthurai



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V. LAKSHMINARAYANAN, J.

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