



A.S.No.542 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN

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C.Sadasivam

...Appellant

Vs.

1. C.Kanakambujam
Rep.by her Power Agent T.Sabareeswaran

Marudhammal (died)

2. C.Santha
3. C.Kamala
4. C.Nithyanandam
5. J.Kalipada Sadhuka

Ramachandran (died)

6. R.Rukmani
7. Sukdeb Maiti @ Konji

...Respondents

Prayer: Appeal filed under Order 41 Rules 1 and 2 of Code of Civil Procedure read with Section 96 of the Code of Civil Procedure, 1908, praying to set aside the Judgement and decree dated 06.07.2017 made in O.S.No.368 of 2013 on the file of V Additional District Court, Coimbatore.



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For Appellant : Mr.T.Thangamani
For Respondents : Mr.P.Mathivanan
(for R1 to R3)
No appearance (for R4)
(R5 to R7) Disd vide
Court order dated
10.02.2023.

J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The fifth defendant in O.S. No. 368 of 2013 is on appeal aggrieved by the decree granted therein for partition and separate possession of 1/5th share of the plaintiff.

3. The plaintiff sued for partition contending that the suit properties belonged to one Kanagasabapathi Pillai, who died leaving behind four sons, viz., K. Nataraja Pillai, K. Arumugam Pillai, K. Chinnathambi Pillai, and K. Pechimuthu Pillai. The present *lis* is between the heirs of one of the sons,



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viz., K. Chinnathambi Pillai. The said K. Chinnathambi Pillai had died leaving behind his two sons, viz., the fourth and fifth defendants; three daughters, viz., the plaintiff and the defendants 2 and 3; and his wife, the first defendant. The plaintiff contended that the suit properties were allotted to the said K. Chinnathambi Pillai at a partition that took place between the sons of Kanagasabapathi Pillai on 25.05.1953.

4. According to the plaintiff, on the death of the said K. Chinnathambi Pillai intestate on 28.04.1994, the properties devolved on the plaintiff and the defendants 1 to 5 as his legal heirs. The plaintiff would also add that the fifth defendant had let out the properties to the defendants 4 to 7 and he is enjoying the rental income therefrom. It is the further claim of the plaintiff that the defendants 1 to 3 and the plaintiff had entered into an oral family arrangement, by which the defendants 1 to 3 had relinquished their share in the property in favour of the plaintiff. The said family arrangement was reduced to writing on 27.06.2013. Therefore, according to the plaintiff, she would be entitled to a 2/3rd share in the suit properties.



5. The suit was resisted by the fifth defendant, who contended that there was an oral arrangement between the parties soon after the death of the said K. Chinnathambi Pillai in the year 1994, and that the fifth defendant had paid a sum of Rs. 2,00,000/- to the plaintiff and Rs. 5,00,000/- each to the defendants 2 and 3. Though the sisters had agreed to execute a registered deed of release, they had not done so. It was also claimed that the mother, Marudhammal/first defendant, had executed a Will on 01.09.2013, bequeathing her share in the suit properties to the fifth defendant. On the above pleadings, the defendants sought dismissal of the suit. The defendants 7 and 8 filed a separate written statement, wherein they claimed that, being tenants, they were unnecessary parties to the suit. They admitted that they were paying rent to the fifth defendant.

6. On the above pleadings, the learned trial Judge framed the following issues:-

“1. Whether the oral arrangement dated 14.07.2008 as claimed by the fifth defendant is true and valid?

2. Whether the Will dated 01.09.2013, said to be executed by the first defendant is true and valid?



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3. *Whether the Memorandum of Family Arrangement dated 27.06.2013 is true and valid?*
4. *Whether the plaintiff is entitled for the relief of declaration as prayed?*
5. *Whether the plaintiff is entitled for the relief of declaration as prayed?*
6. *Whether the plaintiff is entitled for the relief of permanent injunction as prayed?*
7. *Whether the plaintiff is entitled for the arrears of rent and for future rents from the suit properties as prayed?*
8. *To what relief, the plaintiff is entitled to?"*

7. At trial, the son of the plaintiff was examined as PW1 and two other witnesses were examined as PW2 and PW3. PW2 is stated to be the attesting witness to the memorandum of family arrangement dated 27.06.2013, and PW3 is a notary who signed the said document. Exs. A1 to A6 were marked on the side of the plaintiff. The fifth defendant was examined as DW1, and the attesor to the Will dated 01.09.2013, said to have been executed by Marudhammal/first defendant, was examined as DW2. Exs. B1 to B19 were marked.



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8. The learned Trial Judge, on the validity of the family arrangement dated 14.07.2008, concluded that the plaintiff has not proved the said oral arrangement as required under law. The learned Trial Judge found that the oral arrangement set up by the plaintiff would amount to other sharers relinquishing their interest in immovable properties for consideration, which is required to be by way of a registered instrument. Though PW2 and PW3 had spoken about such an arrangement, the Trial Court found that their evidence cannot be a substitute for a registered instrument. Hence, the learned Trial Judge concluded that the oral arrangement dated 14.07.2008 has not been proved by the plaintiff.

9. On the validity of the Will, the learned Trial Judge concluded that the execution of the Will is shrouded in suspicion. The learned Trial Judge found that the Will is claimed to have been executed after the first defendant had entered appearance in the suit, but there is no reference to the pending suit in the Will. The fact that the first defendant has chosen to execute a Will in respect of the entire properties, when she is entitled to only 1/6th share in the properties of the said K. Chinnathambi Pillai, was also taken into



account by the Trial Court to buttress its conclusion that the Will is not true.

The Trial Court has also found that the recital in Ex.A2, the family arrangement dated 27.06.2013, and the Will dated 01.09.2013 are vastly different and the fact that the family arrangement recites that the fifth defendant had committed some acts of cruelty on the first defendant, were also taken into account by the learned Trial Judge to conclude that the Will is not true.

10. On the family arrangement dated 27.06.2013, projected by the plaintiff, the learned Trial Judge concluded that the said document amounted to relinquishment of their rights in the properties by the defendants 1 to 3 in favour of the plaintiff. Such a relinquishment, according to the learned Trial Judge, has to be made only by way of a registered instrument and not otherwise. Therefore, the learned Trial Judge rejected the contention of the plaintiff that she would be entitled to a 2/3rd share as per the family arrangement dated 27.06.2013.



11. On the above findings, the learned Trial Judge rejected the prayer for declaration sought by the plaintiff. Having disbelieved the oral arrangements pleaded by the plaintiff as well as the fifth defendant and having held that the Will projected by the fifth defendant has not been proved and also taking into account the fact that the first defendant had died pending the suit, the learned Trial Judge granted a preliminary decree for partition of the plaintiff's 1/5th share. Aggrieved by the same, the fifth defendant is on appeal.

12. We have heard Mr.T.Thangamani, learned counsel appearing for the appellant and Mr.P.Mathivanan, learned counsel appearing for the respondents 1 to 3.

13. Mr. T. Thangamani, learned counsel appearing for the appellant, would vehemently contend that the Trial Court was wrong in disbelieving the Will and the oral arrangement pleaded by the plaintiff. He would submit that the fifth defendant has placed enough and more evidence, in the form of bank statements, to show that the sisters had received money from him. He



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would also submit that PW1, the son of the plaintiff, had admitted that his mother had received a sum of Rs. 2,00,000/- from the fifth defendant, but he would claim that it was for some other purpose. According to the learned counsel, inasmuch as the payment of money in lieu of their shares has been admitted by the sisters, the Trial Court fell in error in granting a decree for partition of 1/5th share of the plaintiff. On the Will, the learned counsel would contend that the evidence of DW2, the attesting witness, would prove the execution of the Will by the mother and the Trial Court was not right in taking into account extraneous factors and concluding that the execution of the Will is shrouded in suspicion.

14. Contending contra, Mr. P. Mathivanan, learned counsel appearing for respondents 1 to 3, would submit that the oral arrangement pleaded was of the year 2008 and the actual plea of the fifth defendant is that the sisters received money and agreed to execute the release deeds, but the release deeds have not been executed. Therefore, the daughters will not lose their right to claim a share in the property of their father. As regards the payments made, the learned counsel would submit that the payments were made for



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some other purposes. He would also draw our attention to the evidence on record, which would show that, apart from the suit transaction, there were other financial transactions between the parties to the suit.

15. On the Will, the learned counsel would submit that mere examination of the attesting witness is not sufficient. The propounder is bound to discharge all the suspicious circumstances surrounding the execution of the Will. He would point out that the Will was executed after the first defendant entered appearance in the suit. He would also point out that the Will deals with the entire properties of the said K. Chinnathambi Pillai though the first defendant, as an heir of the said K. Chinnathambi Pillai, would be entitled to only 1/5th share therein. The counsel would also point out the fact that the circumstances narrated by DW2 on the execution of the Will would itself show that they are highly suspicious. The first defendant, who was sick for more than 10 years, was living with her daughter, would not have come forward to execute a Will only in favour of her son.



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16. We have considered the rival submissions.

17. On the above contentions of the learned counsel on either side, the following points arise for determination:

1) Whether the plaintiff and the defendants 2 and 3 could be said to have lost their right to the properties of their father because they have received monies from the fifth defendant?

2) Whether the Trial Court was right in concluding that the Will dated 01.09.2013 is not true and genuine?

Point No.1:-

18. The defendant chose to resist the suit based on two contentions, the oral arrangement dated 14.07.2008 and the Will dated 01.09.2013. As far as the oral arrangement dated 14.07.2008 is concerned, except for the oral evidence of DW1, there is no other evidence on record. No doubt, an attempt is made by the learned counsel for the appellant to rely upon the recital in Ex.B15, the Will, wherein the mother has stated that the fifth defendant paid the sisters their share in the property. The said Will has been



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held to be not true and valid. Therefore, the contents of the document cannot be separated from the document and read to conclude that there was an oral arrangement evidencing the relinquishment of share by the sisters in favour of the fifth defendant.

19. It is the specific case of the fifth defendant that the plaintiff and the defendants 2 and 3 had taken money and had agreed to execute release deeds, which they have not done. Mere payment of money would not result in relinquishment of share of heirs in the property of the father. It should be followed by a registered instrument, which is admittedly not there in the case on hand. The mention of the payment made in the Will will not also be of any help to the fifth defendant, inasmuch as the Will has also been held to be not true. We are therefore unable to fault the Trial Court for having disbelieved the alleged oral arrangement pleaded by the fifth defendant.

Point No.2:-

20. Adverting to the Will dated 01.09.2013, which has been produced and marked as Ex.B15, DW2 the attesor has been examined to prove it.



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Though he has spoken about the execution of the Will, his evidence is not convincing. As rightly pointed out by the Trial Court, the first defendant was sick for more than 10 years and was confined to her house during the last 8 months of her lifetime. The Will was executed on 01.09.2013, just 22 days prior to her demise.

21. DW2 has stated that she took out the Will from her suitcase and asked the other attesting witness, Imran, to read it. The Will is a typed one with no scribe. It also bequeaths the entire properties of the said K.Chinnathambi Pillai to the fifth defendant. It is to be noted that the first defendant was not entitled to the entire properties of the said K.Chinnathambi Pillai. The learned Trial Judge has found that the recital in the Will is unnatural. The execution of Ex.A2, the memorandum of family arrangement, by the first defendant is not in dispute. The defendants 2 and 3 have affirmed it. In the said document, it is recited that the fifth defendant had ill-treated his mother. In such circumstances, the question arises whether the mother would have executed a Will in favour of her son, who had ill-treated her. The Answer yes to the said question seems highly



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unlikely.

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22. The Trial Court, after assessing the evidence of DW2 and the contradictions between the evidence of DW1 and DW2, had come to the conclusion that the Will is not true and genuine. We do not see any reason to differ from the conclusion, as the learned counsel for the appellant is unable to portray any circumstance that would render the findings of the learned Trial Judge erroneous.

23. We therefore conclude that the fifth defendant has not established that the Will said to have been executed by the first defendant is true and genuine. The Trial Court has also chosen to disbelieve the oral family arrangement projected by the plaintiff. The plaintiff has not challenged the said judgment. Hence, we see no reason to interfere with the conclusion of the Trial Court. The appeal therefore fails and it is accordingly **dismissed**. There shall be no order as to costs.

(R.S.M., J.) (C.K., J.)
20.11.2024

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Index : Yes / No

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Neutral Citation : Yes / No
Speaking order / Non-Speaking order

To

The V Additional District Court,
Coimbatore.



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and
C.KUMARAPPAN, J.

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