



WEB COPY

S.A. No.2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 27 of 2023
and C.M.P. No. 719 of 2023**

A. Dorthy ... Appellant/ 1st Appellant/ 1st Defendant

Vs.

1. Radha @ Velankanni ... 1st Respondent/ Respondent/ Plaintiff
2. Sharmila
3. G. Suresh ... Respondents 2&3/ Appellants 2&3/
Defendants 2 & 3

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 24.11.2021 passed by the learned Subordinate Judge, Udthagamandalam in A.S. No.9 of 2009 partly reversing the judgment and Decree dated 02.02.2019 passed by the learned District Munsiff at Udthagamandalam, Nilgiris in O.S. No.32 of 2006.

For Appellant : Mr. L. Mouli

For Respondent 1 : Mr. Pramodh Kumar

For RR 2 & 3 : No Appearance



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JUDGMENT

This second appeal has been filed challenging the concurrent finding of the Courts below in decreeing the suit in favour of the plaintiff, thereby the defendants were directed to delivery the suit schedule properties to the plaintiff.

2. The case of the plaintiff is that, originally the suit properties belongs to one Jebamalai Ammal and she executed a WILL dated 21.03.1983, wherein, she had granted life estate in respect of all her properties described in the WILL in favour of the plaintiff and after the death of the plaintiff, the properties shall be bequeathed in favour of the plaintiff's two sons namely Daniel and Aruldass as well as her daughter Arokiamary. Due to family dispute, the first defendant, who is the wife of Aruldass and also the daughter-in-law of the plaintiff developed a quarrel, and forced the plaintiff to leave the suit properties and to stay with her another son Daniel. The plaintiff is having life interest in the suit property, but her right has been denied, hence she had filed a suit for delivery of possession.

3. The first defendant, who is the daughter-in-law of the plaintiff filed a written statement, stating that in the suit properties, the first defendant's



husband namely Aruldass has constructed two rooms and in which, the first defendant and the family members were lived jointly. Subsequently, her husband had committed suicide along with his two children, hence, the first defendant is living alone in the "B" schedule property and also she had denied the execution of the WILL by Jebamalai Ammal and further denied the misunderstandings and family dispute with the plaintiff. She had also stated that some articles were left by the plaintiff, while she was leaving the suit properties.

4. The second defendant is the sister of the first defendant and she had stayed with her husband in the suit properties with the consent of the first defendant, were also added as party in the suit. They filed their statement in support of the first defendant and also stated that, now they are living separately and not residing with the first defendant.

5. After considering the submissions and the evidences adduced on both sides, the Trial Court has concluded that the WILL dated 21.03.1983, which is marked as Ex.A.1 is true and valid. Therefore, on the basis of the WILL, the plaintiff is entitled to possession and enjoyment of the suit properties, till her death and decreed the suit in favour of the plaintiff. Aggrieved over the same, the first defendant had filed an appeal suit and the same was also dismissed by



confirming the Order passed by the Trial Court in respect of delivery of possession of suit properties.

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6. Aggrieved over the concurrent finding, this second appeal has been filed by the first defendant and it was admitted on the following substantial question of law:

"1. Whether the Courts below is correct in holding that Exhibit A1 WILL dated 21.03.1983 is proved without considering the evidence on Record?"

2. Whether the Courts below erred in holding that the Respondent is entitled to possession of suit "A" Schedule property without any evidence on Record?"

7. The learned counsel appearing for the first defendant submits that there were no proper evidences adduced to prove the execution of the WILL. Both the Courts below have failed to consider the fact that the first defendant's husband namely Aruldass was also having vested right over the suit properties and prior to his death, all the family members were living together in one house. He further submitted that the first defendant is now lost her husband and children and she is living alone in her house. He further submitted that both Courts on an erroneous appreciation of facts have decreed the suit, therefore, prays to set aside



the judgment and decree of both the Courts.

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8. Per contra, the learned counsel appearing for the plaintiff/ 1st respondent herein submits that both Courts have considered the evidences placed on record, more particularly, validity of the WILL, including the life interest of the plaintiff over the suit properties and has rightly decreed the suit and no substantial question of law arises in this case, hence prays to confirm the order of the Courts below.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. In this case, admittedly, the suit properties belongs to one Jebamalai Ammal and it is the case of the plaintiff that the said Jebamalai Ammal had executed a WILL dated 21.03.1983, which is marked ad Ex.A.1 and as per the WILL, the life interest was granted to the plaintiff over the suit properties. The Trial Court after scrutinizing the WILL and oral evidence of the attesor of the WILL - P.W.2, accepted the execution of WILL and similarly, the Appellate Court also, after appreciating the evidence of P.W.2 has held that Ex.A.1 - WILL is a registered WILL and it has been properly executed and the same is valid and



binding.

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11. Now, in this appeal, it is submitted that WILL was not proved before the Trial Court. Admittedly, P.W.2 - attester of the WILL was examined. According to him, he was a practicing Advocate for more than 34 years. The WILL was prepared at his Senior Advocate's Office on 21.03.1983. In the presence of his senior Advocate K.V. Krishnan and P.W.2, Jabamalaiaimmal, affixed her thumb impression in the WILL, same was witnessed by them. Thereafter, they subscribed their signatures in the WILL and thereafter, it was presented for registration before the Sub Registrar - II, Udhagamandalam and registered. He further stated that the testator of WILL was having sound state of mind and no suspicious circumstances elicited in the cross-examination. The WILL also shows that all the testator's legal heirs have been given equal shares, however her legal heirs are entitled to claim their right, only after the lifetime of the plaintiff. Both Courts have properly appreciated the evidence of P.W.2. The evidence of P.W.2, complied the legal requirements to prove the WILL under Section 68 of the Evidence Act. Thereby, this Court finds no infirmity in accepting the evidence of P.W.2, to prove the execution and validity of the WILL. Since, both Courts below have rendered concurrent finding and no suspicious circumstances have been demonstrated, this Court finds no



interference is required regarding the validity of the WILL. Once, the WILL is proved, the next question arises is *"whether the plaintiff is entitled to get the possession of the suit properties based on the life interest created in WILL, from the vested interest holders."*

12. On perusal of the WILL, it shows that the testatrix has given life estate in favour of her daughter-in-law i.e., the plaintiff and the intention of the testatrix is very clear that, for giving protection to the plaintiff, she has created a life estate in the suit properties. It is also stated that, the suit properties are capable of generating income and the plaintiff has been granted life estate and she is entitled to possession of the suit properties and has right to collect the income generated in the suit properties and enjoyment of the same. That being the case, the possession and enjoyment of the plaintiff over the suit properties, which has been granted to her by way of WILL cannot be denied.

13. The only defense taken by the defendants that they have not prevented the plaintiff from entering the suit properties or enjoyment of the income from the suit properties and they have stated that the first defendant's husband has constructed the building and thereby, having interest in the schedule mentioned properties and their interest should also be protected. Both Courts



have also accepted the case of the plaintiff that, she had constructed the home in suit property and tax is also assessed in her name. The defendants were not able to give any explanations for assessment of tax - Ex.A.3 in the name of the plaintiff. The defendant No.1, though claims that her husband constructed the home, but unable to prove the same. The evidence adduced on the side of the defendants only shows that, there were some family disputes between the plaintiff and defendants, thereby lodged a police complaint. But, by relying of their dispute, defendants are not entitled to continue their possession in suit property. They are not having any right over the suit properties and their right will come into existence, only after the lifetime of life interest holder, and both Courts have rightly rejected the contentions of the defendants. The substantial question of law framed herein is answered accordingly.

14. Accordingly, this second appeal is dismissed. Consequently, connected civil miscellaneous petition stands closed. No costs.

03.10.2024

stn

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No



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To:

1. The Section Officer,
VR Section,
High Court, Madras.



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K. RAJASEKAR, J.

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