



S.A.No.417 of 2020 & Cros.Obj.No.18 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.417 of 2020 and Cros.Obj.No.18 of 2024

and

C.M.P.No.8589 of 2020

S.A.No.417 of 2020 :

1.Subramani

2.Vasuki

3.Pranesh

.. Appellants

Vs.

Balamurugan

.. Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree, dated 06.01.2020, made in A.S.No.37 of 2019 on the file of the learned Principal District Judge at Erode by confirming the judgment and decree, dated 29.10.2018, made in O.S.No.297 of 2010 on the file of the Learned II Additional Subordinate Judge at Erode.



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For Appellants : Mr.Ramanan
for Mr.N.Manokaran

For Respondent : Mr.R.K.Goutham
for Mr.D.Gopal

Cros.Obj.No.18 of 2024 :

K.Balamurugan .. Cross Appellant/Objector
Vs.

1.N.Subramani

2.S.Vasuki

3.S.Pranesh .. Respondents

Prayer : This Cross Objection is filed under Order XLI Rule 22 of the Code of Civil Procedure, to modify the judgment and decree, dated 06.01.2020, made in A.S.No.37 of 2019 on the file of the learned Principal District Judge at Erode by confirming the judgment and decree, dated 29.10.2018, made in O.S.No.297 of 2010 on the file of the learned II Additional Subordinate Judge at Erode as the Cross Appellant is entitled for equal share in the entire suit properties.

For Cross Appellants : Mr.R.K.Goutham
for Mr.D.Gopal

For Respondent : Mr.Ramanan
for Mr.N.Manokaran



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COMMON JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the learned Principal District Judge at Erode in A.S.No.37 of 2019, dated 06.01.2020, in confirming the judgment and decree of the Court of the learned II Additional Subordinate Judge at Erode in O.S.No.297 of 2010 dated 29.10.2018.

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

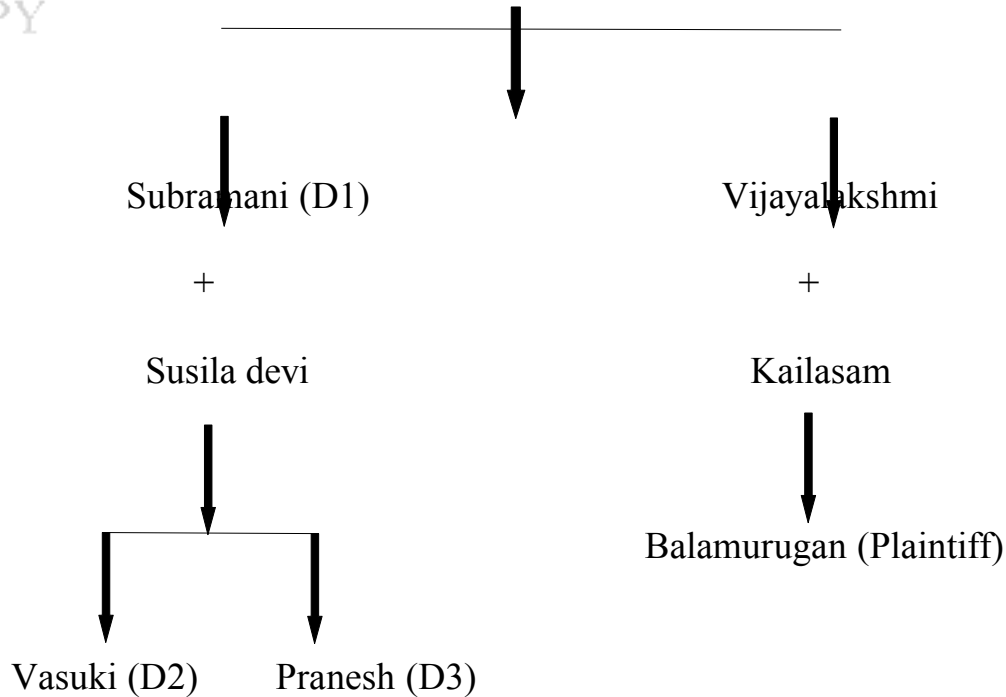
3. O.S.No.297 of 2010 is a suit for partition and separate possession presented by the plaintiff. He sought division of the property into four equal shares, and to allot one share in favour of the plaintiff.

4. The case of the plaintiff is that the properties were ancestral properties in the hands of his grandfather one Nachimuthu Gounder. The relevant genealogy chart is as follows :

Nachimuthu Gounder + Lakshmi



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5. Nachimuthu Gounder is the maternal grandfather of the plaintiff. He got the suit schedule mentioned properties by way of a partition between himself and his brothers through a registered partition deed dated 31.10.1971. He had enjoyed the property as the "Karthā" thereon during his life time. He died intestate leaving behind his legal representatives, his wife/Lakshmi, son/Subramani and daughter/Vijayalakshmi. The said Vijayalakshmi is none else than the mother of the plaintiff.



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6. The mother of the plaintiff had married one Kailasam, and from the wedlock, the plaintiff was born. Kailasam predeceased Vijayalakshmi, and Vijayalakshmi too passed away in the year 1999. Thereafter, the plaintiff and the defendants were in joint possession of the property. The grandmother/Lakshmi also passed away in the year 2009.

7. Due to enmity pursuant to a wedding ceremony in the family, the defendants wanted to oust the plaintiff from joint possession. Therefore, on 15.08.2010, the plaintiff demanded for partition as soon as he came to know that the defendants are attempting to alienate the property. Hence, he came forth with the suit as aforesaid.

8. On service of summons, the defendants have entered appearance, and conceded to the fact that the properties are joint family properties.

9. However, the defendants would deny the fact that Nachimuthu Gounder died intestate. They would plead that Nachimuthu Gounder during his lifetime in a sound and disposing state of mind had executed a "WILL" dated 22.09.1999, whereby, he bequeathed the house property in favour of



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his wife/Lakshmi to enjoy the same during her lifetime, and the reminder was vested in favour of his grandson/the 3rd defendant. With respect to the other immovable properties, the said Nachimuthu Gounder had bequeathed the same in favour of the 1st defendant absolutely.

10. The defendants would plead that even otherwise, women are not entitled to a share in the property even if the testator had died intestate. The properties of Nachimuthu Gounder came to them, and by virtue of their birth, they had half share each in the properties. On these pleadings, they would state that the suit be dismissed.

11. Even along with the written statement, a copy of the alleged "WILL" dated 22.09.1999 was produced.

12. On the basis of these pleadings, the learned trial Judge framed the following issues :

“ 1) Whether the plaintiff is entitled the partition as prayed for ?

2) Whether the plaintiff is entitled the permanent injunction as



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prayed for ?

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3) To what relief the plaintiff is entitled ? ”

13. Denouncing the "WILL" as a rank forgery, the plaintiff took out an application for appointment of an Advocate Commissioner to get an opinion from the Forensic Science Laboratory regarding the genuineness of the signature of Nachimuthu Gounder. He would state that this document being a forged one requires comparison with contemporaneous documents. In order to compare the signature, he produced the bank records signed by Nachimuthu Gounder. The Forensic Science Department at Chennai through its Deputy Director (Documents) gave a opinion on 10.04.2015. The opinion was received by the Court, and it was marked as Ex.C1.

14. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and one M.Thangadurai as P.W.2. On his side, Ex.A1 to Ex.A5 were marked. On the side of the defendants, the 1st defendant examined himself as D.W.1 and one attesting witness to the "WILL" as D.W.2. On their side, Ex.B1 to Ex.B7 were marked.



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15. On the basis of the oral and documentary evidence let in by the parties, the trial Court came to the conclusion that the "WILL" projected by the defendants is an act of forgery, and therefore, decreed the suit as prayed for.

16. Aggrieved by the same, a regular appeal was preferred before the learned Principal District Judge at Erode. The appeal was received, and numbered as A.S.No.37 of 2019. After a detailed analysis of the oral and documentary evidence as well as the findings of the trial Court, the appellate Court came to the conclusion that the "WILL" is a result of forgery, the defendants had not explained suspicious circumstances surrounding the "WILL", and dismissed the appeal.

17. Against the said judgment and decree, the present Second Appeal has been presented before this Court.

18. This Second Appeal was admitted on 18.08.2020 on the following substantial question of law :

“ Whether the Courts below were right in



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relying upon the opinion of the expert which was based on a comparison of the disputed signature with the signature that was three years prior to the disputed signature, more so when the Courts have repeatedly held that comparison should be with the contemporaneous signature ? ”

19. Heard Mr.Ramanan, for Mr.N.Manoharan and Mr.R.K.Goutham, for Mr.D.Gopal, for the respective parties.

20. Mr.Ramanan would contend that the reliance placed upon the evidence of the expert alone by the Courts below is erroneous. He would state that he had examined one of the attesting witness as D.W.2 who had spoken regarding the attestation of the document, and he having proved the "WILL", the suit ought to be dismissed. He would further plead that as the date of death of Vijayalakshmi had not been accepted by the defendants in the suit, the cross objection seeking half share requires rejection.

21. Per contra, Mr.R.K.Goutham would argue that the mere proof of



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attestation is not sufficient for the purpose of non-suiting the plaintiff. He would urge that there are several suspicious circumstances which remained unexplained and they get enlarged when read with Ex.C1, and therefore, the appeal does not deserve any consideration.

22. He would further state that by virtue of the judgment of the Supreme Court in *Vineeta Sharma vs. Rakesh Sharma and Others [(2020) 9 SCC 1]*, the daughter is entitled to a share in the ancestral properties, and consequently, the plaintiff, claiming through Vijayalakshmi, will be entitled to the half share in the suit schedule mentioned properties.

23. I have carefully considered the arguments on either side and I have carefully gone through the records available.

24. Taking into consideration the question of law framed by this Court, I would answer that first before I look into the suspicious circumstances surrounding the "WILL" which was executed by Nachimuthu Gounder.



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25. It is the argument of Mr.Ramanan that the documents, which were compared by the Forensic Science Laboratory, are of the year 1996 (vintage), whereas, the "WILL" came into force on 22.09.1999. He would state that the partition deed was available before the Court and that could have been compared along with the "WILL" projected under Ex.B1. I find it rather curious and more amusing that Mr.Ramanan would want me to treat the document of the year 1971 as being more contemporaneous with the "WILL" executed in the year 1999 than the official records maintained by the bank of the year 1996. The records which had been produced before the Forensic Science Department for comparison of signatures are less than three years from the date of the alleged "WILL".

26. Furthermore, the original of the partition deed entered into between Nachimuthu Gounder, Thanda Gounder and Marappa Gounder though available with the defendants was not produced by them before the Court for the purpose of examination. In order to prove that the properties are ancestral in nature, it was the plaintiff who had produced the certified copy of the partition deed.



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27. The certified copy of the partition deed would not contain the signatures of the executants. If the defendants had wanted the comparison of the signature of Nachimuthu Gounder in the “WILL” with his signature in the partition deed, they ought to have produced the same. This is the first circumstance which goes against Mr.Ramanan's plea.

28. Further, I find a gap of 28 years between the partition deed dated 31.10.1971 and the original "WILL" dated 22.09.1999. I cannot consider the partition deed as anywhere close to being contemporaneous with Ex.B1. Insofar as the documents that were sent for comparison show that they were produced from the custody of the bank in which Nachimuthu Gounder had maintained his accounts. The document itself, as analyzed by the Courts below, would show that Nachimuthu Gounder had specifically shown the 1st defendant as his legal heir. The Courts below did not commit any error in sending the records maintained in the official custody of the bank for comparison with the disputed documents. As pointed out above, the distance of time between the bank records and the "WILL" is only three years.

29. During the course of cross examination of the



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Expert/Mr.M.Thangadurai, Scientific Officer and Document Expert,

Forensic Science Laboratory at Chennai, it has come out that there are differences between the bank documents series itself. But it was explained by the Expert saying that the differences are due to age, and are natural in form. He would give specific reasons for coming to the conclusion that the signature on the disputed documents under Ex.Q1 and Ex.Q2 are not the signatures of Nachimuthu Gounder, and the reasons for the same are as follows :

- “ 1. The skill of writing.
2. The alignment between the letters in the signatures 'நாச்சிமுத்து'.
3. The location and manner of making vowel sign in the 'சி'.
4. The relative sizing between the letters 'ந' & 'ா'; 'ா', 'சி'.
5. The manner of terminating the letters 'ந', 'ா', 'ச', 'சி', 'மு', 'த்', 'து'.
6. In the detailed designs such as the beginning and formation of loops and curves in the letters 'ந', 'ா', 'ச', 'சி', 'மு', 'த்', 'து'. ”

30. Nothing prevented the defendants from sending the very same



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document to another Expert. However, the defendants did not avail the said opportunity. Therefore, the only evidence available before the Court, in order to show that the document was a rank forgery, is the oral evidence of Mr.M.Thangadurai/the Document Expert and his opinion under Ex.C1 counter-signed by the Deputy Director (Documents), Forensic Science Department, Chennai. Therefore, I do not find any error in the Courts below relying upon the said document to come to a conclusion that they did.

31. Turning to the next point, for the mere fact that the attesting witness had spoken about the "WILL", I cannot conclude the "WILL" stands proved. The Court while dealing with the case of a "WILL" is the Court of conscience. It is the duty of a person projecting the "WILL" to satisfactorily explain the circumstances under which the "WILL" was written. A "WILL" is written in order to interfere with the natural course of succession, and therefore, the burden is on the beneficiary in order to substantiate the same.

32. The first suspicious circumstance that I find is that the "WILL" narrates the father of the plaintiff/son-in-law of the testator as a person who indulged in speculative business, and was a drunkard. It is but natural that



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the grandfather finding his son-in-law to be a wastrel would make some measure of provision for his grandson. It is artificial that the grandfather would exclude the grandson through his daughter from inheritance on account of the fact that his son-in-law was a drunkard. Further, to substantiate the fact that his son-in-law being a wastrel, no evidence had been let in by the defendants.

33. The second suspicious circumstance is that the "WILL" narrates a situation where the testator, as the father-in-law, had spent huge amounts in order to give medical treatment to his son-in-law/Kailasam. Absolutely no evidence had been produced by the defendants in order to substantiate the same. On the contrary, Ex.A1 to Ex.A5 have been produced by the plaintiff to show that it was his family that had been spending huge amounts of money in order to give medical treatment to the deceased Kailasam.

34. It is but natural that a father will make a provision for his widowed daughter, especially when she had been married to a person, who according to the "WILL" was indulging in a speculative business and was a



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drunkard. To add, who had fretted away all the assets that had been given to his wife by either investing the money in a wasteful expenditure or by drinking himself to death. When these are the circumstances projected by the defendants, I find it extremely difficult to believe that the father would not have made any provision for his daughter.

35. Mr.Ramanan was quite right in his submission for the mere fact that a person is excluded by the "WILL" does not mean that there is a presumption of the "WILL" being not genuine. But at the same time, the circumstances being such, I find it artificial and unbelievable that the father would state since his son-in-law was a drunkard, hence, his daughter also should not part take in his estate.

36. The crucial suspicious circumstance is that D.W.1 had entered the witness box and categorically had stated that he came to know about the existence of the "WILL" written by his father only after his death. He would project the usual story as projected in all such cases that the "WILL" was kept locked in a box and while going through the box after the death of the father, lo and behold, he came across the "WILL". Quite against this fancy



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story that was projected by the 1st defendant, D.W.2 entered the witness box and gave his story away. He had categorically stated as follows :

“....நாச்சிமுத்து கவுண்டரை யார் அழைத்து வந்தார்கள் என்றால்
அவருடைய மகன் கூட வந்திருந்தார்.....உயில் எழுதி வைத்த நபருக்கு அவர்
இறக்கும்போது சுமார் 75 லிருந்து 80 வயதிருக்கும். ”

37. This shows that not only the 1st defendant had played an important role in the preparation of the "WILL" but had also attempted to project a false story before the Court. The falsity of the story is not far to see. It is because he wanted the 3rd defendant/his son to get benefit on the death of his father. These circumstances when read along with Ex.C1 enable the Courts to come to the clear and categorical conclusion that the "WILL" is a forgery and not worth replying upon. Therefore, I am not in a position to displace the concurrent findings of the Courts below finding the "WILL" to be a forged one.

38. Taking up the cross objection, by virtue of the amendment made to Section 6 of the Hindu Succession Act by the Hindu Succession (Amendment) Act, 2005 which came into force on 09.09.2005, a female is



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treated as co-parcener in a joint family. She is excluded from the benefit of share in the joint family if and only if there has been a final decree passed in a suit for partition between the joint family members or if a partition has been effected by way of a registered document. In case, there is no such division, the female will be entitled to get a share in the joint family assets. This position of law has been settled by the Supreme Court in ***Vineeta Sharma vs. Rakesh Sharma and Others [(2020) 9 SCC 1]***. Therefore, I need not reinvent the wheel.

39. Now turning to the plea made by Mr.R.K.Goutham that in terms of Section XLI Rule 33 of the Code of Civil Procedure, I am entitled to grant a decree which should be passed appropriately in terms of the prayer in the suit. The daughter being a co-parcener, she will be entitled to the half share in the joint family properties left behind by Nachimuthu Gounder for which he was a "Karthā".

40. In the light of the above arguments, the judgment and decree of the Court of the learned Principal District Judge at Erode in A.S.No.37 of 2019, dated 06.01.2020, in confirming the judgment and decree of the



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learned II Additional Subordinate Judge at Erode in O.S.No.297 of 2010,
dated 29.10.2018, stands confirmed.

41. Accordingly, the Second Appeal stands dismissed. In view of the
above discussion, the Cross Objection stands allowed. Costs through out.
The connected Civil Miscellaneous Petition is closed.

04.07.2024

mkn2

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To
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- 1.The learned Principal District Judge,
Erode
- 2.The Learned II Additional Subordinate Judge,
Erode

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