



S.A. No.591 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM:

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

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1. Meenambal,
rep. by her power agent
Mr.Ravichandran

2. Anbazhagan

3. Subamala ... Appellants

Vs.

Saroja .. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.56 of 2023 on the file of Sub-Court, Thiruthuraipoondi dated 25.07.2024 confirming the judgment and decree dated 19.03.2020 passed in O.S.No.104 of 2013 on the file of District Munsif Court, Thiruthuraipoondi.

For Appellants : Mr.K.M.Subramanian



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For Respondent : Mr.S.Senthil

JUDGMENT

The appellants, who are defendants in the suit in O.S.No.104 of 2013, which was filed by the respondent/plaintiff seeking for the relief of partition claiming half share and the same was decreed in favour of plaintiff. Against which, the defendants have preferred an appeal in A.S.No.56 of 2023 on the file of Sub-Court, Thiruthuraipoondi and the same was also dismissed confirming the findings of the trial court. Now, challenging the concurrent findings of courts below, the defendants preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff/daughter of Murugaiah Thevar filed the said suit in O.S.No. 104 of 2013 claiming half share with declaratory relief in the suit property against the defendants. The 1st defendant Meenambal is her sister, 2nd defendant is her father's paternal brother as well as son-in-law of 1st defendant. The 3rd defendant is daughter of 2nd defendant and daughter-in-law of plaintiff. The suit was contested by 1st and 3rd defendants. Before the trial court, the 2nd defendant claimed right over the suit property based on the



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Will dated 23.10.2000 said to be executed by Murugaiah Thevar, father of plaintiff in his favour. Issues were framed and on considering both oral and documentary evidence, the trial court held that the admitted signature found in Ex.B11, Ex.B12, Ex.B24 and Ex.B27 is totally differs from the signature found in the alleged Will Ex.B1, besides the Will also not been proved by examining the Scribe viz., V.Murthy, who is an advocate by profession. In fact, the said advocate is also practicing in Thiruthuraipoondi District Court, wherein the suit was conducted. But, no steps was taken to examine the said Scribe. Apart from that, at the time of alleged execution of the Will, the Testator Murugaiah Thevar was not well and also bedridden and the same was deposed by D.W.1 in her evidence, who is 1st defendant in the suit. Therefore, the trial judge concludes that the Will dated 23.10.2000 relied on by the 2nd defendant is not a genuine one. Based upon Will, the 2nd defendant executed a settlement deed dated 04.08.2008 in favour of 3rd defendant as such is invalid one. The trial judge also made an observation that in the alleged settlement deed, there is no mentioning about the execution of earlier Will, which itself proves that there is suspicious circumstances as well as difference in the signature of testator and the said Scribe was not examined as per manner known to law by the 2nd defendant. Therefore, the Will was surrounded by



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suspicious circumstances. Hence, the defence taken by the defendants is not accepted and finally held that the suit property absolutely belong to father of plaintiff and he died leaving behind plaintiff and 1st defendant, thereby both are equally entitled to half share in the suit property. Accordingly, the suit was decreed in her faovour.

4. Challenging the said findings, the defendants preferred an appeal in A.S.N. 56 of 2023 before the Sub-Court, Tiruthuraipoondi and the first appellate judge also independently analysed entire facts and evidence on record and also framed separate issues and finally held that evidence of D.W.1/1st defendant itself shows that the testator was bedridden nearly about 10 days prior to the date of execution of Will and thereafter, he died shortly. So, courts below concludes that there is no possibility for execution of a Will dated 23.10.2000 just four days before the death of the said Murugaiah Thevar, father of plaintiff. Moreover, the first appellate judge made an observation that the contesting defendants ought to have examined the 1st defendant, but he failed to examine her as per manner known to law and also not taken steps to examine the scribe Moorthy, who is an advocate practicing in the same village of Tiruthuraipoondi and also concludes that the court is empowered to compare the signature of Testator. Accordingly, signature found in Ex.B1 Will



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as well as admitted signatures found in Ex.B11, Ex.B12, Ex.B24 and Ex.B27 was compared and on comparison the admitted signatures totally differs from the signature found in the Will Ex.B1. Thus, the suspicious circumstances casted over the Will has not been disproved by the defendants. Hence, the first appellate judge finally held that the Will is not proved and the plaintiff is entitled to half share in the suit property, accordingly, the appeal was dismissed confirming the findings of trial court. Challenging the concurrent findings of the courts below, the defendants preferred this Second Appeal.

5. The learned counsel for appellants would submit that both the courts below failed to appreciate the evidence of other witnesses, through which, the beneficiaries of the Will have proved the execution of the Will, but it was not properly appreciated by the courts below and erroneously granted the relief in favour of plaintiff as such is liable to be set aside. The learned counsel would also submit that Testator has signed in the Will in the presence of witnesses and a family advocate has also signed in the Will. However, they have taken steps to examine him, but it was not allowed. The signature also been proved through witness. Therefore, the findings given by the courts below is erroneous one and accordingly, they prayed to set aside the findings of courts below.



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6. The learned counsel for respondent would submit that Will was forged one, which was rightly appreciated by the courts below.

7. Heard the contentions of learned counsel for appellants as well as learned counsel for respondent and perused the materials available on record.

8. Considering both side submissions and findings of the courts below, it reveals the fact that the plaintiff and the 1st defendant are daughters of Murugaiah Thevar. As one of the daughter, the plaintiff claiming half share in the suit property, since the property belong to her father and it is self-acquired property of her father. The 1st defendant's daughter has got married to 2nd defendant Anbalagan, who is plaintiff's father's paternal brother's son. But, all the defendants sailing themselves and denied the right of plaintiff stating that Murugaiah Thevar has no male issue, therefore, he wantonly executed a Will on 23.10.2000 while he was in sound state of mind and thereafter, after four days he died. The Will was produced before the trial court marked as Ex.B1 and copy of the Will also produced on the side of defendants. On a bare perusal of the Will, the courts below have given a finding that the signature is fabricated one as well as the courts below have held that signature found in the Will is apparently differs and it is not correlating with the admitted signature found in Ex.B11, Ex.B12, Ex.B24 and Ex.B27. Admittedly, the Will was



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drafted and executed by one Murthy, who is their family advocate, but he has not been examined. However, the evidence of D.W.1, 1st defendant, another daughter of Murugaiah Thevar deposed that his father was bedridden nearly about 10 days before his death. Admittedly, the Will was came into existence just four days before the death of Testator. The evidence of D.W.1 itself proves that Murugaiah Thevar was not in sound state of mind at the time of execution of Will. Furthermore, on a bare perusal of signature found in the Will, which would proves that the Will was fabricated one and the same is amounting to clear abuse of process of law. The plaintiff, who is one of daughter of Testator and she is aged about 75 years, was denied share in her father's self-acquired property, however, as all the defendants have colluded together with an evil intention to grab the property, they have forged the signature of plaintiff's father and fabricated the Will and the same was rightly appreciated by the courts below, which needs no interference. Therefore, I do not find any merit in this Second Appeal as there is no substantial question of law involved. Accordingly, this Second Appeal is dismissed as no merit. The conclusive relief of declaration that the Will is not true and valid one and the subsequent settlement deed dated 04.08.2008 executed by the 2nd defendant in favour of 3rd defendant is also invalid one and the same was rightly observed by the courts



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below, which needs no interference. The courts below categorically declared that the settlement deed is an invalid document is sustainable one. Accordingly, this Second Appeal is dismissed as no merit with costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Sub-Judge, Thiruthuraipoondi.

T.V.THAMILSELVI, J.

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