



S.A. No.1219 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.02.2024

Pronounced on: 22.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.1219 of 2019

and

CMP. No.26500 of 2019

1.V.Jayachandran (Died)
2.R.Shakkila Rani
3.Mrs.Dhanalakshmi
4.Mr.Nagaraj
5.Meena
(Appellants 3 to 5 brought on record as
LRs of the deceased 1st appellant vide
order dated 27.07.2021)

...Appellants

Vs.

1.V.Yuvaraj
2.H.Sumathi

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Decree and Judgment passed by the learned Sub-Court, Arakkonam in A.S. No.11 of 2017 dated 10.04.2019 partly allowing the Decree and Judgment of the learned District Munsif Court, Arakkonam in O.S. No.120 of 2010 dated 18.11.2016 by allowing the present Second Appeal.



S.A. No.1219 of 2017

For Appellants : Mr.J.Shanmuga Sundara Babu

For Respondents : Mrs.P.Arthi

JUDGMENT

The defendants 1 and 3 are the appellants in the present Second Appeal.

2. The parties are described as per their litigative status before the trial Court.

3. The suit had been filed for a permanent injunction. The case of the plaintiff is that the suit property is absolutely belonging to her father Veeraragavalu Naidu, who had purchased the suit property under a registered sale deed dated 19.11.1970. The plaintiff's father had executed a Will on 15.06.1989, in favour of the plaintiff and the first defendant. However, subsequently, he cancelled the said Will and executed a Will dated 19.05.1992, in favour of the plaintiff and defendants 1 to 3. Even the said will was cancelled and the father executed a third Will on 07.01.1994, in favour of the first plaintiff and first defendant alone, which was also



subsequently cancelled in and by Will dated 16.12.1997, under which all the sons and daughters were beneficiaries. In fact, under the said Will, the father decided and wished that the suit property should be sold and the sale proceeds were to be shared equally by all his legal heirs.

4. According to the plaintiff, the said last will dated 16.12.1997 was with the third defendant and on the 13th day ceremony of the father, in the presence of family members and relatives, the third defendant distributed copies of the last Will dated 16.12.1997. In terms of the Will, the plaintiff was entitled to a 1/4th share and defendants were entitled to 1/4th share each. The plaintiff being an employee of Indian Air Force, settled down at Arakonam, after his retirement and he was residing in the suit property. As the third defendant was colluding with the first defendant and attempted to dispossess the plaintiff from the suit property, the suit came to be filed.

5. The first defendant denied the claim of the plaintiff and admitted upto the Will dated 07.01.1994. The alleged Will dated 16.12.1997, according to the first defendant was not executed by his father and therefore,



the plaintiff has claimed rights based on forged and fabricated documents.

According to the first defendant, the plaintiff was not in possession of the suit property, and only in order to grab the property belonging to the first defendant, the suit has been filed with ulterior motive.

6. The second defendant also filed a written statement denying the plaintiff's claim to 1/4th share. However, the 2nd defendant admitted that the plaintiff is in possession of the suit property and the first and third defendants were evading partition, the second defendant was willing for preliminary decree being passed and also was agreeable to pay Court fee for declaring her 1/4th share.

7. The 3rd defendant filed a separate written statement stating that the last Will executed by her father was only dated 07.01.1994, under which, the first and third defendants were alone beneficiaries. According to the 3rd defendant, the plaintiff, after retirement approached the third defendant and he was contending that he was not employed and was struggling for livelihood, requested the third defendant to occupy the suit property on



monthly rent. According to the third defendant, she permitted the plaintiff, her brother to reside in a portion of the suit property on a monthly rent of Rs.600/- from April, 1999 onwards. However, according to the third defendant, the plaintiff did not pay any rent and the third defendant issued a notice, calling upon the plaintiff to vacate and demand the payment of an arrears of rent. The plaintiff has filed the present suit on an imaginary cause of action and therefore, the third defendant sought for dismissal of the suit.

8. The Trial Court held that the Will dated 16.12.1997 was not proved by the plaintiff as required under law and therefore, the Will dated 07.01.1994, was the last Will and testament of the father, Veeraragavalu Naidu. The Trial Court also held that the plaintiff was not entitled to 1/4th share in the suit property and dismissed the suit filed by the plaintiff seeking permanent injunction.

9. The First Appellate Court, rightly held that the main dispute was with regard to the truth and genuineness of the last Will dated 16.12.1997, alleged to have been executed by their father and finding that the plaintiff



took no steps to even have the original Will produced from the custody of the third defendant and also not having examined any of the persons in whose presence, according to him, the Will was read over and distributed by the third defendant and also not taking any steps to examine the attesting witnesses, held that the Will was not true, by the plaintiff and confirm the findings of the Trial Court in that regard. However, considering that the plaintiff's possession has been admitted even by D.W.1, in cross examination and even according to the third defendant, the plaintiff was in possession of the suit property as a tenant, the the First Appellate Court, holding that the plaintiff had proved possession, was entitled to injunction and thereby, reversed the findings of the Trial Court and granted relief of permanent injunction in favour of the plaintiff.

10. Aggrieved by reversal findings rendered by the First Appellate Court, the defendants 1 and 3 have preferred the present Second Appeal. On 14.12.2023, the above Second Appeal was admitted on the following substantial question of law:-

“ Whether the First Appellate Court is justified in granting a



decree for injunction restraining the appellants/defendants from alienating the suit properties after holding that the first respondent/plaintiff failed to prove the Will set up by him on 16.12.1997”

11. I have heard Mr.J.Shanmugasundara Babu, learned counsel for the appellants and Mrs.P.Arthi, learned counsel for the respondents.

12. I have also gone through the judgment of this Court in S.A. No.1216 of 2019 dated 14.12.2023, in and where by, the Second Appeal was dismissed by this Court granting liberty to the appellant therein viz., the third defendant in the present suit to seek recovery of possession in accordance with law. The possession of the first respondent herein has been protected.

13. However, insofar as the suit filed by the plaintiffs/respondents herein, the relief claimed in O.S. No.120 of 2010 is for permanent injunction to restrain the defendants from alienating the suit property to the third parties, unless and until, the suit property is divided by metes and bounds between the plaintiff and defendants 1 to 3.

14. Admittedly, the Courts below, including the First Appellate Court



have negated the last Will and testament dated 16.12.1997, projected by the respondent/plaintiff and categorically found that the plaintiff was not entitled to any share in the suit property. The First Appellate Court rendered a perverse finding granting the relief of permanent injunction to restrain the defendants 1 and 3, from alienating the properties belonging to them. Such a relief of permanent injunction cannot be granted against the true owner, especially after having found that the plaintiff was not entitled to any share in the suit property, negating his claim under the alleged last Will dated 16.12.1997. The Trial Court has rightly dismissed the suit. However, the First Appellate Court having negated the claim from 1/4th share, erroneously granted a decree for permanent injunction to restrain the defendants from alienating the suit properties, unless and until, there was a partition in the family. The question of partition does not arise, when the plaintiff has no right in the suit property and the findings of the First Appellate Court are clearly illegal and perverse, warranting interference under Section 100 of the Code of Civil Procedure, 1908.

15. In fine, the substantial question of law are answered in favour of



S.A. No.1219 of 2017

the appellants and Second Appeal is allowed. The Judgment and Decree passed by the learned Sub Judge, Arakkonam in A.S. No.11 of 2017 dated 10.04.2019 is hereby set aside and Judgment and Decree of the learned District Munsif, Arakkonam in O.S. No.120 of 2010 dated 18.11.2016 is restored. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

22.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Sub Judge, Arakkonam.
2. The District Munsif, Arakkonam.



WEB COPY



S.A. No.1219 of 2019

P.B.BALAJI, J.

rkp

Pre-delivery Judgment in

S.A.No.1219 of 2019

and

CMP. No.26500 of 2019

22.03.2024