



SA. No.823 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

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

SA. No. 823 of 2024
& CMP No. 26260 of 2024

1.Muruganandham
2.Latha
3.Sarala
4.Saranya

... Appellants

Vs.

1.Govindhammal
2.Kuppammal
3.Sumathi
4.Thirumal
5.Anjalatchy
6. Arumugam

..Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgement and Decree dated 16.12.2023 in A.S No. 15 of 2022 passed by the Hon'ble Additional Subordinate Judge, Puducherry reversing the judgement and Decree dated 30.06.2022 in OS No. 2635 of 2016 passed by the Hon'ble I Additional District Munsiff,



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Pondicherry and thereby allow the second appeal.

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For Appellant : Mr. R.Ganesh Kumar

JUDGMENT

This second appeal has been filed to set aside the judgement and Decree dated 16.12.2023 passed by the Additional Subordinate Judge, Puducherry in A.S No. 15 of 2022 by reversing the judgement and Decree dated 30.06.2022 passed by the I Additional District Munsiff, Pondicherry in OS No. 2635 of 2016.

2. The appellants herein are the defendants in suit OS No. 2635 of 2016, filed on the file of the I Additional District Munsif, Pondicherry, by the respondents 1 to 4/plaintiffs, for the relief of partition and other consequential relief. The contention of the plaintiff is that the suit property originally belongs to Perumal Gounder, through sale deed dated 31.12.1958 and he enjoyed as absolute owner. Thereafter, the said Perumal Gounder's son Mani/father of the plaintiff died in the year 1986, leaving behind the plaintiffs' as legal heirs. Subsequently, in the year 1992, the said Perumal Gounder died leaving behind his sons and daughter namely Atchadai,



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Arumugam, Muruganandaham and Arumugam. After attaining majority the fourth plaintiff approached the defendant for partition the property but he refused for partition stating that the Perumal Gounder executed a Will on 20.01.1992 through which bequeathed his entire property in favour of first defendant. Thereby, the first defendant claimed the entire property, based on the alleged Will but the plaintiffs contend that the said Will was obtained by force and coercion.

3. On the defendants' side, the defendants 1 to 5 and 6 appeared through their counsel but not filed any written statement and the 7th defendants remains exparte. On the plaintiffs' side, 4th plaintiff examined himself as PW1 and marked the documents as Ex.A1 to Ex.A10.

4. Upon considering the documents, the Trial Court held that the suit properties is the self acquired property of the Perumal Gounder, hence, he is entitle to give his property to any person. Accordingly, dismissed the suit.

5. Challenging the findings of the Trial Court, the plaintiff filed the appeal before the Additional Sub Judge (FAC), Puducherry, where, the first appellate Court independently analysed the available records and finally held that Will has not been proved by the defendants under the Indian Evidence Act. Thereby the declared the Will, Gift deed and Released deed



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as Null and Void. Accordingly, allowed the appeal. Challenging the reversal findings of the Courts below the appellants/defendants filed this appeal.

6. This Court admits the appeal with the following questions of law:

i. Whether mere pleading with regard to the date of knowledge about the existence of the document in the plaint is sufficient to frame the suit within the period of limitation in the absence of substantial evidence to that effect ?

ii. Whether Section 68 of Evidence Act Will come into operation when the defendant is set exparte and the plaintiff has to establish the case of coercion and undue influence about the execution of registered Will ?

iii. Whether execution of the Will 15 days prior to the death of the testator by itself a suspicious circumstance by itself in the absence of any valid evidence ?

7. Before going to the merits of the case, the facts reveals that the during the Trial proceedings though the defendants served with notice, not produced written statement before the Trial Court. However, the Trial Court based on Ex.A3 came to the conclusion that since the property is self acquired property of the Perumal Gounder, hence, he is entitle to give his



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property any person. Accordingly, he gave the property to the first defendant and thereby dismissed the suit. Against which the defendants filed the appeal, where the first appellate Court concluded that the defendants claiming right based on the Will but the Will has not been proved in accordance with law. Accordingly, the first appellate Court declared the Will as Null and Void by allowing the appeal. In fact, as rightly appreciated by the first appellate Court the defendant should have proved the Will and also the plaintiff bound to establish that the said Will was obtained by force and coercion. Even, judgement was passed without the written statement and evidences, hence, the judgement passed by the Court is set aside. Further, this court remand this matter back to the Trial Court for fresh consideration. The Trial Court is directed to give equal opportunities to the parties and decide the case as per manner known to law within a period of six months from the date of receipt of a copy of this judgment.

8. Accordingly, this second appeal is disposed of. No Costs. Consequentially, pending petition, if any, is/are closed.

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T.V.THAMILSELVI,J.

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To

- 1.The Section Officer,
V.R Section.
2. The Additional Subordinate Judge, Puducherry.
3. I Additional District Munsiff, Pondicherry.

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