



S.A.No.370 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.370 of 2021
and
C.M.P.No.6928 of 2021

1. M.Gnanavel
2. Rajavel ... Appellants

Vs.

1. Kala
2. Thavamani
3. Pushpa ... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 21.03.2016 in A.S.No.45 of 2014 passed by the learned Subordinate Judge, Tirupathur, Vellore, confirming the judgment and decree dated 04.06.2014 in O.S.No.351 of 2009 passed by the learned Principal District Munsif, Tirupathur, Vellore.

For appellants : Mr.P.Balamurugan



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JUDGMENT

The defendants 2 and 3 are the appellants herein challenging the concurrent judgment and decree for partition granted against them by the Courts below.

2. In order to appreciate the issues involved in this second appeal, it is necessary to set out the facts of the case with the parties being referred to in the same ranking as before the Trial Court, for ease of understanding.

FACTS OF THE CASE:

2.1. The plaintiff had filed a suit for partition and separate possession on the file of the Principal Munsif Court, Tirupattur, in O.S.No.351 of 2009. The case of the plaintiff is that the properties belong to her father viz., Murugappa Chettiyar. Murugappa Chettiyar got married to one Puspha and the plaintiff and defendants are the children born to the two. The plaintiff's contention is that the suit schedule properties were purchased by her father under a registered



sale deed dated 07.04.1963 and therefore, the same are the self-acquired properties of her father. Her father was cultivating these lands by himself.

2.2. The said Murugappa Chettiyar died intestate on 23.01.2009 and on his death, the properties devolved on his legal heirs equally. The plaintiff would submit that till his death, Murugappa Chettiyar was in exclusive enjoyment and possession of the suit property and the revenue records also stood in his name. Apart from the plaintiff and the defendants, there are no other legal representatives for the said Murugappa Chettiyar.

2.3. Of late, the defendants 2 and 3 have not been sharing the income from the properties with all the sharers and therefore, the plaintiff had requested for a partition. Since there was no response to the said request, the plaintiff has issued a legal notice dated 12.08.2009 on the defendants. There has been no response to the same



as well. Therefore, the plaintiff has come forward with the suit in question.

2.4. The defendants 1 and 4 have contended that Murugappa Chettiyar had executed a Will dated 11.03.2007 in favour of the defendants 2 and 3 and the son of the second defendant in respect of the suit properties. The plaintiff and the first defendant were not given any share, since, huge amounts were spent during their marriage and they had also been given jewels and other articles as sridhana. Therefore, the defendants pray for the suit to be dismissed.

2.5. The defendants 2 and 3 filed a written statement contending that even during the lifetime of Murugappa Chettiyar, the defendants 2 and 3 were jointly cultivating and enjoying the suit properties. Murugappa Chettiyar was suffering from certain ailments till his death. The defendants would contend that the plaintiff has not been in joint possession of the suit properties. However, on 11.03.2007, the said Murugappa Chettiyar had executed a Will in



favour of the defendants 2 and 3 and the son of the second defendant.

After his death, the Will has come to effect. Therefore, the plaintiff has no right to the suit schedule properties. They also contend that the suit properties have not been properly valued and the Court fee has not been properly paid.

TRIAL COURT:

3. The learned Principal District Munsif, Tirupathur, had framed issues which were recast the issues just prior to the judgment as follows:

“1. Whether the suit properties are in joint possession of the plaintiff and defendants?

2. Whether Murugappa Chettiyar had executed a will in favour of the defendants 2 and 3 and the son of the second defendant as claimed by the defendants?

3. Whether the will alleged to have been executed by Murugappa Chettiyar is a sham and nominal document as claimed by the plaintiff?

4. Whether the plaintiff is entitled to claim 1/5th share in the suit properties?



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5. Whether the suit properties has been properly valued by the plaintiff?

6. Whether the plaintiff is entitled to the preliminary decree sought for?

7. To what other relief?"

4. The plaintiff has examined herself as P.W.1 and marked Exs.A1 to A8. The 4th defendant has examined herself as D.W.1 and the 3rd defendant has examined himself as D.W.2 and one Selvi and Jayavel as D.W.3 and D.W.4 respectively, and marked Exs.B1 and B2.

5. The learned Judge, on considering the evidences on record, came to the conclusion that the will is a fabricated one as it gives rise to suspicion. The testator has not affixed his signature on the page where the contents are found and it is only in the last page of the will that his signature has been affixed. That apart, the learned Judge had also relied on the evidence of the D.W.1, mother of the plaintiff, regarding the active role that has been played by the



defendants 2 and 3 in the execution of the will and held that the will has not been proved, particularly, taking note of the discrepancies in the evidence of the attesting witness. Therefore, the learned Judge had decreed the suit.

LOWER APPELLATE COURT:

6. Challenging the said judgment and decree, the defendants 2 and 3 have filed an appeal in A.S.No.45 of 2014 on the file of the Sub Court, Tirupathur.

7. The learned Sub Judge has also confirmed the judgment and decree of the Trial Court, on the ground that the will has not been proved and that it is not a true document. Aggrieved by the same, the appellants are before this Court.

8. This matter was posted for admission on 24.08.2021 and on that day, the learned counsel for the appellants sought for an



adjournment, after which, the matter has come up before this Court once again on 12.12.2023 and thereafter, the matter is listed only now.

DISCUSSION:

9. Mr.P.Balamurugan, learned counsel for the appellants, would vehemently contend that the Will has been accepted and admitted by both the first defendant and the fourth defendant, who is none else the mother of the plaintiff and the defendants 1 and 3. Further, the mother (the fourth defendant) has also adduced evidence in respect of the Will as D.W.1. The learned counsel for the appellants would submit that the defendants 2 and 3 have examined two others as D.W.3 and D.W.4 who are the attesting witnesses to the Will. He would submit that the Courts below have overlooked the above fact and have wrongly decreed the suit.

10. Heard the learned counsel for the appellant and perused the records.



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11. It is an admitted fact that the suit properties are the self-acquired properties of Murugappa Chettiyar and that the plaintiff and the defendants are the only legal heirs of the said Murugappa Chettiyar. The plaintiff would contend that the said Murugappa Chettiyar had died intestate, whereas, the defendants 2 and 3 would set up a Will. If the Will is proved, then, the properties would devolve as per the terms of the Will. In case, the will is not proved, then, the properties of Murugappa Chettiyar would equally devolve on all his legal heirs. Therefore, it is necessary to consider if the Courts below have rightly appreciated the proof regarding the Will. The Will has been marked as Ex.B2.

12. To prove the execution of Will, the defendants had examined D.W.3 and D.W.4 who are said to be the attesting witness of this Will. A perusal of the Will dated 11.03.2007 which consists of 2 sheets where the contents are typed back to back would show that



the pages 1, 2 and 3 do not contain the signature of the testator Murugappa Chettiyar. Murugappa Chettiyar's signature is found only in the 4th page. Therefore, the testator has not signed on the pages which contains the recitals of the Will. In this regard, the evidence of the propounder of the Will, viz., the defendants 2 and 3 and the attesting witnesses need to be looked into which exercise both the Courts have also undertaken. The 4th defendant who is the mother of the plaintiff and the defendants 1 to 3 has also been examined as D.W.1. D.W.1 has deposed that the Will has made provision for her son and daughters as well.

13. A perusal of the Will would show that the Advocate who has affixed his notary seal has affixed it on the pages where the testator's signature was not found. The third defendant who is one of the beneficiaries under the alleged Will and who has been examined as D.W.2, would submit that the Will has been drafted by one Advocate Raja, whereas, a perusal of the Will would show that the



Will was drafted by one Advocate Anbalagan and that the defendants 2 and 3 have played an active role in the preparation of the Will which is evident from the cross-examination of D.W.1 and D.W.3. D.W.1, in her evidence, has stated that all the arrangements for preparing the Will had been done by the 3rd defendant and the recitals of the Will have also been dictated by one Rajavelu. The witness has also stated that the Will was handwritten by Advocate Raja, whereas, the Will is a typed one.

14. Coming to the attesting witnesses D.W.3 and D.W.4, D.W.3 would submit that both she and D.W.4 – Jayavel, had gone together to the testator's house. However, D.W.4 would submit that D.W.3 was already present at Murugappa Chettiyar's house. That apart, D.W.2 has not deposed about the testator signing the Will in his presence as well in the presence of the other attesting witness. D.W.4 would submit that he has signed the documents five years prior to his deposition, which means the Will has been executed in the year 2009.



D.W.3 has deposed about the presence of the third defendant and his family during the alleged execution of the Will.

15. A perusal of Ex.B2 - Will would show the signature “M.Murugappan” is affixed by a man with a firm hand. D.W.4, in his cross-examination would, however, state as follows:

“.... முருகப்ப செட்டியாருக்கு டம்ளர் கூட கையில் பிடிக்க முடியாத நிலையில் அவருக்கு கை அதிர்ச்சி இருக்கும்.....”

16. Both the Courts below have extensively considered the evidence and the suspicious circumstances surrounding the execution of the Ex.B2 - Will and have rightly decreed the suit. I see no reason to disagree with the findings of the Courts below.

Accordingly, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. No costs.



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Index : Yes/No

Speaking order/non-speaking order
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To

- 1.The Subordinate Judge, Tirupathur, Vellore.
- 2.The Principal District Munsif, Tirupathur, Vellore.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,



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