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S.A.NO.173 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.173 OF 2020
AND CMP NO.3538 OF 2020

Samuvel @ Samivel

... Appellant / Appellant /
Defendant

Versus

1.Susheela
2.Sasikala
3.Vinothini

... Respondents /Respondents /
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 8, 2019 passed in A.S.No.43 of 2017 by the learned Principal Subordinate Judge, Erode, confirming the fair and final Order dated March 2, 2016 passed by the Principal District Munsif, Erode in I.A.No.974 of 2012 in O.S.No.203 of 2009.

For Appellant : Mr.V.S.Kesavan

For Respondents : Mr.R.Ganesh

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated August 8, 2019 passed in A.S.No.43 of 2017 by the 'learned Principal Subordinate Judge, Erode' [henceforth 'First Appellate Court' for



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brevity and convenience] confirming the fair and final Order dated March 2, 2016 passed in I.A.No.974 of 2012 in O.S.No.203 of 2009 by the 'learned Principal District Munsif, Erode' [henceforth 'Trial Court' for brevity and convenience].

2. The Suit Property is an absolute property of Thirumayammal, who is the wife of 1st defendant and mother of plaintiff and 2nd defendant. Thirumayammal died intestate in the year 2003 leaving behind her two sons, namely S.Thangavel (plaintiff) & Samuvel @ Samivel (2nd defendant) and her husband - Subramania Gounder (1st defendant) as her legal heirs to succeed her estate. Hence, as per Section 15 of the Hindu Succession Act, 1956, the plaintiff is entitled to 1/3 share and the defendants are jointly entitled to 2/3 share. In the said Suit, Preliminary Decree was passed on October 14, 2009. Thereafter, the plaintiff filed an Interlocutory Application in I.A.No.1418 of 2009 in O.S.No.203 of 2009 for passing Final Decree. Meanwhile, the plaintiff – Thangavelu passed away on December 11, 2010, leaving behind his wife - Susheela and two daughters, namely Sasikala and Vinothini and they were brought on record as Petitioner Nos. 2 to 4 in the Final Decree application. Thereafter, on January 8, 2011, the 1st respondent therein (1st defendant in the Original



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Suit) namely Subramania Gounder passed away. Consequently, the Petitioner Nos.2 to 4 filed an Interlocutory Application in I.A.No.974 of 2012 in O.S.No.203 of 2009 under Order XX Rule 18 of the Code of Civil Procedure, 1908 ['CPC' for short] praying to pass a Supplementary Preliminary Decree dividing the Suit Property into 6 shares based on good and bad soil and allot 1/6 share to each petitioners, collectively 3/6 share.

3. The second respondent filed a Counter in the said Interlocutory Application stating that Subramania Gounder did not die intestate. During his lifetime he executed a Registered Gift Settlement Deed in favour of the 2nd respondent on January 21, 2009, thereby settling Subramania Gounder's share in the Suit Properties and other properties entirely in his favour. Pursuant to the Gift Settlement Deed, the 2nd respondent took possession of the property as absolute owner of the same. On December 4, 2009 the 2nd respondent, in turn, executed a Registered Gift Settlement Deed in respect of properties settled on him by his father, in favour of his son, namely S.Arun Kumar. Since the petitioners have not added S.Arun Kumar as party to the proceedings, the Suit is bad for non-joinder of necessary parties. Accordingly, the 2nd respondent prayed to



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dismiss the Suit.

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4. In the said Interlocutory Application, second respondent commenced his evidence by examining himself as R.W.1 and Ex-R.1 was marked. No evidence on the side of the petitioners.

5. The Trial Court after hearing both sides, concluded that the petitioners have denied the execution of the said registered Gift Settlement Deed during the cross-examination of R.W.1. Despite denial, the second respondent did not examine the attesting witness to Ex-R.1 - registered Settlement Deed and therefore, it has not been proved. Accordingly, the Trial Court allowed the said Interlocutory Application and passed Supplementary Preliminary decree in favour of the petitioners on March 2, 2016.

6. Feeling aggrieved, the 2nd respondent, preferred an appeal in A.S.No.43 of 2017 on the file of the First Appellate Court. To be noted, the petitioners had filed another Suit in O.S.No.151 of 2012 against the 2nd respondent herein and his son S.Arun Kumar in respect of the properties left by Subramania Gounder. The said Suit viz., O.S.No.151 of 2012 and I.A.No.974 of 2012 were heard simultaneously and orders were passed on



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the same day i.e., on March 2, 2016 in favour of the plaintiff (Petitioners 2 to 4 herein). Hence, the 2nd respondent herein and his son S.Arun Kumar filed an appeal in A.S.No.49 of 2017. In both the appeals, namely A.S.No.49 of 2017 and A.S.No.43 of 2017, the common question involved is whether the Gift Settlement Deed dated January 21, 2009 allegedly executed by Subramania Gounder in favour of Samuvel @ Samivel is true or not. The First Appellate Court jointly heard both the appeals and vide its common Judgment and Decree dated August 8, 2019 concluded that the respondents failed to prove the Registered Gift Settlement Deed dated January 21, 2009 allegedly executed by Subramania Gounder in favour of the respondents. Accordingly, dismissed both the appeals.

7. Feeling aggrieved, the second respondent preferred this Second Appeal in S.A.No.173 of 2020 over A.S.No.43 of 2017. The 2nd respondent and his son S.Arun Kumar preferred Second Appeal in S.A.No.285 of 2020 over A.S.No.49 of 2017. To be noted, S.A.No.285 of 2020 was dismissed on merits on March 12, 2020 by the Hon'ble Single Judge of this Court.

8. Mr.V.S.Kesavan, learned Counsel appearing for the



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appellant / second respondent submits that the petitioners have not specifically denied the execution of the Registered Gift Settlement Deed dated January 21, 2009. The second respondent – Samuvel @ Samivel has not examined any attesting witness thereof. The Trial Court and the First Appellate Court miserably failed to consider the said aspect and decreed the Suit in favour of the petitioners and passed Preliminary Decree. The learned Counsel fairly submits that S.A.No.285 of 2020 filed by the present appellant against the Judgment and Decree dated August 8, 2019 passed in A.S.No.49 of 2017 was dismissed by this Court on March 12, 2020.

9. In response, Mr.R.Ganesh, learned Counsel appearing for the respondents 1 to 3 herein submits that both the Courts concurrently held that the respondents failed to prove the registered Gift Settlement Deed dated January 21, 2009 said to have been executed by Subramania Gounder in favour of the second respondent. Once the Settlement Deed is held to be not proved, the Petitioner Nos.1 to 3 automatically become entitled to a Decree for partition as prayed for, as the said finding removes the clouds around their entitlement. He further submits that there is no question of law, much less, substantial question of law involved in the



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Second Appeal. Accordingly, he prays to dismiss the Second Appeal.

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10. This Court has considered both sides' submissions.

Perused the records.

11. The Trial Court as well as the First Appellate Court concurrently held that the respondents failed to prove the Registered Settlement Deed dated January 21, 2009. The petitioners have stated that, Subramania Gounder during his last years, has lost control of his senses and remained as a dementia patient. In view of the specific stand taken by the petitioners, the respondents ought to have examined at least one attesting witness to prove the execution as well as the mental capacity of the executant during the relevant time period. Since the respondents miserably failed to examine any of the attesting witnesses, the Trial Court as well as the First Appellate Court concurrently held that the Gift Settlement Deed dated January 21, 2009 allegedly executed by Subramania Gounder in favour of his son Samuvel @ Samivel has not been proved.

12. Considering the facts and circumstances of the case, this Court is of the considered view that the Trial Court as well as the First Appellate Court rightly recorded findings based on the evidence and



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documents available on record. There is no illegality or irregularity on the same. There is no substantial question of law involved in this Second Appeal. Further, as stated *supra*, this Court dismissed S.A.No.285 of 2020 wherein the question involved was the same as in this Second Appeal. Hence, the Second Appeal deserves to be dismissed.

13. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

1.The Principal Subordinate Judge
Erode.

2.The Principal District Munsif
Erode.



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R. SAKTHIVEL, J.

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