



S.A.(MD) No.373 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.373 of 2009

1.Jeyaraman (died)

2.Venkitammal

3.Ramesh

4.Suresh

... Appellants

-vs-

1.Jeyalakshmi

2.Rathinam

3.Rajendran (died)

4.Athilakshmi

5.Vinoth Kumar

... Respondents

(Appellants 2 to 4 are brought on record
as L.Rs. of the deceased sole appellant)

(Respondents 4 and 5 are brought on record
as L.Rs. of the deceased third respondent)



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 12.11.2008, passed in A.S.No.29 of 2008 on the file of Sub-Court, Aruppukottai, confirming the judgment and decree, dated 04.04.2008, passed in O.S.No.189 of 2002 on the file of District Munsif Court, Aruppukottai.

For Appellants : Mr.S.Natarajan,
Senior Counsel,
for Mrs.Vijayakumari Natarajan.

For Respondents 1 & 2 : Mr.T.Balaji

For Respondents 4 & 5 : Mrs.M.Sudha Rani

JUDGMENT

The first defendant in the suit for injunction is the appellant. The suit was decreed by the trial Court. The findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the first defendant has come by way of this Second Appeal.

2. Pending Second Appeal, the sole appellant/first defendant died and his legal heirs were brought on record as Appellants 2 to 4. It is also seen



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that the third respondent/second defendant died pending Second Appeal and his legal heirs were brought on record as Respondents 4 and 5.

3. The respondents 1 and 2 / plaintiffs 2 and 3, along with their deceased mother, deceased first plaintiff, namely, Meenakshi Ammal, filed the suit for bare injunction. According to the plaintiffs, the suit property was the self-acquired property of the first plaintiff. The plaintiffs 2 and 3 and the defendants 1 and 2 were her children. It was claimed by the plaintiffs that the first plaintiff executed a Will, dated 18.01.2001, in favour of the plaintiffs 2 and 3 in respect of A-Schedule property. From that date on wards, all the plaintiffs had been in possession and enjoyment of the same jointly. The first plaintiff executed a Settlement Deed, settling the B-Schedule property in favour of the plaintiffs 2 and 3. Likewise, the first plaintiff executed a Settlement Deed in favour of the third plaintiff in respect of item 'C' of the property. The plaintiffs 2 and 3 had taken possession of the property from the date of settlement and they had been in possession and enjoyment of the same without any interference from any quarter. That being so, the defendants, without having any manner of right, made an attempt to encroach the suit properties. Hence, the plaintiffs were constrained to file the suit for bare injunction.



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4. The defendants filed a written statement and denied the averments in the plaint as if the suit property was the self-acquired property of the first plaintiff. They also denied the Will, executed by the first plaintiff. It was further averred that there was no necessity for the first plaintiff to exclude the defendants 1 and 2, who were male heirs. It was also pleaded that the other plaintiffs exerted influence and coercion on the first plaintiff and got the Will in their favour. The defendants also denied the execution of the Settlement Deed, pleaded in the plaint. They also denied the possession of the plaintiffs over the suit property and claimed that the suit property originally belonged to the father of the defendants. It was claimed by the defendants that the father of the parties died when the defendants were minors and hence the revenue documents stood in the name of the first plaintiff, however, the custody of the revenue documents was with the defendants. On these pleadings, the defendants sought for dismissal of the suit.

5. Before the trial Court, the third plaintiff was examined as P.W.1 and the attesor to the Will and the Settlement Deed pleaded by the plaintiffs was examined as P.W.2. On behalf of the plaintiffs, 17 documents were marked as Exs.A-1 to A-17. The first defendant was examined as D.W.1 and yet another witness was examined as D.W.2. On behalf of the defendants, 9 documents were marked as Exs.B-1 to B-9.



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6. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs proved their prima facie title over the suit property and also possession. As a consequence, the suit for bare injunction was decreed by the trial Court. Aggrieved by the same, the first defendant preferred an appeal in A.S.No.29 of 2008. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the first defendant has come by way of this Second Appeal.

7. Mr.S.Natarajan, learned Senior Counsel, appearing for the appellant/first defendant contended that the Will, allegedly executed by the first plaintiff, was not mentioned in the cause of action paragraph of the plaint and, therefore, there was a failure of cause of action. The learned Senior Counsel further submitted that absolutely there was no justification to exclude the male heirs of the first plaintiff, namely, the defendants at the time of executing Ex,A-1 and hence the Will, relied upon by the plaintiffs, was surrounded by suspicious circumstances and they have not been dispelled by the plaintiff/propounder. The learned Senior Counsel also submitted that if the Will, relied upon by the plaintiff, was held to be invalid, the defendants would become co-owners of the property on the death of the first plaintiff and hence the suit for injunction would not lie. The learned Senior Counsel



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further submitted that the first appellate Court had not framed points for determination, as mandated under Order 41 Rule 31 of the Code of Civil Procedure, and, therefore, the judgment and the decree of the first appellate Court are liable to be set aside.

8. The learned counsel for the respondents, by taking this Court to the findings rendered by the Courts below, submitted that on proper appreciation of oral and documentary evidence available on record, both the Courts below came to the conclusion that the plaintiffs were entitled to a decree for bare injunction , as prayed for, and the said findings need not be disturbed.

9. The documentary evidence relied on by the plaintiffs, namely, Exs.B-5 to B-9 would establish that the suit properties originally belonged to the first plaintiff, namely, Meenakshi Ammal. The plaintiffs 2 and 3 are daughters of Meenakshi Ammal and the defendants 1 and 2 are sons of Meenakshi Ammal. The suit B-Schedule properties were settled by Meenakshi Ammal under Ex.A-2. The suit-C Schedule property was settled by Meenakshi Ammal in favour of the third plaintiff under Ex.A-3. The suit A-Schedule properties were bequeathed by Meenakshi Ammal in favour of the plaintiffs 2 and 3. The attesor to the Will and the Settlement Deeds, namely,



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Punyamurthy was examined as P.W.2. He clearly deposed about the due execution of the Will and the Settlement Deed by the first plaintiff.

10. The trial Court, on a close scrutiny of the evidence of the attester, came to the conclusion that due execution of the Will and the Settlement Deed was proved by the plaintiffs. The said finding was affirmed by the first appellate Court.

11. The learned Senior Counsel appearing for the appellants submitted that the first plaintiff had not given any reasoning for excluding the male heirs, namely, the defendants and, therefore, the disposition made under Ex.A-1 - Will was highly unnatural and the same was a serious suspicion, surrounding the Will.

12. Merely because one of the heirs of the testatrix was excluded from the testamentary document, we cannot jump to the conclusion that the testamentary document was invalid. The execution of the Will was proved by examining P.W.2, the attester. The suit was filed by the testatrix herself along with her daughters and the Will was produced as a plaint document, during the lifetime of the testatrix. Though the defendants pleaded undue influence and coercion, they failed to lead any evidence to support the said plea that the signature of the testatrix in the Will was obtained by undue influence or coercion. The trial Court also noted that D.W.1 clearly admitted that the



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testatrix was living along with him in his house at the time of execution of the Will. The testatrix was taken to Registrar's office from the house of the defendant and Ex.A-1 - Will appeared to have been executed and registered. The defendants have not raised any objection, such as employment of coercion and undue influence, immediately after execution of the document. In these circumstances, the plaintiffs had not only proved the due execution of the Will but they also dispelled all the suspicious circumstances, surrounding the Will. The Courts below, by proper appreciation of the evidence available on record, came to the conclusion that Ex.A-1 – Will and Exs.A-2 and A-3 – Settlement Deeds were proved. Thus, the prima facie title of the plaintiff over the suit property was rightly upheld.

13. The revenue documents, such as tax receipts, produced by the plaintiffs were taken into consideration by the Courts below for coming to the conclusion that the plaintiffs proved the possession over the suit property on the date of filing of the suit.

14. The learned Senior Counsel for the appellants assailed the judgment of the first appellate Court on the ground that the first appellate Court failed to frame points for determination, as mandated under Order 41 Rule 31 of the Code of Civil Procedure. In this regard, the learned Senior Counsel relied on the decisions of the Apex Court in *K.Karuppuraj v.*



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WEB COPY *M.Ganesan*, 2022 (1) CTC 674, and, *B.V.Nagesh and Another v. H.V.Sreenivasa Murthy*, 2010 (5) CTC 719.

15. A perusal of the first appellate Court judgment would suggest in paragraph 9 it framed the following point for consideration :

Whether the judgment and the decree passed by the trial Court were sustainable and the appeal was liable to be allowed ?

16. The point for determination framed by the first appellate Court was not specific and the same was superficial. However, the first appellate Court considered the entire evidence available on record and came to the conclusion that the plaintiffs proved their prima facie right over the suit property, by proving due execution of Exs.A-1 to A-3. The first appellate Court had taken into consideration the revenue documents produced by the plaintiffs, namely, Exs.B-4 and B-10 to B-12 and rendered a finding that the plaintiffs proved their possession over the suit property. The conclusion reached by the first appellate Court with regard to title and possession of the plaintiffs over the suit property was based on proper appreciation of the entire evidence available on record and all the issues, arising for consideration in the case, such as due execution of Exs.A-1 to A-3, possession of the plaintiffs, and



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the findings were rendered based on the evidence available on record. In such circumstances, this Court comes to the conclusion that there was a substantial compliance of the mandatory provision under Order 41 Rule 31 of the Code of Civil Procedure. In this regard, reference may be had to **G.Amalorpavam and Others v. R.C.Diocese of Madurai and Others,** reported in **2006 (3) SCC 224 = AIR ONLINE 2006 SC 540**. In the said case law, the Apex Court held that failure to frame points for consideration would not vitiate the judgment if there is substantial compliance of Order 41 Rule 31 of the Code of Civil Procedure. The relevant observation reads as follows :

"9. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient.



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Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination."

Therefore, the submission made by the learned Senior Counsel for the appellants regarding non-compliance of Order 41 Rule 31 is not acceptable to this Court.

17. The learned Senior Counsel for the appellants vehemently contended that the Will, relied on by the plaintiffs with regard to A-Schedule property, was not at all referred in the cause of action paragraph of the plaint and, therefore, the plaint was liable to be rejected for failure of cause of action.

18. A perusal of the plaint would suggest that Ex.A-1 was clearly mentioned in the plaint paragraph 5 and the execution of the Will was denied by the defendants in their written statement. In order to assess the cause of action, the entire averments in the plaint have to be taken into consideration. Merely because the Will had not been referred to in the cause of action



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paragraph of the plaint, we cannot come to the conclusion that there was a failure of cause of action and, therefore, the said submission of the learned Senior Counsel for the appellant is also not acceptable to this Court.

19. In view of the above discussion, I do not find any substantial question of law to interfere with the findings rendered by the Courts below. Accordingly, the Second Appeal stands dismissed. Consequently, the connected M.P.(MD) No.1 of 2009 is closed.

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NCC : Yes
Index : Yes
Internet : Yes

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To:

- 1.Subordinate Judge,
Aruppukottai.
- 2.District Munsif,
Aruppukottai.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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