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S.No.585 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	02.07.2025
<i>Pronounced on</i>	28.07.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.585 of 2019

Geetha

.. Appellant

versus

1.Subbammal

2.M.Ravi

3 Kuppammal

4.Mani

5.Ponnappa Reddy

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 29.02.2012 in A.S.No. 59/2012 of the learned Subordinate Judge, Tiruttani, confirming the judgement and decree dated 28.10.2009 in O.S. No.33/2007 on the file of the learned District Munsif of Pallipattu.

For Appellant : Ms.Zeenath Begam

For Respondents : Mr.M.V.Deenadayalan for R1 to R3



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JUDGMENT

This Second Appeal arises out of the judgment and decree dated 29.02.2012 in A.S.No. 59 of 2012 passed by the learned Subordinate Judge, Tiruttani, confirming the judgment and decree dated 28.10.2009 in O.S.No.33 of 2007 passed by the learned District Munsif, Pallipattu.

2.The Second appeal is at the instance of the first defendant in O.S.No.33 of 2007. The said suit was laid by the plaintiffs seeking relief of permanent injunction restraining the defendants from anyway interfering with the plaintiffs' peaceful possession and enjoyment of the suit property situated in Sri Kalikapuram Village, Pallipattu Taluk, Tiruvallur District in Gramanatham S.F.No.50/31 measuring 218 sq.mts., with the thatched house, terraced house constructed under Group House Scheme with electricity service connection.

3.For the sake of convenience, the parties herein after are referred to, as per their ranking in the trial Court.



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4.The case of the plaintiffs in brief is as follows:

The suit properties are the ancestral properties of the 2nd and 3rd plaintiffs' father who is the husband of the 1st plaintiff namely Munusamy Reddy. It is the vacant site with a small house constructed by the Government under the Group House Scheme in a portion of the property and the same is in possession and enjoyment of the plaintiffs. The patta and E.B connection stands in the name of the 2nd plaintiff and the house tax is also paid by him. The defendants without any right or interest in the suit property, attempt to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property. Hence, the suit.

5. The suit was resisted by the defendant contending that the patta was fraudulently obtained by the plaintiffs and that they do not have any right or title over the suit property. The plaintiffs' never lived the suit property and that they are living separately at Vallalar Sabapathy Nagar situated near the suit Village. The plaintiffs left the said Munusamy Reddy unattended and the said Munusamy also did not take care of his father Naina



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Reddy. The said Naina Reddy was taken care by one Govinda reddy. Hence, the said Naina Reddy executed a registered Will on 06.04.1968 in respect of the suit property. After the demise of Govinda Reddy his four children had equal rights in the suit property. The brothers and sisters of the defendant executed their $\frac{3}{4}$ shares in respect of the suit property under the registered sale deed dated 04.12.2006. Hence, the entire suit property belongs to the defendant. The house patta was transferred to the name of Gopinath and Gothandam, the sons of Govinda Reddy. Hence, the property is under exclusive possession of the 1st defendant. The 2nd and 3rd defendants have nothing to do with the suit property and they are unnecessarily impleaded in the suit. It is further stated that without seeking for declaratory relief, the suit for bare injunction is not maintainable. Hence, the suit is liable to be dismissed.

6. At trial, the plaintiffs were examined as P.W.1 and one Subramani was examined as P.W.2. 13 documents were marked on the side of the plaintiffs. The 1st defendant has examined as D.W.1 and one



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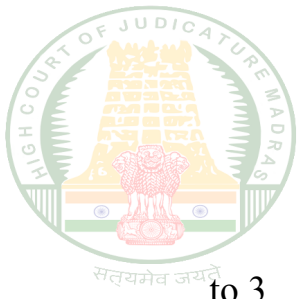
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Gothandaraman was examined as D.W.2. 5 documents were marked on the side of the defendants. The Commissioner's report and Sketch were marked as Exs.C.1 and C.2.

7. On consideration of the oral and documentary evidence adduced by the respective parties and the submissions putforth in the matter, the trial Court was pleased to decree the suit in favour of the plaintiffs as prayed for.

8.Challenging the same, the 1st appeal has been preferred by the 1st defendant and the 1st appellate Court, on appreciation of the materials available on record, both oral and documentary, and the arguments putforth by the respective counsel, was pleased to dismiss the appeal confirming the judgment and decree of the trial Court. Impugning the same, the 1st defendant has preferred this second appeal.

9.Heard, Ms.Zeenath Begam learned counsel for the appellant/1st defendant and Mr.M.V.Deenadayalan, learned counsel for the respondents 1

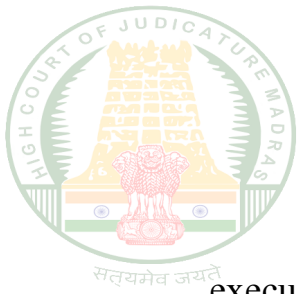


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10.The original suit is filed by the plaintiffs for the relief of permanent injunction claiming that they are in possession and enjoyment of the suit property, to establish their possession the plaintiffs have filed 13 documents. On the side of the 1st defendant she has relied upon a Will dated 06.04.1967 contending that the said Will was executed by one Naina Reddy in favour of her father Govinda Reddy, since he was taking care of Naina Reddy. The 1st defendant's brothers and sisters gave their 3/4th share in favour of the 1st defendant by executing a sale deed on 04.12.2006. Hence, the 1st defendant is alone in possession and enjoyment of the suit property. The alleged Will is marked as Ex.B.1. The patta and sale deed dated 04.12.2006 are marked as Exs.B.2 and B.3, the house tax receipts are marked as Exs.B.4 and B.5 respectively.

11.The trial Court as well as the First Appellate Court has categorically held that the plaintiffs have established their possession and enjoyment in the suit property and the defendants failed to prove the



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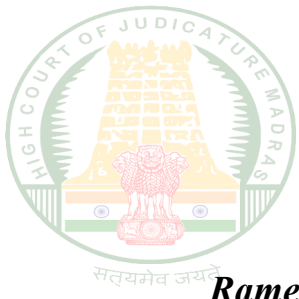
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execution of the alleged Will. On the side of the appellant, it was contended that the said Will was executed in the year 1967 and therefore, its genuineness cannot be questioned. As per Section 90 of Indian Evidence Act, documents more than 30 years old does not need any proof as laid down in the case reported in **1999 (3) MLJ 577** in which it was held that,

*" Section 90 of the Indian Evidence Act (1 of 1872)
the Court can presume that it was duly executed though it
is not obligatory on the part of the Court to have such
presumption, the Court has got the discretion to raise the
presumption under Section 90 of Indian Evidence Act."*

12.Thus, the argument urged on behalf of the appellant/defendant is that the propounded Will is a registered document which itself amounts to *prima facie* proof of the Will. This is wholly a misconceived argument. It is not the law that if a propounded Will is shown to be registered it amounts to *prima facie* proof of the Will.

13.The principle that a Will must be proven in accordance with Section 68 of the Indian Evidence Act, is firmly established in law. In



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Ramesh Verma V. Lajesh Saxena reported in (2017) 1 SCC 257, the Hon'ble Apex Court has held that requirement of proof of a Will in accordance with Section 68 is not done away with, even if the Will is not disputed by the opposite party. The relevant passage is extracted as hereunder:

" 13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement."



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20. *There can be no doubt with respect to the manner in which execution of a Will is to be proved. In the light of plethora of decisions including the decisions in Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, through Lrs.) and in Derek AC Lobo's case (supra) this position is well settled that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. It is not the case of the appellant that the Will dated 06.04.1990 is a registered one.*

21. *Now, Section 63 of the Succession Act reads thus:-*

"63. Execution of unprivileged wills. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:-



(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

22. Section 68 of the Evidence Act makes it clear that at least one attesting witness has to be examined to prove execution of a Will. It is true that in the case at hand DW2 was the attesting witness who was examined in Court. Therefore, the question is whether they had deposed to the



effect that the Will in question was executed in accordance with sub-rules (a) to (c) thereunder.

11. Similar law has been laid down by Supreme Court in the case of Dhanpat v. Sheo Ram (Deceased) through legal representatives and others, reported in (2020) 16 SCC 209 and in the case of V. Kalyanaswamy (Dead) by legal representatives and another v. L. Bakthavatsalam (Dead) by legal representatives and others, reported in (2021) 16 SCC 543.

12. The Supreme Court in the case of Bharpur Singh and others v. Shamsher Singh, reported in (2009) 3 SCC 687 has held that it may be true that Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c), Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.



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13. *The Supreme Court in the case of Niranjani Umeshchandra Joshi v. Mrudula Jyoti Rao and others, reported in (2006) 13 SCC 433 has held that mere proof that testator had signed the Will is not enough. It has also to be proved that testator has signed out of his free will having a sound disposition of mind and not a feeble and debilitated mind, understanding well the nature and effect thereof. The Court will also not refuse to probe deeper in the matter merely because propounder's signature on the Will is proved. Similar law has been laid down by Supreme Court in the cases of Savithri and others v. Karthyayani Amma and others, reported in (2007) 11 SCC 621, Balathandayutham and another v. Ezhilarasan, reported in (2010) 5 SCC 770, Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others, reported in (2005) 8 SCC 67 and Meenakshiammal (Dead) through legal representatives and others v. Chandrasekaran and another, reported in (2005) 1 SCC 280.*

50. Next, it was submitted by Mr. Gulati, and rightly so, that the benefit of Section 90 of the Evidence Act of presumption as to documents thirty years old could not have been given to the plaintiffs. As applicable in the State of Uttar Pradesh, Section 90A with the State amendment is reproduced



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below: "90-A.

(1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a Court of Justice, is produced from any custody which the court in the particular case considers proper, the court may presume that the original was executed by the persons by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement."

The explanation to sub-Section (1) of Section 90 will also apply to this Section."

51. Section 90A(1) provides that where a registered document or its certified copy being a part of the record of court is produced from the custody of court, the court may presume that the original was executed by the person by whom it is purported to have been executed. Section 90A(2), however, makes it clear that the presumption in Section 90A(1) will not be made if the said document def forms the basis of the suit. The defendants in the subject suit traced their title to the WILL. The WILL, therefore, formed the basis of the subject suit and hence no presumption under Section 90A(1)



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can be raised to the benefit of the defendants."

14. Therefore, the onus to prove the execution and validity of the Will lies upon the propounder as held in the judgement referred herein above. If the propounder succeeds in proving the execution of their Will, then the onus shifts on the person who alleges the Will has been forged. In the case on hand, the appellant/defendant failed to prove the execution and validity of the Will.

15. Hence, I do not find any error in the judgment and decree passed by the trial Court and the first Appellate Court in favour of the plaintiffs.

16. Having considered the material on record both oral and documentary and also the reasoning assigned by the trial Court and the First Appellate Court, I am of the opinion that there is no merit in this Second Appeal.

17. In this result, this Second Appeal is dismissed. No costs. The judgment and decree dated 29.02.2012 in A.S.No. 59 of 2012 passed by the learned Subordinate Judge, Tiruttani, is Confirmed and the judgment and



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decree dated 28.10.2009 in O.S.No.33 of 2007 passed by the learned

District Munsif, Pallipattu is confirmed.

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vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The Subordinate Judge, Tiruttani,
- 2.The District Munsif, Pallipattu
- 3.The Section Officer, VR Section, High Court, Madras

K.GOVINDARAJAN THILAKAVADI,J.



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