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Soudamini Vs. Visambharan

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Court : Kerala

Decided On : Feb-04-2014

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : Soudamini

Respondent : Visambharan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN TUESDAY, THE4H DAY OF FEBRUARY201415TH MAGHA, 1935 AS.No. 296 of 2002 ( ) ---------- AGAINST THE

JUDGMENT
IN OS11581995 of II ADDITIONAL SUB COURT, ERNAKULAM ========== APPELLANTS/DEFENDANTS:: ---------- 1. SOUDAMINI, AGED51YEARS, W/O. LATE VENUGOPALAN RESIDING AT SHINY NIVAS, (PALLICKAPARAMBIL) ALAPPATT ROAD, RAVIPURAM, KOCHI.

2. P.V.SHINY, D/O. LATE VENUGOPALAN AGED23YEARS, SHINY NIVAS (PALLICKAPARAMBIL) ALAPPATT ROAD, RAVIPURAM, KOCHI. BY ADV. SRI.T.RAJESH RESPONDENTS/PLAINTIFFS:: ----------
1. VISAMBHARAN, AGED59 NOBIL VIHAR EDAPPALLY TOLL, THRIKKAKARA

NORTH, KOCHI-24.

2. MRS.NIRMALA ULLASKUMAR D/O. LATE RAMAN, AGED39 WARRIAM VEEDU NAMBIAPURAM ROAD, PALLURUTHI. R1 & R2 BY ADVS. SRI.C.K.ARAVINDAKSHA MENON SRI.MVS.NAMBOOTHIRY SRI.KUMARASWAMY SARMA K.N. SRI.PRAKASH P.GEORGE THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON0402-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: SD S.S. SATHEESACHANDRAN, J., ---------- A.S. No.296 OF2002---------- Dated this the 4th day of February, 2014

JUDGMENT

Genuineness of Ext.B1 Will, which was disputed, and, upon which defendants resisted the suit claim for partition of plaintiffs, is the sole question involved in this appeal challenging the preliminary decree passed by learned II Additional Sub Judge, Ernakulam, in favour of plaintiffs.

2. Plaintiffs, two in number, and the predecessor of defendants, namely Venugopal, are the children of one Karthyayani. Admittedly, under a registered sale deed in 1961, Karthyayani obtained 5 cents of property in survey No. 940/7 in Ernakulam village. Later, she disposed by sale 1.5 cents in that property. She passed away on 25.03.1992. Plaintiffs laid the suit for partition, after the death of Venugopal, their brother, against defendants, his wife and daughter, seeking division of the plaint property and allotment of their share. Suit was resisted by defendants, both of them together, contending that late Karthyayani had executed Ext.B1 Will in favour of their A.S. No. 296/2002 2 predecessor Venugopal, and, plaintiffs have no right over the property.

3. Previously, the suit decreed ex-parte was challenged by defendants in appeal before this Court. Ex-parte decree was set aside and the case was remitted for fresh disposal on merits. On such remission, both sides adduced evidence, with defendants producing Ext.B1 Will and examining DW2, an attestor to prove that testament.

4. Learned sub judge appreciating the facts and circumstances and materials produced found that Ext.B1 will produced as mutilated with three corners of it burned out, cannot be accepted as a genuine will executed by late Karthyayani, and negativing the challenges of defendants preliminary decree was passed in the suit.

5. Learned counsel for defendants argued at length referring to some judicial authorities as well to contend that the reasonings taken by learned sub judge to hold that the will is not genuine, cannot be accepted. After perusing Ext.B1 will produced, I find challenge raised to the decree asserting the genuineness A.S. No. 296/2002 3 of the will does not call for serious consideration. Ext.B1 will is seen written on a stamp paper of the value of twenty rupees purchased by Karthyayani on 20.02.1990. Over and above the circumstance that Ext.B1 will was, admittedly, produced two days before the case came up for trial after remission, a cursory perusal of the stamp paper on which the will is typed would show that it could not have been admitted in evidence and it was liable to be impounded. Stamp paper on which the will is typed does not contain the seal impression with date, of the office of issue, which is a mandatory requirement under the Kerala Manufacture and Sale of Stamp Rules, 1960. Rule 33A of the above Rules reads thus: "All stamp papers of the value of one rupee and above issued out of Treasuries and sub-treasuries, shall bear, at the bottom, a seal showing the date of issue without which the paper shall not have any fiscal value, and shall be impounded if presented before any public servant authorised to impound such documents. The date seal shall be affixed in the presence and immediate supervision of the Treasurer/Assistant Treasurer. At the end of the day's works, the device used for affixing the seal shall be sealed and deposited in the strong room for safe A.S. No. 296/2002 4 custody." (Proviso not required and omitted) When that be the case, Ext.B1, the will written on a stamp paper, which does not contain the seal impression, with the date of issue, of the treasury could not have been received in evidence. That document tendered in evidence was liable to be impounded. When such be the case, I find challenge against the preliminary decree passed by the court based on Ext.B1 will has to fail. The court below shall take appropriate steps on return of records for impounding Ext.B1. Appeal is dismissed directing both sides to suffer their costs. Sd/- S.S. SATHEESACHANDRAN JUDGE sd // True

Copy // P.A. To Judge

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