IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2828 OF 2022
(arising out of Special Leave Petition (C) No.35002 of 2012)

SAROJA AMMAL **... APPELLANT(S)**

Versus

M DEENADAYALAN & ORS. **... RESPONDENT(S)**

O R D E R

Leave granted.

2. Aggrieved by the judgment and decree of the High Court of Judicature at Madras in a second appeal, reversing the concurrent judgments and decrees of both the Courts below and thereby dismissing her suit for declaration of title and injunction, the original plaintiff has come up with the above appeal.

3. We have heard Shri Jayanth Muth Raj, learned senior counsel for the appellant and Mr. Harshvir Pratap Sharma, learned senior counsel for the first respondent.

4. The appellant filed a suit in O.S. No.25 of 2004 on the file of the sub-court, Krishangiri for a declaration of title and for permanent injunction in respect of certain properties. Her claim was based upon the last Will and Testament dated 15.07.1992 of one Chi. Munisamy Chettiar, whom the appellant claimed to be her husband.

5. The six sons and four daughters of Munisamy Chettiar allegedly born through his first wife were impleaded as defendant Nos.1 to 10 in the suit. The defendant Nos.2 and 3 filed a written statement, which was adopted by defendants 1, 5 and 7 to 10, contending that the appellant was not the wife of their father and that she was actually the legally wedded wife of one Marimuthu Gounder and that she also gave birth to two daughters in her marriage. Though defendants 4 and 6 filed a separate written statement, they also opposed the suit on the same grounds as

the other defendants did. The truth and validity of the Will was also questioned by the defendants.

6. The first respondent herein, who was the sixth defendant in the said suit, filed an independent suit in O.S No.35 of 2004, seeking a declaration of his title and for a permanent injunction, against the appellant herein.

7. Both these suits were taken up together and by a judgment and decree dated 30.06.2008, the trial Court decreed the suit filed by the appellant herein, holding that the appellant was the second wife of the testator and that the Will stood proved. The independent suit filed by the first respondent herein was also decreed, as the same concerned one item of property.

8. Aggrieved by the decree passed in the appellant's suit, the first respondent herein filed a regular first Appeal in A.S No.26 of 2008. But the first appellate Court dismissed the appeal by a judgment and decree dated 23.12.2009. Therefore, the first respondent herein filed a second appeal on the file of the High Court of Judicature at Madras. The High Court framed two

substantial questions of law as arising for consideration, which are as follows:

> *"1. Whether the presumption drawn by the courts below that both Munisamy Chettiar and Saroja Ammal were living as husband and wife for the long time?*
>
> *2. Whether Ex.A9 has been proved as required under Section 68 of the Evidence Act, coupled with Section 63 of the Indian Succession Act?"*

9. On the first question of law, the High Court held that, ***(i)*** long and continuous cohabitation of a man and a woman; ***(ii)*** their treatment as such for a number of years by the society; and ***(iii)*** the fact that they are living under the same roof, may ordinarily lead to a presumption that they are living as husband and wife, but the benefit of such presumption will not be available if either of the spouses had been married to another person. Since on facts, the appellant was married to one Marimuthu Gounder and had also borne two children for him, the High Court answered the first question of law against the appellant herein.

10. The second question of law was also answered by the High Court against the appellant on the ground that there were suspicious circumstances surrounding the execution of the Will and that the Will cannot be taken to have been proved in accordance with law. As a result of both the questions of law being answered against the appellant, the High Court allowed the second appeal filed by the first respondent herein. Therefore, the plaintiff, who is back to square one, is before us.

11. At the outset we should say that the question whether the appellant was the legally wedded wife or was in an illicit relationship is not germane to decide whether the Will propounded by her is true, genuine and valid. In fact this position has been understood clearly by the High Court, as seen from paragraph 12 of the impugned judgment, where the High Court has stated that irrespective of whether the plaintiff was the wife of Munisamy Chettiar or not, she will be entitled to the relief of declaration and injunction, if she was able to prove that the Will was executed by the testator in a sound and disposing state

of mind. Therefore, it is enough for us to confine our discussion only to the second question of law framed by the High Court for consideration.

12. The appellant examined herself as PW-1 and marked the Will in question as *Exhibit A-9*. It was a registered Will. One of the attestors of the Will was examined as PW-2. To show that the testator was in a sound and disposing state of mind, the appellant also examined three witnesses who had purchased a few properties from the testator both before and after the execution of the Will. All of them stated that the testator was in a sound and disposing state of mind.

13. The defendants placed heavy reliance upon *Exhibit B-21*, which is a medical report and discharge summary of the testator-Munisamy Chettiar. But the same revealed that the testator just had high fever and diabetic foot, two months before the execution of the Will. Actually the testator died only after four years of the execution of the Will, in September, 1996.

14. The trial Court and the first appellate Court also took note of *Exhibit A-13*, which was a complaint lodged by the testator on 12.05.1986 against his sons with the Director General of Police. In the said complaint the testator had expressed fear for his life and properties. A registered partition deed dated 21.01.1978 marked as *Exhibit A-2* showed that the testator and his six sons had partitioned the family properties and that what was bequeathed by the testator through the Will was only the properties that fell to his share.

15. In view of all the above factors, the trial Court and the first appellate Court held that the Will was proved in accordance with law and that there were no suspicious circumstances. But unfortunately the High Court re-appreciated the entire evidence all over again and came to an independent conclusion that there were suspicious circumstances surrounding the execution of the Will. It appears that the suspicion that the defendants were able to create in the mind of the learned Judge about the character of

the appellant, led to the conclusion that there were suspicious circumstances surrounding the execution of the Will.

16. However, defending the judgment of the High Court, it was contended by the learned senior counsel for the first respondent that once the relationship between Munisamy Chettiar and the appellant, as claimed by her, was proved to be false, the very foundation of the Will propounded by the appellant would go and that there was ample material on record to show that the appellant could not have been living with the testator. It is further contended by the learned senior counsel for the first respondent that the trial Court and the first appellate Court grossly erred in drawing certain presumptions on the basis of a registered partition deed of the year 1978 between Munisamy Chettiar and his sons and that even the police complaint was only against two sons. Drawing our attention to *Exhibit B-21*, the learned senior counsel for the first respondent contended that Munisamy Chettiar could not have been in a sound and disposing state of mind at the time of the alleged execution of the

Will and that the trial Court and the first appellate Court overlooked an important fact namely that Munisamy Chettiar had a problem with his eye-sight. According to the learned senior counsel for the first respondent, the High Court had the power under Section 73 of the Evidence Act, 1872 to compare the signatures and render a finding and that the active participation of the appellant in the execution of the Will and the non-examination of one of the attestors were all suspicious circumstances. The total non-exclusion of the legal heirs, according to the learned senior counsel for the first respondent was also one of the important aspects that has been overlooked by the trial Court and the first appellate Court. In support of his contentions, the learned senior counsel for the first respondent also relied upon the decisions of this Court in ***Pentakota Satyanarayana and Others*** *vs.* ***Pentakota Seetharatnam*** **and Others**[1] and ***Indra Sarma*** *vs.* ***V.K. V. Sarma***[2]**.**

1 (2005) 8 SCC 67
2 (2013) 15SCC 755

17. But all the above arguments of the learned senior counsel for the first respondent revolve only around facts and the appreciation of evidence. As we have pointed out earlier, the truth and validity of the Will propounded by the appellant did not depend upon whether the appellant was a legally wedded wife or mistress of the testator or whether she was in an unacceptable relationship with the testator. The High Court itself accepted this position in paragraph 12 of the impugned judgment. In any case, the fact that the appellant was living with the testator for a long period of time was borne out by the evidence on record and the findings recorded by the Courts concurrently in this regard, could not have been over turned by the High Court by framing a question of law.

18. Insofar as the Will is concerned, the fact ***(i)*** that all the sons had been provided their respective shares under a registered partition deed of the year 1978; ***(ii)*** that the testator in fact had given a police complaint against his own sons; ***(iii)*** that none of the children of the testator except defendant Nos.2 and 6 went

into the witness box to support the stand taken in written statement; ***(iv)*** that the Will was a registered Will of the year 1992, after the execution of which the testator lived for four years; ***(v)*** that Exhibit B-21 hospital record merely shows that the testator had high fever and diabetic foot, two months before the execution of the Will; and ***(vi)*** that the appellant examined at least one of the attestors of the Will, were sufficient for the trial Court and the first appellate Court to come to the conclusion that the Will was true and valid and that there were no suspicious circumstances. The High Court re-appreciated the very same evidence to come to a different conclusion in a second appeal under Section 100 of the Code of Civil Procedure, 1908. Therefore, the impugned judgment is liable to be set aside.

19. The decision in ***Pentakota Satyanarayana*** (supra), turned entirely on facts. In that case, the propounder of the Will was found by all the Courts to have proved the execution of the Will by the testator when in a sound and disposing state of mind. But the High Court held that there were suspicious circumstances.

While over turning the verdict of the High Court, this Court indicated the circumstances which falsified the claim of suspicious circumstances.

20. Similarly the decision in ***Indra Sarma*** (supra) relied upon by the learned senior counsel for the first respondent, arose out of a question whether a live-in relationship would amount to a domestic relationship within the meaning of the said expression under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005. This decision will not take the first respondent anywhere, since the absolute owner of a property is entitled even to bequeath his properties in favour of strangers.

21. Therefore, in fine, the appeal is allowed, the impugned judgment and decree of the High Court are set aside and the judgment and decree of the trial Court and the first appellate Court are restored.

.....J
(Hemant Gupta)

.....J
(V. Ramasubramanian)

New Delhi
April 08, 2022

ITEM NO.32 COURT NO.11 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 35002/2012

(Arising out of impugned final judgment and order dated 29-03-2012 in SA No. 313/2010 passed by the High Court of Judicature at Madras)

SAROJA AMMAL Petitioner(s)

VERSUS

M.DEENADAYALAN & ORS. Respondent(s)

Date : 08-04-2022 This petition was called on for hearing today.
[The reasoned order is uploaded on 12.04.2022]

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Jayanth Muth Raj, Sr. Adv.
Mr. Roy Abraham, Adv.
Mrs. Malavika J., Adv.
Mr. Sureshan P., AOR

For Respondent(s) Mr. Harshvir Pratap Sharma, Adv.
Mr. B. Karunakaran, Adv.
Mr. S. Gowthaman, AOR

UPON hearing the counsel the Court made the following
O R D E R

The reasoned order is placed on the file and is uploaded on 12.04.2022.

Pending application(s), if any, also stand disposed of.

(SWETA BALODI) (RENU BALA GAMBHIR)
COURT MASTER (SH) COURT MASTER (NSH)
(Signed order is placed on the file)

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For Petitioner(s) Mr. Jayanth Muth Raj, Sr. Adv.
Mr. Roy Abraham, Adv.
Mrs. Malavika J., Adv.
Mr. Sureshan P., AOR

For Respondent(s) Mr. Harshvir Pratap Sharma, Adv.
Mr. B. Karunakaran, Adv.
Mr. S. Gowthaman, AOR

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the parties.

Arguments concluded.

Leave granted.

The appeal is allowed.

Detailed Judgment/Order to follow.

Short written synopsis, if any, be filed by the parties by tomorrow i.e. 09.04.2022.

(SWETA BALODI) (RENU BALA GAMBHIR)
COURT MASTER (SH) COURT MASTER (NSH)