

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01 / 07 / 2025

JUDGMENT PRONOUNCED ON : 06 / 10 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.343 OF 2018

P.Eswari

... Appellant/
Plaintiff

Vs.

1. Nallappa Gounder (Died)
2. N.Thulasimani (Died)
3. T.Pushpa
4. V.Indhumathy

... Respondents /
defendants

Note : Respondent No.1 passed away during the pendency of the Original Suit and at that time his legal representatives were already on record as plaintiff and second defendant. During the pendency of this Appeal Suit, Respondent No.2 passed away. Respondents 3 and 4 were brought on records as legal representatives of the deceased -Respondent No. 2 vide Order of this Court dated October 25, 2021, made in C.M.P. No.12854 of 2021 in A.S.No.343 of 2018.



A.S.NO.343 of 2018

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated February 09, 2018 passed in O.S.No.53 of 2016 by the learned II Additional District and Sessions Court, Erode.

For Appellant : Mr.Arun Prasath
for Mr.M.Guruprasad

For Respondents : Passed away
Nos.1 and 2

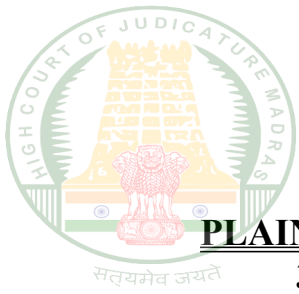
For Respondents : Mr.N.Manokaran
Nos.3 and 4

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated February 09, 2018 passed in O.S.No.53 of 2016 by the 'II Additional District and Sessions Court, Erode' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

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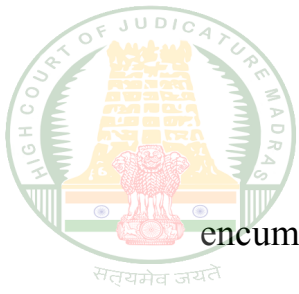


PLAINTIFF'S CASE

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3. The plaintiff is the daughter of first defendant and late Thirumayammal. The second defendant is son of first defendant and also brother of plaintiff. The Suit Item No.1 was purchased by first defendant and Thirumayammal using joint family income in the name of Thirumayammal under registered Sale Deed dated March 04, 1970. Later, out of the rental income from Suit Item No.1, Thirumayammal purchased Suit Item No.2 in her name vide Sale Deed dated July 03, 1991.

3.1. The plaintiff and defendants constitute a Hindu undivided joint family and are in joint possession and enjoyment of the Suit Properties without effecting any partition. Thirumayammal passed away intestate on June 18, 2008, leaving behind plaintiff and defendants as her legal heirs, who are entitled to a 1/3 share each in the Suit Properties. Despite various demands made for amicable partition by the plaintiff, the defendants refused. The plaintiff made a final demand for partition on March 20, 2016, but the defendants proclaimed that they would not allot any share to the plaintiff and intended to encumber the Suit Properties. The plaintiff is residing in a small portion of Suit Item No.1 along with her family. Therefore, the plaintiff filed the present Suit for partition, separate possession, and permanent injunction restraining the defendants from



encumbering and alienating the Suit Properties.

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DEFENDANTS' CASE

4. The defendants filed separate written statements, the sum and substance of which are as follows:

4.1. The Suit Properties are the absolute properties of late Thirumayammal, purchased from her separate funds and not from joint family income. Suit Item No.1 was purchased by Thirumayammal under a registered Sale Deed dated March 4, 1970. Suit Item No.2 was purchased by Thirumayammal from her own funds, including rental income from Suit Item No.1 under registered Sale Deed dated July 3, 1991. There was no contribution from first defendant in the purchase of Suit Item Nos.1 and 2, and he had no right, title, or possession over the same.

4.2. Thirumayammal on November 8, 1984 executed a registered Will bequeathing the entire Suit Item No.1 absolutely in favour of second defendant.

4.3. Thereafter, Thirumayammal executed another registered Will dated May 20, 2008, revoking her earlier Will and bequeathing Suit Item



No.1 in favour of the second defendant, with a limited right to the plaintiff to reside in a small house on the eastern of Suit Item No.1 during the plaintiff's life time without any power of alienation.

4.4. Thereafter, Thirumayammal passed away on June 18, 2008. Upon her demise, the Will dated May 20, 2008 came into effect and the second defendant became entitled to Suit Item No.1 with the plaintiff having life estate over a small house therein.

4.5. The plaintiff is not a joint family member along with defendants as alleged. There was no joint family property and there was no joint family income / funds. Hence, the plaintiff is not entitled to 1/3rd share in Suit Item No.1 as claimed by her. Stating so, the defendants prayed for dismissal of the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues on July 02, 2016:-

1. *Is it true that the suit properties are to be subjected to partition as claimed?*



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2. *Is the plaintiff entitled to the relief of partition of the suit properties? If so to what share?*
3. *Is the Will of Thirumayee ammal dated May 20, 2008, valid, genuine and binding upon the plaintiff?*
4. *To what other reliefs, the parties are entitled to?"*

6. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and one Mr. Thangavel was examined as P.W.2 and Ex-A.1 to Ex-A.4 were marked. On the side of the defendants, the 2nd defendant was examined as D.W.1 and Ex-B.1 to Ex-B.4 were marked. Further, one Mohan was examined as D.W.2 and one Sumathi was D.W.3; they were the attesting witness and scribe respectively to the Will dated May 20, 2008.

7. Pending the Original Suit, the first defendant passed away intestate. His legal representatives were already on record, namely the plaintiff and the second defendant.

8. After full-fledged trial, the Trial Court held that Ex-B.4 - Will dated May 20, 2008 is genuine, valid and binding on the plaintiff and



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accordingly, dismissed the Suit *qua* Suit Item No.1. Further held that Suit Item No.2 alone is available for partition. Accordingly, the Trial Court concluded that the plaintiff was entitled to $\frac{1}{2}$ share in Suit Item No.2 and passed a Preliminary Decree to that effect.

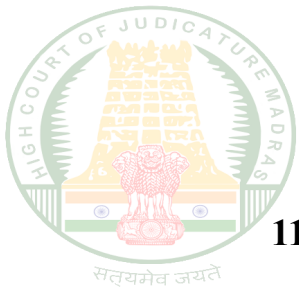
FIRST APPEAL

9. Feeling aggrieved, the plaintiff has preferred this Appeal Suit under Section 96 read with Order XLI Rule 1 of the CPC.

10. During the pendency of this Appeal Suit, the second defendant (Respondent in the Appeal Suit) passed away and hence, his legal representatives, namely wife – Pushpa and daughter – Indhumathi were brought on record vide Order of this Court dated October 25, 2021 made in Civil Miscellaneous Petition No.12854 of 2021 in the main Appeal Suit.

ARGUMENTS:

11. The arguments of Mr.Arun Prasath for Mr.M.Guruprasad, learned Counsel for the appellant / plaintiff can be summarised as follows:



11.1. Ex-B.4 is the certified registration copy of the Will dated May 20, 2008. The original of Ex-B.4 - Will has not been produced. There is no foundational pleadings about the original of Ex-B.4. Without foundational pleadings, secondary evidence is not admissible, in other words, certified copy / registration copy of the Will is not admissible.

11.2. D.W.2, who is said to be one of the attestor of Ex-B.4 – Will was not aware of its contents. Hence, the other attesting witness of Ex-B.4 – Will ought to have been examined, but the defendants’ side failed to do so. Since other witness was not examined, Ex-B.4 is not proved as per Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872.

11.3. The Trial Court permitted the defendants’ side to cross-examine their own witness namely D.W.2 when the conditions stipulated under Section 154 of Indian Evidence Act, 1872 are not satisfied. The Trial Court erred in doing so.

11.4. The Trial Court’s finding that the Suit Properties are



absolute/separate properties of Thirumayee Ammal is incorrect.

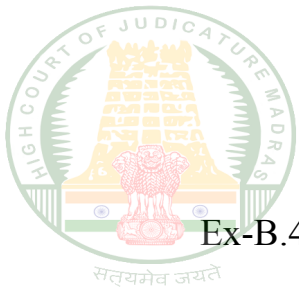
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11.5. In support of his contentions, he relied on the Judgment of Hon'ble Supreme Court in *Janki Narayan Bhoir -vs- Narayan Namdeo Kadam*, reported in *(2003) 2 SCC 91*.

11.6. The Judgment and Decree of the Trial Court is erroneous and deserves to be interfered with. Accordingly, he would pray to set aside the Judgment and Decree of the Trial Court.

12. On the other hand, Mr.N.Manokaran, learned Counsel for the respondents 3 and 4 would invite the attention of this Court to the evidence. of P.W.1 and argue that the plaintiff is well aware of the execution of Ex-B.4 – Will dated May 20, 2008 by Thirumayammal at the time of Thirumayammal's demise itself.

12.1. He would further argue that Thirumayammal had executed Ex-B.3 – Will dated November 8, 1984 bequeathing the entire Suit Item No.1 in favour of second defendant absolutely. The subsequent Will (Ex-B.4) was executed bequeathing Suit Item No.1 in favour of second defendant with life interest over a small house on the eastern portion thereof to the plaintiff. She consciously omitted Suit Item No.2 from her Will. Hence,



Ex-B.4 – Will is natural and there are no suspicious circumstances surrounding it.

12.2. He would further argue that Ex-B.4 is a registered Will and hence only a formal proof is required. One of the attesting witness, namely Mohan, examined as D.W.2, is a close relative of the testatrix. He is the nephew of the testatrix. His chief evidence clearly proves the execution of Ex-B.4 – Will.

12.3. He would further argue that D.W.2 was later won over by the plaintiff and consequently, D.W.2 refused to appear for cross-examination. Subsequently, through coercive action by the Court, he was arrested and produced before Court for cross-examination. Since he resiled from his earlier statements, he was cross-examined by the defendants' side after obtaining necessary permission from the Court.

12.4. He would further argue that, in addition to D.W. 2, the scribe of Ex-B.4 – Will was also examined. Her evidence is also clear and trustworthy and there is no reason to reject the same.

12.5. Before commencement of trial, on June 15, 2017, the plaintiff

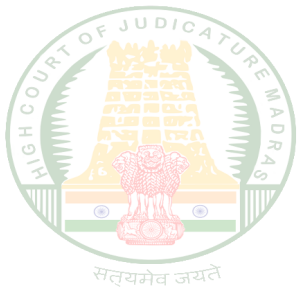


gave notice to the defendants calling upon them to produce the original

Will. On June 30, 2017, the defendants filed a memo stating that the original Will is with the plaintiff. The said memo has been recorded by the Trial Court. The plaintiff did not deny or give any reply to the said memo. The second defendant in his chief examination, has clearly stated that the custody of the original of Ex-B.4 - Will is with the plaintiff. The Trial Court rightly dismissed the Suit *qua* Suit Item No.1 by holding that Ex-B.4 – Will is true, valid and binding on the plaintiff. There is no need to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.

12.6. He would rely on the following decisions in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in ***Pentakota Sathyanarayana -vs- Pentakota Seetharathnam***, reported in ***(2005) 8 SCC 67***;
- (ii) Judgment of Hon'ble Supreme Court in ***Sridevi -vs- Jayaraja Shetty***, reported in ***(2005) 2 SCC 784***;
- (iii) Judgment of this Court (Division Bench) in ***Janaki Devi -vs-***



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Vasanthi, reported in **2005 (1) CTC 11**;

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(iv) Judgment of this Court (Division Bench) in *Dr.Shantha -vs- Sharada*, reported in **2003 (4) CTC 470**.

DISCUSSION:

13. Heard on either side. Perused the evidence available on record.

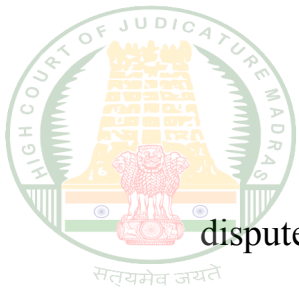
The following points arise for consideration in this Appeal Suit:

(i) Whether the Suit Properties are joint family properties as contended by the plaintiff or self-acquired properties of the mother - Thirumayammal ?

(ii) Whether Ex-B.4 – Will dated May 20, 2008 is true, genuine and valid ?

Point No.(i)

14. Ex-A.1 = Ex-B.1 - registered Sale Deed dated March 04, 1970 *qua* Suit Item No.1 and Ex-A.2 = Ex-B.2 - registered Sale Deed dated July 03, 1991 *qua* Suit Item No.2 stands in the name of Thirumayammal . No



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dispute with the above facts. It is the case of the plaintiff that there existed a joint family consisting of the first defendant, Thirumayammal, second defendant and the plaintiff at the time of Ex-B.1, and Suit Item No.1 was purchased using the joint family funds, jointly by Thirumayammal and first defendant, in the name of Thirumayammal. Further, out of the rental income from Suit Item No.1, Suit Item No.2 was purchased by Thirumayammal and hence, it is also a joint family property. That being the case of the plaintiff, the defendants' case is that Suit Properties are self-acquired / absolute properties of Thirumayammal and there existed no joint family income, funds or properties as contended by the plaintiff.

15. The plaintiff who pleads that Suit Item No.1 was purchased out of joint family income bears the burden to prove the existence of joint family properties and surplus income therefrom and / or joint family income and surplus thereof, before Ex-B.1. Other than the pleadings, there is nothing available on record to show such existence before Ex-B.1. Further, at the time of Ex-B.1 *i.e.*, in 1970, as per the plaint cause title and the evidence of P.W.1 / plaintiff, the plaintiff was below 10 years and the second defendant was about 6 years old. It is improbable that they contributed to the joint family income in any manner at such tender ages.



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When there is no proof that Suit Item No.1 is a joint family property, Suit Item No.2 which even as per the plaintiff was purchased out of the rental income from Suit Item No.1, cannot be said to be a joint family property.

16. Further case of the plaintiff is that Suit Properties was jointly purchased by Thirumayammal and first defendant, in the name of Thirumayammal. The first defendant in his written statement has clearly pleaded that the Suit Properties do not belong to him in any manner. The plaintiff in her evidence has stated she and her father had no animosity against each other, and hence, there is no reason for first defendant to file written statement against the interest of the plaintiff contrary to truth. Moreover, there is no pleadings or evidence available on record to show that first defendant had substantial income from any source to purchase properties. Nothing could be found from a perusal of Ex-B.1 and Ex-B.2 to show that first defendant was involved in the purchase of Suit Properties in any manner. As a matter of fact, he has not even a witness to Ex-B.1 and Ex-B.2. P.W.1 in her evidence has clearly deposed that her father had no property inherited from his father side (என் தகப்பனாருக்கு பிதுராஜித சொத்துக்கள் எதுவும் இல்லை என்றால் சரிதான்); and that it is a well-known fact in her village that her mother is a smart and able person who was

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running a milk vending business with 12 buffaloes. From the above it is clear that Thirumayammal had her own income and in view of the aforesaid admissions made by first defendant and the plaintiff, it can only be concluded that Thirumayammal purchased Suit Item No.1 out of her own income.

17. For argument sake, even while assuming Suit Properties were purchased by first defendant in the name of Thirumayammal, it can only be presumed to be for the benefit of Thirumayammal and not first defendant, as the first defendant has not taken such a stand; the first defendant on the other hand, has categorically pleaded that he has no title or right over the Suit Properties. When the first defendant has not taken a stand that the Suit Properties were purchased by him out of his own exertions for his benefit, but in the name of Thirumayammal, the plaintiff is precluded from taking such a stand [See Judgment of Hon'ble Supreme Court in **Gangamma -vs- Nagarathinamma**, reported in (2009) 15 SCC 756 and the Judgment of this Court (Division Bench) in **Parvathi Ammal -vs- Solai Ammal**, reported in 1997-2-LW-908]. Hence, such an assumption would also fail. Therefore, the contention of the plaintiff that Suit Item No.1 was jointly purchased by Thirumayammal and first defendant, in the name of



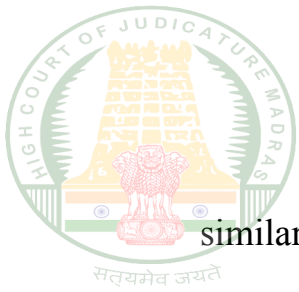
Thirumayammal, has no legs to stand.

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18. Thus, neither is there any evidence available on record to show that Suit Properties are joint family properties nor is there any to show that the Suit Properties were purchased jointly by first defendant and Thirumayammal or by first defendant in the name of Thirumayammal for his own benefit. Hence, this Court is of the view that the Suit Properties are self-acquired and absolute properties of Thirumayammal. **Point No.(i) is answered accordingly in favour of defendants and against the plaintiff.**

Point No.(ii)

19. As held above, the Suit Properties are absolute properties of Thirumayammal vide Ex-B.1 and Ex-B.2 – Sale Deeds. Hence, Thirumayammal had testamentary capacity to execute Will in respect of the same. The first defendant in his written statement pleaded that Thirumayammal passed away leaving behind a Will executed while in a sound and disposing state of mind out of her free will bequeathing Suit Item No.1 in favour of the second defendant absolutely with life interest in respect of a small house therein in favour of plaintiff without any power of alienation. The second defendant in his written statement as well has made



similar pleadings. In addition, he has extracted the operative portions of the aforesaid Will dated May 20, 2008 and annexed a certified registration copy (scanned) of it along with written statement (later marked as Ex-B.4), besides pleading about the earlier registered Will dated November 8, 1984. Upon the demise of Thirumayammal, the Will dated May 20, 2008, the plaintiff is residing in the small house on the eastern side of Suit Item No.1. The above are the categorical pleadings made on the defendants' side.

20. To be noted, the plaintiff did not file any rejoinder or reply to the written statements filed by the defendants, which is nonetheless not mandatory. Based on the pleadings, issues were framed on July 02, 2016 and one among them, the third issue, was *“Is the Will of Thirumayee ammal dated May 20, 2008, valid, genuine and binding upon the plaintiff”*. On June 15, 2017, when the case was posted for trial, the plaintiff's side issued a memo of notice calling upon the defendants to produce the original of Ex-B.4 - Will dated May 20, 2008. The defendants' side filed reply a memo stating that the same is under the custody of the plaintiff. The plaintiff did not submit any reply denying or controverting the

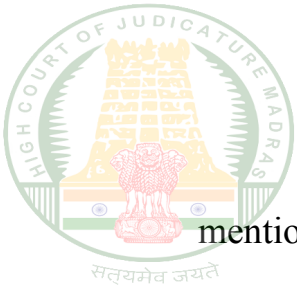


averments made in the reply memo.

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21. Further, from the evidence of P.W.1 / plaintiff, it could be clearly understood that she had the knowledge of Ex-B.4 – Will at the time of her mother's demise. P.W.1 has deposed that immediately after the demise of her mother, she sought for her proportionate share in the rental income from Suit Item No.1 which the second defendant refused citing that Suit Item No.1 has been bequeathed to him under Ex-B.4 – Will. Further, from a bare reading of Ex-B.4 – Will, it is discernible that Thirumayammal and the plaintiff, both are residing in the Suit Item No.1 at the time of execution of Ex-B.4 – Will, which increases the likelihood of the plaintiff being aware of the execution of Ex-B.4 - Will.

22. Though the defendants in their written statement omitted to plead that the original of Ex-B.4 – Will is under the custody of the plaintiff, they have stated so in the reply memo before the commencement of trial. Further, the registration copy (scanned) of the Will dated May 20, 2008 (Ex-B.4) was marked in open Court in the presence of the plaintiff's side Counsel by the second defendant, without any objection from the plaintiff's side. Further, D.W.1 / second defendant has deposed in his chief examination that the original of Ex-B.4 lies with the plaintiff. Further, as



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mentioned above, the plaintiff and the testatrix were residing in the Suit

Item No.1 at the time of execution of Ex-B.4 and this, coupled with the fact that the plaintiff was given life interest, increases the probability of the original of Ex-B.4 being under the custody of the plaintiff. From the above, especially the fact that the plaintiff did not deny or controvert or reply to the averments made in the reply memo, it appears that the custody of the original of Ex-B.4 – Will is with the plaintiff. As per Section 65 (a) of the Indian Evidence Act, 1872, when the original of a document appears to be in the possession of the person against whom it is sought to be proved, then secondary evidence is admissible. Hence, the secondary evidence viz., Ex-B.4 –registration copy (scanned) of the Will dated May 20, 2008 is admissible in evidence.

23. Coming to the proof of Ex-B.4 – Will, it has to be noted that the plaintiff did not specifically deny the testamentary capacity and execution of Ex-B.4 – Will in a sound state of mind. P.W.1 in her evidence has deposed that she is contesting the Will only on an assumption that it is not genuine. Relevant extract is hereunder:

“எனக்கும், என் அப்பாவிற்கும் விரோதம் எதுவும்
இல்லை. இந்த வழக்கில் என் தகப்பனார் என்ன



எதிர்வாதம் செய்திருக்கிறார் என்பதை தெரிந்து கொள்ளவில்லை. 2ம் பிரதிவாதியான என் தம்பி என்ன எதிர்வாதம் செய்திருக்கிறார் என்று என் வழக்குரைஞர் சொல்லித்தொரிந்து கொண்டேன். 2ம் பிரதிவாதியின் எதிர்உரைக்கு நான் பதில் உரை எதுவும் தாக்கல் செய்யவில்லை. என் அம்மா உயில் எழுதி வைத்திருக்கிறாரா என்று நான் விசாரிக்கவில்லை. என் அம்மாவின் உயில் பதிவு செய்யப்பட்டுள்ளது என்று சொன்னால் எனக்கு தெரியாது. என் அம்மாவின் உயிலை நான் பார்க்கவில்லை. என் மகன் வளர்ந்து விட்டான். என் மகனையும் உயிலை பற்றி விசாரிக்க சொல்லவில்லை. உயில் பொய்யானது என்று அனுமானத்தில் சொல்லுகிறேன் என்றால் சரிதான். என் அம்மா எழுதி வைத்ததாக 2ம் பிரதிவாதி சொல்லும் உயில் தாவா 1ம் அயிட்டம் சொத்தான வீட்டில் தென்புறத்தில் கழிகோட்டில் இருக்கும் பகுதியில் நான் என் ஆயுள் காலம் வரை குடியிருந்து கொள்ள வேண்டும் என்றும், எனக்கு பின்னிட்டு அதை என் தம்பி அடைந்து கொள்ள வேண்டும் என்றும் என் அம்மா உயில் எழுதி வைத்துள்ளார் என்று சொன்னால் அதைப்பற்றி எனக்கு தெரியாது.”

24. Now this Court shall look into some relevant facts. Ex-B.3 – registered Will dated November 8, 1984, the earlier Will of



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Thirumayammal whereby she bequeathed Suit Item No.1 absolutely in favour of second defendant without any life interest for the plaintiff, contains a recital that the testatrix had conducted the marriage of her daughter with all the *Seer*. Thus, it can be understood that the plaintiff was married before Ex-B.3. To be noted, the plaintiff did not categorically deny Ex-B.3 anywhere. In her evidence, P.W.1 had deposed that in her marriage, she had a son and a daughter, that her husband had no property and that he entered into a relationship outside of marriage. It was in this scenario, Thirumayammal executed Ex-B.4 – Will dated May 20, 2008 revoking Ex-B.3 and bequeathing Suit Item No.1 in favour of second defendant subject to the life interest of the plaintiff in respect of the small house on the eastern side thereof. Suit Item No.1 is a plot measuring 3080 sq. ft. containing two houses (one on the eastern side and one on the western side) and a weaving shed, while Suit Item No.2 is a vacant house site measuring 1068 sq. ft.

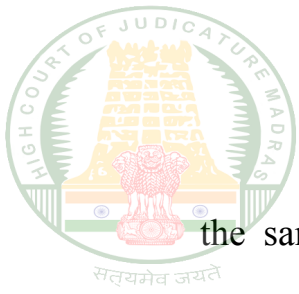
25. The intention of the testatrix could be gathered from the above facts. When her daughter was happily married and quite settled, she bequeathed the entire Suit Item No.1 absolutely in favour of second defendant leaving no life interest for the plaintiff. Due to the subsequent



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developments in the marital life of the plaintiff, as the plaintiff's husband who had no property entered into a relationship outside of marriage and the plaintiff had two children to take care of, the testatrix revoked her earlier Will (Ex-B.3) and bequeathed Suit Item No.1 in favour of second defendant giving life interest over a house therein in favour of plaintiff through Ex-B.4 – Will dated May 20, 2008. *Qua* Suit Item No.2, she did not execute any Will at any point of time. Thus, the testamentary disposition is very natural and the intention of the testatrix is clear; she wanted to ensure the basic need of shelter to her daughter, the plaintiff, who is not in a happy marriage. In these circumstances, as the testamentary capacity of the testatrix and execution of Ex-B.4 – Will in a sound state of mind are not denied and as testamentary disposition is natural and the intention of the testatrix is clear, this Court is of the view that Ex-B.4 requires only a formal proof.

26. The defendants' side examined D.W.2, one of the attesor of Ex-B.4 and D.W.3, Ex-B.4's scribe. D.W.2 and another witness to Ex-B.4 – Will namely Raja are none other than the nephews (testatrix's brother's sons) of the testatrix - Thirumayammal. D.W.2, on September 22, 2017, had filed his chief affidavit and his chief examination was also recorded on



the same day. At that time, he identified the photo in Ex-B.4 and the signatures found in each and every page thereof as that of Thirumayammal. He also identified his signature as well as the signature of the other attesting witness. Further, at the time of registration as well, he along with the said other attesting witness, signed as identifying witnesses at the Sub-Registrar Office. To be noted, Ex-B.4 is a clear scanned copy in which all the signatures and pictures are clear and identifiable. At the request of the plaintiff's side, the case was adjourned for cross-examination of D.W.2. Thereafter, D.W.2 did not appear before Court and hence, he had to be produced for cross-examination through coercive action by Court by issuance of arrest warrant on January 4, 2018. On January 4, 2018, the plaintiff's side cross-examined him. Slightly contradictory to his earlier evidence, he deposed to the effect that he was not aware of the contents of the Will; in his earlier evidence he had deposed to the effect that he was aware of the contents of Ex-B.4 – Will. However, in his cross-examination, he admitted his signature and identified the signature of Thirumayammal. He also admitted that he signed as witness in Ex-B.4 - Will and as an identifying witness before the Sub-Registrar Office. D.W.2 being closely related to the testatrix and thus to both the plaintiff and the defendants, it is possible that he later choose to



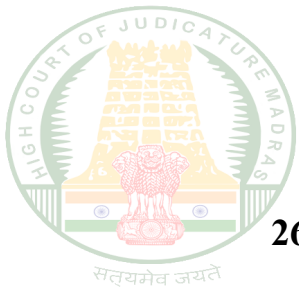
stay from the Court proceedings to maintain a cordial relationship with

both the sides and tried to maintain a cordial stand at the time of his cross-examination. Still, his evidence is sufficient to prove the execution of Ex-B.4 – Will as per Section 63 (c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. The learned Counsel for the appellant / plaintiff would contend that the Trial Court erred in permitting the defendants to cross-examine their own witness namely D.W.2 when the conditions stipulated Section 154 of the Indian Evidence Act, 1872 are not satisfied. As stated *supra*, as D.W.2 resiled from few of his earlier deposition *qua* his knowledge about the contents of Ex-B.4 – Will, the defendants' side cross-examined their D.W.2. Section 154 of Indian Evidence Act, 1872 reads thus:

“Section 154. Question by party to his own witness :

(1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.”



26.1. From the above extract, it is clear that it is the discretion of the

Court to permit a person to cross-examine their own witness. The Trial Court has exercised its discretion and this Court finds no reason as to why the Trial Court ought not to have done so. Hence, there is nothing wrong with the same.

27. D.W.3 – Scribe, though she is not an attesting witness, has clearly deposed about the execution and attestation of Ex-B.4 – Will. The evidence of D.W.2 and D.W.3 clearly proves the execution of Ex-B.4 – Will. Their evidence are trustworthy and no reason to reject the same. Further, the testatrix is a signatory and she has signed not just in Ex-B.4 – Will, but in the earlier Will (Ex-B.3) as well. There appears to be no significant difference between her signature in Ex-B.3 and in Ex-B.4. Further, there appears to be no suspicious circumstances surrounding Ex-B.4 – Will. From the oral evidence of P.W.1, D.W.1, D.W.2 and D.W.3, it could be gathered that Ex-B.4 – Will was executed by Thirumayammal voluntarily in a fit state of mind. Hence, this Court is of the view that Ex-B.4 – Will has been proved as per Section 63 (c) of Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. Ex-B.4 – Will is true, genuine, valid and binding on the plaintiff. **Point No.(ii) is**



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answered accordingly in favour of defendants and against the plaintiffs.

28. No quarrel with the case laws relied on either side. This Court has considered the principles advanced therein. As they are general principles, there was no need for this Court to discuss them elaborately.

29. In view of the above findings, the plaintiff is not entitled to seek partition in Suit Item No.1. However, as there is no testament in respect of Suit Item No.2, upon the demise of Thirumayammal, it shall devolve upon the plaintiff and first and second defendants as per Section 15 of the Hindu Succession Act, 1956. Even the defendants have not disputed that the plaintiff is entitled to share in Suit Item No.2. As first defendant passed away pending Suit, his 1/3 share in Suit Item No.2 would devolve upon the plaintiff and the second defendant as per Section 8 of the Hindu Succession Act, 1956. Thus, the plaintiff and the second defendant would each be entitled to equal share in Suit Item No.2. The Trial Court rightly dismissed the Suit *qua* Suit Item No.1 and decreed the Suit *qua* Suit Item No.2. This Court finds no reason to interfere with the Judgment and

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Decree of the Trial Court. Hence, the Appeal Suit must fail as devoid of merits.

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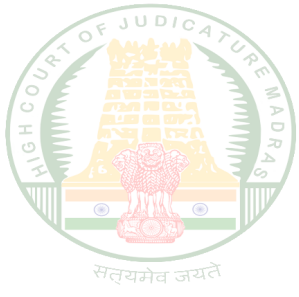
CONCLUSION:

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30. Resultantly, the Appeal Suit stands dismissed. The Judgment and Decree of the Trial Court is hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs in this Appeal Suit.

06.10.2025

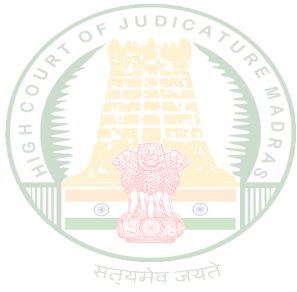
Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

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Erode.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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