



A.S.No.130 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2026

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CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

A.S.No.130 of 2013

and

M.P.No.1 of 2013

1.Devaki
2.Dhakshinamoorthy

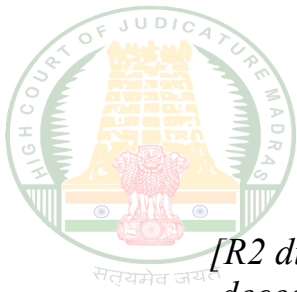
... Appellants

Vs.

1.Sasikala
2.Mogana (died)
3.Revathi (died)
4.Gopinath
Proprietor, Indian Oil Corporation Bunk,
Camp Road, Selaiyur,
(Near Bharath University), Tambaram.
5.Senthilvel
6.S.Gayathri
7.S.Harishshankar
8.Shanmugam

... Respondents

*[R3 died, R5 brought on record as LR of deceased
R3 vide order of the Court in C.M.P.Nos.21843,
21844 and 21845 of 2022 in A.S.No.130 of 2013,
dated 01.03.2023]*



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[R2 died, R6 to R8 brought on record as LR's of the deceased R2 vide order of the Court in CMP Nos.21871, 21872 & 21873 of 2022 in A.S.No.130 of 2013, dated 07.07.2026]

Prayer : Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree passed by the I Additional District Judge, Cuddalore, in O.S.No.34 of 2011, dated 17.12.2012.

For Appellants	:	Mr.D.Baskar
For R1	:	Mr.L.Leelaraman for Mr.T.M.Hariharan
R2 & R3	:	Died
R4	:	No appearance
R5	:	Not ready in notice

J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the decree and judgment of the learned I Additional District Judge, Cuddalore, in O.S.No.34 of 2011, dated 17.12.2012, granting a preliminary decree allotting 3/5 share in respect of Item Nos.1 and 2 and allotting 3/10 share in respect of Item No.3 of the suit schedule properties in

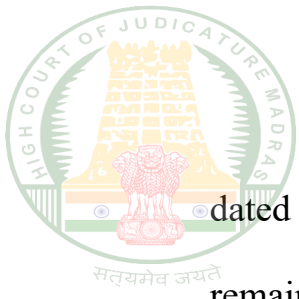


favour of the plaintiffs, the defendants 1 and 2 in the suit have filed the present Appeal.

2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The suit has been laid by the daughters of the 1st defendant, claiming partition. The 1st defendant is the mother of the plaintiffs, and the 2nd defendant is the brother of the plaintiffs. The suit properties belong to the father of the plaintiffs and the 2nd defendant, and the husband of the 1st defendant, namely, Velayutham. He died on 01.01.1996 leaving behind the plaintiffs and the defendants 1 and 2 as legal heirs. Hence, the plaintiffs, being the daughters of Velayutham, have filed the present suit for partition.

4.The defendants 1 and 2 contested the suit by stating that Item Nos.1 and 2 of the suit schedule properties were purchased by Velayutham out of his own income, whereas, Item No.3 of the suit schedule properties was jointly purchased by Velayutham and his son (2nd defendant). It is the stand of the defendants 1 and 2 that Velayutham had left an unregistered Will,



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dated 02.09.1995, granting life interest to his wife (1st defendant) and vested remainder to his son (2nd defendant) in respect of Item Nos.1 and 2 of the suit schedule properties and bequeathing his half share in respect of Item No.3 of the suit schedule properties in favour of the 1st defendant. On the strength of the same, Item No.3 of the suit schedule properties was sold to the 3rd defendant. Hence, they opposed the suit claim for partition.

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5. Based on the above pleadings, the trial Court framed the following issues :

- i. *Whether the suit properties are joint family properties of the plaintiffs and the defendants ?*
- ii. *Whether the Will dated 02.09.1995 is true and valid and has come into effect ?*
- iii. *Whether the 1st defendant is the absolute owner of the suit properties ?*
- iv. *Whether the plaintiffs are entitled to 3/5 share in the suit properties ?*
- v. *Whether the suit is barred by limitation ?*
- vi. *To what other reliefs, the plaintiffs are entitled to ?*

6. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A9 marked. On the side of the defendants, D.W.1 to D.W.3 were

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examined and Exs.B1 to B5 marked.

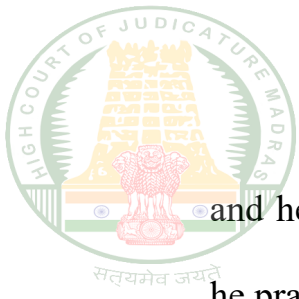
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7. Based on the evidence and materials on record, the trial Court, by its judgment and decree dated 17.12.2012, disbelieved the Will dated 02.09.1995 (Ex.B5) propounded by the defendants 1 and 2, and granted the relief of partition.

8. Challenging the same, the present Appeal has been filed by the defendants 1 and 2.

9. Learned counsel for the appellants would submit that the trial Court has not appreciated the facts properly. The Will (Ex.B5) has been left by Velayutham and both the attesting witnesses had died. D.W.3 has been examined to prove the signature of Velayutham, which has not been taken note of by the trial Court. Hence, he would submit that the trial Court is not right in decreeing the suit.

10. Learned counsel appearing for the 1st respondent would submit that the alleged Will (Ex.B5) has not been proved in the manner known to law



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and hence, the trial Court has rightly decreed the suit for partition. Hence, he prayed for dismissal of the Appeal.

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11. Heard the learned counsel on either side and perused the entire materials available on record.

12. In the light of the submissions made on either side, the only point that arise for consideration in this Appeal is as to whether the Will dated 02.09.1995 (Ex.B5) is true and valid and proved in the manner known to law?

Point :

13. The fact that Item Nos.1 and 2 of the suit schedule properties were purchased by the father of the plaintiffs and the 2nd defendant, namely Velayutham, is not in dispute. Similarly, the fact that Item No.3 of the suit schedule properties was jointly purchased in the names of Velayutham and his son (2nd defendant), is also not in dispute.

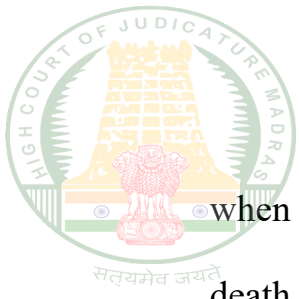


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14.The defendants 1 and 2 have propounded a Will, dated 02.09.1995, said to have been executed by Velayutham. According to them, the Will has been executed in the presence of two attesting witnesses, namely, Venkatraman and Somu. Admittedly, these attesting witnesses have not been examined. It is the contention of the defendants that both the attesting witnesses have already died. Therefore, D.W.3 was examined to prove the signature of the executor.

15.It is relevant to note that, before proving the Will in any other manner, particularly when the attesting witnesses are not found or not alive, the above factum has to be established before proceeding to prove the Will under Section 69 of the Evidence Act/Section 68 of Bharatiya Sakshya Adhiniyam (BSA), 2023. Admittedly, there is no evidence, whatsoever, on the side of the defendants to show that both the attesting witnesses had died and steps have been taken to ascertain their death. The evidence of D.W.1 (1st defendant), when carefully seen, clearly indicates that the defendants have not even made an attempt to know when both the attesting witnesses died. D.W.1 has clearly stated in her evidence that she is not aware as to



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when Somu died. She has also admitted that no one has told her about the death of Somu. Similarly, she has clearly stated that she does not know when Venkatraman died. She does not know whether Venkatraman is alive or dead.

16. Similarly, D.W.2 (2nd defendant) has also admitted that he never enquired Somu or the legal heirs of the attesting witnesses. His evidence also does not indicate that the attesting witnesses had died.

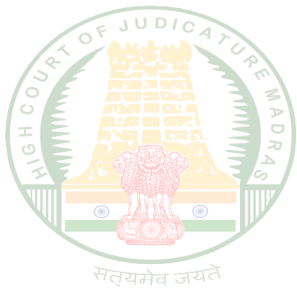
17. Therefore, in the absence of any proof as to the death of the attesting witnesses, as a matter of right, one cannot resort to the provisions of Section 69 of the Evidence Act/Section 68 of BSA, 2023 to prove the Will by examining any person who is acquainted with the signature of the so-called attesting witnesses. Before invoking such procedure, it has to be established before the Court that both the attesting witnesses had died or their whereabouts are not known and they could not be found. Diligent exercise ought to have been made by the parties who are seeking to prove the Will under Section 69 of the Evidence Act/Section 68 of BSA. Merely on the oral submissions without any enquiry or without any proof of death of



the so-called attesting witnesses, relying on any other person to prove the signature of the attesting witness, will not serve any purpose.

18.Further, it is to be noted that, in this case, D.W.3 has been examined to show as if he identified the signature of the attesting witness. In fact, D.W.3 is no way connected to the attesting witnesses. He never said anything about the attesting witnesses. He has stated as if he knew only about the executor. His evidence also does not help the defendants in any manner.

19.When the Will (Ex.B5) propounded by the defendants 1 and 2 has not been established in the manner known to law, the same cannot be given importance for any other purpose. Further, the existence of such Will has not been intimated when the legal notice was issued by the plaintiff at the earliest point of time. Be that as it may. This Court finds that the Will (Ex.B5) has not been established in the manner known to law. ***Therefore, the point is answered against the defendants.***



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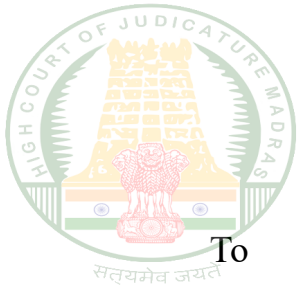
20.Further, in fact, the trial Court has granted a preliminary decree allotting 3/5 share in respect of Item Nos.1 and 2 and allotting 3/10 share in respect of Item No.3 as the same has been jointly purchased by Velayutham and his son (2nd defendant). The trial Court has rightly restricted the relief only to the half share of Velayutham in respect of Item No.3. Hence, we do not find any merit in this Appeal.

21.Accordingly, this Appeal is dismissed, confirming the judgment and decree of the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K., J.) (M.J.R., J.)
07.07.2026

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Internet : Yes
Index : Yes / No
Speaking Order
Neutral Citation : Yes



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To

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1.The I Additional District Judge,
Cuddalore.

2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

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