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AS No. 652 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 652 of 2026

AND

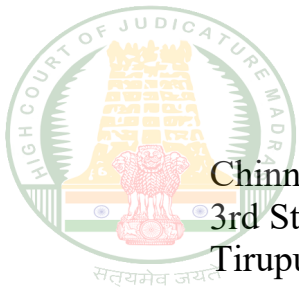
CMP NO. 16971 OF 2026

Kanagasabapathi
S/o. Late. Chinnappa Gounder,
D.No.3/56, West Street,
Muthampalayam,
Muthampalayam Village,
Tirupur.

..Appellant / Plaintiff

Vs

1. Valliathal @ Valliammal
W/o. Late. C. Ponnusamy,
D.No.12/22, Kangayam Nagar,
Kangayam Road,
Tirupur South Taluk,
Tirupur.
- P. Ramamoorthy (died)
2. B. Jeyanthi
W/o. Bhuvaneswaran,
D.No.17, ABT 2nd Street,
Karuvampalayam,
Tirupur South Taluk,
Tiruppur Dt.
3. M. Jeyalakshmi
W/o. Late. C. Murugesan,
Chinna Thottam,
3rd Street, Kangayam Tirupur.
4. S. Gomathi
W/o. Shanmugam,



Chinna Thottam,
3rd Street, Kangayam Road,
Tirupur.

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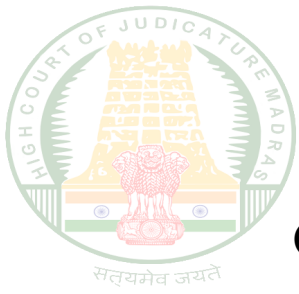
5. M. Uma Maheswari
D/o. late. C. Murugesan,
Chinna Thottam,
3rd Street, Kangayam Road,
Tirupur.
6. Shanmuga Priya
W/o. Ramachandran,
Chinna Thottam,
3rd Street, Kangayam Road,
Tirupur.
7. R. Mahalakshmi
W/o. Udayakumaran,
Chinna Thottam,
3rd Street, Kangayam Road,
Tirupur.

..Respondents /
Defendants

Prayer: Appeal Suit filed under Section 96 r/w. Order 41 Rules 1 and 2 CPC of 1908 to set aside the impugned Judgement and Decree dated 10.12.2025 made in OS No.162 of 2020 on the file of the Additional District Sessions Judge, Tirupur in granting relief of Preliminary Decree for Partition and Separate Possession of 1/3 share in favour of the Plaintiff and 1/3 Share in favour of the Defendants 4 to 8 in the Suit Properties as illegal, perverse, contrary to law and evidence against preponderance and probabilities of case and pass such further or other orders and thereby render justice.

For Appellant(s):

Mr.V.Ashok Kumar,
for M/s.N.Stalin



Judgment

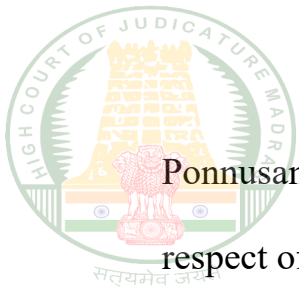
(Judgment of the Court was delivered by M.Jothiraman J.)

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Unsuccessful plaintiff has preferred the present Appeal Suit. The Suit is filed for partition seeking 2/3rd share in the suit properties. The Court below decreed the suit and accordingly, a preliminary decree for partition and separate possession of 1/3rd share in favour of the plaintiff. The parties are referred hereunder as per their ranking before the Court below.

2. Brief case of the plaintiff is as follows:

2.1. The plaintiff's brother Ponnusamy is the husband of the 1st defendant and father of the defendants 2 and 3. The plaintiff's brother Murugesan is the husband of the 4th defendant and father of the defendants 5 to 8. Ponnusamy, Murugesan and the plaintiff are brothers. Originally, the suit property belongs to one Chinnappa Gounder, who is the father of the plaintiff and the said Ponnusamy and Murugesan. The said Chinnappa Gounder died intestate on 12.08.1992. After his demise, the plaintiff and his two brothers were in joint possession and enjoyment of the suit property. The said Ponnusamy left his family due to misunderstanding in his family in the year 1974 and he was living separately in Chittur, Andhra Pradesh till 1999. In the year 2000, Ponnusamy came to the plaintiff's house and lived with him. The defendants 1 to 3 did not contact him till his death. The plaintiff was providing food and clothes and also met the medical expenses of his brother Ponnusamy. During the lifetime of



Ponnusamy, he bequeathed a Will dated 10.02.2010 in favour of the plaintiff in respect of his 1/3rd share in the suit properties.

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2.2. The said Ponnusamy died on 21.02.2011 in plaintiff's house. All the death rituals were done by the plaintiff. Even though death intimation was given by the plaintiff to the defendants 1 to 3, they did not attend the death ceremony. The defendants 1 to 3 created a release deed dated 16.03.2017 releasing the shares of the defendants 1 and 3 and the share of the 2nd defendant. Since Ponnusamy already executed a Will, the defendants 1 to 3 have no right and title in respect of 1/3rd share of Ponnusamy in the suit properties. During the pendency of the Suit, the 2nd defendant died intestate as unmarried on 26.12.2021, leaving his mother / 1st defendant and his sister / 3rd defendant as his legal heirs and therefore, the plaintiff is entitled for the partition of 2/3rd shares in the suit properties.

3. Brief case of the defendants 1 and 3 are as follows:

3.1. The very execution of the alleged Will dated 10.02.2010 by Ponnusamy in favour of the plaintiff is created by the plaintiff. The suit properties are not the self acquired properties of Ponnusamy and are ancestral and joint family properties, in which the defendants 2 and 3 have separate right and share by birth. Ponnusamy married the 1st defendant in the year 1967 and they lived happily together for many years and got children, who are the



defendants 2 and 3. Due to loss in business, Ponnusamy left from the residence for several years.

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3.2. After a long period of 30 years, Ponnusamy returned back. Till the death of Ponnusamy, he continued to show his love and affection to the defendants 1 to 3. On 21.02.2011, Ponnusamy died intestate leaving behind the defendants 1 to 3 as his legal heirs. The funeral and final rites of the deceased Ponnusamy was done by his son / 2nd defendant. On 16.03.2017, the 2nd defendant released his 1/9th share over the suit properties in favour of the defendants 1 and 3 for valuable consideration.

4. Brief case of the defendants 4 to 8 is as follows:

4.1. Originally the suit properties belong to Chinnappa Gounder and after his death, his sons the plaintiff, Ponnusamy and Murugesan were entitled to 1/3rd share each. After the death of Murugesan, the defendants 4 to 8 were jointly entitled to 1/3rd share in the suit properties. The defendants 4 to 8 have paid Court Fees for allotment of their 1/3rd share in the suit properties.

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

1. Whether Plaintiff's brother namely C.Ponnusamy had executed a Will in favour of Plaintiff on 10.02.2010 is true and acted upon and enforceable



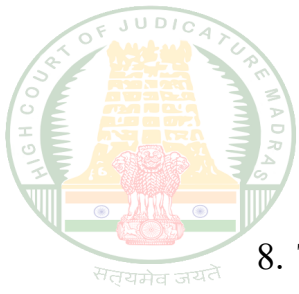
2. Whether plaintiff is entitled to get Preliminary Decree in respect of 2/3rd shares of the Suit schedule properties as prayed for?

3. To what other reliefs are entitled to plaintiff?

6. On the side of the plaintiff, the plaintiff examined himself as PW1 and one of the Attestors Thiru Selva @ Selvakumar was examined as PW2. Exs.A1 to A24 were marked. On behalf of the defendant, 3rd defendant examined himself as DW1 and Ex.B1 was marked during the course of cross examination of PW1. Exs.B1 and B2 were marked through DW1 on the side of the defendants 1 and 3. No oral and documentary evidence was adduced by the defendants 4 to 8.

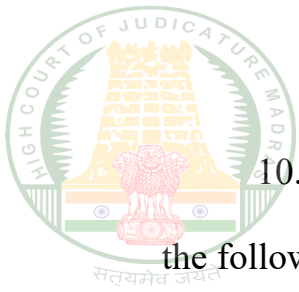
Findings of the Trial Court:

7. It is very unnatural to execute a Will leaving the Wife, Son and Daughter. The plaintiff has suppressed his actual living address in the Suit. The age of the Testator / Ponnusamy is stated wrongly in the Will which creates doubt. The signatures in the Will are totally different from page to page. Though the plaintiff filed Caveat Petition in the year 2017, which is marked as Ex.B1, during the cross examination of PW1, neither immediately filed the Suit nor intimated about his right to the defendants 1 to 3, regarding the execution of the alleged Will by Ponnusamy. The Will is not proved in the manner known to law. Hence, the plaintiff is not entitled to any other relief based on the Will.



8. The Court below has passed a Preliminary Decree that the plaintiff is entitled to 1/3rd share in the suit properties. Aggrieved over the same, the present appeal has been filed.

9. The learned counsel appearing for the appellant / plaintiff would submit that once the Will dated 10.02.2020 was executed and the same was proved in the manner known to law, the plaintiff became entitled to 1/3rd share in addition to his own 1/3rd, totalling to 2/3rd of the suit property. The Court below having held that the Release Deed dated 16.03.2017 is not binding on the plaintiff, the Trial Court committed a grave error in law, indirectly giving effect to the same by restricting the plaintiff's share. The evidence of PW2 and written statement of the defendants clearly establishes that the plaintiff alone maintained Ponnusamy by providing food, shelter, clothing and medical expenses, which led to the execution of the Will in favour of the plaintiff. The Will has been proved by examining one attesting witness / PW2 and during the course of cross examination of PW2, nothing elicited against the claim of the plaintiff with regard to execution of Will by the deceased Ponnusamy in a good state of mind. Therefore, the findings rendered by the Court below are contrary to law and the impugned judgment and decree is liable to set aside to the extent of remaining allotment of shares.



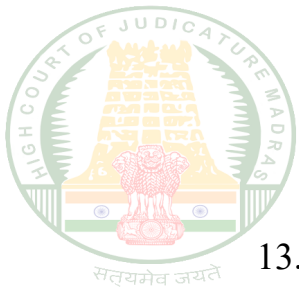
10. In the light of the aforesaid submissions made on the appellant side, the following points for determination arises in this appeal:

(1) Whether the Will dated 10.02.2010 executed by the plaintiff's brother, namely C.Ponnusamy is true and valid?

(2) Whether the plaintiff is entitled to 2/3rd share in the suit schedule properties as prayed for?

11. It is not in dispute that the suit properties were originally purchased by the father of the plaintiff, namely Chinnappa Gounder through Sale Deed dated 29.11.1960 under Ex.A1. Ex.A2- Death Certificate stands in the name of Chinnappa Gounder states that he died on 12.08.1982. The Plaintiff, Ponnusamy and Murugesan are the sons / legal heirs of the deceased Chinnappa Gounder. The 1st defendant is the wife, the defendants 2 and 3 are the son and daughter of the deceased Ponnusamy. The 4th defendant is the wife and the defendants 5 to 8 are daughters of the deceased Murugesan.

12. It is also not in dispute that the said Ponnusamy died on 20.02.2011, leaving behind the defendants 1 to 3 as his legal heirs. It is the specific case of the plaintiff that the defendants 1 to 3 did not take care of Ponnusamy and that the plaintiff was providing food, clothing and medical facilities to Ponnusamy and therefore, the said Ponnusamy executed Ex.A10- Unregistered Will dated 10.02.2010 in favour of the plaintiff.



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13. According to the defendants 1 to 3, the alleged Will dated 10.02.2010 was not brought to the notice of the defendants 1 to 3 till the filing of the Suit. It is very unnatural to execute a Will leaving behind his wife, son and daughter. The age of Ponnusamy mentioned in the Will was 70 years, whereas in Ex.A14 Death Certificate reflects the age of the Executor as 67 years. The Will is not proved in the manner known to law. In order to prove the execution of the Will, PW2 / attesting witness was examined. PW2, in his cross examination, deposed that he signed as witness in the Will on the request made by the plaintiff. He admits that in the Will, he has not signed his name as Selvakumar and he has signed only as Selva. He did not know who is the another witness / Attestor to the Will. At the time of execution of the Will, Ponnusamy was residing in a old age home and after execution of the Will, he again went back to the Old Age Home.

14. It is relevant to note that though the plaintiff has knowledge about the execution of the Release Deed dated 16.03.2017, he has chosen to file Caveat Petition in Ex.B1 in the year 2017 itself, but he has not chosen to file the Suit immediately by claiming right under Ex.A10 – Unregistered Will, whereas he has filed the Suit only in the year 2020. The reason for not informing the alleged execution of Will has not been explained by the defendants 1 and 3. There are several suspicious circumstances surrounding the Will and the same



has not been dispelled by the plaintiff and not properly explained by the plaintiff. The Will is not proved in the manner known to law. The evidence of PW2 is not sufficient to prove the execution and attestation of the alleged Will.

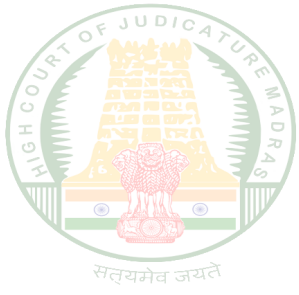
15. Considering the evidence adduced on either side, the Court below rightly found that the alleged Will under Ex.A10 dated 10.02.2010 is not proved in the manner known to law and the plaintiff is only entitled to 1/3rd share in the suit schedule properties and not entitled for 2/3rd share of the deceased Ponnusamy. There is no infirmity in the judgment and decree passed by the Court below. The appeal suit lacks merit and the same is liable to be set aside.

Point Nos.1 and 2 are answered accordingly.

16. Accordingly, the Appeal Suit stands dismissed, confirming the Judgement and Decree dated 10.12.2025 made in OS No.162 of 2020 on the file of the Additional District Sessions Judge, Tirupur. No costs. Consequently, connected miscellaneous petition is also dismissed.

(N.S.K.,J.) (M.J.R.,J.)
22-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
Jvm



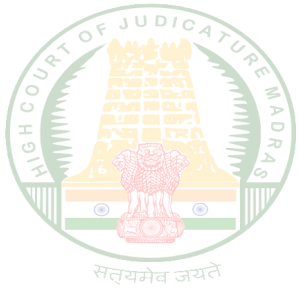
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To

The Court of Additional District Sessions Judge,
Tirupur



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**N.SATHISH KUMAR J.
AND
M.JOTHIRAMAN J.**

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