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S.A.Nos.609 of 2023 & 55 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2026

PRONOUNCED ON : 30.07.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.Nos.609 of 2023 & 55 of 2025
and C.M.P.Nos.8430, 13607 and 8648 of 2026

S.A.No.609 of 2023

G.Ravichandran

... Appellant

Vs.

1.K.Arulmozhi

2.K.Raman

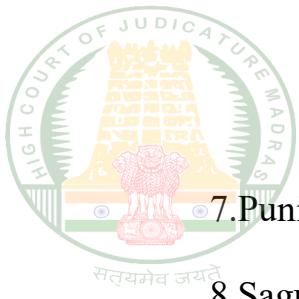
3.The Sub Registrar of Thiruvannamalai
Taluk Office Compound,
Tiruvannamalai.

4.The Commissioner,
Tiruvannamalai Municipality,
Sannathi Street,
Tiruvannamalai Town and District.

5.K.Arunachalam

6.Bharathi

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7.Punitha

8.Sagunthala

9.Senthilkumaran

10.Seenuvasan

11.Govarthanagiri

12.Sankar

13.Alamelu

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 03.01.2023 in A.S.No.5/2020 on the file of the Additional District Judge, Tiruvannamali, confirming the judgment and decree dated 29.11.2019 in O.S.No.117 of 1993 on the file of the Additional Sub Judge, Tiruvannamalai and to set aside the same.

For Appellant : Mr.T.R.Rajagopalan,
Senior Counsel for
Mr.V.Vidyesh

For Respondents : Mr.G.Krishnakumar for R1, R6 to R13
Mr.D.Rajagopal for R5
Mr.S.Gunasekaran,
Govt. Counsel for R3 & R4
R2 & R5 served – No Appearance

S.A.No.55 of 2025

K.Arunachalam

... Appellant

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Vs.

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1.G.Ravichandran

Natarajan (Died)

2.K.Arulmozhi

3. K.Raman

4. The Sub Registrar of Thiruvannamalai
Taluk Office Compound,
Tiruvannamalai.

5.The Commissioner,
Tiruvannamalai Municipality,
Sannathi Street,
Tiruvannamalai Town and District.

6.Bharathi

7.Punitha

8.Sagunthala

9.Senthilkumaran

10.Seenuvasan

11.Govarthanagiri

12.Sankar

13.Alamelu

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., praying to set aside the judgment and decree dated 03.01.2023 in A.S.No.5/2020 on the file of the Additional District Judge, Thiruvannamalai, which is confirmed in O.S.No.117 of 1993 dated 29.11.2019, on the file of the Additional Sub

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Judge, Tiruvannamalai.

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For Appellant : Mr.D.Rajagopal

For Respondents : Mr.T.R.Rajagopalan,
Senior Counsel for
M/s.D.Chitra Maragatham for R1
Mr.G.Krishnakumar
for R2, R6 to R13
Mr.S.Gunasekaran,
Govt. Counsel for R4 & R5

COMMON JUDGMENT

S.A.No.609 of 2023 is arising out of a suit for declaration of title and recovery of possession in respect of item No.1 and a consequential permanent injunction in respect of item Nos.2 to 8 filed by the appellant/plaintiff. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the unsuccessful plaintiff filed the second appeal.

2. S.A.No.55 of 2025 is filed by the 6th defendant in the suit.

Since both the second appeals are arising out of a single suit viz., O.S.No.117 of 1993, both the second Appeals are taken up for hearing



3. For the sake of convenience, the parties are referred to as per their ranking in O.S.No.117/93 on the file of Additional Sub Court, Thiruvannamalai, out of which, the Second Appeal No.609 of 2023 arises.

4. The case of the plaintiff in O.S.No.117 of 1993 (S.A.No.609 of 2023):

4.1. The suit properties originally belonged to one Kesava Pillai, paternal grandfather of the plaintiff. He executed a registered settlement deed dated 15.12.1958, marked as Ex.A1, bequeathing item Nos.1 to 6 in the suit properties in favour of his daughter Rajamani Ammal. Item Nos.7 and 8 were allotted to share of Rajamani Ammal in a partition suit in O.S.No.33 of 1960, on the file of Sub Court, Vellore. Thus, Rajamani Ammal became owner of the suit properties. During her life time, she executed a Will dated 30.12.1992, bequeathing the suit properties to the plaintiff and after her death on 12.01.1993, the plaintiff became owner of the property. From the date of death of Rajamani Ammal, the plaintiff has been in possession and enjoyment of the suit properties.



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4.2. The first defendant in the suit, who is none other than the son of Rajamani Ammal's husband's step brother Appadurai, without having any manner of right over the suit properties, made a false claim over the same. He illegally attempted to get the house tax assessment and the revenue document for the suit properties in his favour. Hence, the plaintiff issued a paper publication on 04.02.1993 asserting his right over the suit properties by mentioning the Will of Rajamani Ammal dated 30.12.1992. The first defendant caused a reply paper publication on 07.02.1993 claiming right over the suit properties under the alleged Will executed by Rajamani Ammal dated 29.12.1992 in his favour.

4.3. The plaintiff also pleaded about the invalidity of the sale deed executed by the first defendant in favour of the third defendant in respect of item 2 to 6 by disputing the Will relied on by the first defendant. Since the defendants 1 to 3 laid a false claim over the suit properties, the plaintiff issued a lawyer notice on 09.03.1993, asserting right over the property based on the Will executed by Rajamani Ammal and the defendants issued a reply, denying the rights of the plaintiff and asserting the right over the property under the Will relied on by them.



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4.4. Pending suit, the 6th defendant (appellant in

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S.A.No.55/2025) filed an impleading petition to get himself impleaded as 6th defendant in the suit by claiming that he had been in absolute possession and enjoyment of item No.3 of the suit property by putting up construction thereon. It was also pleaded that 6th defendant had no right over the suit item No.3.

4.5. On these pleadings, the plaintiff sought for declaration of title over the suit property. He also sought for relief of recovery of possession in respect of item No.1 and a permanent injunction in respect of item Nos.2 to 8 as against the first defendant. He also sought for permanent injunction restraining the second defendant from encumbering the suit properties. He also sought for mandatory injunction directing the 6th defendant to demolish the construction in the suit item No.3 and handover vacant possession to the plaintiff.

5. The contesting first defendant filed a written statement and resisted the suit by claiming right over the suit properties under the Will

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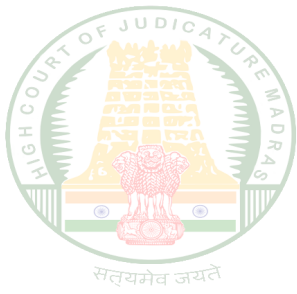
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executed by Rajamani Ammal dated 29.12.1992. The allegation in the plaint

as if Rajamani Ammal brought up the plaintiff from his boyhood was specifically denied. The Will relied on by the plaintiff dated 30.12.1992 was also specifically denied by the defendant. It was also stated that the plaintiff's father filed a suit against his father Kesava Pillai and his sister Rajamani Ammal in O.S.No.33 of 1960 on the file of Sub-Court, Vellore and hence, the relationship between Rajamani Ammal and plaintiff's father got strained. It was further pleaded that Rajamani Ammal is very affectionate to first defendant and hence, out of love and affection, she executed a Will dated 29.12.1992 in his favour. On these pleadings, the first defendant sought for dismissal of the suit.

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6. The 6th defendant, who was impleaded subsequently, filed a written statement and denied both the Wills relied on by the first defendant and the plaintiff. He claimed that suit item No.3 in S.No.44/16 measuring 0.53 acres in Kosalai Village was in his occupation and he had put up construction thereon. He also claimed that he enjoyed the property to the full knowledge of all and thus, the plaintiff as well as the first defendant had no right over the suit property. On these pleadings, he sought for dismissal of the suit.

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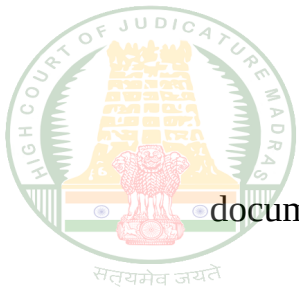
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7. The first defendant in the suit viz., Natarajan, filed a separate suit in O.S.No.95 of 2014 against the 6th defendant in the present suit seeking declaration of title and recovery of possession. Both the suit were taken up for trial simultaneously.

8. In O.S.No.117 of 1993, the plaintiff was examined as P.W.1 and one of the attesor to the Will Ex.A4, relied on by the plaintiff was examined as P.W.2. On his behalf, 21 documents were marked as Ex.A1 to Ex.A21. The first defendant in O.S.No.117 of 1993 was examined as D.W.1. The attesor to the Will-Ex.B2 relied on by the first defendant was examined as D.W.2. The second defendant, who purchased item No.1 from first defendant was examined as D.W.3. 6th defendant, who claimed possession over the item No.3 was examined as D.W.4. On behalf of the defendants 10 documents were marked as Ex.B1 to Ex.B10.

9. In O.S.No.95 of 2014, plaintiff therein and the first defendant in O.S.No.117 of 1993 has been examined as P.W.1 and 9 documents were marked as Ex.A1 to Ex.A9. On behalf of the defendants, no oral and

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documentary evidence were let in O.S.No.95 of 2014.

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10. The trial Court, on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiff in O.S.No.117 of 1993 was not entitled to any relief and dismissed the suit. The findings of the trial Court were affirmed by the first appellate Court. Challenging the said findings, the plaintiff preferred Second Appeal No.609 of 2023 and the 6th defendant preferred Second Appeal No.55/2025. As far as O.S.No.95/2014 is concerned, the suit filed by the first defendant Natarajan was decreed and the appeal filed by the defendant therein Arunachalam in A.S.No.10 of 2022 was dismissed. Though 6th defendant the said Arunachalam said to have filed an appeal, challenging the judgment and decree passed in connected appeal in A.S.No.10 of 2022, as early as 03.06.2023, the same is not numbered and not listed before this Court. Hence, the second appeals filed against the judgment and decree passed in O.S.No.117 of 1993 are taken up for consideration.

11. The learned Senior Counsel appearing for the appellant would submit that the Courts below committed an error in not appreciating the evidence of attesor to Ex.A4-Will and rejecting the same. Alternatively,

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he submitted that even assuming Ex.A4-Will is not proved, the plaintiff being a brother's son of Rajamani Ammal is entitled to suit property as class II heir. The learned Senior Counsel also submitted that the evidence of attester to Ex.B2-Will relied on by the first defendant was not sufficient to prove the said Will, as he failed to depose regarding the attestation of the Will by other attestors. In nutshell, he submitted that the ingredients of Section 63 of the Indian Succession Act, 1925 has not been satisfied and hence, the Courts below ought not to have upheld the validity of Ex.B2-Will relied on by the first defendant.

11.1. The learned Senior Counsel appearing for the appellant also submitted that inclusion of property situate in S.No.60/5, which was sold by Rajamani Ammal in the year 1979 under Ex.A15-Will, relied on by the first defendant, creates serious suspicion with regard to the genuineness of the said Will. The learned Senior Counsel also submitted that the observation made by the Courts below with regard to the strained relationship between the plaintiff's family and Rajamani Ammal was not well founded as the suit in O.S.No.33 of 1960 was ended in a compromise. In this regard, the learned Senior Counsel referred to the suit register in O.S.No.33 of 1960 in support of his contention. The said document has



been filed as additional evidence in C.M.P.No.13607 of 2026 in S.A.No.609 of 2023.

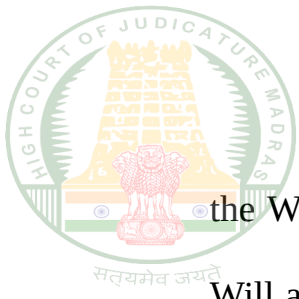
12. In the light of the submissions made by the learned Senior Counsel appearing for the appellant, the following substantial questions of law are taken up for consideration in these Second Appeals:

(a) Whether Ex.B2 Will relied on by the first defendant has been proved as per Section 63(c) of the Indian Succession Act, 1925?;

(b) Whether the findings of the Courts below with regard to the rejection of Ex.A2 Will is vitiated by any perversity?

13. The learned counsel appearing for the respondents are heard on the above mentioned substantial questions of law.

14. The learned counsel appearing for the first defendant would submit that P.W.2 attesor to Ex.A4-Will not even identified his signature in



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the Will and hence, the Courts below were justified in rejecting that Ex.A4

Will as proved. The learned counsel by taking this Court to the evidence of D.W.2-attestor to Ex.B2-Will would submit that all the ingredients of Section 63(c) of Indian Succession Act, 1925 were satisfied and hence, the Courts below were justified in relying on Ex.B2-Will to non suit the plaintiff. He also submitted that Ex.A2-SSLC certificate produced by the plaintiff was a forged and created document.

15. The learned counsel appearing for the appellant in S.A.No.55 of 2025/6th defendant in the suit would submit that though the 6th defendant raised the plea of adverse possession in so far as item No.3 of the suit property, the Courts below failed to consider the same and hence, the judgment and decree passed by the Courts below is vitiated and liable to set aside.

16. Both the plaintiff and the contesting defendant claim that the suit property originally owned by Rajamani Ammal. The plaintiff claims right over the Will executed by Rajamani Ammal dated 30.12.1992 marked as Ex.A4. The defendant claims right over the suit property under the Will executed by Rajamani Ammal dated 29.12.1992 marked as Ex.B2.



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Alternatively, the plaintiff also claims, de hors the Will Ex.A4, he is entitled to succeed to the suit property as Class-II heir of Rajamani Ammal in his capacity as her brother's son as Rajamani Ammal died issueless. In order to prove Ex.A4-Will, the plaintiff examined one of the attessor to the testamentary document as P.W.2. The defendants examined attessor to Ex.B2 as D.W.2.

17. A perusal of the records would indicate that Ex.A4-Will was not marked through attessor viz., P.W.2. However, it was marked through beneficiary viz., P.W.1 plaintiff. A perusal of the Court endorsement in Ex.A4-Will would indicate that it was marked through P.W.1 on 19.11.2012. The proof affidavit of attessor to the said testamentary document was sworn only on 29.01.2013 and the same was filed before the Court on 05.02.2013. Therefore, it is clear that when the proof affidavit was prepared in the office of the counsel for the plaintiff, Ex.A4-Will was already filed before the Court and P.W.2 attessor had no occasion to identify his signature in the said Will. A perusal of the chief examination of P.W.2 in Court on 05.02.2013 would indicate that he simply deposed that the averments found in his proof affidavit were true. Thereafter matter was adjourned for cross examination. Neither in the chief examination nor in the cross examination, Ex.A4-Will,

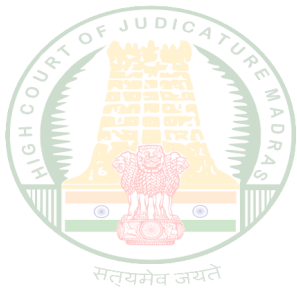


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which was already in the custody of the Court was shown to P.W.2 and he never identified his signature found in Ex.A4 before the Court. Though P.W.2 in his proof affidavit mentioned about the execution of Will by Rajamani Ammal and attestation of the same, when the original Will was not shown to the witness and he had no occasions to identify his signature found in the Will, we cannot say that the Will has been proved. In this regard, it would be appropriate to refer the judgment of this Court in ***Govindan Chettiar (Died) Vs. Akilandam alias Seethalakshmi and 24 others*** reported in ***1997-3-L.W.673***, wherein while dealing with the similar situation, this Court observed as follows:

“28. I have already said that the attesting witnesses in this case have not identified the signature of the deceased, nor the attestation by them. They only give a general statement about the procedure of attestation. When the signatures of the testator and the attestors are not identified, it cannot be said that the Will is properly proved. In 1996- II- M.L.J. 596 (Suguna Bai Vs. Muniammal @ Dhanalakshmi and others), I had occasion to consider a similar question. In paragraph 18 of the judgment, I have held thus:-

"Even though D. W. 5 speaks that he is an attestor when he was examined. I do not



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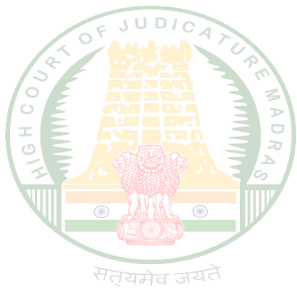
find that the Will is shown to him and the signatures of the various attestors or the testator are identified by him. It is seen that Ex.B-8 was marked through D.W.3, the third defendant, wherein the Court noted "subject to proof". I do not find that any step has been taken by the third defendant (appellant) to have the same proved in accordance with law, i.e., when attestation to a Will is sought to be proved, naturally, the witness must say that the document contains either the thumb impression or signature of the attesor, and that he has also signed in token of the attestation. He must identify the signature as seen in the document.." (Emphasis Supplied)

In this case, the Will is marked through D. W.1 who is the propounder. The Will is not even shown to D. W. 2 or D.W. 3. Along with the same, the statement in the written statement that the deceased was senile even from 1961 also gains importance. Being business partners of the appellant, they were interested in him.

29. Regarding attestation, their Lordships of the Supreme Court have said as follows in the decision reported in.A.I.R. 1955 S.C. 346 (Girja Datt Singh v. Gangotri Datt Singh):-

"It cannot be presumed from the mere signatures of two persons appearing at the foot of the endorsement of registration of a Will that they had appended their signatures to the document as attesting witnesses or can be construed to have done so in their capacity as attesting witnesses. Section 68, Evidence Act requires an attesting to be called as a witness to prove the due execution and attestation of the Will. This provision should be complied with in order that those two persons might be treated as attesting witnesses".

If this is the legal requirement of an attesting witness, as I have stated earlier, every attestor will



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*have to prove the signature which they had attested.
That evidence is lacking in this case.”*

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18. Therefore, it is clear that the attesor of the testamentary document must identify his signature in the Will and depose about the attestation of the said document. In the case on hand, in the proof affidavit, there is a general statement by the attesor P.W.2 regarding the attestation of the Will executed by Rajamani Ammal. However, as mentioned earlier, the original Will of Rajamani Ammal was not available with the plaintiff when proof affidavit was prepared on 29.01.2013 as the said document was filed before the Court as early as 19.12.2012 and marked as Ex.A4 through propounder of the Will, who was examined as P.W.1. When original Will has not been identified by the attesor and he has not made any statement regarding attestation of the Will after identifying his signature in the document, we cannot say that the evidence of P.W.2 regarding the attestation of the Will executed by Rajamani Ammal without identifying his signature in testamentary document would prove the said Will. A close scrutiny of evidence of attesor would indicate that the Will which was already in the custody of the Court was not at all shown to him when he was in witness box. Therefore, I have no hesitation in coming to the conclusion that evidence of P.W.2 attesor is not at all useful to prove the Ex.A4-Will relied

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on by the plaintiff.

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19. Alternatively, the learned counsel appearing for the appellant would submit that dehors Ex.A4-Will, the plaintiff is entitled to succeed to the estate of Rajamani Ammal in his capacity as Class II heir. It is not in dispute that Rajamani Ammal died without any surviving descendants and the plaintiff is none other than the brother son of Rajamani Ammal. The contesting first defendant is Rajamani Ammal's husband step brother's son. It is also not in dispute that Rajamani Ammal got the property from her father under settlement deed and partition deed. In such circumstances, after the death of Rajamani Ammal, the property will devolve on the heirs of her father as per Section 15(2)(a) of Hindu Succession Act. Therefore, unless the first defendant succeed in proving the Will-Ex.B2, the plaintiff is entitled to the suit properties.

20. Now let us proceed to examine whether Ex.B2 relied on by the first defendant is proved in accordance with law. In order to prove Ex.B2-Will relied on by the first defendant, one of the attestor to the said document has been examined as D.W.2. In his chief examination, Ex.B2-Will was shown to him and he identified his signature found in Ex.B2-Will

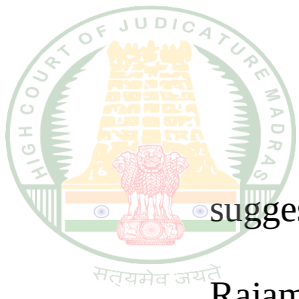


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as a first witness to the said document. In his evidence, he deposed that the

Will was dictated by Rajamani Ammal and she signed the Will-Ex.B2 in his presence. He also deposed that he attested the Will as per the request made by Rajamani Ammal. He also deposed that other attesor to Ex.B2 Balakrishnan also signed the Will. In his evidence, he had stated that on the date of execution of the Will, Rajamani Ammal was hale and healthy and the scribe of the Will also put his signature.

21. A close scrutiny of the evidence would indicate that D.W.2 not only has seen Rajamani Ammal signing the Will, but he also saw other attesor signing the Will. Even though he has not specifically stated that he had seen other attestors signing the Will, he deposed that the other attesor also signed the Will. [என்னுடன் பாலகிருஷ்ணன் என்பவரும் சாட்சி கையொப்பம் இட்டார்]. Therefore, there is no difficulty in coming to the conclusion that D.W.2 has seen other attesor Balakrishnan signing the Will. He also deposed that he signed the Will in the presence of the attesor. In view of the same, this Court comes to the conclusion that the ingredients of Section 63(c) of Indian Succession Act, 1925 is substantially satisfied in the case on hand. D.W.2 also withstood the cross examination. He denied the



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suggestion that the did not attest the Will and the same was not singed by Rajamani Ammal. In his cross examination also D.W.2 clearly deposed that he singed the Will in the presence of testatrix and she [Rajamani Ammal] put her signature in his presence. D.W.2 in his chief examination clearly deposed that other attesor Balakrishnan also attested the Will along with him and there is no specific cross examination of D.W.2 with regard to the attestation by other attesor. In these circumstances, the submission made by the learned Senior Counsel appearing for the appellant that ingredients of Section 63(c) of Indian Succession Act,1925 has not been satisfied by the evidence of D.W.2 is not acceptable to this Court and the same is rejected.

22. The learned Senior Counsel appearing for the appellant submitted that D.W.2 desposed that he was called by a stranger to attest the Will and the same appeared to be unnatural. A scrutiny of the D.W.2's evidence would indicate that he and the testatrix were resident of same street viz., Big Street, Thiruvannamalai. The house of the D.W.2 facing South and the house of plaintiff, which is situate next to Rajamani Ammal house faces North and both the houses were set apart by 10 houses. He further stated that he was called by an unknown person to attest the Will as per the direction of Rajamani Ammal and after reaching the house of Rajamani



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Ammal, he enquired with her about the call made by her. It was also stated that Rajamani Ammal acknowledged and stated that she wanted to execute a testamentary document and to attest the said document, he was called by her. Therefore, it is clear that just to procure the presence of D.W.2, Rajamani Ammal utilised services of some person known to her, but not known to D.W.2. Merely because, the presence of D.W.2 was procured by Rajamani Ammal by a person not acquainted with attesor, we cannot come to a conclusion that attestation by D.W.2 is unnatural. D.W.2 in his evidence clearly deposed about his acquittance with Rajamani Ammal. When acquittance with testatrix has been spoken to by D.W.2, the utilisation of service of third party by testatrix for procuring the presence of attesor cannot be put against the propounder of the Will.

23. The learned Senior Counsel appearing for the appellant also submitted that a property sold by Rajamani Ammal in the year 1979 in S.No.60/5 was included in the Will and the same creates a serious suspicion regarding the genuineness of the Will and execution of the same by Rajamani Ammal. It is seen from Ex.A15, Rajamani Ammal sold lands to an extent of 1.66 acres situate in S.No.60/5 in Tevanendal Village, Thiruvannamalai, Sub Registrar -II, to one Murugan on 16.04.1979. Merely

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because, the property sold by Rajamani Ammal has been included in the Will executed by her, we cannot reject the entire Will. The same will not give rise to a serious suspicious circumstances so as to impeach the genuineness of the Will. When the property already sold has been included in the Will certainly, the beneficiary under the Will would not acquire any right over the said property as testatrix did not have any right over the said property on the date of execution of the Will. Any inadvertent inclusion of the property sold by the testatrix will not affect the validity of the entire Will. At the most, we can only hold that beneficiary under the Will would not get any title over the property sold by testatrix.

24. The learned Senior Counsel appearing for the appellant also submitted that the findings rendered by the Courts below that in view of the strained relationship between the Rajamani Ammal and plaintiff's family due to filing of partition suit of a plaintiff's father in O.S.No.33 of 1960 against Rajamani Ammal and Kesava Pillai, there was no possibility for Rajamani Ammal to execute a Will in favour of the plaintiff, cannot be accepted as the said suit in O.S.No.33 of 1960 was compromised between the parties and some of the items were allotted to Rajamani Ammal. In order to prove the said compromise, the appellant/plaintiff filed C.M.P.No.13607 of 2026 to

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raise additional evidence ie., suit Register in O.S.No.33 of 1960. This Court

already came to the conclusion that Ex.A4 Will relied on by the plaintiff was not proved by the evidence of attesor examined as P.W.2, as he failed to identify his signature in the original Will. Therefore, even assuming that the additional document is received as evidence and the same will not help the plaintiff to prove the case. The reception of additional evidence will not have any impact on the final conclusion of this Court with regard to the validity of Ex.A4-Will.

25. In such circumstances, the petition for raising additional evidence need not be allowed. Further, the plaintiff was aware of the suit proceedings in O.S.No.33 of 1960 as it was referred to in his pleadings itself. The strained relationship between the plaintiff's family and Rajamani Ammal was spoken to by the first respondent in his written statement as well as in the paper publication made by him prior to filing of suit. In such circumstances, the plaintiff has got ample opportunity to get the suit extract and file it before the trial Court. In the absence of any justifiable reason for the failure of the appellant/plaintiff to file the said document before the Courts below, this Court is unable to come to the conclusion that the appellant/plaintiff exercised due diligence and in spite of exercise of due



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diligence, he was prevented from producing the same before the Courts below. Therefore, this Court is not inclined to allow the petition filed by the appellant/plaintiff petitioner seeking to receive the document as Document A and hence, C.M.P.No.13067 of 2026 is dismissed.

26. The learned Senior Counsel appearing for the appellant relied on a judgment of Hon'ble Apex Court in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam** reported in **(2003) 2 SCC 91** and also another judgment of the Hon'ble Apex Court in **Meena Pradhan and Others vs. Kamla Pradhan and Another** reported in **(2023) 9 SCC 734** for the proposition that the attesting witness should have seen the other attester signing the Will. In the case on hand, this Court already discussed the evidence of D.W.2 and found that in his evidence, he deposed about the attestation of Will by other attester and hence, the ingredients of Section 63(c) of Indian Succession Act, 1925 have been subsequently complied with. Hence, the said decisions are not helpful to advance the case of the appellant.

27. The learned Senior Counsel appearing for the appellant relied on the following judgments for the proposition that merely because a Will has been attested by a close relative of the testator, it cannot be termed



as unnatural:

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1. ***Lalita Krishnaraj Parekh and another Vs. Kirti Jagadish***

Mulani reported in ***2009 SCC OnLine Bom 2018***;

2. ***N.Raveendranath and another Vs. Sarala N. and another***

reported in ***2024 SCC OnLine Ker 1346***;

3. ***Khem Chand & Ors Vs. State & Ors.*** reported in ***2010 SCC***

OnLine Del 1998; and

4. ***K.K.Varathan Vs. Dhanalakshmi and others*** reported in

2016 SCC OnLine Mad 29514.

28. With regard to the proposition argued by the learned Senior Counsel appearing for the appellant that merely because a close relative has attested the Will, it cannot be treated as unnatural, this Court has no quarrel. In fact, in case of a Will, the testator under normal circumstances, will request only a trusted close relative or friend to attest the Will, because when the validity of the Will executed by him is questioned by any one of his legal representatives, after his death, the attester must appear before the Court and depose about the execution of the Will by the testator, in order to give effect to the true will (intention) of the testator expressed in the testamentary document. Therefore, it is natural every testator will only request the trusted



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persons like relatives, friends or known acquaintance to attest the Will. In the case on hand, this Court already came to the conclusion that P.W.2 attesor failed to identify his signature in the Will-Ex.A4 and therefore, the Will has not been proved. In such circumstances, this Court need not go to the question whether the relationship between the plaintiff and the attesor-P.W.2 will affect the validity of the Will or not.

29. In the light of the discussion made earlier, the submissions made by the learned Senior counsel appearing for the appellant are not appealable to this Court and hence, the substantial questions of law taken up for consideration are answered against the appellant and the second appeal No.609 of 2023 stands dismissed.

30. The learned counsel appearing for the 6th defendant and the appellant in S.A.No.55 of 2025, vehemently contended that item No.3 of the suit property has been in his possession and enjoyment and he had put up construction thereon to the fully knowledge of the plaintiff and the first defendant for more than statutory period and the Courts below have committed error in not considering the plea of adverse possession raised by



the 6th defendant. It is settled law, the plea of adverse possession shall be specifically pleaded and strictly proved by cogent evidence.

31. In the case on hand, though the plea of adverse possession was raised by the 6th defendant in his written statement, he has not established the same by producing any reliable evidence. On his behalf, he has not examined anybody in a suit filed by the first defendant seeking declaration of title and recovery of possession in O.S.No.95 of 2014. Further, he was examined in the suit filed by the present appellant in O.S.No.117 of 1993 as D.W.4. On his behalf, no documents were marked. Ex.B1 to Ex.B8 were marked through D.W.1. Ex.B9 and Ex.B10 were marked through D.W.3. All these witnesses D.W.1 to D.W.3 were examined on behalf of the first defendant. There is no documentary evidence available on record except oral testimony of 4th defendant as D.W.4 to support his case of adverse possession over suit item 3.

32. In the absence of any evidence except interested testimony of D.W.4, to support hostile possession of 6th defendant for more than statutory period of 12 years, immediately preceding presentation of the



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plaint in O.S.No.95 of 2014, the Courts below are justified in negating the

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plea of adverse possession made by the 6th defendant. I don't find any substantial question of law arises for consideration in S.A.No.55 of 2025.

33. In the light of the above, both the Second Appeals are dismissed by confirming the judgment and decree passed by the Courts below in A.S.No.5 of 2020 and O.S.No.117 of 1993.

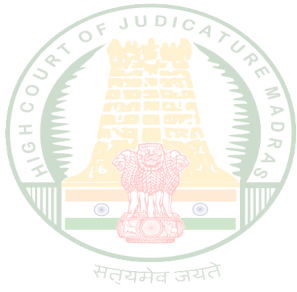
30.07.2026

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No

vsm

To

1. The Additional District Judge, Tiruvannamali.
 2. The Additional Sub Judge, Tiruvannamalai
 3. The Section Officer
- VR Section, High Court, Madras.



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S.SOUNTHAR, J.

vsm

Common Judgment made in
S.A.Nos.609 of 2023 & 55 of 2025

30.07.2026