

A.S.No.285 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2026

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CORAM :

The Hon'ble Mr.Justice N.SATHISH KUMAR
and
The Hon'ble Mr.Justice M.JOTHIRAMAN

A.S.No.285 of 2014
and
M.P.No.1 of 2014 and C.M.P.No.19210 of 2016
and
C.M.P.Nos.7635 and 8940 of 2026

1.Kanthalakshmi
2.Rajeswari
3.Krishnaveni
4.Krishna Kumar

.. Appellants

Vs.

1.Vasanth @ Vasanthammal (died)
2.D.Shakthivel
3.D.Selvi
4.T.Bhagya Lakshi @ Pappathi

[R1 died, RR2 to 4 were brought on record
as LR.s. of deceased first respondent
vide order dated 17.03.2023 made in
CMP Nos.2379, 2380 and 2381 of 2023
in A.S.No.285 of 2014]

.. Respondents

This appeal suit has been filed under Section 96 of the Civil Procedure Code, 1908 read with Order XLI and XLI-A of CPC and Order IV of the



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Madras High Court A.S. Rules seeking to set aside the judgment and preliminary decree dated 05.07.2013 made in O.S.No.190 of 2007 on the file of the IV Additional District and Sessions Court, Coimbatore insofar as they went against the appellants herein and thus render justice.

For Appellants : Mr.Sharath Chandran
for Mr.N.S.Suganthan
of M/s.NSS Advocacy LLP

For Respondents : Mrs.Hema Sampath, Senior Counsel
for Mr.S.Arjun for RR2 to 4
R1 died

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JUDGMENT

(The judgment of the court was made by N.SATHISH KUMAR, J.)

The present appeal suit has been preferred by the appellants / defendants in O.S.No.190 of 2007 aggrieved over the judgment and preliminary decree, dated 05.07.2013 passed by the IV Additional District and Sessions Court, Coimbatore in a partition suit filed by the first respondent herein (died) / plaintiff seeking for partition of 1/5th share in the suit property.

2.The parties in this case are hereinafter referred to as per their rankings before the trial court.



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3.The facts which are necessary for the disposal of this first appeal are as follows:

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3.1.The plaintiff, one Vasantha @ Vasanthammal is the mother of deceased Ayyasamy, who was the husband of the first defendant, namely Kanthalakshmi. The suit properties are self acquired properties of said Ayyasamy. Though the first item of suit property was purchased by Ayyasamy and his wife jointly on 15.07.1994, the entire sale consideration was paid out of the income earned by said Ayyasamy in his business and that the first defendant did not contribute anything on the same. The other items belonged to Ayyasamy and are self acquired properties of Ayyasamy. The said Ayyasamy died intestate on 03.01.2007 leaving behind the plaintiff and the defendant as his legal heirs. The mother being the Class 1 legal heir, is entitled to 1/5th share in the suit properties. There was difference of opinion arose between the plaintiff and the defendants and the plaintiff sought for partition of suit properties into five equal shares. But the first defendant turned down her request for partition and attempted to make an attempt to dispose of the movable assets. Therefore, the present suit has been filed by the plaintiff.

3.2.It is the case of the first defendant that her husband had executed a Will dated 28.06.2006 bequeathing all the properties in favour

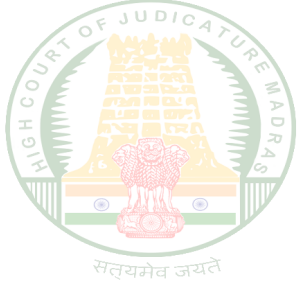


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of the first defendant. Therefore, she denied that her husband had died intestate. The first defendant also denied the averment of the plaintiff that the first item of the property was purchased out of the income of her husband. She was also looking after the timber business and she has savings and her jewels were also sold for the purchase of the first item of property. The averment of the plaintiff in the plaint with regard to the transfer of ownership with regard to the movable items is also false and there was no cause of action to file the suit. The plaintiff has no right to claim any share in the suit properties.

3.3.In the reply statement filed by the plaintiff, the execution of the Will by the said Ayyasamy is disputed. It is a forged and fabricated Will. The witnesses to the Will were close relatives of the first defendant. The first defendant through her close associates impersonated the deceased Ayyasamy and sold the property of the plaintiff as per the sale deed dated 31.05.2007, in respect of which criminal proceedings are pending against the first defendant and her associates. Therefore, it is her contention that the alleged Will is a forged document.

4.Based on the above pleadings, the trial court framed the following issues:



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(i) Whether the plaintiff is entitled for 1/5th share in the suit properties?

(ii) Is it true that Ayyasamy executed a WILL dated 28.06.2006 in favour of the first defendant?

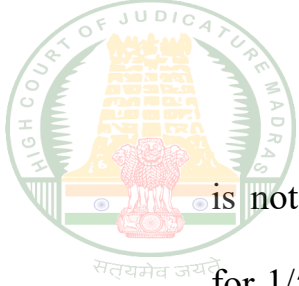
(iii) To what other relief?

(iv) Whether after the demise of Ayyasamy, 1st defendant is in possession and exclusive enjoyment of the entire properties covered under the will dated 26.06.2006?

(v) Whether the suit is an abuse of process of law?

5. On the side of the plaintiff, the plaintiff examined herself as P.W.1 and marked nine documents, namely Exs.A.1 to A.9 and on the side of defendants, D.W.1 to D.W.4 were examined and four documents, namely Exs.B.1 to B.4 were marked. Ex.C.1, Commissioner report was also marked.

6. Based on the materials available and after appreciating the evidence, the trial court found that the signature found in Ex.B.3 Will and Ex.B.4 registered document said to have been executed by Ayyasamy is not the same and there is a marking difference in the signature found in both the documents. Further, the evidence of the two attesting witnesses



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is not believable. Finding so, the trial court granted preliminary decree for 1/5th share in item nos.2 and 3 and 1/5th share of ½ in the first item, 1/5th share value of the wood stocks available on 30.03.2007 as found by the Commissioner and 1/5th share in item nos.2 and 4 in item no.5 and in respect of suit items 1 and 3 in 5th item, the suit was dismissed.

7. Aggrieved over the same, the defendants have preferred the present appeal challenging the preliminary decree. The plaintiff has not filed any appeal so far as the dismissal of the suit in respect of item nos.1 and 3 in 5th item in the suit property.

8. Mr. Sharath Chandran, learned counsel for Mr. N. S. Suganthan of M/s. NSS Advocacy, appearing for the appellants would submit that D. Ws. 2 and 3, the attesting witnesses of the Will, have clearly spoken about the execution of the Will by the deceased Ayyasamy. Though their evidence is not in conformity as required under law, the fact remains is that both the attesting witnesses have clearly deposed that the document namely Ex. B.3 Will was executed by the deceased. Therefore, their evidence though is not in verbatim with regard to the attestation, that will not dent the document. Once it is established that they saw the testator signing the document, the trial court ought to have believed their evidence and taken note of the execution and the attestation of the



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document, namely the Will. Therefore, it is contended that there is no suspicious circumstance whatsoever attached to the Will.

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9.It is the further contention of the learned counsel for the appellant that the trial court had unnecessarily embarked upon the exercise of comparing the two documents. The trial court assumed the role of experts which is not permissible. The husband executing a Will in favour of his wife is quite natural and believable. Therefore, the finding of the trial court doubting the execution of the Will is not proper. In fact, the Ex.B.3 Will has been clearly established by the witnesses and there is no suspicion over the same. In support of this contentions, the learned counsel relied on the following two judgments of the Hon'ble Supreme Court:

(i)***Naresh Charan Das Gupta Vs. Paresh Charan Das***

Gupta reported in (1954) 2 SCC 800;

(ii)***Gopal Krishan and others Vs. Daulat Ram and***

others reported in (2025) 2 SCC 804.

10.The learned senior counsel for the respondents would submit that the Will has been created by the first defendant and her conduct clearly showed that even after the death of her husband, she had



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impersonated and got the document registered as if the deceased Ayyasamy had executed the document with third parties. It is the contention of the learned senior counsel that criminal proceedings were initiated in this regard and they were convicted. Therefore, their conduct would clearly prove that Ex.B.3 Will is also a created document. Further, the so-called attesting witnesses, namely D.Ws.2 and 3 were none other than the close relatives of first defendant and one of the attesting witnesses is none other than the husband of the first defendant's sister. Therefore, their evidence is highly doubtful and clearly shows that the Will could not have been executed by said Ayyasamy as alleged by the defendants. Their evidence have not clearly proved the execution and attestation of the Will as required under law and therefore, the execution of the Will is shrouded with suspicion. Hence, the trial court has rightly disbelieved their evidence and the execution of the Will. It is the further contention of the learned senior counsel that during the pendency of the appeal, the first respondent / plaintiff died leaving behind the legal heirs and they were impleaded as respondents 2 to 4. Besides, she has also left a Will in favour of the legal heirs in respect of her 1/5th share in the suit items as decreed by the trial court. Therefore, the learned senior counsel submitted that the validity of that Will can be decided during the final



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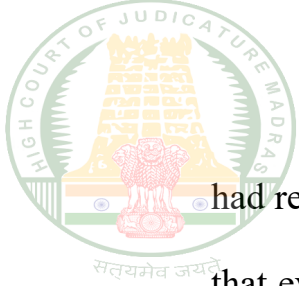
decree proceedings. If the Will is found to be genuine in the final decree proceedings, the 1/5th share of the plaintiff will go to the legatee, otherwise the shares will be devolved as per the law, in which case, the defendants also will be entitled to 1/6th share each out of the 1/5th share allotted to the plaintiff.

11.In the light of the above submissions made by the respective learned counsel and learned senior counsel, the points that arise for consideration in this appeal are as follows:

(a)Whether the Will dated 28.06.2006 is proved in the manner known to law and is there any suspicious circumstance attached to the Will?

(b)To what other relief, the parties are entitled to?

12.The respondents herein have filed a petition being C.M.P.No.8940 of 2026 under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to receive the copy of the judgment made by the trial court to show that the first defendant and her associates were convicted for impersonating and creating forged document in order to defeat the right of the plaintiff. With regard to the reception of a document as additional evidence, the Court must first be satisfied that the trial court



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had rejected the evidence but it must have admitted; the party must prove that even after due diligence, the party could not produce such document and the document remained inaccessible during the trial and further, the appellate court is of the view that in order to make complete justice, such document is required. It is to be seen that the document now sought to be filed as additional evidence is the copy of the judgment of the criminal court. This court is of the view that the same will not be relevant in the present civil case. Though the same is sought to be filed to prove the conduct of the parties, we are of the considered view that such document is not at all necessary for the disposal of the present appeal suit. Therefore, the C.M.P.No.8940 of 2026 is liable to be closed as the document is not required to be filed as additional evidence in this case. Accordingly, C.M.P.No.8940 of 2026 is closed.

13.The entire issue in the present case revolves around Ex.B.3 Will dated 28.06.2006. A perusal of the Ex.B.3 Will shows that it is an unregistered Will. Though it is normal for any husband to leave a Will in favour of his wife, the recital in Ex.B.3 Will indicates that since the said Ayyasamy was suffering from heart ailment for the last six months and he does not have the hope that he could live for a long time and hence, he was writing the Will. Absolutely there is no evidence whatsoever with



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regard to the so-called heart ailment of the testator Ayyasamy and no evidence has been adduced to that effect. Be that as it may, D.W.2 and D.W.3, attesting witnesses were examined to prove the execution of the Will by the testator.

14.A perusal of the evidence of D.W.2 would clearly indicate that D.W.2 Kamatchi is none other than the husband of the plaintiff's sister. The other witness D.W.3 is none other than the husband of the first defendant's sister. As far as the Will is concerned, the twin facts of execution and attestation of the Will has to be proved in the manner known to law before the Will being admitted and thereafter only, the Will can be relied upon by the parties. In the light of the above position of law, when the evidence of D.W.2 is looked into, it is seen that the evidence of D.W.2 proceeded in the chief examination as if the testator had signed the Will in the presence of the attesting witnesses, namely D.W.2 and D.W.3. In the cross examination, the D.W.2 has admitted that he has never signed anything in the Advocate's office. His further evidence would clearly indicate that he has never seen the signature of Ayyasamy and he does not know whether the testator signed in English or Tamil, except stating that Ayyasamy signed in one piece of paper and further, that document was already prepared and brought by said Ayyasamy. Therefore, his



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evidence clearly indicates that except one piece of paper, D.W.2 does not know anything about the document and further, he was not in a position to identify the signature of the testator Ayyasamy. Therefore, his entire evidence when carefully seen, would clearly indicate that he is not even aware of the Will said to have been left by the deceased Ayyasamy. There was nothing to indicate as to whether the said Ayyasamy was in sound state of mind at that time, whereas the entire cross examination of the attesting witness D.W.2 would show that D.W.2 was not in a position to state that whether the Will was left by the deceased. Therefore, his entire evidence does not even satisfy the execution as well as the attestation of the Will as required under the law. Further, being the close relative of D.W.1, signing as the attesting witness is quite probable in order to support the case of D.W.1.

15.The other attesting witness, namely D.W.3 is one Radhakrishnan. His evidence when is scanned does not also prove the attestation. When his cross examination is carefully seen, he has also admitted the criminal case pending against the first defendant for impersonating the signature. The cross examination of D.W.3 would show that Ayyasamy's Will was registered in Palakad and in the said Will only, he and D.W.2 have signed the same, whereas Ex.B.3 Will is only an



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unregistered Will. The further evidence of D.W.3 when scanned would go to show that he had admitted that he was not present when the Will was written and D.W.3 is not in a position to read and write Tamil and he does not know where the Will was prepared and what was the content in the Will. Further, the entire evidence does not know whether the testator had also seen the witnesses signing the document. Therefore, in the absence of any evidence to prove the attestation, we are of the view that the unregistered Will cannot be relied upon, particularly with the evidence of D.W.2 and D.W.3, who are very close to D.W.1. Therefore, when the execution and attestation of the Will was not proved in the manner known to law, it is hard to believe the unregistered Will.

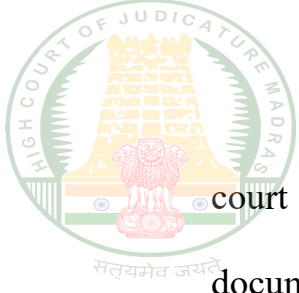
16. The scribe of the Will, namely D.W.4 was examined. He has deposed that he had prepared the Will in the District Registrar Office on 28.06.2006. His evidence does not prove the execution or attestation of the Will. His cross examination clearly shows that he has not seen any witnesses signing the document nor the testator signing the document. Though he has stated that he had prepared the Will and handed over the Will to the testator, he has never seen either the testator or the witnesses signing the document in his presence. Further, his cross examination would clearly show that he never used to keep the draft after preparation



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of the document. However, he had admitted that the Will was brought back one week later and at that time, he had compared the draft. In his chief examination itself, he has said that he has signed only on 28.06.2006. Therefore, there is inconsistency in his evidence and it is highly unbelievable and creates serious doubt about the Will. Therefore, once the execution and attestation of the Will has not been established and the evidence of the witnesses are inconsistent with each other and against the normal conduct of the parties, the question of relying on the evidence of those witnesses with regard to the Will does not arise at all. Therefore, the ordinary presumption that a husband will normally write a Will to his wife cannot be applied in this case as the execution and attestation of the Will is not proved in the manner known to law and there are inconsistencies in the evidence of witnesses.

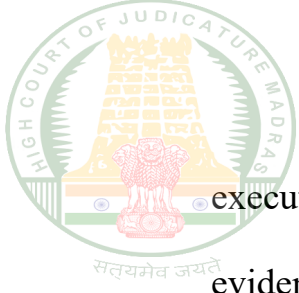
17.Further, the very conduct of parties that certain documents have been registered impersonating the deceased and criminal proceedings have been launched against them clearly shows that their conduct also cannot be ignored altogether. The pendency of the criminal case for impersonating has been clearly admitted by D.W.3 in his cross examination. D.W.1 also, in her evidence, has admitted about the criminal case filed against them for impersonation. It is to be noted that the trial



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court has also convicted them in the criminal proceedings. Though the document, namely the judgment of the criminal court was sought to be marked as additional evidence, this court has not accepted the same, as stated supra, because the fact remains that the judgment of the criminal court convicting the accused, namely D.W.1 and others, is not disputed. Therefore, the conduct of the parties cannot be brushed aside or ignored altogether. The very Ex.B.3, Will propounded by first defendant is shrouded with serious doubt and the attesting witnesses are very close relatives of D.W.1. Their evidence also when scrutinised thoroughly do not prove the fact of execution and attestation of the document, instead inconsistencies are found by this court. The decisions relied on by the learned counsel for the appellants do not help the case of the appellants, though there is no disputation about the proposition laid down in the decisions cited. Considering the entire evidence of the attesting witnesses, it is seen that there are inconsistencies in their testimonies and the circumstances emerging from the record, the execution and attestation of the Will remain shrouded with doubt and cannot be accepted as having been proved in the manner known to law. This court is of the view that it is unsafe to rely on their evidence when there are inconsistencies in the evidence. When the propounder of the Will has failed to establish the due



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execution and attestation of the Will in the manner known to law and the evidence in this regard suffers from inconsistencies rendering the same wholly unreliable, this court is of the view that the trial court is right in disbelieving the Will and the present appeal suit filed by the defendants deserves to be dismissed.

18.In the result, the present appeal suit is dismissed, confirming the judgment and preliminary decree passed in O.S.No.190 of 2007 dated 05.07.2013 by the IV Additional District and Sessions Court, Coimbatore. No costs. Consequently, connected miscellaneous petition, namely M.P.No.1 of 2014 is closed.

19.C.M.P.No.7635 of 2026 has been filed by the respondents herein seeking to receive the copy of the Will dated 13.04.2009 as additional evidence in the present appeal. It is seen that the Will dated 13.04.2009 has been left by the original plaintiff in favour of respondent no.2 and his wife in respect of the 1/5th share declared by the trial court in favour of the plaintiff. The said Will is a registered Will. The above said registered Will has been executed in favour of second respondent during the pendency of the proceedings. Though the said document is sought to be filed, subsequently, the learned senior counsel for the respondents fairly submitted that the validity of the Will shall be



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established during the final decree proceedings based on the shares to be allotted to the original plaintiff, namely the mother of respondent no.2. In such view of the matter, as the issue is only with regard to the 1/5th share of the suit properties and this court has also confirmed the judgment passed by the trial court granting preliminary decree in respect of 1/5th share in favour of the plaintiff and now that share will be devolved upon to the legatees as per the Will left by the plaintiff and if the Will is not established in the manner known to law in the final decree proceedings, then the defendants 1 to 4, namely appellants herein are also entitled to 1/6th share out of 1/5th of the plaintiff's share, no orders needs to be passed in this petition. Therefore, while allotting the share in the final decree proceedings, the court concerned can go into the validity of the Will said to have been left by the original plaintiff and allot the shares, based on the outcome of the Will as indicated above and accordingly, this C.M.P.No.7635 of 2026 is closed.

20.C.M.P.No.19210 of 2016 has been filed by the appellants to return the original document marked as Ex.B.4 before the trial court by replacing or substituting the same with the certified copy of Ex.B.4. It is to be noted that the judgment and preliminary decree passed by the trial court is confirmed by this judgment and the appeal filed by the appellants



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is dismissed as stated above. Therefore, in this view of the matter, the appellants can file an application before the trial court under Order XIII Rule 9 of the CPC for the return of the document. With this liberty, the C.M.P.No.19210 of 2016 filed by the appellants is closed.

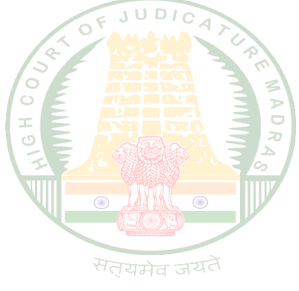
(N.S.K., J.) (M.J.R., J.)
03.07.2026

Index : Yes / No
Speaking Order /Non speaking order
Neutral Citation : Yes
vvk

To

1.IV Additional District and
Sessions Judge, Coimbatore.

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



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