

A.S. No.770 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 27.02.2026**

DELIVERED ON : 10.04.2026

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CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.No.770 of 2023

and

C.M.P.Nos.26961 of 2023 & 2947 of 2026

K.S.Krishnasamy (Died)

1.K.Umamaheshwari

2.Geethapadmini

3.Sudha

4.K.Santhamani

...

Appellants

Vs.

Lakshmi

...

Respondent

PRAYER: First Appeal filed under Section 96 of the Civil Procedure Code, praying to set aside the judgment and decree dated 31.07.2023 made in O.S.No.543 of 2012 on the I Additional District Judge, Coimbatore and to allow the First Appeal.

For Appellants : Mr.SR.Raghunathan
for Mr.V.Anandhamurthy
For Respondent : Mr.T.Saikrishnan



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JUDGMENT

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The defendants in O.S.No.543 of 2012, on the file of the First Additional District Judge, Coimbatore are the appellants herein.

Pleadings:

2.Plaint in brief:

2.1.Plaintiff and the first defendant are daughter and son of late Subbiah Gounder, through his first wife. After the death of the first wife, their father married one Thangammal, through whom no children were born. Suit property originally belonged to Pongia Gounder and his sons, and in and by partition deed dated 11.09.1929, the suit property was allotted to the share of the father of the plaintiff Subbiah Gounder. Under a sale deed dated 23.06.1937, Subbiah Gounder got $\frac{1}{3}^{\text{rd}}$ share and in an oral partition, he derived 4.88 acres. Subbiah Gounder died in November 1946. His second wife Thangammal became entitled to half share in the entire property. Plaintiff is entitled to $\frac{1}{3}^{\text{rd}}$ share. Thangammal, the second wife died on 12.02.2012 and her share also became her absolute property after the commencement of the Hindu Succession Act. As Thangammal died without any issues, the plaintiff and the first defendant succeeded to her share. Thus, the



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plaintiff as a heir of her father and as a heir of her step-mother becomes entitled to an equal one half share, the other half share belonging to brother of the plaintiff viz., the first defendant.

2.2.The first defendant and the second wife of Subbiah Gounder jointly sold one Acre to a third party and the plaintiff is not a signatory to the said sale deed. The Plaintiff demanded partition. However, the plaintiff's demand was evaded by the defendants. The defendants 2 to 4 are daughters of the first defendant and they claim under the settlement deed dated 27.07.2011, based on an alleged Will executed by Thangammal dated 25.07.2011. Will of Thangammal is not true and genuine. The first defendant, brother of the plaintiff died intestate on 03.07.2013 and his wife is the fifth defendant and daughters are defendants 2 to 4. They only inherited half share of the first defendant. Hence, the suit for partition and permanent injunction was filed to restrain the defendants from a; alienating or encumbering the suit property.

3.Written statement filed by the first defendant and later adopted by the defendants 2 to 4 in brief:

3.1.The plaintiff is no doubt is the daughter of Subbiah Gounder, through first wife, born in the year 1937. The first wife died in the year 1939. Thereafter, Subbiah Gounder married



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Thangammal. The property measuring 2.59 acres in S.F.No.72/2 of Kannampalayam Village was allotted to the share of the Subbiah Gounder, in a partition dated 11.02.1929. Subbiah Gounder was carrying on agricultural operations in the property. He also purchased properties through registered sale deed dated 23.06.1937, besides also becoming entitled to other properties in a family arrangement dated 30.10.1937. The properties were all enjoyed by Subbiah Gounder as his ancestral properties.

3.2.The first defendant, being his only son, became entitled to one half share. Subbiah Gounder, died in the year 1945 and not 1946, as alleged by the plaintiff. Properties devolved only on the first defendant and mother of the first defendant namely Thangammal, second wife of Subbiah Gounder. The right of enjoyment of said Thangammal is also restricted and she had no power of alienation. The first defendant is entitled to $\frac{3}{4}$ th share and Thangammal to $\frac{1}{4}$ th share. The said $\frac{1}{4}$ th share blossomed into a full share in terms of the Hindu Succession Act, 1956. Plaintiff is not entitled to any share. The first defendant and Thangammal joined by defendants 2 to 4, sold one acre in S.F.No.72/2, in and by sale deed dated 31.05.1991, about which the plaintiff is fully aware. The plaintiff consented for the said alienation, by executing a



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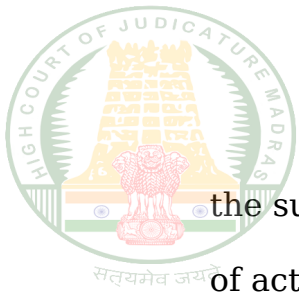
Varthamana letter on 13.05.1991. Thangammal also executed a Will

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dated 25.07.2011, bequeathing her 1/4th share in favour of the defendants 2 to 4 and the said Will has come into effect on 12.02.2012, with the demise of Thangammal. The first defendant has executed a settlement deed on 27.07.2011, in favour of defendants 2 to 4 and the defendants 2 to 4 have thus become absolute owners of the suit property. Plaintiff has not valued the suit property and the suit is bad for non-joinder of necessary parties.

4.Written Statement filed by the fifth defendant in brief:

Subbiah Gounder died in 1945 and not 1946 as contended by the plaintiff. The first defendant alone became entitled to the entire property and the plaintiff is not entitled to any property. Revenue records have also been mutated in the name of the first defendant, who was enjoying the suit property as his absolute property. Plaintiff has not objected to the sale deed executed by the first defendant and her step-mother Thangammal, on 31.05.1991. Thangammal has also executed a Will dated 25.07.2011, in favour of the defendants 2 to 4. The first defendant has also settled his share in favour of defendants 2 to 4 and thus, defendants 2 to 4 are enjoying the suit properties as absolute owners, in terms of the Will and settlement deed referred hereinabove. Plaintiff has no right in



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the suit properties. Suit is bad for mis-joinder and there is no cause of action for the suit.

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5.Additional Written Statement filed by the third defendant:

The power of attorney executed to represent the plaintiff is unregistered and has not been executed by the plaintiff. The power of attorney has been executed only to avoid the plaintiff from entering witness box as her evidence would turn adverse to her own case. Power agent cannot depose on behalf of the plaintiff with regard to the acts done by the plaintiff, prior to the execution of the power of attorney. Subbiah Gounder died even prior to coming into force of the Hindu Succession Act and the plaintiff has no right over the property. There is no cause of action for the suit. The plaintiff having failed to challenge the sale deed executed by the first defendant in the year 1991, is not entitled to question the rights of the defendants in the suit property.

6.Based on the pleadings, the following issues were framed:

i) Whether the plaintiff is born to the 1st wife of the Subbiah Gounder?

ii) Whether it is true that the 1st wife of Subbiah Gounder died in the year 1939 as claimed by the defendants?



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iii) Whether the plaintiff has right to claim share in the suit properties?

iv) Whether the alleged Will executed by the 2nd wife of Subbiah Gounder is true and binding on the plaintiff?

v) Whether the settlement deed dated 27.07.2011 alleged to be executed by the 1st defendant is binding on the plaintiff?

vi) Whether the suit is bad for non-joinder of necessary parties as claimed by the defendants?

vii) Whether the 5th defendant is not a necessary party to the suit?

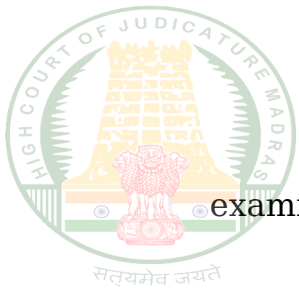
viii) Whether the plaintiff is entitled to the share claimed for?

ix) Whether the plaintiff is entitled to the relief of permanent injunction as sought for?

x) What other reliefs is the plaintiff entitled to?

7.Trial:

On trial, the plaintiff examined herself as P.W.1 and marked Exs.A.1 to A4. On the side of the defendants, D.W.1 and D.W.2 were



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examined and Exs.B.1 to B.16 were marked.

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8.Decision of the trial Court:

Trial Court, finding that the daughter is also entitled to a share in the suit properties, taking note of the decision of the Hon'ble Supreme Court in the case of ***Vineetha Sharma Vs. Rakesh Sharma***, reported in ***2020-5-LW 300***, found that the date of death of the father would be irrelevant and decreed the suit granting a preliminary decree of partition, declaring the plaintiff's share as one half and also granting permanent injunction, restraining the defendants from alienating or encumbering the said property in any manner.

9.Aggrieved by the said judgment and decree, the defendants are on First Appeal.

10.I have heard Mr.S.R.Raghunathan, learned Counsel for Mr.V.Anandhamurthy, learned Counsel for the appellants and Mr.T.Saikrishnan, learned Counsel for the respondent.

11.Arguments of Mr.S.R.Raghunathan:

11.1.Mr.S.R.Raghunathan, learned Counsel for the appellant would firstly contend that the trial Court has committed a grave



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error in applying the ratio laid down by the Hon'ble Supreme Court in ***Vineetha Sharma's*** case, without noticing that the decision of the Hon'ble Supreme Court was relating only to succession under the 1956 Act and would not in any manner affect succession, which has opened prior to the commencement of the 1956 Act. He would also state that the plaintiff was fully aware of the fact that, she was not entitled to any share and that was the reason why she executed the Varthamana letter. Though a copy of the said Varthamana letter was marked as Ex.B.2, the trial Court has not taken note of the said document, on the ground that the original has not been filed and also on the ground that the Varthamana letter is unregistered and unstamped. He would also state that appellants have also now taken out an application for marking the said Varthamana letter in original.

11.2.Mr.S.R.Raghunathan, would further state that the appellants had also filed an additional written statement in and whereby, it has been contended that the lands being agricultural lands, the Hindu Women's Right to Property Act, 1937, was made applicable to the suit properties vide Act 26 of 1947 with retrospective effect from 26.11.1946 onwards. He would therefore, contend that when Subbiah Gounder had died in the year 1945, his second wife Thangammal would not get any share in the suit



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properties and the entire suit properties would fall only on the shoulders of the first defendant, the only male heir of the Subbiah Gounder.

11.3.Mr.S.R.Ragunathan, would also state that the respondent / plaintiff has not been able to substantiate the correct date of death of Subbiah Gounder and taking me through the plaint, as well as deposition of the parties, he would state that excepting for stating that said Subbiah Gounder died in 1946, no date has been mentioned in the plaint. On the contrary, pointing out the stand of the appellants in the written statement as well as registered documents executed in 1991, conveying 1 acre of land jointly in favour of a third party, the documents clearly mention the year of death as 1945. It is not open to the plaintiff, without establishing the correct date of death of Thangammal, to claim a share under Thangammal.

11.4.As regards the finding of the trial Court, regarding plaintiffs' entitlement to a half share in the share of Thangammal, Mr.S.R.Ragunathan, learned Counsel would further state that defendant was entitled to take inconsistent pleas. He would further state that if at, all the issue of estoppel or acquiescence was raised by Thangammal against the defendants, the decision would have



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been different and the defendants would certainly be estopped by acquiescence, but however, he would contend that in a lis as between the appellants and the respondent, no estoppel or acquiescence would arise and plaintiff cannot contend that by conduct, defendants have conferred title on Thangammal.

11.5.Without prejudice to the above submissions Mr.S.R.Raghunathan, would state that, in any event Thangammal had executed her last Will and testament on 25.07.2011 and with the evidence of D.W.1 and D.W.2, the appellants have established due execution of the said Will executed by Thangammal. He would further point out that in cross examination of D.W.1 and D.W.2, not even a suggestion has been put questioning the sound and disposed state of mind of the testatrix. He would therefore, state that the Court is entitled to presumption that the testatrix was in a sound mind at the time of execution of Will.

11.6.In support of his submission Mr.S.R.Raghunathan, has relied on the following decisions:

i) Eramma Vs. Veerupana & others reported in 1965 SCC Online SC 23;

ii) Vineeta Sharma Vs. Rakesh Sharma reported in (2020) 9 SCC 1;



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iii) Rayachand Wanmalidas Vs. Sheth Maniklal

Mansukhbhai reported in AIR 1946 Bom 266 (FB);

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iv) Chapsibhai Dhanjibhai Danad Vs. Purushottam

reported in Air 1971 SC 1878;

v) Kamakshi Builders Vs. Ambedkar Educational

Society reported in (2007) 12 SCC 27;

vi) Muddasani Venkata Narsaiah Vs. Mudasani Saroja,

reported in (2016) 12 SCC 288.

12.Arguments of respondent Counsel Mr.T.Sai Krishnan:

12.1. Learned Counsel for the respondent / plaintiff would firstly state that with regard to the defence regarding the properties being agricultural lands and the retrospective operation of the Hindu Women's Right to Property Act, 1937, only from 26.11.1946, there is no pleadings. In this regard, he would state that though learned Counsel for the appellants has made elaborate submissions, the application filed by the appellants to file an additional written statement was in fact, dismissed by the trial Court and despite a challenge to the said order by way of revision to the High Court, the appellants were not permitted to file the additional written statement. He would invite my attention to the observations and findings in paragraph No.5 of the judgment referring to I.A.No.391 of 2018, having been dismissed on



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25.09.2018. It is therefore, the contention of Mr.T.Sai Krishnan, learned Counsel for the respondent that it is not open to the appellants to canvas the said ground, in the absence of pleadings. He would therefore, state that as long as additional written statement has not been taken on file, no reference could be made to the said additional written statement.

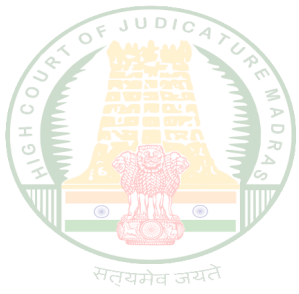
12.2.Mr.T.Sai Krishnan, would further state that the fact that Thangammal, second wife joined execution of sale deed in favour of a third party would suffice to presume an admission on the side of the appellants that Thangammal had a definite share in the suit property and the first defendant being a party to the said sale deed along with the appellants, cannot now contend that the second defendant did not have any share. In this regard, he would also state that even as a back up, the appellants are only falling back on alleged Will executed by Thangammal. Therefore, viewed from any angle according to Mr.T.Sai Krishnan, learned Counsel, the appellants have conceded the right of Thangammal. Therefore, it is no longer open to the appellants to state that Thangammal was not entitled to any share and it is only the first defendant, who became the absolute owner after the demise of the father Subbiah Gounder.

12.3.Referring to the statement of objections and reasons of



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the Amendment Act, 39 of 2005 and relevant paragraphs of the judgment of the ***Vineeta Sharma's*** case referred to herein supra, Mr.T.Sai Krishnan, would state that the Act itself only intended to amend and codify the existing law. The Act only brought about changes in the law of succession and gave rights which were till then unknown in relation to women's property. Referring to the relevant paragraphs of ***Vineeta Sharma's*** case, Mr.T.Sai Krishnan, learned Counsel for the respondent would state that, irrespective of whether the father was alive or not, the daughter would become a coparcener by birth and therefore, insofar as the ancestral properties of father Subbiah Gounder, she would become entitled to one half share on her birth and even in respect of the share of Thangammal, who was step-mother of the plaintiff as well as first defendant her half share would also be taken only by plaintiff and first defendant. It is therefore, submitted by the learned Counsel for the respondent that the trial Court has not committed any error in declaring the one half share of the respondent / plaintiff. As regards Ex.B.16 Will, learned Counsel appearing for the respondent / plaintiff, relying on the evidence of the contesting witness D.W.2, would state that his evidence does not satisfy the mandate of Section 63(c) of the Indian Succession Act. He would therefore, state that the trial Court has rightly appreciated the evidence of the attesting witnesses in disbelieving Ex.B.6.



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12.4.In support of his submissions, Mr.T.Sai Krishnan, has relied on the following decisions:

i) Palaisamy Vs. Chinnakandan reported in 2012 5 L.W. 145;

ii) Ramnath Sao Vs. Goberdhan Sao reported in (2017) 13 SCC 149;

iii) A.Kanagalakshmi Vs.V.Gururaj, reported in 2018 (3) CTC 250.

iv) Selvamani & others Vs. Ponnusamy & others reported in (2019 4 L.W. 937;

v) Thenmozhi Vs. Kousalya reported in 2023 (2) CTC 328;

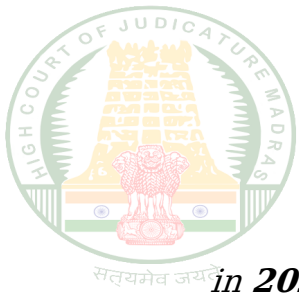
vi) C.Murali Vs. S.Kumar, reported in 2025 (3) CTC 499;

vii) Shivakumar & others Vs. Sharana Basappa & others reported in (2021) 11 SCC 277;

viii) V.Prabhakara Vs. Basavaraj reported in 2022 (1) SCC 115;

ix) S.Balachandar Vs. N.Palanisamy reported in 2021 (3) CTC 300;

x) Johrilal Chowdhary (Died) Vs. D.Shankar Chettiar reported in 2021 (4) CTC 716;



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xi) Marimuthu & others Vs. Natarajan & others reported

in 2020 (5) CTC 533.

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Analysis:

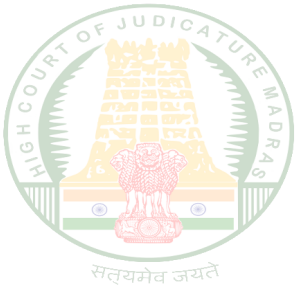
13.I have carefully considered the submissions advanced by the learned Counsel for the appellants as well as the learned Counsel for the respondent.

14.Based on the submissions made by them, I proceed to formulate the following points for consideration:

1) Whether C.M.P.No.2947 of 26 seeking permission to produce the original Varthamana letter as additional evidence in the present appeal can be entertained?

*2) Whether the plaintiff would become entitled to a right by birth in view of Act 39 of 2005, as interpreted by the Hon'ble Supreme Court in **Vineeta Sharma's** case?*

3) Whether Thangammal had any right in the suit properties and if so, whether the Will dated 25.07.2011, has been proved to be duly



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executed, in order to disinherit the plaintiff?

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15.Point No.1:

15.1.The Varthamana letter dated 13.05.1991, said to have been executed by the respondent / plaintiff, consenting for the sale of 1 acre of land by her step-mother and brother / first defendant was marked as Ex.B.2, before the trial Court. However, the trial Court has discussed about the said Exhibit and finding that the original of the same has not been filed and further in view of the fact that, the said Varthamana letter is unregistered and also unstamped, has found that Ex.B.2, had no evidentiary value. In the present appeal, the original of the said Varthamana letter is sought to be produced as additional evidence. In the affidavit in support of the said application in C.M.P.No.2947 of 2026, it is stated that the original was traced after thorough search and no serious prejudice would be caused to the respondent, if the original is permitted to be exhibited before this Court, as an additional document.

15.2.By filing a counter to the said application, the respondent has resisted the request for the said additional document being permitted to be received, contending that the photostat copy of the same was already marked as Ex.B.2 and the trial Court has elaborately discussed about the admissibility of the



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said document and has rightly not taken into consideration the said Varthamana letter. It is therefore, contended that the production of the original at this stage is not going to, in any manner help the appellants.

15.3.I will first deal with the admissibility and evidentiary value of the said Varthamana letter, on the ground that it is unstamped and unregistered.

15.4.From the contents of Ex.B.2, which is already marked before the trial Court, I find that the plaintiff in and by the said Varthamana letter has stated that she does not have any right in the subject property, which was proposed to be sold to a third party by her brother and step-mother, Thangammal. Therefore, I do not see how such a consent letter, which is only in the nature of an affidavit of disclaimer, at best, needs to be stamped or unregistered. Section 17 of the Registration Act, 1908, makes registration of documents compulsory, only when such document purports or operates to create, declare, assign, limit or extinguish any right, title or interest in immovable property of a value of 100 rupees and more. The said Varthamana letter does not in any manner declare, assign, limit or extinguish any right, title or



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interest in an immovable property.

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15.5.On the contrary, the respondent / plaintiff, only puts it on record that she has no right in the property and therefore, has no objection for the property being alienated by her brother and step-mother. Therefore, the finding of the trial Court that the document is unregistered and unstamped and hence, cannot be received in evidence, is liable to be set aside.

15.6.This alone is not however, not sufficient for the appellants for being entitled to, as a matter of right, persuade the Court to look into the said Varthamana letter. The execution of the Varthamana letter has been seriously disputed by the plaintiff, throughout. The trial Court has rightly found that no efforts have been taken by the defendants to establish the truth and genuineness of the said Varthamana letter. Therefore, even by producing the original of the said Varthamana letter, marked as Ex.B.2, at this appeal stage, the document will not have any evidentiary value, since the very execution of the said document has been disputed by the respondent / plaintiff. Therefore, when the execution of Ex.B.2 has not been proved, I do not see any grounds to permit the original of Ex.B.2, Varthamana letter to be



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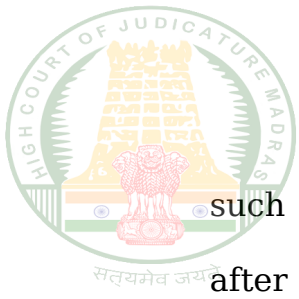
received as additional document in the appeal. Accordingly, Point No.1 is answered against the appellants.

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16.Point No.2 & 3:

16.1.The respondent / plaintiff has contended that eventhough the properties are ancestral properties, with the advent of the Hindu Succession Act, 1956, and amended by Act 39 of 2005, and the path breaking judgment in ***Vineeta Sharma's*** case, the daughter would become a coparcener by birth and therefore, it is not open to the brother / first defendant to contend that, he alone takes the entire property, on the demise of the father, Subbiah Gounder. The arguments, though appears to be interesting and attractive at first blush, the ratio laid down in ***Vineeta Sharma's*** case has to be interpreted in the context in which it has been rendered.

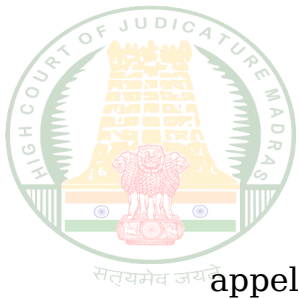
16.2.The Hon'ble Supreme Court was dealing with a case of succession opening after the commencement of the Hindu Succession Act in the year 1956. Therefore, the ratio laid down by the Supreme Court that the date of death of the father would be irrelevant, would certainly have to be viewed from the facts of the said case, where the daughter claimed a right under Section 6 of the Hindu Succession Act, 1956 as amended by Act 39 of 2005. In



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such circumstances, the Hon'ble Supreme Court held that even after born daughters would also become entitled to be treated as coparceners along with the sons. ***Vineeta Sharma's*** case does not lay down a proposition that a daughter has to be treated as a coparcener, even if succession opened prior to the coming into force of the 1956 Act.

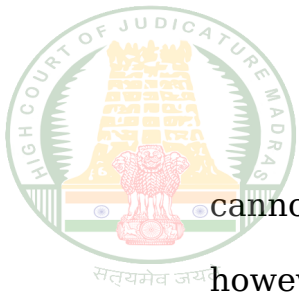
16.3.In the instant case, admittedly, Subbiah Gounder died before 1956; though there is a dispute with regard to the year of death, with the plaintiff contending that her father died in 1946, and the appellants contending that Subbiah Gounder died in 1945. However, when admittedly, Subbiah Gounder died prior to the commencement of the 1956 Act, the Hindu Succession Act was not in force on the said date and therefore, when succession opened on the date of death of the Subbiah Gounder, it would go only as per the then prevailing customary law. In other words, the male coparceners alone would be entitled to a right by birth. Viewed in such a manner, the separate half share of Subbiah Gounder would go in two shares, one half share to the first defendant, son and the remaining half share to his second wife, Thangammal. Hence, the plaintiff is not entitled to a share on birth.



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16.4. Though it is contended by the learned Counsel for the appellants that in view of the retrospective effect given to the operation of the Hindu Women's Right to Property Act, 1937, from 26.11.1946, Thangammal cannot be entitled to any share, since Subbiah Gounder died even in 1945. As rightly contended by Mr.T.Sai Krishnan, no such plea was taken before the trial Court. The said plea is placed only in the additional written statement. It is noted that the application seeking to file said additional written statement was dismissed and the said order was confirmed in revision. Thus, I am unable to see how the appellants can fall back on the pleadings in the additional written statement. Even de hors the above, in the light of the fact that Thangammal herself has joined execution of the sale deed in Ex.B.1 in favour of a third party in the year 1991, which document clearly speaks about the step-mother Thangammal being entitled to a share in the property and more so, when Thangammal has executed a Will and the appellants are also claiming right under the said Will, I am unable to accept the arguments advanced by the learned Counsel for the appellants that Thangammal was not entitled to any share in the property.

16.5. Principle of application of estoppel as argued by Mr.S.R.Raghunathan, may be right in the sense that, in a *lis* between Thangammal and the appellants, the appellants certainly



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cannot contend that Thangammal is not entitled to a share, but however, viewed from the angle that all along after the demise of Subbiah Gounder, Thangammal has exercised rights as owner even in 1991 and again at the time of executing Ex.B.16 Will, I do not see how the appellants are permitted to canvas a case that Thangammal was not entitled to any share at all in the property. Hence, Point No.2 is answered in favour of the appellants and against the respondent.

17.Now, having come to the conclusion that Thangammal had a share in the property, the only question remains is whether the Will in Ex.B.16, has been duly proved under Section 63 (c) of the Indian Succession Act, 1925 r/w. Section 68 of the Indian Evidence Act, 1872.

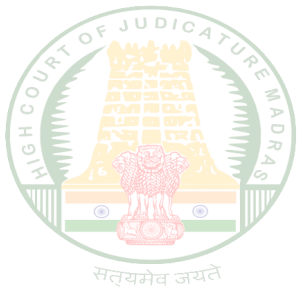
17.1.Ex.B.16 is the Will executed by Thangammal. One of the attesting witnesses to the said Will has been examined as D.W.2. In his evidence, in chief examination, he has stated that his grandfather is the elder brother of the testatrix, Thangammal. He speaks about the family, Thangammal having married Subbiah Gounder and that Subbiah Gounder's first wife had died subsequent to which, he married his aunt Thangammal. He has also stated that Thangammal and Subbiah Gounder were not blessed



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with any issues. He speaks about the execution of the Will on 25.07.2011. He has further stated that Thangammal requested him to come to her residence on the next day for purposes of attesting the Will proposed to be executed by her. He has also stated that he went to Thangammal's residence at about 9 a.m. in the morning on 25.07.2011. He has spoken about the Advocate reading out the Will aloud to Thangammal. He has also stated that he read the contents of the Will before the Will was printed on bond sheets. He clearly deposes as follows:

"தங்கம்மாள் டிசாத்து பத்திரங்களை வார்க்கறிஞரிடம் டிகாடுத்து உமாமகே'வரி, கீதாபத்மினி, சுதா (2 முதல் 4 பிரதிவாதிகள்) ஆகியோர் டிபயருக்கு உயில்சாசனம் எப்துவெண்டும் என டிசான்னார். தங்கம்மாளுக்கு, வார்க்கறிஞர் உயில்சாசனம் மாதிரி ஒன்றை தயார் டிசய்து அதை தங்கம்மாளுக்கு பழத்து காண்பித்தார். தங்கம்மாள் என்னையஜம் உயில்சாசனத்தின் மாதிரியை பழக்க டிசான்னார். நானும் பழத்தென். பின்பஜ உயில்சாசனத்தின் மாதிரியில் உள்ள விவரங்கள் நான்கு பச்சை தாள்களில் பிரிண்ட எடுக்கப்பட்டது. அதில் தங்கம்மாள் கைரெகை வைத்தார். அதில் நானும், ஆர்த்தியஜம் சாட்சி கைடியபுத்து டிசய்தொம். மெற்றிசான்னவாறு தயார் டிசய்யப்பட்ட உயில்சாசனம் தான் தற்பொது என்னிடம் காட்டப்படும் உயில்சாசனம் ஆகும். அது பி.வா.சா.ஆ.16. அதில் ஒவ்டிவாரு பக்கத்தில் உள்ள கைரெகை தங்கம்மாளின் கைரெகையாகும். பி.வா.சா.ஆ.16ல் உள்ள முதல் சாட்சியின் கைடியபுத்து ஆர்த்தியின் கைடியபுத்து ஆகும். தங்கம்மாள் பி.வா.சா.ஆ.16ல் ஒவ்டிவாரு பக்கத்திலும் கைரெகை வைத்து பின்பஜ ஆர்த்தி அதில் சாட்சி கைடியபுத்து டிசய்தார். ஆர்த்தி சாட்சி கைடியபுத்து டிசய்யஜம்பொது நானும், வார்க்கறிஞர் சண்முகசுந்தரமும், தங்கம்மாளும் இருந்தொம். பி.வா.சா.ஆ.16ல்



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2வதாக உள்ள சாட்சி கைடியபுத்து என்னுடைய கைடியபுத்தாகும். நான் பி.வா.சா.ஆ.16ல் சாட்சி கைடியபுத்து பொட்டபொது தங்கம்மாள், வார்க்கறிஞர் சண்முக சுந்தரம், ஆர்த்தி ஆகியொர் இருந்தனர். பி.வா.சா.ஆ.16ல் முதல் பக்கத்தின் பின்புறத்தில் மெலெ ஒட்டப்பட்ட பஜகைப்படத்தில் உள்ளது தங்கம்மாள். அந்த பஜகைப்படத்தின் மெலெ தங்கம்மாள் கைரெகை வைத்துள்ளார். அதன் கீர் உள்ள இரண்டு பஜகைப்படங்களில் ஒன்று ஆர்த்தியினுடையது. மற்றொன்று என்னுடையது. ஆர்த்தியின் பஜகைப்படத்தின் மீது அவரும், என்னுடைய பஜகைப்படத்தின் மீது நானும் கைடியபுத்துக்கள் டிசய்தோம். மெற்றிசான்ன அனைத்தும் பி.வா.சா.ஆ.16 உயில்சாசனம் ஏற்பட்ட அன்றே எங்களால் டிசய்யப்பட்டது. அதன் பின்புஜ நொட்டரி பி.வா.சா.ஆ.16ல் கைடியபுத்து டிசய்தார். நொட்டரி, சாட்சிகளின் கைடியபுத்துகளுக்கு கீர் கைடியபுத்து டிசய்தார். பி.வா.சா.ஆ.16ல் முதல் பக்கத்தின் பின்புறத்தில் உள்ள பஜகைப்படங்களின் மீது நொட்டரி சீல் வைத்தார். பி.வா.சா.ஆ.16ல் நொட்டரி சீல் வைத்ததும், கைடியபுத்து டிசய்ததும் அன்றே எங்கள் முன்னிலையில் டிசய்யப்பட்டதாகும்."

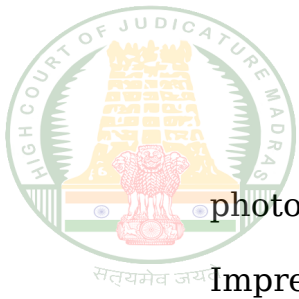
17.2.In his cross examination, despite being grilled about the facts pertaining to execution of the Will, I do not find any dent having been made by the plaintiff's Counsel. In fact, he has not only denied the suggestion that the testatrix was not even in a position to work without assistance but has further stated that Thangammal was looking after her daily chores without any assistance from anybody. He has also denied the suggestion that she had no vision in one eye and she was also hard of hearing. Merely because he has not been able to state the name of the person who took the final



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print out of the Will and non-mentioning of the name of the Advocate who prepared the Will or the typist who printed the same, in my considered view, it would not be fatal to the case of proof of execution of the Will.

17.3.The requirement of Section 63(c) has been fully complied and satisfied with in the facts of the present case. With regard to the said aspects, I do not find any holes in the evidence, despite elaborate cross examination on the side of the plaintiff. Independently, I have also gone through Ex.B.16 Will. The Will is an unregistered Will. The testatrix has affixed her left thumb impression in all the four pages of the Will. The spacing amongst the lines in the Will appears to be normal and there is no irregularity. In fact, the last page of the Will ends almost towards the first half and the Left Thumb Impression of the testatrix has been placed right below the last sentence of the Will. Below the testatrix's signature, two attesting witnesses have signed. The notary public by name, A.Shanmuga Sundaram has also attested the Will on the same day. Apart from the signatures on the four pages of the Will, on the reverse of the first page, the photograph of the testatrix as well as the attesting witnesses have been affixed. Seal of the notary public is also affixed across the photographs. The two witnesses have also affixed their signatures, besides their

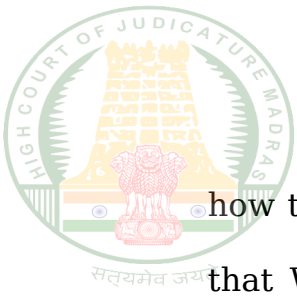


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photographs. The testatrix has also affixed her Left Thumb Impression over her photograph affixed on the reverse of the first page.

17.4.I do not find any suspicious circumstances surrounding in the execution of the Ex.B.16 Will. The requirements of Section 63, have been fully satisfied. Merely because the attesting witness D.W.2 has only stated that testatrix has affixed Left Thumb Impression in the Will and does not state that he has seen the testatrix affixing the Left Thumb Impression, in my considered opinion, it will not amount to failure, to prove due execution. Evidence of the attesting witness cannot be read in isolation. It should be read as a whole. Entire evidence, if read in unison, both chief and cross, clearly points to the fact that the attesting witness has spoken about the testatrix affixing her Left Thumb Impression and as to how she affixed her Left Thumb Impression in all the pages and thereafter, the other attesting witness Arthi attested the Will. Therefore, I am unable to countenance the arguments of Mr.T.Sai Krishnan, learned Counsel for the respondent that the evidence of D.W.2 does not satisfy the mandate of Section 63 of the Indian Succession Act, 1925.

17.5.Merely because photographs are affixed, I do not see

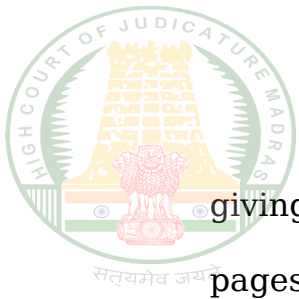


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how this can be put against the propounder of the Will, to contend that Will has not been duly executed or that it is surrounded by suspicious circumstances. In fact, affixing of photographs is done when the Will is registered, as part of formalities for registration. Therefore, affixing the photographs in an unregistered Will, which has been notarised by an Advocate and Notary public, in my considered opinion, only adds more value to the Will and can never be a ground to suspect the truth and genuineness of the Will.

17.6.With regard to the Will mentioning at Page No.3 that the testatrix Thangammal has signed the Will but when the Will does not contain the signature of Thangammal in any of the pages, this again cannot be a ground to suspect the genuineness of the Will. Admittedly, the thumb impression of Thangammal, who was aged 95 years, at that relevant point of time, has been affixed in all the pages. D.W.2 has clearly spoke about the Thangammal affixing her Left Thumb Impression, besides also on the reverse of the first page over the photograph of the Thangammal. In such circumstances, a minor error in the contents of the Will mentioning the testatrix signing the Will cannot be fatal to the case of the appellants.

17.7.In fact, I find that eventhough it has been mentioned so,



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giving an impression that the testatrix has signed the Will, all the pages of the Will specifically mention that the Left Thumb Impression of Thangammal has been affixed. Therefore, it is only an inadvertent error, while drafting the Will which can never be a ground to challenge the Will. Hence, I am inclined to hold that the Will has been duly proved in accordance with law and consequently, share of Thangammal has been bequeathed to the appellants, children of first defendant Krishnasamy. Therefore, the plaintiff is not entitled to any share from and out of the Thangammal's share. Therefore, Point Nos.2 & 3 are answered in favour of the appellants and against the respondent.

18.Coming to the decisions, I have already discussed the applicability of the ratio in ***Vineeta Sharma's*** case and how the decision cannot be applied to this case when succession opened even prior to the commencement of the Hindu Succession Act.

19.The Hon'ble Supreme Court in ***Eramma's*** case has also held that devolution of ancestral properties of a male Hindu would not be governed by the 1956 Act, when the death of the Kartha was prior to 1956. The Hon'ble Supreme Court further held that the 1956 Act was only prospective. This ratio squarely applies to the facts of the present case.

20.The Full Bench in Bombay High Court, in ***Rayachand's*** case held that the defendant can take inconsistent pleas in a suit



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and it is for the Court to decide whether he is entitled to succeed in any of them. Ratio laid down by the Full Bench has also been approved by the Hon'ble Supreme Court in ***Chapsibhai's*** case. Therefore, I do not see how the defendants on one hand taking a stand that Thangammal did not have a share in the property, cannot also take benefit under the Will executed by said Thangammal. I have already rejected the arguments of the appellants that Thangammal is not entitled to any share. Therefore, Thangammal having a definite share in the suit properties was entitled to execute her last Will and testament. From the foregoing discussions it can be noticed that due execution, attestation of the Will have also been upheld. Hence, the share of Thangammal would go only by testamentary succession and not by intestate succession, entitling the plaintiff to claim a share in Thangammal's estate.

21.The Hon'ble Supreme Court in ***Muddasani Venkata Narasaiah's*** case held that when no question is put forth to the attesting witnesses as to the disposing state of mind of the testatrix, then the witness account regarding the disposing state of mind has to be presumed to be true.

22.In ***Palanisamy's*** case, this Court dealt with the applicability of the Madras Hindu Women's Right to Property [Extension to Agricultural Land) Act, 1947, with retrospective



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effect. This decision may not be relevant, since I have already held that without any pleading in this regard, the additional written statement having not been received by the trial Court, no amount of evidence can be adduced.

23.In *Ramnath Sao's* case, the Hon'ble Supreme Court held that prior to the coming into force of the Hindu Succession Act, 1956, the joint family property would continue to belong to the family. This decision may not be of much relevance, since I have already rendered a finding that the succession opened even prior to the commencement of the Hindu Succession Act. This decision was rendered in the context of allotment of share of a widow of the original ancestor, who became entitled to a share in the joint family property under the 1937 Act.

24.In *Kanagalakshmi's* case, this Court taking note of the effect of 2005 Amendment Act, held that even though joint family property had been partitioned between the father and sons alone, under a registered partition deed, property was kept undivided for common enjoyment of the family and 6 children were born after partition deed including daughters. In such circumstances, taking note of the 2005 amendment Act, this Court held that daughters who are alive on 09.09.2005, would also become coparceners in the father's share.

25.In *Thenmozhi's* case, the Division Bench of this Court

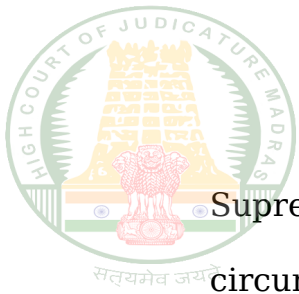


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held that the suit properties being ancestral properties, by virtue of Hindu Succession Amendment Act, 2005, the daughter would be entitled to an equal share along with her father in all joint family properties. The Division Bench followed the ratio of the Hon'ble Supreme Court in **Vineeta Sharma's** case in entitling the daughter to coparcenary right and share in ancestral properties and held that the Amendment Act, 2005, would apply to living daughters as on 09.09.2005, irrespective of the date of birth of the daughter or death of the father. Having already held that **Vineeta Sharma's** case cannot be applied to the facts of the present case, I do not see this decision would come to the rescue of the respondent.

26.In **Murali's** case, this Court held that when members of family treated property as joint family property, mere deficiency in pleadings or inadequate recitals in documents would not be detrimental and property has to be held as joint family property and eligible for partition.

27.In **Shivakumar's** case, the Hon'ble Supreme Court laid down the principles governing the adjudicatory process concerning the proof of Will. There is no quarrel either with regard to the ratio laid down by the Hon'ble Supreme Court or the well settled principles governing interpretation of Wills and their due execution as required under law. On the facts of the case before the Hon'ble



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Supreme Court, the Hon'ble Supreme Court held that suspicious circumstances exist and were unexplained and in such circumstances, held that the Will was not proved. The said decision cannot be applied to the facts of the present case.

28.In *V.Prabhakara's* case, the Hon'ble Supreme Court held that relief can only be on the basis of the pleadings and evidence is to be based on such pleadings alone. The only exception carved by the Hon'ble Supreme Court is the case where the parties know each other very well and the pleadings was implicitly an issue before the Court. I have already applied the ratio laid down by the Hon'ble Supreme Court by refusing to look into the pleadings in the additional written statement, with regard to the State Act namely the Madras Hindu Women's Right to Property Act, 1937.

29. This Court in *Marimuthu's* case, has also laid down the importance of pleadings and held that what is not pleaded cannot be proved and the said rule rests on a principle of fairness as no party can be permitted to surprise the other side with something which has not been pleaded. This Court further held that procedure though handmaid of justice must only be understood as law of fairness and under the head of substantial justice, rules of fairness cannot be flouted. I have already applied this decision by holding



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that in the absence of pleadings additional evidence cannot be let

in.

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30.For all the above reasons, the appellants are entitled to succeed and the Appeal Suit is accordingly allowed. However, considering the relationship between the parties, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10.04.2026

Index : Yes / No

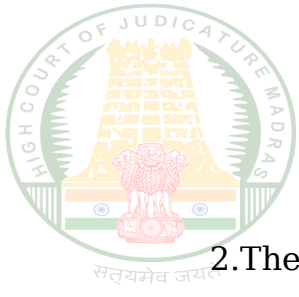
NCC : Yes / No

MR

To

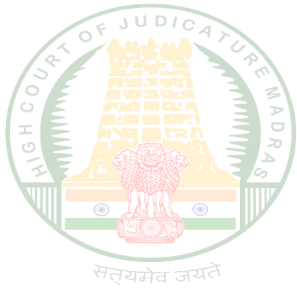
1.The I Additional District Judge,
Coimbatore.

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



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

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