

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2013

CORAM:

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

A.S.Nos.517 and 685 of 1993
and C.M.P.No.543 of 2010

A.S.No.517 of 1993

1. Tmt.Esther Jaspher Swaminathan
 2. Alfred Swaminathan
 3. Sukumar Swaminathan
 4. Sathya Swaminathan
- .. Appellants/Defendants 6
to 9

Memo recorded Appellants 1 to 4 are the successors of the deceased R2 vide order of Court dated 16.11.2011 made in A.S.No.517 of 1993 and C.M.P.No.543 of 2010

vs.

1. Mrs.Dhanabagiam Francis
 2. Mrs.Rajamani Cunniah (deceased)
 3. Mrs.Kamala Thambuswamy
 4. Mrs.Soroja Prabhakar
- .. Respondent/Plaintiff
5. Mrs.Victoria Srinivasan *
- W/o.Srinivasan,
rep. by Power of Attorney Agent
C.Samuel Devados

6. Mr.Nathanial Swaminathan
 7. Mrs.Rajakumari David
 8. Asha John Divyanathan
 9. Mrs.Susanna Rani David
- .. Respondents/
Defendants 1 to 5 &
10 to 12

* C.Samuel Devadoss permitted to represent as
Power Agent of Victoria Srinivasan vide order of
Court dated 23.07.2010 made in CMP No.245/2009

A.S.No.685 of 1993

1. Mrs.Rajakumari David
 2. Asa John Diviyanathan
 3. Mrs.Susanna Rani David
- .. Appellants/
Defendants 10 to 12

Vs.

1. Mrs.Dhanabagiam Francis
 2. Mrs.Rajamani Cunniah (deceased) **
rep. by her Power Agent Victoria Srinivasan
 3. Mrs.Kamala Thambusamy
 4. Mrs.Soroja Prabhakar
 5. Mrs.Victoria Srinivasan
 6. Mr.Nathanial Swaminathan
 7. Mrs.Yesthar Jaspher Swaminathan
 8. Alfred Swaminathan
 9. Sukumar Swaminathan
- .. Respondent No.1/Plaintiff
- .. Respondents/
Defendants 1 to 8

** Victoria Srinivasan permitted to represent as
Power Agent of Rajamani Cunniah vide order of
Court dated 10.04.2012 made in CMP No.1185/2011

(The ninth defendant is not made party of the appeal
as he has been set ex-parte in the trial Court)

Appeal against RR 2 and 3 was dismissed as per
order of this Court dated 13.03.2013

* * *

Common Prayer : Appeal Suits have been filed under Section 96 and
Order 41 of the Code of Civil Procedure against the judgment and
decree dated 01.02.1993 made in O.S.No.751 of 1985 on the file of the
Subordinate Court, Salem.

* * *

For Appellants in : Mr.T.R.Rajagopalan, Senior Counsel
A.S.No.517 of 1993 for T.R. Rajaraman

For Respondents in : Mr.Kasthuri Rangan for
A.S.No.517 of 1993 M/s.Sampathkumar Associates for R5

No appearance for RR 1, 3,
4 and 6 to 9

For Appellants in : No Appearance
A.S.No.685 of 1993

For Respondents in : Mr.Kasthuri Rangan for
A.S.No.685 of 1993 M/s.Sampathkumar Associates for R5

Mr.T.R.Rajagopalan, Senior Counsel
for T.R. Rajaraman
for RR 7 to 9

No appearance for RR 1, 4 and 6

COMMON JUDGMENT

The defendants 6 to 9 in O.S.No.751 of 1985 on the file of the Sub Court, Salem, are the appellants in A.S.No.517 of 1993 and the defendants 10 to 12 in the same suit are the appellants in A.S.No.685 of 1993. The plaintiff filed a suit for partition of 1/7 share in the suit properties and the suit was decreed as prayed for and aggrieved by the same, these two appeals were filed.

2. Though there is no appearance for the appellants in A.S.No.685 of 1993, as that appeal was also arising out of the same suit in A.S.No.751 of 1985 and the other appeal was filed by the defendants 6 to 9, both the appeals were heard together and this common judgment is pronounced.

3. The case of the plaintiff is as follows:

The plaintiff, defendants 1 to 5 and one R.P.David are the children of Sathyanathan and Gnanambal and the properties were self-acquired properties of Sathyanathan and he was also having partnership business with his son R.P.David and he was also doing business in transport, in which, all his children were partners. The plaintiff executed a power of attorney in favour of her father as she was residing at Chennai and after the death of her father, she also executed a power in favour of her brother R.P.David. Their father Sathyanathan died on 05.05.1974 intestate leaving behind his widow Gnanambal and his seven children, namely, plaintiff, defendants 1 to 5 and R.P.David. R.P.David and the fifth defendant with the connivance of family friend Ramachandran created an oral Will said to have been expressed by late Sathyanathan on 02.05.1974 in the presence of the plaintiff and others and also in the presence of family lawyer, S.V.Anandapadmanaban, which was reduced into writing later, and the plaintiff and other children signed the document admitting that wish expressed by late Sathyanathan of his intention to give all his properties to his grandsons through his two sons, namely, defendant 5 and R.P.David and also claimed to have registered the family arrangement and the plaintiff came to know about the registration of family arrangement only four months prior to the

filing of the suit and the document described as family arrangement was not a valid document and Sathyanathan died intestate and he did not express any wish to give his properties in favour of his grandsons through his sons and after the death of Sathyanathan, fifth respondent and R.P.David were in the management of the properties. As per the Indian Succession Act, Gnanambal, widow of Sathyanathan, was entitled to 1/3 share and other children are entitled to 2/3 share and Gnanambal also died on 30.12.1981 intestate and therefore, her 1/3 share devolved upon her children and therefore, the plaintiff is entitled to 1/7th share in the suit properties. R.P.David, the brother of the plaintiff, was in management and he died on 13.04.1985 and his legal heirs are defendants 10 to 12. After the death of R.P.David, misunderstanding arose between the parties and some properties were transferred in the names of the defendants 6 to 9 without the knowledge of the plaintiff and the plaintiff, being the co-owner, is entitled to 1/7th share and the transfer of properties in the names of the defendants 6 to 9 and 10 to 12 are not binding on the plaintiff and therefore, the suit was filed by the plaintiff for the partition of 1/7th share in the suit properties.

4. The seventh defendant filed a statement and the same was adopted by the defendants 6 and 8. He denied the allegation that Sathyanathan died intestate on 05.05.1974 and further stated that on 02.05.1974 he expressed his intention to give all his properties in favour of his grandsons through his sons David and Swaminathan and that was recorded by the Doctor, Prabhu Ramachandran and at that time, Sathyanathan was not in a position to sign or to affix his thumb impression and in the memorandum written by the Doctor the wishes of the Sathyanathan were noted and the plaintiff, the fifth defendant and another son R.P.David and the other daughters signed it and it was also attested by the family Doctor and Advocate Mr.S.V.Anandapadmanaban and on 16.05.1974, the wishes of late Sathyanathan expressed orally to the Doctor was reduced into writing and it was signed by the legal heirs and the same was also registered and therefore, as per the family arrangement dated 16.05.1974, the grandsons of late Sathyanathan through his sons became absolute owners of the suit properties and the plaintiff was aware of the same and she was also party to the family arrangement dated 16.05.1974 and thereafter, she never claimed any share in the properties and the properties were enjoyed by the grandsons and the plaintiff was never in joint possession with the grandsons of Sathyanathan and other members and without setting aside the family arrangement dated 16.05.1974, the suit filed for partition was not maintainable and the same was barred by time and Court Fee paid under Section 37(2) of the Court Fees and Suits Evaluation Act was also not proper and in O.S.No.951 of 1980, the family arrangement dated 16.05.1974 was upheld and therefore, the suit filed by the plaintiff for partition was not maintainable.

5. The 11th defendant filed a statement and the same was adopted by the defendants 10 and 12 and the 11th defendant also reiterated the allegations made in the written statement filed by the other defendants and also claimed right under the family arrangement dated 16.05.1974 and therefore, stated the plaintiff cannot claim any right over the property.

6. The 8th defendant filed an additional statement and the same was also adopted by the defendants 6, 7 and 9 and in the additional statement, the 8th defendant stated that after the death of Sathyanathan, his widow Gnanambal became entitled to 1/3 share in his properties and Gnanambal executed a settlement deed on 31.10.1981 in respect of item No.4 in favour of eighth defendant and at that time, the eighth defendant was a minor and the eighth defendant was represented by his father Swaminathan and he accepted the settlement deed on behalf of 8th defendant and therefore, the eighth defendant became absolute owner of 1/3 share of Gnanambal in item No.4 of the suit properties. It is also stated that Gnanambal also executed a Will dated 11.07.1981 bequeathing her 1/3 share in respect of other properties in favour of ninth defendant and therefore, the ninth defendant became absolute owner in respect of 1/3 share in respect of other properties except item No.4 of Gnanambal and therefore, the plaintiff can claim only 1/7th share out of 2/3 share of Sathyanathan and in respect of 1/3 share of Gnanambal, the plaintiff cannot claim any right.

7. On the basis of the above pleadings, the following issues were framed:

- (1) Whether the plaintiff is entitled to 1/3 share in the suit properties and if so, whether the plaintiff is entitled to the income from those properties ?
- (2) Whether Late Sathyanathan executed an oral Will on 02.05.1974 in respect of his properties as alleged in the written statement ?
- (3) Whether the suit has been properly valued for the purpose of Court fee and jurisdiction ? and
- (4) To what relief, the plaintiff is entitled to ?

8. The additional issues were framed as follows:

- (1) Whether the Will dated 11.04.1981 alleged to have been executed by Gnanambal is true and valid ? and
- (2) Whether Settlement deed dated 31.10.1981 alleged to have been executed by Gnanambal is true and valid ?

9. On the side of the plaintiff, she examined herself as P.W.1 and examined the third defendant as P.W.2. On the side of the defendants, the fifth defendant examined himself as D.W.1 and attesting witnesses to the Will and Settlement Deed were examined as D.Ws.2 and 3. On the side of the plaintiff, 22 exhibits were marked and on the side of the defendants, 8 exhibits were marked and the interim report of the Commissioner and final report are marked as Exs.C.1 and C.2 respectively.

10. The trial court tried issue Nos.1 and 2 and also additional issues together and held that Ex.B.1, the family arrangement dated 16.05.1974 will not have the effect of transferring any interest in the properties owned by Sathyanathan and Ex.B.8, the memorandum written by the Doctor writing the wishes of late Sathyanathan on 02.05.1974 cannot be accepted as true document and therefore, the plaintiff's right cannot be denied on the basis of Ex.B.1 and late Sathyanathan never expressed his intention on 02.05.1974 to give his property to his grandsons through his sons and the said document dated 02.05.1974 was fabricated by the sons, namely, fifth defendant and his brother R.P.David with an intention of defrauding the plaintiff and the defendants 1 to 4. The trial Court also held that Ex.B.6 Will and Ex.B.7 Settlement deed are also not valid and not proved to have been executed by Gnanambal and the execution of Will and Settlement deed by Gnanambal will also go against the case of the defendants that there was a family arrangement on 16.05.1974, by which all the properties were given to the grandsons through his sons and the fifth defendant, who was examined as D.W.1, also did not say anything about the settlement deed though in the settlement deed, he was representing his son and got possession of the properties as per settlement deed and the Will was also not proved to have been executed by Gnanambal and disbelieved the Settlement Deed and the Will and granted decree, as prayed for.

11. The learned Senior Counsel Mr.T.R.Rajagopalan, appearing for the appellants in A.S.No.517 of 1993 submitted that the Court below without properly appreciating Exs.B.8 and B.1 erred in holding that Ex.B.1 cannot be believed and that will also not amount to transfer of any interest in the suit properties without properly appreciating the fact that it was executed in the year 1974 and till 1985 no steps were taken by the plaintiff to set aside that document and admittedly, the plaintiff was a signatory to Exs.B.8 and B.1 and no explanation was given by her for affixing her signature in those documents and also for her silence for 11 years. In O.S.No.951 of 1980 on the file of Sub Court, Salem, filed by defendants 11 and 12, who are the appellants in A.S.No.685 of 1993, the oral Will which was reduced into writing on 02.05.1974 and the family arrangement dated 16.05.1974 were upheld and partnership properties were divided among the grandsons of late Sathyanathan and therefore, the Court below erred in holding that Exs.B.8 and B.1 cannot be accepted. He also submitted that having signed Ex.B.1 knowing fully well about the

contents of the document, it is not open to the plaintiff to plead ignorance about that document. He also relied upon the judgment in Ranganayakamma V. K.S.Prakash reported in (2008) 15 SC 673 and K.M.Madhavakrishnan V. S.R.Sami reported in 1980 (II) MLJ 398, in support of his contentions.

12. On the other hand, learned counsel for the fifth respondent submitted that the trial court, after elaborately considering the oral and documentary evidence, rightly held that Ex.B.1 cannot be accepted and under Ex.B.1 no transfer of interest was effected and Ex.B.8 was not proved to have been executed or representing the wish of late Sathyanathan and oral Will cannot be a ground to disinherit the other legal heirs and oral Will cannot be believed and no one can claim any right under the oral Will and O.S.No.951 of 1980 cannot be relied upon by the appellants in support of their claim, as in that suit, though the documents dated 02.05.1974 and 16.05.1974 were upheld, in O.S.No.951 of 1980 neither the plaintiff nor the defendants 1 to 4 were parties and that suit was filed by defendants 11 and 12 against defendants 5 to 9 herein and therefore, the findings in the suit will not have any bearing. He also submitted that even according to the appellants, Exs.B.8 and B.1 were attested by the family doctor and family advocate and when the same was disputed by the plaintiff and other defendants, the appellants ought to have proved the execution of those documents by examining the attesting witnesses and admittedly, attesting witnesses were alive and no explanation was given by the appellants for not examining the attesting witnesses. He also submitted that the suit was not contested by the children of Sathyanathan, namely, defendants 1 to 5 and though the fifth defendant examined himself as D.W.1, he has not filed any statement denying the averments in the plaint and therefore, his evidence cannot be considered in the absence of any statement filed by him repudiating the allegations made in the plaint.

13. He further submitted that the seventh defendant was only a child, aged 12 years in the year 1974 and therefore, he is not competent to speak about the circumstances, in which, Exs.B.8 and B.1 were executed and in the absence of any statement filed by the other legal heirs, it cannot be contended that late Sathyanathan expressed his wish to give his properties to the grandsons through his sons and therefore, the Court below rightly rejected Exs.B.8 and B.1. The learned counsel also submitted that Ex.B.8 cannot be considered for transfer of any interest in favour of the grandsons and the reading of Ex.B.1 also would make it clear that the parties agreed to give effect to the wish of their father by executing family arrangement and therefore, in the absence of any execution of document by the parties pursuant to the wish of the father, Ex.B.1 will not convey any interest or convey transfer of interest in favour of the grandsons and that was also rightly appreciated by the Court below.

14. The Court below also rightly held that having regard to the evidence of D.W.1, no document would have been written on 02.05.1974 by the doctor and Ex.B.8 document also cannot be accepted as the doctor, who had written the document, was not examined and considering the discrepancies in the production of Ex.B.8, the Court below rightly held that Exs.B.8 and B.1 cannot be relied upon to hold that the properties were given to the grandsons through sons of late Sathyanathan as per the his wish.

15. He also submitted that the Settlement Deed and Will alleged to have been executed by the mother Gnanambal would also prove that Exs.B.8 and B.1 cannot be true documents. If Exs.B.8 and B.1 were acted upon, the mother Gnanambal would not get any right over the properties, but she executed Settlement Deed in respect of Item No.4 in favour of eighth defendant and also executed the Will in respect of other properties in favour of the ninth defendant and in the Will and settlement, it has been stated that the disputes about the validity of family arrangement dated 16.05.1974 arose and therefore, the Will and Settlement Deed were executed by the grandmother. He also submitted that having regard to the evidence of the witnesses, it cannot be stated that the Settlement Deed was validly acted upon and this was also not proved by examining any one of the attesting witnesses and though one attesting witness/D.W.3 was examined to prove the Settlement deed, having regard to the evidence of D.W.1, the Settlement Deed could not have been acted upon and therefore, the court below rightly held that Will and Settlement deed, Exs.B.6 and B.7 alleged to have been executed by mother Gnanambal were not proved and they were not valid documents and therefore, having regard to the well considered judgment of the trial court, there is no need to interfere with the orders of the trial court. He also relied upon the judgment reported in Jagdish Singh V. Madhuri Devi reported in 2008 (3) CTC 528 (SC) for the proposition that when the trial court gives elaborate reasoning for disbelieving the oral and documentary evidence by applying its mind, the same cannot be set aside lightly and in this case, the trial court elaborately discussed the variations in Exs.B.8 and B.1 and also evidence of D.W.1 and therefore, the well-considered judgment of the trial court does not call for any interference in the appeal and these appeals are liable to be dismissed.

16. On the basis of the above submissions, the following points for consideration arose in these appeals :

- (1) Whether the Court below erred in holding that Exs.B.8 and B.1 will not transfer any interest in the properties in favour of the grandsons of Sathyanathan ?
- (2) Whether the Court below was right in rejecting Exs.B.8 and B.1 ? and

(3) Whether the Court below was right in rejecting the Will and Settlement deed, Exs.B.6 and B.7 executed by Gnanambal ?

17. Sathyanathan and Gnanambal had five daughters and two sons. The Plaintiff and defendants 1 to 4 are their daughters and fifth defendant and one R.P.David are their sons. The sixth defendant is the wife of the fifth defendant and defendants 7 to 9 are their children. The tenth defendant is the widow of R.P.David and defendants 11 and 12 are their children.

18. Though defendants 1 and 5 entered appearance through counsel, they have not filed any statement either accepting or denying the case of the plaintiff. Defendants 2 to 4 filed a memo accepting the case of the plaintiff and also paid court fee in respect of their share. Nevertheless, the fifth defendant examined himself as D.W.1 in support of the case of his wife and children.

19. It is the specific case of the defendants 6 to 12 that on 02.05.1974, Sathyanathan orally expressed his wish to give his properties to his grandsons through sons and that wish was made in the presence of four daughters and two sons and in the presence of family doctor and advocate and it was recorded by the family doctor and the same was also signed by four daughters and two sons. Later, on 16.05.1974, after the death of Sathyanathan on 05.05.1974, the wishes of Sathyanathan expressed on 02.05.1974 were reduced into writing and the family arrangement was entered into and that was also registered and therefore, as per Ex.B.1, the family arrangement, the grandsons through sons became absolute owners of the properties and therefore, the plaintiff cannot claim any right over the properties. It is also the contention of the learned Senior Counsel for the appellants that for 11 years, no attempt was made by the plaintiff to claim partition and in O.S.No.951 of 1980, Ex.B.8, Will dated 02.05.1974 and Ex.B.1, Family arrangement, dated 16.05.1974 were upheld and the judgment became final and therefore, it is not open to the plaintiff to contend that she is not bound by the documents Exs.B.8 and B.1. It is also the contention of the learned Senior Counsel for the appellants that as per the judgments reported in 1980 (II) MLJ 398 and (2008) 15 SCC 673 when a party of full age and understanding signs a document, he is normally bound by the signature whether he reads the document or understands the same or not and in this case, Exs.B.8 and B.1 contain the signature of the plaintiff and no explanation was given by the plaintiff for affixing her signature in those documents and the explanation given by her that her signature was obtained by her brother at the time of their father's death and she also believed her brother and signed the document cannot be accepted as Ex.B.1 is a registered one. Therefore, we will have to see the legal effect of Exs.B.1 and B.8.

20. According to me, Ex.B.8 cannot be pressed into service in support of the case of the appellants merely because in the suit in O.S.No.951 of 1980, Exs.B.8 and B.1 were marked and they were upheld. Admittedly, the plaintiff and defendants 1 to 4 were not parties to that suit and therefore, any finding rendered in that suit will not bind the plaintiff and defendants 1 to 4. The plaintiff denied the execution of any oral Will and execution of any family arrangement and therefore, even assuming that the signature of the plaintiff was obtained in Exs.B.1 and B.8, when the same was denied by the plaintiff, a duty is cast upon the appellants to prove that the plaintiff signed those documents knowing fully well about the contents. Admittedly, the fifth defendant is the competent person to speak about Exs.B.8 and B.1 and as stated supra, though he entered appearance through counsel, he did not file any statement denying the case of the plaintiff. In evidence, he narrated the circumstances under which Exs.B.8 and B.1 were executed. However, there is no question of accepting the evidence of D.W.1 in the absence of any statement filed by him repudiating the allegations made in the complaint. It is well-settled that in the absence of any pleading no evidence can be let in.

21. The fifth defendant herein was a party to O.S.No.951 of 1980 and he was the first defendant in that suit and he filed the statement in O.S.No.951 of 1980. He also admitted in evidence in this case that in O.S.No.951 of 1980, he filed a statement, wherein, he alleged that his brother R.P.David obtained signature from him and his wife in various documents and reposing faith on his brother, he and his wife, signed those documents and those documents were used by his brother to create documents against him. The case of the plaintiff was that she and her sisters believed their brothers and as requested by them, they signed various documents and such documents have been used to create Exs.B.8 and B.1. The evidence of P.W.1 is also corroborated by D.W.1 in his statement filed in O.S.No.951 of 1980 and he also admitted that he and his wife signed various documents at the instance of his brother. Further, the persons, who wrote Exs.B.8 and B.1, were not examined and no explanation was given by the defendants 5 to 12 for non-examination of those witnesses. It is also admitted that along with Ex.B.1 a copy of Ex.B.8 was annexed at the time of registration and whereabouts of Ex.B.8, which was annexed with Ex.B.1, was not known to anybody and that was also admitted by D.W.1 and later Ex.B.8 was produced, which is only a Xerox copy, to support the defence of the defendants 6 to 12 that in Ex.B.8, the wishes of late.Sathyanathan were recorded and that was also admitted by the plaintiff and defendants 1 to 5. Even assuming that the plaintiff and defendants 1 to 5 signed Exs.B.1 and 8 no right can be claimed under Exs.B.1 and B.8 and at the most they can be treated as an oral wish and in the absence of any proof of execution of any document, Ex.B.8 cannot be given legal effect to.

22. Similarly, no title will pass under Ex.B.1, even assuming that those documents were signed by the plaintiff and the other defendants 1 to 5. A reading of Exs.B.1 and B.8 would make it clear that they accepted the wishes of their father and agreed to execute proper document to effect the wishes. Therefore, a mere confirmation of the wishes of their father will not convey any title in respect of the properties belonging to the parties and when the parties agreed to execute a document such as release deed or other conveyance to give effect to the wishes of the father to give properties to the grandsons through his sons of Sathyanathan, in the absence of execution of such deeds, they cannot claim any right over the properties of late Sathyanathan. The trial court elaborately discussed Exs.B.8 and B.1 and also the evidence of D.W.1 and held that no document was executed to give effect to the statement made in Ex.B.1 to hold that Ex.B.1 and B.8 are true and valid and no party can claim any right under those documents and I do not find any infirmity with the findings of the trial Court.

23. Though in the judgment reported in 1980 (II) MLJ 398 and (2008) 15 SCC 673 it was held that family arrangement must be given importance and a party to the document cannot be allowed to say that he signed the document without knowing the contents of the document and a party, who signed the document is presumed to be having knowledge about the content of the document, the law laid down in those judgments cannot be applied to the facts of the case. As stated supra, even assuming Ex.B.1 was signed by the plaintiff and other defendants 1 to 5, under Ex.B.1 no title was conveyed as parties only affirmed the wishes of the father under Ex.B.1 and they agreed to execute necessary document to give effect to the wishes and in the absence of any document executed by them, the grandsons cannot claim any right under Ex.B.1.

24. Therefore, I hold that the points 1 and 2 are answered against the appellants and the trial Court rightly held that no title passes under Ex.B.1 and Ex.B.8 and the non-examination of the family doctor and the family advocate would lead to the conclusion that Exs.B.8 and B.1 were not executed in the manner as alleged by the defendants 6 to 12 and they will not convey any interest in the properties in favour of the defendants 6 to 12.

25. The trial court also relied upon the wordings in Exs.B.6 and B.7, the Will and Settlement to arrive at the above conclusion. In those two documents, the mother admitted that disputes were raised regarding the document dated 02.05.1974 and therefore, the Will and Settlement were executed by her. In Exs.B.6 and B.7 also there was no reference to 16.05.1974 document Ex.B.1 and this was also considered by the trial court to arrive at the conclusion that the defendants 6 to 12 cannot claim any right under Exs.B.8 and B.1 and therefore, I also concur with the findings of the trial court in

respect of Exs.B.8 and B.1 and I also hold that the defendants 6 to 12 cannot claim any right under Exs.B.8 and B.1.

26. In the Will and Settlement, the grandmother Gnanambal gave properties in favour of children of Swaminathan, namely, defendants 9 and 8. Under the Will, she alleged to have bequeathed items nos.1 to 3 of the suit properties to ninth defendant and under Settlement Deed, she alleged to have settled item no.4 in favour of eighth defendant. In the Settlement Deed, the eighth defendant was represented by the father Swaminathan and in his evidence Swaminathan did not state anything about the settlement deed and he also stated that he was not aware of the settlement deed executed in favour of his son, but as per settlement deed it was acted and accepted by Swaminathan and Swaminathan did not give any evidence that he accepted the settlement deed. Further, the Settlement Deed and Will were executed in quick succession and the reason for executing Settlement Deed and Will was also stated in that and according to the grandmother, there was a dispute with respect to the wishes expressed by her husband on 02.05.1974 and therefore, the Will and Settlement Deed were executed by her. As stated supra, there was no reference to 16.05.1974 document in the Will and Settlement Deed and the contents of Ex.B.6 Will are also against the case of the fifth defendant, namely, that his father wanted to give all his properties to his grandsons through the sons. If really, the grandfather wanted to give all his properties to the grandsons there was no necessity for stating in the Will that the grandfather wanted to give some properties to the granddaughter and to give effect to the wishes of her husband, the Will was executed. Further, no reason was stated for not giving any property to the other grandchildren and considering all these aspects, the trial Court rightly held that the Will and Settlement Deed were not proved to have been validly executed and the defendants 8 and 9 cannot claim any right under the Will and Settlement deed. According to me, having regard to the fact that Swaminathan, the fifth respondent, had taken active part in segregation of the properties in his favour and the fact that the mother was under his custody during her last days, the Will and Settlement deed must have been created by him and that was rightly appreciated by the court below and held that those documents were not proved to have been validly executed and I concur with the findings of the trial Court.

27. The point No.3 is answered accordingly.

28. C.M.P.No.543 of 2010 was filed by the fifth respondent in A.S.No.517 of 1993 to amend the preliminary decree by including the item of property. No argument was advanced on that application and hence, the application is dismissed.

29. In the result, the judgment and decree of the trial Court dated 01.02.1993 in O.S.No.751 of 1985 are affirmed and both the appeals are dismissed. No costs.

Sd/
Asst. Registrar (CS-V)
Dt.30.01.2014

//true copy//

Sub Asst. Registrar.

gg

To

The Subordinate Judge, Salem.

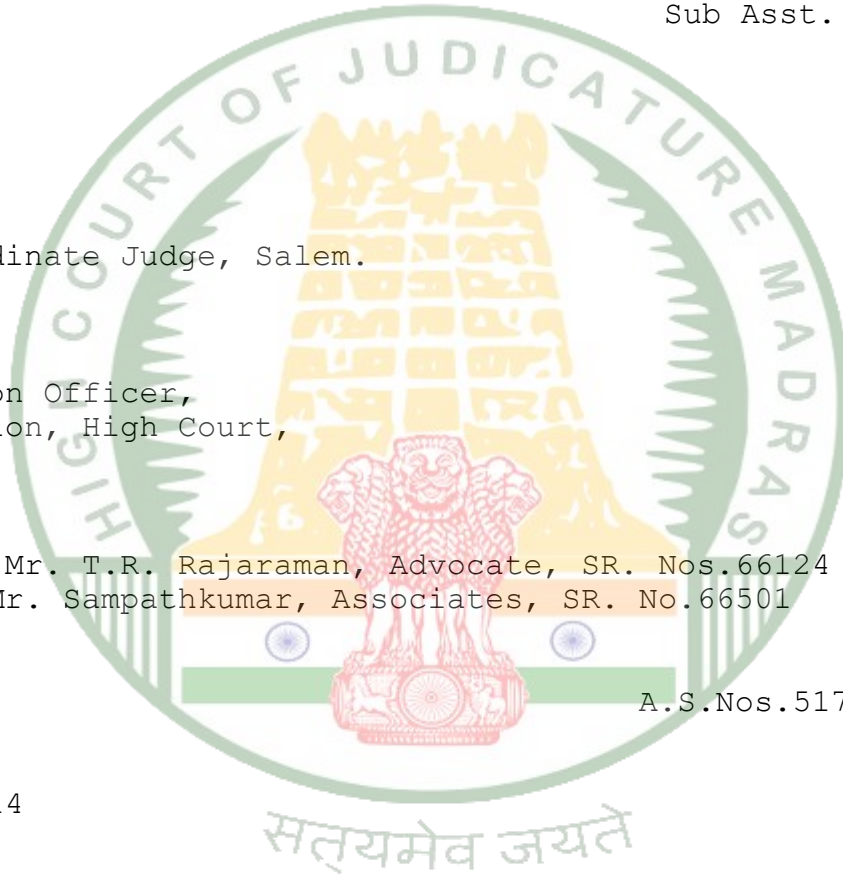
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The Section Officer,
V.R. Section, High Court,
Madras.

+2 ccs to Mr. T.R. Rajaraman, Advocate, SR. Nos.66124 & 66125
+1 cc to Mr. Sampathkumar, Associates, SR. No.66501

A.S.Nos.517 and 685 of 1993

ksj (co)
rnk/31.1.14



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