

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2019

PRONOUNCED ON : 28.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.96 of 2001

R. Krishnasamy ... Appellant/1st Defendant

Vs.

1. V.Kavitha ...1st Respondent/Plaintiff

2. P.S.G.Suganya Gurugulam
Girls Higher Secondary School,
rep by its Secretary,
Civil Aerodrome Post,
Coimbatore.
3. District Educational Officer,
District Educational Office,
Gopalapuram 3rd street, Coimbatore.
4. Coimbatore central Co-operative Bank
Represented by its Manager,
Goundampalayam, Coimbatore.
5. Coimbatore District Central Co-operative Bank,
Represented by its Manager,
Sinthamani Branch, Coimbatore.
6. Coimbatore District Central Co-operative Bank,
Represented by its Manager,
Singanallur Branch, Coimbatore.
7. The Post Master,
Peelamedu East Post Office,
Peelamedu, Coimbatore.
8. Lakshmi Ganesh Associates,
Arasur, Coimbatore district.
9. C.M.C Xerox,
KKV Complex, opposite to Medical College,
No. 79-A, Avinasi road,
Coimbatore.
10. Rasika Gifts,
KKV Complex, opposite to Medical College,
No.79-B, Avinasi road,
Coimbatore.

11. Modern Bakery,
KKV Complex, opposite to Medical College,
No.79-C, Avinasi road,
Coimbatore.
12. Dass Book World,
KKV Complex, opposite to Medical College,
No.79, Avinasi road,
Coimbatore.
13. Mother Cargo Services,
KKV Complex, opposite to Medical College,
No.79, Avinasi road,
Coimbatore.
14. Nandagopal
15. Corporation of Coimbatore,
Represented by its Commissioner,
North office, Corporation Buildings,
Coimbatore.
16. Rangammal Respondents/Defendant 2 to 16

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree passed in O.S. No.705 of 1998 by the Second Additional Subordinate Judge, Coimbatore, dated 20.11.2000.

For Appellant : Mr. R.Muralidharan
for M/s. S.Gunalan

For R1 : Mr. S.Parthasarathy, Senior Counsel
for M/s. Sarvabhauman Associates

For R2 to R14 : Given up

For R15 : Mr.R.Sivakumar

JUDGMENT

Aggrieved over the judgment and decree dated 20.11.2000, passed in O.S. No.705 of 1998, on the file of the Second Additional Subordinate Court, Coimbatore, the first defendant has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for partition and directing the first defendant to render the true and proper accounts of the income received from the suit properties and pay the half of the same to the plaintiff.

4. Briefly stated, according to the plaintiff's case, the plaintiff is the only daughter born to the first defendant and Velumani and Velumani, the plaintiff's mother, was a graduate and employed as a teacher in the second defendant's school and the properties and assets described in the plaint schedules A to C are the self acquired properties of Velumani and she purchased the plaint A schedule property as a vacant site by way of a sale deed dated 03.04.1976 out of her earnings and savings and also the contribution made by her father Marudachala Gounder. She constructed a residential and commercial complex and also availed loan from financial institutions and private individuals with reference to the same. The defendants 9 to 14 are the tenants in the occupation of the plaint A schedule property and they have taken the lease of the same on the rents as set out in the plaint. With the income derived from plaint A schedule property and also out of her earnings and savings, Velumani purchased jewels as set out in the plaint B and C schedules and they are the self acquired properties of Velumani. The first defendant is employed as a Selection Grade Assistant in Coimbatore Institute of Technology and he is a womaniser and spendthrift and leading a wayward life and during the life time of Velumani, the first defendant had illegal contacts with many ladies and he was not attached and affectionate to his wife Velumani. The relationship between Velumani and the first defendant was never cordial till her demise in the year 1997. The plaintiff was given in marriage in the year 1992 and Velumani was very affectionate and attached to the plaintiff, her only daughter and also her grand son Kaushik. After the marriage, at the request of Velumani, the plaintiff stayed with her as the relationship with the first defendant was not cordial. Accordingly, the plaintiff was residing in the suit property along with her husband and children till her demise in 1997. Velumani was affected with intestine cancer and bedridden and died intestate on 28.11.1997 leaving behind the plaintiff and the first defendant as her legal heirs. The plaintiff and her husband were looking after Velumani during her illness and also spent a huge amount towards the medical expenses of Velumani. Within a month after the demise of Velumani, the first defendant expressed his desire of remarriage and further requested the plaintiff to execute a release deed in his favour releasing all her rights in the suit properties. The plaintiff refused to do so and aggrieved over the same, the first defendant started to fabricate the records to grab the suit properties. The amounts described in the plaint B and C schedules are the deposits made by the plaintiff and the death benefits of Velumani and thus, the plaintiff is entitled to $\frac{1}{2}$ share in the plaint schedule properties put together. The first defendant married a girl of 19 years old and the above would reveal the character and attitude of the first defendant towards his relationship with the family members. After the demise of Velumani, the first defendant is collecting rents from the tenants and also the amount from the bank and also

misappropriating the income and also not giving lawful share to the plaintiff to which she is entitled. Hence, according to the plaintiff, the need for the suit for appropriate reliefs.

5. The first defendant resisted the plaintiff's suit by putting forth the case that the plaintiff was born to him and Velumani and Velumani joined as a temporary staff in the second defendant's school on 16.01.1974 and was made permanent on 03.10.1977 and the first defendant joined Coimbatore Institute of technology on 22.08.1960 as an attender and later on, promoted as Junior Assistant and Assistant. Now retired from service as Senior Clerk and his last drawn salary was Rs.7,900/- per month. Velumani's last drawn salary was Rs.7,500/- per month and denied the case of the plaintiff that the properties described in the plaint schedules A to C are the self acquired properties of Velumani. According to him, the site described in the plaint A schedule was purchased out of a sum of Rs.10,000/- borrowed from Marudhachala Gounder, Velumani's father on the basis of the promissory note and the remaining sum for the acquisition of the same was paid by the first defendant out of his own salary and also from his agricultural income from the ancestral lands and further put forth that initially only a ACC sheet roofed building was put up in the property in the year 1976 and thereafter, in the year 1986, a RCC house measuring 960 sq.ft was constructed and the ground floor of the commercial complex was constructed in the year 1990 and first floor in the year 1994 and the first defendant is having the details about the money spent for the said constructions and the source of income. The money was raised by taking loans from third parties, chits and financial assistance from relatives and the same would show that the improvement of the A schedule property had been done by the hard work and efforts of the first defendant and not by Velumani and the first defendant further denied the occupancy of the various tenants in the plaint A schedule property and the rent paid by them as set out in the plaint and according to him, the rent paid by the defendants as set out in the plaint is false and according to him, towards the rent paid by the defendants as set out in the written statement, the plaintiff is not entitled to receive any share in the same and the plaintiff is not entitled to half share in the plaint A schedule property and further, put forth the case that Velumani was mere a name lender qua the plaint A schedule property and the first defendant put forth the case that the deposits described in the plaint B schedule belong to the deceased Palaniappan, the elder brother of the first defendant and on his sudden demise, the said deposits were entrusted to the first defendant and Velumani by his wife Rangammal to be managed properly and though the deposits stand in the name of Velumani, it actually belongs to Smt.Rangammal, wife of Palaniappan. The first defendant also put forth the case that the jewels pledged with the fourth and the fifth defendant belongs to Smt.Rangammal and therefore, the case of the plaintiff that Velumani held the deposits and jewels described in the plaint B and C schedules is

false. The allegations put forth by the plaintiff that the first defendant was not maintaining cordial relationship with his wife Velumani is false. On the other hand, the first defendant and Velumani lived as an ideal couple and the plaintiff was never affectionate either towards the first defendant or Velumani since her childhood despite the love put forth by the first defendant and Velumani. After the marriage, the plaintiff remained detached from the first defendant and Velumani and the plaintiff contracted a love marriage which was opposed by the first defendant and Velumani and the plaintiff was provided with all the customary seedhana at the time of marriage and Velumani, on account of the cancer disease, was taken care of only by the first defendant and the plaintiff had never attended her during her illness and treatment. The first defendant never requested the plaintiff to execute a release deed in his favour in respect of the plaint schedule properties. On the other hand, according to the first defendant, the plaint schedule properties had been bequeathed in his favour by Velumani by executing a Will dated 15.10.1997 and denied the case of the plaintiff that he has fabricated the records to grab the suit properties and disputed the case of the plaintiff that the jewels were handed over by the first defendant to Velumani and he is having the custody of the same. Therefore, according to the first defendant, the suit laid by the plaintiff is liable to be dismissed.

6. In the additional written statement, the first defendant would put forth the case that by virtue of the Will dated 15.10.1997, the first defendant had become the absolute owner of the plaint A schedule property and with reference to the plaint B schedule properties and certain items of plaint C schedule properties, the same belong to the 16th defendant, Smt.Rangammal. As the beneficiary under the Will executed by Velumani, it is only the first defendant who has right and ownership over the plaint B schedule properties and therefore, the plaintiff's suit is liable to be dismissed.

7. The third defendant has filed the written statement and put forth the case that the plaintiff being a married lady, she is not eligible to claim any share in the amount as regards the death benefits of Velumani and the husband automatically become the nominee and Velumani had nominated her husband to receive the provident fund accumulation and hence, the plaintiff is not entitled to claim any share in the same. The first defendant is the natural legal heir to receive the amount and the third defendant is an unnecessary party to the proceedings and prayed for the dismissal of the plaintiff's suit.

8. The defendants 4 to 6 put forth the case that the deceased Velumani pledged the jewels for availing jewel loan for Rs.23,000/- and also deposited Rs.40,000/- each in the name of Velumani and Krishnasamy and also borrowed Rs.30,000/- each against the abovesaid deposits and Krishnasamy also pledged the

jewels for a jewel loan of Rs.20,000/- and the defendants are ready to obey the orders of the Court and ready to disburse the amount with interest to the lawful claimants.

9. The seventh defendant has filed the written statement putting forth the case that Velumani had opened three recurring deposit accounts at Peelamedu East Sub Post Office and the nominee R.Krishnasamy claimed the amount on producing the death certificate of the depositor i.e., Velumani and on verification, the amounts were paid to him and as the claim was settled by the seventh defendant in accordance with the rules, the plaintiff has no right to claim any share against the seventh defendant and therefore, prayed for the dismissal of the plaintiff's suit.

10. The 16th defendant has filed the written statement contending that she is the wife of Palaniappan, the elder brother of the first defendant and put forth the case that her husband Palaniappan had deposited various amounts at Bank and financial institutions and after his demise, the sum was handed over to Velumani and his brother. The plaintiff is aware of the same and therefore, the amount shown in the plaint B schedule property only belongs to the 16th defendant and the jewels belonging to her husband were also entrusted to the custody of Velumani and to the first defendant and therefore, the mere fact that Velumani had pledged the jewels subsequently would not lead to the conclusion that the same belongs to her absolutely. The jewels belonging to the 16th defendant had also been included in the plaint C schedule and therefore, prayed for the dismissal of the plaintiff's suit.

11. The plaintiff filed a reply statement disputing the truth and validity of the Will projected by the first defendant dated 15.10.1997 and according to her, the attesting witness of the alleged Will are the close relatives and partisans of the first defendant and all together have fabricated and forged the said Will to deprive the plaintiff of her share in the suit properties. The plaintiff further denied the claim of the 16th defendant qua the deposits and jewels described in the plaint B and C schedules as put forth by her and the 16th defendant had been directed by the first defendant to plead so with a view to deprive the rights of the plaintiff and accordingly, prayed for the grant of the reliefs to her as claimed in the plaint.

12. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed for consideration by the trial Court:

1. Whether the plaintiff is entitled to claim share in the plaint schedule properties?

2. Whether the Will dated 15.10.1997 projected by the first defendant is true?

3. Whether the plaintiff schedule properties belong to the first defendant?

4. Whether the plaintiff is entitled to claim the relief of partition as prayed for?

5. Whether the plaintiff is entitled to seek the accounts of the income from the first defendant as put forth in the plaint?

6. To what relief, the plaintiff is entitled to?

Additional issues:

1. Whether the Court fee paid by the plaintiff is correct?

2. Whether the 16th defendant has right over the plaint B and C schedule properties?

13. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A44 were marked. On the side of the defendants, DWs 1 to 9 were examined, Exs.B1 to B120 were marked. Exs.X1 to X4 were also marked.

14. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to hold that the plaintiff is entitled to obtain the $\frac{1}{2}$ share in the plaint schedule properties as prayed for and further held that the plaintiff is entitled to claim share in the plaint B and C schedule properties, subject to the debts with reference to the same and also the plaintiff is entitled to claim $\frac{1}{2}$ share in the A schedule property, subject to the debts with reference to the same and determined that the plaintiff has failed to establish the entrustment of the 23 $\frac{1}{2}$ sovereigns of jewels by Velumani to the first defendant and accordingly, granted the preliminary decree in favour of the plaintiff. Impugning the same, the first appeal has been preferred by the first defendant.

15. The following main points arise for determination in this first appeal:

1. Whether the Will dated 15.10.1997 is true, valid and binding on the plaintiff?

2. Whether the plaintiff is entitled to claim partition and separate possession of $\frac{1}{2}$ share in the plaint schedule properties as put forth in the plaint?

3. Whether the plaintiff is entitled to claim rendition of accounts from the first defendant as regards the income received from the plaint schedule properties?

4. To what relief the plaintiff is entitled to?

5. To what relief the first defendant/appellant is entitled to?

Point Nos.1 to 3:

16. The plaintiff is the daughter of the first defendant and Velumani, since deceased and from the materials placed on record, it is found that the plaint A schedule property, as a vacant site had been acquired by Velumani, by way of a sale deed dated 03.04.1976, marked as Ex.A1 and it is further seen that subsequent thereto, the RCC construction and the commercial complex had been put up in the A schedule property. The plaint A schedule property is also found to have been let out on rent to various tenants and rental income had been received from the said property. Velumani is found to have worked as a teacher in the second defendant's school and it is also seen that after sustaining cancer disease, she had died on 28.11.1997. Now, according to the plaintiff, all the properties set out in the plaint schedule belonged to Velumani, her mother. Further, according to the plaintiff, her mother was affectionate towards her and put forth the case that after the demise of Velumani, as her legal heir, she is entitled to claim her $\frac{1}{2}$ share in the plaint schedule properties and the first defendant, her father, had not come forward to effect partition in respect of the plaint schedule properties. Hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs against the defendants.

17. The first defendant mainly resisted the plaintiff's suit contending that Velumani, during her life time, had bequeathed her properties in his favour under a Will dated 15.07.1997, which has been marked as Ex.B108 and by way of the same, it is only the first defendant who is entitled to the properties left behind by Velumani and also put forth the case that the deposits and the jewels set out in the plaint schedule actually belong to the 16th defendant who is the wife of the first defendant's elder brother Palaniappan. The 16th defendant also put forth the similar case as regards the jewels and deposits and accordingly, contended that the plaintiff is not entitled to claim any share in the suit properties as projected in the plaint.

18. The first defendant would also put forth the case that it is he who had contributed mainly for the acquisition of the plaint A schedule property and also for the improvements made in the plaint A schedule property. With reference to the same, the first defendant would project the accounts books marked as Exs.B31 to B38 and thereby would contend that the said accounts would reveal the contribution made by the first defendant for the acquisition of the plaint A schedule property and the

improvements made therein. However, as rightly determined by the trial Court, when the accounts books projected by the first defendant do not disclose or reveal the income received by the first defendant during the relevant period, both from his service as well as from the agricultural lands and the efforts which had been made by the first defendant with reference to the same and when the other documents projected by the first defendant also do not disclose that it is he who had contributed the amount for the acquisition and the improvements made in the plaint A schedule property and when it is seen that the deceased Velumani was having independent income and when it is also the case of the plaintiff that the deceased Velumani, by taking loans and through the aid received from her father and other sources, had acquired the plaint A schedule property and put up the construction in the same and when the partition deed effected in the family of the first defendant also does not disclose that the first defendant had received any income from the agricultural properties allotted to him and accordingly, when the documents projected by the first defendant, in toto, do not support his version that it was he who had contributed mainly for the acquisition and the improvements made in the plaint A schedule property and furthermore, when no proper explanation has been put forth by the first defendant for the acquisition of the plaint A schedule property in the name of his wife Velumani and all the more, when the first defendant has claimed right in respect of the plaint A schedule property only on the basis of the Will dated 15.10.1997 said to have been executed in his favour by Velumani, in all, the trial Court is fully justified in holding that the plaint A schedule property absolutely belongs to Velumani and rightly rejected the case of the first defendant that it was he who had made the contribution for the acquisition of the same and the improvements made in the same.

19. The plaint A schedule property being the absolute property of Velumani and Velumani having died leaving behind the plaintiff and the first defendant as her legal heirs, accordingly, it is seen that the plaintiff and the first defendant would be entitled to claim equal share in the properties left behind by Velumani. However, to deprive the lawful claim of the plaintiff regarding the properties left behind by Velumani, the first defendant would project the Will dated 15.10.1997 and claim that the abovesaid Will had been executed in his favour by Velumani. According to the plaintiff, the abovesaid Will is a fabricated record and further, according to the plaintiff, even during the life time of Velumani, the first defendant was not having cordial relationship with her and leading a wayward life and also put forth the case that the first defendant had contracted a marriage with a young girl and therefore, according to the plaintiff, Velumani had no reason to disinherit her from claiming her share in the suit properties and bequeath the same in entirety in favour of the first defendant and therefore, according to the plaintiff, the Will

projected by the first defendant is a fabricated record and sought for the rejection of the same.

20. Inasmuch as the first defendant has propounded the Will marked as Ex.B108 and the same had been repudiated by the plaintiff in toto, it is for the first defendant to establish the truth and validity of the said Will. In this connection, the first defendant had chosen to examine one of the attestors of the Will Velusamy as DW6 and the scribe of the Will Sridharmoorthy as DW7. DW6 is found to have tendered evidence as if he was solicited by Velumani to stand as an attestor to the Will executed by her in favour of the first defendant and accordingly, reached the residence of Velumani on 15.10.1997 and he and the other witness Subbaiyan had attested the Will executed by Velumani. It is found that DW6 Velusamy and the other attestor Subbaiyan are the close relatives of the first defendant. Analysing his evidence, the trial Court has noted that when DW6 is unable to disclose his date of birth, his date of marriage and the date of the partition effected in his family and on the other hand, he would only claim that he knows only the date of the Will executed by Velumani in favour of the first defendant and further noted that when DW6 is found to be residing nearly 25 kilometres away from the residence of Velumani and when DW6 is found to be not closely associated with the family of Velumani and when DW6 is found to have not attested any of the documents executed by Velumani in connection with the acquisition of the various properties by her and also to the various transactions effected by her and when it is further seen that the close relatives of Velumani are residing in close proximity to the residence of Velumani at the time of the execution of the alleged Will, accordingly, entertained a serious doubt as to whether really Velumani would have solicited the assistance of DW6 for attesting the Will said to have been executed by her in favour of the first defendant. As regards the unreliable character of DW6, Rangammal, the 16th defendant, examined as DW9 would state that DW6 is an unreliable person and he cannot be believed and he is in the habit of engaging in the fraudulent activities and he was removed from service and the character of DW6 being above as spoken to by DW9 and when DW6 is found to be not associated with the family of Velumani in any manner prior to the execution of the Will in question and when the close relatives of Velumani are found to be residing in the near proximity of her residence, in all, to say that Velumani had solicited the assistance of the relative namely DW6 residing nearly 25 kilometres away from the residence of Velumani for standing as the attestor of the alleged Will would belie the normal conduct of any person and therefore, the case projected by the first defendant that the Will executed by Velumani had been attested by DW6 Velusamy and another attestor Subbaiyan had been rightly not believed by the trial Court and in my considered opinion and the reasonings of the trial Court for not placing reliance upon the evidence of DW6 do not warrant any interference.

21. Sridharmoorthy DW7 would claim to have prepared the Will as per the instructions of Velumani. DW7 is an Advocate. The case has been projected by the first defendant that Velumani was introduced to DW7 by her elder sister. Quite contrary to the same, DW7 would depose that Velumani's sister had not met him and he has no acquaintance with Velumani's sister and he would further state that at the time of the preparation of the Will, Velumani had entrusted the copy of the title deed to him. Per contra, the first defendant would claim that no title deed was entrusted to DW7 by Velumani for the preparation of the Will. The abovesaid contradiction has not been properly explained. It has not been explained that as to how Velumani had endeavoured to contact DW7 for the preparation of the Will in question particularly when there is no material to show that Velumani had prior acquaintance with DW7. Therefore, to say that the Will in question had been prepared by DW7 as per the instructions of Velumani, as such, cannot be believed and rightly discountenanced by the trial Court.

22. According to the first defendant, Velumani, on 15.10.1997, had obtained the permission from the school and came early for the purpose of the execution of the Will. In respect of the presence of the attester, according to DW6, the attester, he was contacted by Velumani on 15.10.1997 at about 5.30 p.m. Per contra, the clerk examined as DW2, employed in the school in which Velumani had worked, would tender evidence that Velumani was on duty on 15.10.1997, 16.10.1997 and 17.10.1997 without availing any permission and when the records projected by him with reference to the same marked as Ex.B38 does not point out any permission obtained by Velumani to leave the school earlier, particularly, on 15.10.1997, therefore, the claim of the first defendant that Velumani had come earlier on 15.10.1997 after obtaining the permission for the purpose of the execution of the Will, as such, cannot be believed and the same is not supported by any material worth acceptance. The same is also found to be a suspicious circumstance by the trial Court as regards the execution of the Will in question by Velumani.

23. Furthermore, considering the medical prescriptions marked as Exs.B114 and B115 and considering the evidence of Dr.Nagarajan, examined as Ex.DW8 in the right perspective, when there is a remote possibility of Velumani leaving for home early on 15.10.1997, in all, the trial Court has rightly disbelieved the case of the first defendant that the Will in question had been executed by Velumani on 15.10.1997 as put forth by him.

24. When DW7 would claim that he had prepared the Will in question at the direction of Velumani, however, on being questioned about the photograph at the time of cross examination, at the first instance, has stated that Velumani is not available in the said photograph. Therefore, the evidence

of DW7 being above, the trial Court has rightly refused to place acceptance on his testimony that he has prepared the Will in question as directed by Velumani.

25. Further considering the materials available on record, when no proper explanation has been projected for disinheriting the plaintiff to succeed to the properties described in the Will and when the materials placed on record would go to show that the plaintiff had been looking after her mother even after her marriage by residing in the same residence along with her mother, therefore, to say that Velumani had chosen to disinherit her daughter, the plaintiff, from succeeding to the properties on the ground that she has not been looking after her during her illness, as such, cannot be believed and accordingly, the trial Court has assessed that the reasons found in the Will for disinheriting the plaintiff from succeeding to her properties is a false one and thereby also rightly doubted the authenticity and genuineness of the Will in question.

26. When it is further seen that the relationship between the first defendant and Velumani not being smooth and cordial and particularly, when it is seen that the contents of the letter written by the first defendant to Velumani discloses the strained relationship between the two, to say that Velumani had discarded her only daughter and chose to bequeath all the properties in favour of the first defendant, as such, belies any reason and the abovesaid factors had been rightly taken into consideration by the trial Court and accordingly found that the Will projected by the first defendant said to have been executed by Velumani is not a true document.

27. Furthermore, considering the evidence of the scribe, it is seen that the scribe had not witnessed the execution of the Will by Velumani and the only evidence available is that of the attessor DW6, when as above discussed, no reliance or acceptance could be fastened on the evidence of DW6 as such and particularly, when DW6 is found to be a close relative of the first defendant and when a serious suspicion arises as to why Velumani has not solicited the assistance of her relatives at the time of the execution of the Will and when the case projected by the first defendant as if Velumani's sister was also present at the time of the execution of the Will and when there is no explanation offered as to why Velumani's sister has not attested the Will in question, all put together and as above noted, when no sufficient cause has been made out for disinheriting the plaintiff from succeeding to her properties, particularly, when there is no material placed on record showing the absence of love and affection between Velumani and the plaintiff and on the other hand, the materials placed on record only disclose that it is only the plaintiff who had been looking after her mother even after her marriage and when the relationship between Velumani and the first defendant is not smooth and cordial, the abovesaid materials had been rightly

assessed and analysed by the trial Court and found that the Will projected by the first defendant said to have been executed by Velumani has not been established to be a true Will and therefore, the trial Court is wholly justified in determining that the first defendant has failed to establish the authenticity of the Will marked as Ex.B108.

28. Considering the case of the 16th defendant claiming that the deposits and jewels described in the plaint schedule actually belong to her and the same had been entrusted to the plaintiff and the first defendant for safe custody after the demise of the her husband, however, when there is no material to hold that the deposits and the jewels claimed by the 16th defendant belong to her and when the 16th defendant has not projected any counter claim with reference to the same and when the 16th defendant would also claim that the deposits and jewels claimed by her also belong to her husband's second wife and their two daughters, in all, the trial Court has rightly disbelieved the evidence of the 16th defendant for claiming right over the deposits and jewels described in the plaint schedules and therefore, no interference is warranted to the abovesaid determination of the trial Court.

1. The trial Court has also rightly held that the plaintiff has miserably failed to establish the entrustment of the 23½ sovereigns of gold to the first defendant by Velumani, her mother and rightly rejected the plaintiff's case with reference to the same.
- 2.

30. The counsel appearing for the plaintiff, during the course of his arguments, contended that there is no valid and acceptable reasons projected for Velumani to disinherit her only daughter to succeed to the properties and the abovesaid factors alone would be sufficient for rejecting the Will projected by the first defendant and furthermore, also contended that when the truth and validity of the Will has not been established by the first defendant, according to him, the trial Court is justified in rejecting the defence version and upholding the plaintiff's case and in this connection, placed reliance upon the decisions reported in 2019-4-LW.952 (P.Dhananjayan & another Vs. M.Senthilkumar), (1990) 1 SCC 266 (Kalyan Singh Vs. Chhoti and others), 2013-2-LW.255 (Kasthuri Ammal & others Vs. G.Sampath), AIR 1940 Madras 315 (Sadachi Ammal Vs. Rajathi Ammal and others), 2017 (1) CTC 165 (Saraswathi Vs. M.Maruthachalam, M.Krishnamurthy), (2018) 2 MLJ 42 (Rayakkal (Deceased) and others Vs. N.Ramasamy and others), AIR 2019 Mad 250 (K.B.Parasuraman Vs. Sakunthala and Ors.) and 1959 Supp (1) SCR 426 : AIR 1959 SC 443 (H.Venkatachala Iyengar Vs. B.N.Thimmajamma and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

1. For the reasons aforesaid, the trial Court has rightly determined that the plaintiff is entitled to claim $\frac{1}{2}$ share in the plaint A to C schedule properties subject to the debts with reference to the same and further, rightly determined that the plaintiff is entitled to claim income in proportionate to her share from the plaint schedule properties from the date of the plaint till the date of effecting partition and rightly determined that the plaintiff has failed to establish the entrustment of 23½ sovereigns of gold to the first defendant by Velumani and the abovesaid determination of the trial Court not warranting any interference, accordingly, I hold that the Will dated 15.10.1997 projected by the first defendant is not true, valid and binding on the plaintiff. I therefore hold that the plaintiff is entitled to claim partition and separate possession of her share in the plaint A to C schedule properties subject to the debts as determined by the trial Court and I further hold that the plaintiff is entitled to receive the income in proportionate to her share from the first defendant in respect of the plaint schedule properties. Accordingly, the point Nos. 1 to 3 are answered.

2.

Point Nos.4 & 5:

32. In the light of the abovesaid discussions, the judgment and decree dated 20.11.2000, passed in O.S. No.705 of 1998, on the file of the Second Additional Subordinate Court, Coimbatore are confirmed. Resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

sli

To:

1. The Second Additional Subordinate Court,
Coimbatore.

Copy to:

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

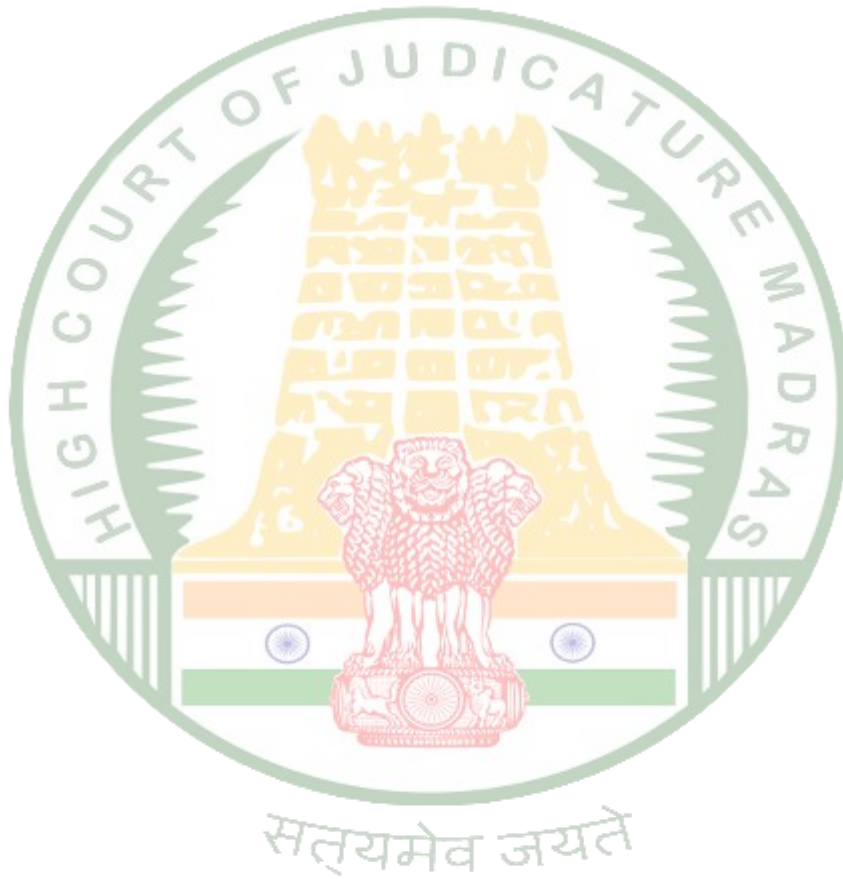
+1cc to M/s. Sarvabhauman Associates, Advocate SR.No.99682

+1cc to Mr.R.Sivakumar, Advocate SR.No.99536

+1cc to Mr.S.Gunalan, Advocate SR.No.99363

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