



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 06.09.2021]

[Pronounced on : 27.09.2021]

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.427 of 2012

and

C.M.P.No.4894 of 2021

Gopalsamy (died)

1.Narayanasamy (died)

2.Arumugam

3.Kuppu @ Kuppammal

4.G.Selvam @ Chandrasekaran

5.G.Seenu @ Rajeswaran

6.G.Balakrishnan

7.G.Chinnasamy @ Damodaran

8.G.Manohar

9.Ranjini

10.Sarasu

11.G.Balan

12.G.Murugan

13.R.Thirunavukkarasu

14.R.Karunakaran

15.R.Kadiravan

16.Vimala

17.Malathi

18.Govindammal

19.Kumaraselvi

20.Babu

21.Ramu

... Appellants /Defendants

(Appellants 18 to 21 brought on record

as LRs of the deceased 1st Appellant

vide order of Court dt.24.02.2021 made

in C.M.P.No.2786 of 2021 in A.S.No.427

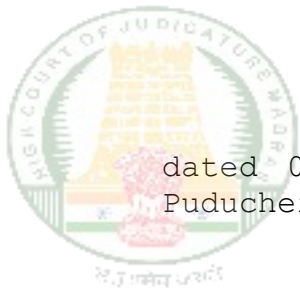
of 2012 by Dr.GJJ)

Vs.

Vasanth @ Mannangatti

... Respondent /Plaintiff

Prayer:- The First Appeal filed under Order XLI rule 1 of C.P.C read with Section 96 of C.P.C, against the judgment and decree



dated 03.09.2010 passed by the III Additional District Judge, Puducherry, in O.S.No.7 2005.

WEB COPY

For Appellants : Mr.K.R.Neelambar

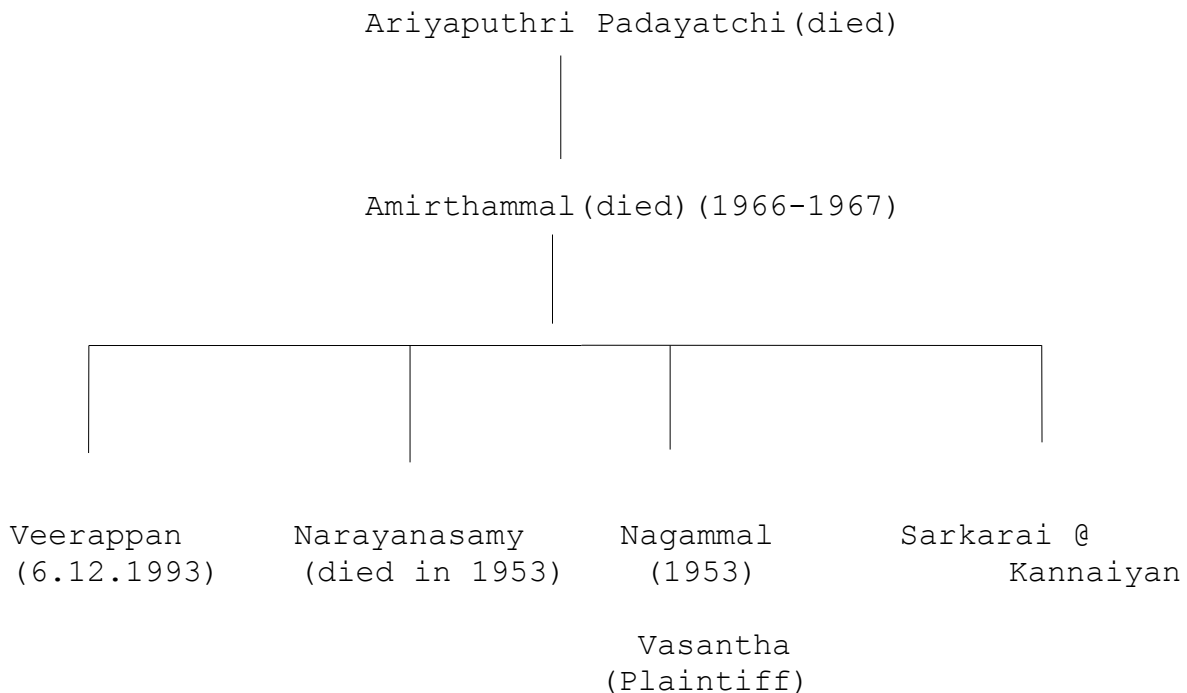
For Respondent : Mrs. Elizabeth Ravi

J U D G M E N T

(The case has been heard through video conference)

The defendants in the suit for declaration and recovery of possession are before this Court, challenging the decree granted in O.S.No.7 of 2005 passed by the III Additional District Court, Puducherry. For morefully appreciating the issue on hand, it is necessary to allude to the pleadings and the evidence let in by both the parties to substantiate their respective cases. The parties are also being referred in the same rank as before the Trial Court.

2.The Plaintiff's case in brief: The plaintiff would submit that the suit 'A' Schedule property belong to one Ariyaputhri Padayatchi. The following is the genealogy tree of the said Ariyaputhri Padayatchi.





3.The plaintiff would submit that she is the daughter of the only daughter of Ariyaputhri Padayatchi one Nagammal who had died as early as in the year 1953. Narayanasamy one of the sons of Ariyaputhri Padayatchi had died a bachelor in the year 1953 and after the demise of the plaintiff's mother and her uncle Narayanasamy, only Veerappan and Sarkarai @ Kannaiyan were the surviving children of Ariyaputhri Padayatchi and Amirthammal. They were both in possession and enjoyment of the 'A' Schedule property. Veerappan who had got married was later deserted by his wife and he had not remarried. Sarkarai @ Kannaiyan remained a bachelor. Veerappan also passed away on 06.12.1993 and thereby the entire property devolved of Sarkarai @ Kannaiyan. It appears that from the sale of the agricultural land, the brothers had got some of Rs.8 Lakhs which was invested in a fixed deposit with a Cooperative Urban Bank Limited, Pondicherry.

4.The defendants 1 to 4 are the brother's sons of Amirthammal. The plaintiff after her marriage had been living away from the suit schedule property, whereas, the defendants 1 to 4 were residing just a kilometer away from Kannaiyan's place. It appears that although both Veerappan and Kannaiyan had not entertained defendants 1 to 4 and was more attached to the plaintiff, who was none other than their sister's daughter, the defendants with the sole intent of taking over the property had ransacked the house of Kannaiyan and removed all the documents, when Kannaiyan had become seriously ill. The defendants 1 to 4 without informing the plaintiff had rushed him to Nallam Nursing Home and when the plaintiff attempted to see him at the hospital she was prevented. The plaintiff also came to know that the defendants 1 to 4 had made arrangements to bring the Sub Registrar to the Nursing Home to take the thumb impression of the said Sarkarai @ Kannaiyan in a Will prepared by them. However, their attempt had to be aborted, since the hospital authorities refused permission. Therefore, with a view of obtaining the signature of the Kannaiyan in the Will, the defendants had shifted the said Kannaiyan from Nallam Nursing Home to the Government Hospital, Pondicherry against medical advise. It appears that on the way to the General Hospital, they had obtained the thumb impression on the document viz. the Will which was already prepared by the defendants. The said Kannaiyan died within hours of his admission at the Government Hospital, Pondicherry. After his demise, the defendants had removed the other documents from the house. The plaintiff would submit that, she is the only legal heir of the said Kannaiyan,



being his sister's daughter. Therefore, she had filed the above suit for the reliefs stated supra including the relief of recovery of the Fixed Deposit amount from the bank.

5. Defence pleaded by the defendants:

The 3rd defendant had filed a written statement which was adopted by the defendants 2, 5 to 14. The sum and substance of the written statement filed by the defendants was that they denied the relationship between the plaintiff and the said Kannaiyan. They denied that Nagammal, the plaintiff's mother was the daughter of Ariyaputhri Padayatchi and Amirthammal and had contended that the plaintiff was not the daughter of Nagammal. The defendants had also pleaded that late Kannaiyan had died a bachelor and considering the fact that the defendants had been taking care of him he had executed a Will in a sound disposing state of mind on 30.12.1998. Under the said Will, the properties have been bequeathed on the defendants. The 3rd defendant also submitted that on the demise of the said Kannaiyan, the defendants became the absolute owners of the suit schedule properties. They therefore prayed for the dismissal of the suit.

6. Trial Court:

The learned III Additional District Judge, Pondicherry, framed the following issues for trial in O.S.No.7 of 2005;

1. Whether the suit is maintainable?
2. Whether the suit is undervalued for the purpose of Court fee?
3. Whether the plaintiff is entitled for mesne profits?
4. Whether the plaintiff is entitled for Judgment and Decree?
5. To what other reliefs the parties are entitled?

However, no issue has been framed as to

(a) Whether the Will executed by Kannaiyan is true and valid one?

(b) Whether the plaintiff is the legal heir of the Ariyaputhri Padayatchi and Amirthammal through their daughter Nagammal?

7. The plaintiff on her side had examined herself as PW1 and the Sub Registrar, who was brought to the Hospital by the defendants, one M.Mani as PW2 and that the plaintiff's son Nimilan as PW3 to speak about what had transpired at the Hospital viz. Nallam Nursing Home and at the Government Hospital, Pondicherry. She had in support of her case marked



Ex.A1 to Ex.A18. The 3rd defendant examined himself as DW1 and one Chandrasekaran and Dr.M.Raj Kumar as DW2 and DW3 respectively and had marked Ex.B1 to Ex.B6. The learned trial Judge on a detailed consideration of records including the evidence has decreed the suit as prayed for. Challenging the same, the defendants are before this Court.

8.Points for consideration:

The following points for consideration arise in this First Appeal on hearing the arguments of both counsels;

(a)Whether the plaintiff has proved that she is the legal heir of the deceased Sarkari @ Kannaiyan, therefore entitled to his property?

(b)Whether the Will dated 30.12.1998 has been executed by the testator in a sound and disposing state of mind comprehending the contents of the documents?

(c) Whether the Will has been proved in the manner known to law with particular reference to Section 68 of the Evidence Act and Section 63(C) of the Indian Succession Act?

9.Submissions:

(A)Mr.Rajendhran Raghavan appearing for the defendants would assail the judgment and decree of the Court below on the following grounds;

(i) Conduct of plaintiff:

He would contend that the plaintiff has come to Court with unclean hands. Although, originally she had filed the suit *informa pauperis* later she withdrew the same and paid the Court fee.

(ii)She has not been able to establish her relationship with the Testator. Ex.A6 would go a long way to prove this since the age of the plaintiff as given in the said document was 38 years which meant, she was born in the year 1960 whereas her mother Nagammal had died in the year 1953. Her birth certificate Ex.A17 is registered only in the year 1999.

(iii)The Will Ex.B1 has been proved in the manner known to law by examining the attesting witness and the plaintiff was not able to prove the suspicious circumstances.



He would rely on the following judgments in support the above plea.

(a) 1988 (1) MLJ pg.440 - Venugopal Reddiar (died) and other Vs. Gopalasamy Reddiar and another.

(b) AIR 2008 All Pg.83 - In the matter of: Goods of Lalo Hire Ltd.

(c) 2008 (1) MLJ 1337(SC). Savithri and others Vs. Karthyayani Amma and others.

This judgment has been cited in support of the argument that deprivation of share to natural heirs by itself does not constitute suspicious circumstances.

He would therefore pray that the appeal should be allowed and the judgment and the decree of the III Additional District Judge, Pondicherry be set aside.

(B) Per contra, Mrs. Elizabeth appearing on behalf of the plaintiff would counter the above arguments by inter alia contending as follows:

(i) The plaintiff having paid the requisite Court fee after the defendants had objected to the plaintiff being permitted to institute the suit as indigent person the same cannot be called in question at this stage.

(ii) The plaintiff by filing Ex.A11 to Ex.A17 has established beyond doubt that she is the daughter of Nagammal who in turn was the daughter of Ariyaputhri Padayatchi and Amirthammal. Therefore, she had established her relationship with the deceased Sarkarai @ Kannaiyan. She would submit that the defendants have not been able to disprove the above documents which are public documents.

(iii) She would further contend that the execution of Ex.B1 Will is completely shrouded in suspicious circumstances and the thumb impression has been obtained when the late Kannaiyan was in the hospital. She would contend that when the defendants realised that they could not get the Sub-Registrar to register the Will at Nallam Nursing Home they had shifted him against medical advice to General Hospital, Pondicherry where the said Kannaiyan had died within hours of his admission. She would contend that the thumb impression was obtained during the time he was shifted from Nallam Nursing Home to Government General Hospital, Pondicherry. Once the plaintiff was able to establish the suspicious circumstances the Will has to fail and succession should open as provided under the Hindu Succession Act. She would further submit that DW2 has admitted that he had not seen



the Testator signing Ex.B1 Will and nor was he aware of the contents of the Will.

In the above circumstances she would pray that the appeal be dismissed and the judgment and decree of the trial Court be confirmed.

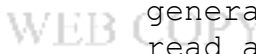
10.Discussion:

The defendants have assailed the judgment and decree of the III Additional District Judge, Pondicherry, the suit subject matter of this appeal, primarily on two grounds:

(a) That the plaintiff is not related to Kannaiyan; and

(b) Kannaiyan had made a testamentary disposition in favour of the defendants.

11. To prove her relationship with Kannaiyan the plaintiff has marked her birth certificate as Ex.A17 and the birth certificate of her mother, Veerappan and Kannaiyan (which is in the French language as well as English) are Ex.A11 to Ex.A16. Ex.A17 would indicate that one Vasantha was born on 26.07.1951 to Deivasigamani and Nagammal. This certificate is issued pursuant to orders of the Judicial Magistrate, Pondicherry in C.M.P.No.467 of 1999. Ex.A11 is the French version and Ex.A12 is the English version of the birth certificate of Nagammal who was born on 06.02.1913 to Ariyaputhri Padayatchi and Amirthammal. Likewise Ex.A13 is the French version and Ex.A14 is the English version of the birth certificate of Veerappan, born on 09.08.1915 to Ariyaputhri Padayatchi and Amirthammal. Ex.A15 is the French version and Ex.A16 is the English version of birth certificate of Kannaiyan who was born on 16.03.1928 to Ariyaputhri Padayatchi and Amirthammal. From a reading of these documents it is clearly evident that the first child born to Ariyaputhri Padayatchi and his wife Amirthammal was Navammalle (Nagammal) followed by Veerappan and Kannaiyan. Ex.A.17 would prove that the plaintiff is the daughter of Deivasigamani and Nagammal. The defendants have not let in any evidence to rebut this contention. Therefore the plaintiff is the sister's daughter of deceased Kannaiyan. Having held so, I have to now consider as to whether she is a legal heir of Sarkari @ Kannaiyan entitled to inherit his property. Admittedly, the deceased Kannaiyan is a Hindu and bound by the Hindu Succession Act if he had died intestate. The plaintiff case is that he died intestate whereas the case of the defendants is that he died leaving behind a testamentary disposition. Before deciding on the validity of the Will Ex.B1, it is necessary to decide on



12. Section 8 of the Hindu Succession Act talks about the general rules of succession in the case of males and it would read as follows:

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule ;

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

13. The defendants have come forward with a case that the Kannaiyan had not died intestate but that he had made a bequest under Ex.B1 - Will, by which the properties have been bequeathed to them. The plaintiff has challenged the very execution of the Will stating that the thumb impression of Kannaiyan was forcibly taken by the defendants when Kannaiyan was in the hospital and not in a sound disposing state of mind. The plaintiff has contended that the execution of the Will is not only shrouded in suspicious circumstances but has also not been proved in the manner known to law.



14.Ex.B1 Will is said to be executed on 30.12.1998. On 30.12.1998 the deceased Testator had been admitted into the ICU ward of clinic Nallam at 7.15 a.m. and discharged at 20.00 hours against medical advise and on request. This is evident from a perusal of Ex.B2. Discharge summary of clinic Nallam. One Mani who was working as the Sub-Registrar at the District Registrar's office was examined as PW2. He had adduced evidence pursuant to the summons issued to him. He would submit that he had received an application for registering a Will of a person admitted in Clinic Nallam and he had come to the clinic at 5.30 p.m. but he was unable to proceed with the registration as the conditions were not conducive. The said Kannaiyan was discharged from clinic Nallam at 20.00 hours and admitted at the General Hospital, Puducherry at 21:35 hours and he died at 12:40 hours on 31.12.1998. From the evidence of PW2 it is clear that till PW2 had left the Hospital, Ex.B1 - Will had not been executed and Kannaiyan had been shifted from clinic Nallam at 20:00 hours on 30.12.1998 and admitted into the Government Hospital, Puducherry at 21:35 hours of the same day where he died the very next day at 12:40 hours. That Ex.B1 - Will has not been executed by Kannaiyan in a sound, disposing state of mind is evident from the following circumstances:

(a) In the Will Ex.B1 there is a recital that the Testator who was taking treatment at Dr. Nallam's Hospital has recovered. The recital in the Will is as follows:

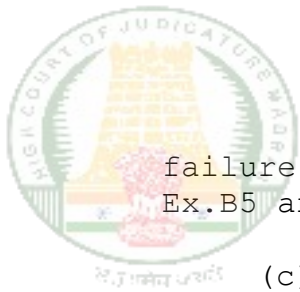
வயதின் காரணமாக நான் உடல் நலமில்லாமல் புதுவை, ஈஸ்வரன் தர்ம ராஜா கோயில் வீதியில் அமைந்திருக்கும் டாக்டர் நல்லான் மருத்துவமனையில் சிகிச்சை பெற்று உடல்நலம் தேறி உள்ளது.

This is a totally false recital since Ex.B2 would show that the said Kannaiyan had been admitted in the ICC of Nallam Clinic at 7.15 a.m. and discharged at request at 20.00 hours and therefore the statement that he has recovered is false and clearly indicates that the Will had been prepared earlier.

(b) DW2 would in very clear terms state that he had not seen Kannaiyan affixing his thumb impression. His deposition in this regard is as follows:

Ex.B1-யில் சக்கரை (எ) கணையன் கைரேகை போடும் போது அல்லது வைக்கும் போது நான் அங்கு இல்லை.

The deposition of this witness is unreliable for the simple reason that Ex.B2 would show that Kannaiyan was in the ICC (Intensive Care Ward) and therefore his evidence that he came to Nallam Clinic and sat chatting with Kannaiyan is highly improbable. Kannaiyan continued to be in a serious condition even at the Government Hospital, Pondicherry due to cardiac



failure till his death. This is evident from perusing Ex.B4, Ex.B5 and Ex.B6.

(c) The defendants have played an active role in preparing the Will - Ex.B1 since Kannaiyan who was admitted into the ICC at 7.15 a.m. on 30.12.1998 could not have instructed the scribe for getting the Will typed, arranged to bring the Sub-Registrar and the attesting witness (DW2). The defendants have not been able to give any details in this regard. Further, they have not chosen to examine the scribe.

15. The Will - Ex.B1 has therefore not been executed by the Testator in a sound and disposing state of mind and its execution is shrouded in suspicious circumstances. That apart, DW2 who has been examined as the attesting witness has deposed that he did not see the Testator affix his signature. Therefore, the Will has not been proved in the manner known to law. It is needless to state that the onus is on the propounder to remove the suspicious circumstances surrounding its execution. In the instant case this onus has not been discharged. In the judgment reported in Gurdial Kaur and others Vs. Kartar Kaur and others in AIR 1998 SC 2861, the Hon'ble Supreme Court has held as follows:

4. The law is well settled that the conscience of the Court must be satisfied that the Will in question was not only executed and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will. Therefore, whenever there is any suspicious circumstances, the obligation is cast on the propounder of the Will to dispel suspicious circumstance.

16. In the judgment in Balathandayutham and others Vs. Ezhilarasan reported in 2010 (5) SCC 770, the Hon'ble Supreme Court relying on the authoritative pronouncement in H.Venkatachala Iyengar Vs. B.N.Thimmajamma and others in AIR 1959 SC 443 held as follows;

11. In so far as execution of the Will is concerned, under Section 63 of the Indian Succession Act, 1925 it has to be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the



WEB COPY

13.The law thus laid down in H.Venkatachala (supra) is still holding field and this Court has followed the same in various other judgments. [See Madhukar D. Shende v. Tarabai Aba Shedage MANU/SC/0016/2002 : (2002) 2 SCC 85; Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and Ors. MANU/SC/8788/2006 : (2006) 13 SCC 433 and Savithri and Ors. v. Karthyayani Amma and Ors. MANU/SC/8061/2007 : (2007) 11 SCC 621]

17.On a conspectus of the above principles it is evident that the defendants have failed to prove the execution of the Will and dispel the suspicious circumstances. The points for consideration 2 and 3 are also answered against the appellants / defendants.

18.In the result, the first appeal is dismissed and the judgment and decree of the III Additional District Judge, Puducherry in O.S.No.7 of 2005 stands confirmed. Consequently, the connected miscellaneous petition is also dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kas/Jeni
To.

The III Additional District Judge,
Puducherry.

+2cc to M/s.Rajendran Raghavan, Advocate Sr.50282
+1cc to M/s.Elizabeth Ravi, Advocate Sr.50053

A.S.No.427 of 2012
and
C.M.P.No.4894 of 2021

kj[co]
srg 19/01/2022