



*S.A.No.644 of 2021 etc*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on : 14.06.2024**

**Pronounced on : 20.06.2024**

**CORAM:**

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**S.A.No.644 of 2021  
and  
Cross. Obj.No.41 of 2023**

Lingaraj ... Appellant in S.A.No.644/21  
& 1<sup>st</sup> respondent in Cross.Obj.No.41/23

**Vs.**

1.M.Girija  
2.M.Chandramani .. Respondents 1 & 2 in S.A.No.644/21  
& Cross Objectors in Cross.Obj.No.41/23

3.M/s.Thulasimani Chemicals,  
Rep. By Arumugam,  
Door No.1/82B, Buddhar Street,  
Komarapalayam,  
Namakkal District.

4.Mariappan  
5.Murugesan  
6.N.Rajathi  
7.K.Subramani  
8.Malliga  
9.Duraisamy Reddy  
10.M.Mohanasundaram  
11.Pavayeeammal  
12.Nagarajan  
13.Raghuman



*S.A.No.644 of 2021 etc*

14.P.Kannan

15.M/s.Nifco Roadways,  
Rep. Its Office Manager,  
Komarapalam.

16.Anup Road Lines & Delux Road Lines,  
Komarapalayam.

17.M/s.Translutions (P) Ltd.,  
Koamarapalayam.

18.Sri Ragavendra Transport,  
Koamarapalayam.

19.Dhanalakshmi

20.Manonmani @ Mani

21.S.Govindaraj

22.G.Chitra

23.C.Padmapriya

24.S.Kalaivani

25.Raja @ Manshingh Raja

26.Minor M.Dhanusreepriya

27.Manivannan

... Respondents  
in both cases

**Prayer in S.A.No.644 of 2021:** Second Appeal is filed under Section 100 of CPC against the judgment and decree dated 21.09.2020 passed in A.S.No.17 of 2018 on the file of the Additional District Court, Namakkal, by partly reversing the judgment and decree dated 08.12.2017 made in O.S.No.240 of 2010 on the file of the Subordinate Court, Tiruchengode.

**Prayer in Cross.Obj.No.41 of 2023:** Cross objection is filed under Order 41 Rule 22 of CPC read with Section 100 of CPC against the judgment decree dated 08.12.2017 made in O.S.No.240 of 2010 on the file of the Subordinate Court, Tiruchengode.



*S.A.No.644 of 2021 etc*

For Appellant/1<sup>st</sup> defendant : Mr.B.M.Subash

For R1 & R2 / Plaintiffs : Mr.C.Jagadish

R3 to R27 abated vide court order dt.25.11.2022

### **JUDGMENT**

This second appeal was admitted by this Court on 26.11.2021 by formulating the following substantial questions of law:-

(i) When there are two Wills, namely, Ex.X1 in favour of the second plaintiff, Ex.B1 in favour of the first defendant, the finding of the First Appellate Court that Ex.X1 is the last Will, when actually Ex.B1 is the last Will, is on the basis of proper appreciation of evidence?

(ii) Whether omission to mention in Ex.B1 Will about Ex.X1 Will would create suspicion in the genuineness of Ex.B1 Will?

(iii) Whether the Lower Appellate Court is right in law in holding that the first defendant has not let in evidence to dispute the suspicion surrounding the Ex.B1 Will?

2. In the suit, the appellant herein is the first defendant and the respondents 1 and 2 herein are the plaintiffs. In the forthcoming



*S.A.No.644 of 2021 etc*

paragraphs, the parties are described as per their litigative status in the  
suit.

WEB COPY

3. The suit was filed by the plaintiffs for partition and separate possession claiming 3/4<sup>th</sup> share in the suit properties and also for the relief of permanent injunction and mandatory injunction and for rendition of accounts relating to the rents realized by the first defendant on and from 01.07.2004, i.e., from the date of death of Late Mari Chettiar, father of the plaintiffs and the first defendant.

4. The first defendant is the brother of the plaintiffs. The suit properties were the ancestral properties of Late Mari Chettiar, who, along with his brother entered into a partition deed dated 08.03.1982, by which, Late Mari Chettiar was provided with certain properties including the suit properties. According to the plaintiffs, in the year 1987, Mari Chettiar and his sons, namely, Lingaraj and Angappan entered into a deed of partition dated 14.12.1987 and in the said partition, Angappan got himself separated from the joint family and was allotted schedule 'B' properties. According to the plaintiffs, their father Late Mari Chettiar and the first defendant were allotted 'A' schedule properties in the said deed of



*S.A.No.644 of 2021 etc*

partition. According to the plaintiffs, 'A' schedule property was jointly owned by the first defendant and his father Late Mari Chettiar.

5. According to the plaintiffs, the first plaintiff got married in the year 1992. It is the case of the plaintiffs that their father Late Mari Chettiar, during his life time, executed a registered Will dated 06.12.2001, through which, he has bequeathed his 1/6<sup>th</sup> share in the 'A' schedule properties allotted to him under the registered deed of partition dated 14.12.1987. According to the plaintiffs, under the said Will, his two daughters, namely, the first plaintiff and the second plaintiff were bequeathed with 1/6<sup>th</sup> share each and apart from that, he has bequeathed his remaining 1/6<sup>th</sup> share to the second plaintiff. According to the plaintiffs, in the Will dated 06.12.2001, the testator Late Mari Chettiar has also referred to the Act 1 to 1990 to Hindu Succession Act, 1956, in and by which, the plaintiffs have got 1/6<sup>th</sup> share each in the suit properties. The plaintiffs are claiming partition based on the Will dated 06.12.2001 as well as co-parceners of the 'A' schedule property, which was allotted to their father under deed of partition dated 14.12.1987.

6. The first defendant is the contesting defendant in the suit. The



S.A.No.644 of 2021 etc

remaining defendants are tenants under the suit properties and they have been given up as party defendants by the plaintiffs during the pendency of the suit.

7. According to the first defendant, the Will dated 06.12.2001 alleged to have been executed by Late Mari Chettiar in favour of the plaintiffs, is a fabricated Will. According to him, his father Late Mari Chettiar executed a Will dated 03.02.2004 bequeathing the suit schedule properties in his favour absolutely. According to the first defendant, his father Late Mari Chettiar was not keeping good health in the last three months of 2001 till February, 2002, and that he was bedridden, unconscious and was on treatment. According to the first defendant, the alleged Will dated 06.12.2001 is a bogus will and only the Will dated 03.02.2004 executed in favour of the first defendant is a genuine Will.

8. The Trial Court, based on the pleadings of the respective parties, framed the following issues:-

- (a) Whether the plaintiffs are entitled for partition and separate possession as prayed for?*
- (b) Whether the Will dated 06.12.2001*



WEB COPY



*S.A.No.644 of 2021 etc*

*executed by Late Mari Chettiar in favour of the plaintiffs and also Will dated 03.02.2004 executed in favour of the first defendant are true or not?*

*(c) To what other reliefs, the plaintiffs are entitled?*

9. On the side of the plaintiffs, 7 documents were filed, which were marked as Exs.A1 to A7, and one more document, namely, original Will dated 06.12.2001 produced by the plaintiffs' uncle, who was allegedly having the custody of the original Will, was marked as Ex.X1 through the plaintiffs' uncle/PW2. On the side of the first defendant, 4 documents were filed, which were marked as Exs.B1 to B4, and two witnesses were examined as DW1 and DW2. Both the plaintiffs and the first defendant have examined one of the attesting witnesses to their respective Wills.

10. The Trial Court, by its judgment and decree dated 08.12.2017, dismissed the suit by giving the following reasons:-

(a) Since the joint family properties were partitioned between the surviving coparceners, the plaintiffs cannot claim partition by invoking Hindu Succession Act, 2005.

(b) The first defendant, the propounder of the Will dated 03.02.2004, has proved the said Will through his oral and documentary



*S.A.No.644 of 2021 etc*

evidence.

WEB COPY

(c) The will dated 06.12.2001 (Ex.X1) relied upon by the plaintiffs is a fabricated will.

(d) Since the plaintiffs have not proved the Will dated 06.12.2001 (Ex.X1), they are not entitled to the relief of mandatory injunction and permanent injunction.

11. Aggrieved by the findings of the Trial Court, the plaintiffs preferred the first appeal before the Additional District Judge, Namakkal, in A.S.No.17 of 2018. The Lower Appellate Court, by its judgment and decree dated 21.09.2020, partly allowed the appeal giving the following findings:-

(a) Eventhough the Trial Court framed an issue to decide about the genuineness of both the Wills, namely, Will dated 06.12.2001 (Ex.X1) and Will dated 03.02.2004 (Ex.B1), for the reasons best known to the Trial Court, the genuineness or otherwise of Ex.X1-Will was not decided by the Trial Court.

(b) In the Will dated 06.12.2001 (Ex.X1), reasons have been assigned for excluding the other natural legal heirs.

(c) The Will dated 06.12.2001 (Ex.X1) has been proved through



*S.A.No.644 of 2021 etc*

the evidence of PW2, brother of the testator, and PW3, one of the attestors to the said Will.

(d) Further, the Will dated 06.12.2001 (Ex.X1) is a registered Will, registered before the concerned Sub Registrar Office.

(e) In the plaint, there is a specific averment that the second plaintiff, beneficiary under Ex.X1, is yet to be married. During the cross-examination of the second plaintiff, the fact that the second plaintiff remains spinster was not put to challenge.

(f) Late Mari Chettiar, father of the plaintiffs and the first defendant, would not have executed the Will dated 03.02.2004 (Ex.B1) superseding the Will dated 06.12.2001 (Ex.X1) executed in favour of the second plaintiff to safeguard the future of his beloved unmarried spinster daughter (second plaintiff).

(g) Through the partition deed dated 14.12.1987 (Ex.A2), the first defendant has been provided with a share in the jointly family properties. The specific case of the first defendant is that in the properties allotted to him and his father through the partition deed dated 14.12.1987, he is having half share and the other half share belonged to his father Mari Chettiar. Since the first defendant, son of Mari Chettiar, has been allotted a share in the joint family properties, it is hard to comprehend that Mari



*S.A.No.644 of 2021 etc*

Chettiar would have desired to bequeath the entire share allotted to him in the family partition in favour of the first defendant unmindful of the future of his unmarried daughter, the second plaintiff. This vital circumstance causes genuine suspicion over the validity of the Will dated 03.02.2004 (Ex.B1) propounded by the first defendant.

(h) In the Ex.B1-Will dated 03.02.2004, there is no whisper about the earlier Will dated 06.12.2001 (Ex.X1) executed by the testator/Mari Chettiar, in favour of the second plaintiff. The non-mentioning of the earlier Will dated 06.12.2001 (Ex.X1) in Ex.B1-Will dated 03.02.2004, will cast a strong suspicion over the genuineness of the Will dated 03.02.2004 (Ex.B1).

(i) Mari Chettiar, who took care to register the Will dated 06.12.2001 (Ex.X1) before the concerned Sub Registrar Office, in all probability, would have taken steps to register Ex.B1-Will dated 03.02.2004 as well, if really Ex.B1 had come into existence out of his free will and volition. This crucial aspect creates legitimate doubts over the Will dated 03.02.2004 (Ex.B1).

(j) The first respondents, who is the propounder of Ex.B1-Will dated 03.02.2004, has not let in evidence to dispel suspicious circumstances surrounding the execution of said Ex.B1-Will.



*S.A.No.644 of 2021 etc*

WEB COPY

12. Due to the reasons stated supra, the Lower Appellate Court came to the conclusion that the Will dated 06.12.2001 (Ex.X1) executed by Mari Chettiar in favour of the second plaintiff is a genuine Will, whereas the Will dated 03.02.2004 (Ex.B1) is not a genuine Will, as it is surrounded by suspicious circumstances. By holding so, the Lower Appellate Court partly allowed the appeal in the following manner:-

(a) A preliminary decree for partition is passed in favour of the second plaintiff directing division of such properties into two equal shares by metes and bounds and with reference to the nature of soil, allot one such share to the second plaintiff.

(b) The first defendant is granted one month time to effect partition in terms of the preliminary decree. If within the stipulated time, the first defendant does not come forward for amicable partition, the second plaintiff is at liberty to invoke Rules 13 and 14 of Order XXVI of CPC for passing final decree.

(c) The dismissal of the suit in respect of the claim for mandatory injunction, permanent injunction



*S.A.No.644 of 2021 etc*

and accounts by the Trial Court, is confirmed.

WEB COPY

13. The first defendant in the suit, aggrieved by the findings of the Lower Appellate Court, has preferred this second appeal. A cross-objection No.41 of 2023 has also been filed by the plaintiffs in the second appeal aggrieved by the non-grant of entire reliefs in their favour as prayed for in the suit.

14. Heard Mr.B.M.Subash, learned counsel for the appellant/first defendant; and Mr.C.Jagadish, learned counsel for the respondents 1 and 2 /plaintiffs.

15. The learned counsel for the appellant/first defendant would submit as follows:-

(a) The plaintiffs have not discharged their burden to prove that the suit property is a joint property of Hindu Undivided Family after execution of partition deed dated 14.12.1987 (Ex.A2).

(b) The appreciation of averments in Ex.A2 would sufficiently prove that there is no existence of joint family from the date of execution of Ex.A2-partition deed dated 14.12.1987.

(c) The suit is liable to be dismissed on the ground of non-joinder



*S.A.No.644 of 2021 etc*

of necessary parities, as other two members of the family, who enjoyed the same legal status as that of the plaintiffs, are not parties to the suit.

(d) The subsequent Will dated 03.02.2004 (Ex.B1) executed by Mari Chettiar in favour of the first defendant is proved to be true and genuine.

(e) The first defendant had examined the attesor of the Will dated 03.02.2004 (Ex.B1) by examining DW2. There is no suspicious circumstances surrounding the genuineness of the Will dated 03.02.2004 (Ex.B1). Therefore, the execution of the Will is proved in terms of Section 63(c) of the Indian Succession Act, 1925.

(f) It is not mandatory for any Will to disclose the cancellation of a former Will. Once the execution of the subsequent Will is proved, the former Will automatically is rendered redundant

16. The learned counsel for the appellants/first defendant, in support of his submissions, relied upon the following authorities:-

- i. Moreshar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D), 2022 SCC Online SC 1307;
- ii. Mahesh Kumar Vs. Vinod Kumar [(2012) 4SCC 387];
- iii. Bhagwat Sharan Vs. Purushottam [(2020) 6 SCC 387]; and



*S.A.No.644 of 2021 etc*

iv. Rathinaswamy Vs. Achi Kannu [CDJ 2020 MHC 4884].

WEB COPY

17. On the other hand, the learned counsel for the respondents 1 and 2/plaintiffs would submit as follows:-

(a) A cross-objection has been filed by the plaintiffs in this appeal on the ground that despite the Lower Appellate Court giving a finding that the Will dated 06.12.2001 (Ex.X1) is a genuine Will allotting 1/6<sup>th</sup> share each to the plaintiffs and an additional 1/6<sup>th</sup> share to the second plaintiff as per Ex.A2/partition deed dated 14.12.1987, has erroneously granted only 1/6<sup>th</sup> share to the second plaintiff. According to him, only under those circumstances, there became a necessity for the plaintiffs to file cross-objection in this second appeal.

(b) The Lower Appellate Court has rightly held that the unregistered Will dated 03.02.2004 (Ex.B1) is shrouded by suspicious circumstances and is not a genuine Will.

(c) In the Will dated 06.12.2001 (Ex.X1), the recitals are natural and factual. Mari Chettiar, father of the plaintiffs and the first defendant, as testator, has mentioned in the Will that his daughter/M.Chandramani, second plaintiff, has been looking after him and also providing him with



*S.A.No.644 of 2021 etc*

all basic necessities, such as, food, shelter and clothing and medical assistance and taking care of him in all other aspects. The second plaintiff is also spinster and therefore, the Will dated 06.12.2001 (Ex.X1), which is natural and factual, is a genuine Will.

(d) The Will dated 06.12.2001 (Ex.X1) in favour of the plaintiffs is a registered Will, whereas the Will dated 03.02.2004 (Ex.B1) is an unregistered Will.

(e) The first defendant's wife committed suicide because of the wavered life lead by the first defendant. The first defendant is addicted to alcohol and provoked her to commit suicide and thereafter, the first defendant was arrested and later on he was acquitted honorarily. His father was put to shame because of the vices of the first defendant. His father was taken care of only by the second plaintiff and also assisted by his brother (PW2). PW3 was a driver (one of the attesting witnesses to Ex.X1), who used to accompany the testator, by taking him in a car owned by PW2's son. Only on the instructions of Late Mari Chettiar, PW3 has attested the Will. However, in the subsequent Will dated 03.02.2004 (Ex.B1), there is no reference to Ex.X1-Will and there is also no revocation clause. If really, Late Mari Chettiar, father of the plaintiffs and the first defendant, has executed Ex.B1-Will dated 03.02.2004, he



*S.A.No.644 of 2021 etc*

would have referred to the earlier Will-Ex.X1 and he would have registered the subsequent Will as well.

(f) The testator/Mari Chettiar has taken care to handover the original Will Ex.X1 to his brother/PW2, in whom, he reposed confidence.

(g) As far as DW2 is concerned, he is a stranger to the family and Late Mari Chettiar did not have acquaintance with DW2 during his life time. DW2, in his deposition, says that he was working in Jai Mahal Kalyana Mandapam as a Manager and in his chief examination, he has deposed that he has been working as a clerk in a Yarn Shop. The oral evidence of DW2 is artificial and unbelievable. On the other hand, PW3 accompanied the testator by taking him in a car to the Sub Registrar's Office. The Trial Court has not taken into consideration the suspicious circumstances surrounding the Will dated 03.02.2004 (Ex.B1) and erred in disbelieving the Will dated 06.12.2001 (Ex.X1), which is a registered Will.

(h) The act of registration is a solemn act lending assurance to the genuineness of the Will. The testator has consciously executed Ex.X1 Will, whereas Ex.B1 Will, being an unregistered document, is, on the face of it, suspicious. The recitals of Ex.B1 Will are all false and frivolous and this is also one another suspicious circumstance, which the



*S.A.No.644 of 2021 etc*

Trial Court failed to take note of it. The propounder of Ex.B1 Will has not dispelled this suspicion.

(i) The Lower Appellate Court has rightly disbelieved the Will dated 03.02.2004 (Ex.B1), but, however, failed to appreciate the recitals in Ex.X1-Will in the proper perspective. The testator/Mari Chettiar, in his Will/Ex.X1, has categorically held that the first plaintiff is entitled to 1/6<sup>th</sup> share and the second plaintiff is entitled to 1/6<sup>th</sup> share and that the testator is entitled to 1/6<sup>th</sup> share; and after his life time, the second plaintiff is entitled to his part of 1/6<sup>th</sup> share as well.

(j) On coming into force of the Act 1 of 1990 to Hindu Succession Act, 1956, the plaintiffs were the only coparceners along with the father and the first defendant. Eventhough the father has referred to 1/6<sup>th</sup> share, the plaintiffs, the first defendant and their father Late Mari Chettiar will be entitled to 1/4<sup>th</sup> share each in the suit properties. As per the Will dated 06.12.2001 (Ex.X1), the second plaintiff will be entitled to 1/4<sup>th</sup> share held by her father and as such, she will be entitled to 2/4<sup>th</sup> share in the suit properties and the first plaintiff will be entitled to 1/4<sup>th</sup> share and the first defendant will be entitled to 1/4<sup>th</sup> share.



*S.A.No.644 of 2021 etc*

**DISCUSSION:**

WEB COPY

18. The suit properties were the ancestral properties of Mari Chettiar, who, along with his brothers, entered into a partition deed dated 08.03.1982 (Ex.A1). Mari Chettiar was provided with certain properties, which includes suit properties as well. In the year 1987 itself, Mari Chettiar and his sons, namely, Lingaraj (first defendant) and Angappan, entered into a deed of partition dated 14.12.1987 (Ex.A2). In the said partition, Angappan got himself separated from the joint family and was allotted schedule 'B' properties. Late Mari Chettiar and Lingaraj/first defendant were allotted schedule 'A' properties.

19. The first plaintiff got married in the year 1992. Late Mari Chettiar, father of the plaintiffs and the first defendant, during his life time, executed a registered Will dated 06.12.2001 (Ex.X1), through which, he has made it clear that his two daughters, namely, the first plaintiff and the second plaintiff, are entitled to 1/6<sup>th</sup> share each, and his 1/6<sup>th</sup> share has been bequeathed to the second plaintiff. In the said Will Ex.X1, the testator Late Mari Chettiar has also referred to the Act 1 of 1990 to Hindu Succession Act, 1956, in and by which, the first plaintiff and the second plaintiff have got 1/6<sup>th</sup> share each in the suit properties.



*S.A.No.644 of 2021 etc*

WEB COPY 20. The plaintiffs are claiming partition based on the Will dated 06.12.2001 (Ex.X1) as well as through coparceners of the schedule 'A' properties, which were allotted to their father under the deed of partition dated 14.12.1987 (Ex.A2). The original Will dated 06.12.2001 (Ex.X1) was in the custody of one Mr.Palanisamy, who was none other than the younger brother of the testator. He was summoned to produce the original Will and he was examined as PW2. One of the attesting witnesses to Ex.X1 was examined as PW3. He was the driver of PW2's son Senthil Kumar, who was owning a foundry.

21. The first defendant disputes the Will dated 06.12.2001 (Ex.X1) executed in favour of the plaintiffs, as, according to him, it is a fabricated Will. He claims that his father Late Mari Chettiar left behind an unregistered Will in his favour, which is dated 03.02.2004 (Ex.B1). In order to prove Ex.B1-Will, the first defendant was examined himself as DW1. The plaintiffs have disputed the genuineness of the will dated 03.02.2004(Ex.B1). According to the first defendant, the property allotted to Late Mari Chettiar under Ex.A2, partition deed dated 14.12.1987, was totally bequeathed to him under Ex.B1-Will and



*S.A.No.644 of 2021 etc*

therefore, the plaintiffs are not entitled for partition. In the written statement filed by the first defendant, a strange defence has been taken as if his father was not keeping good health in the last 3 months of 2001 till February, 2002, and that he was bedridden, unconscious and he was on treatment. It is also the specific case of the first defendant that the second plaintiff had accompanied with his father for further treatment. The second plaintiff is working as a Lecturer. In the Ex.X1-Will, the recitals are believable and their father Late Mari Chettiar, as testator, has mentioned in the said Will that his daughter Chandramani/second plaintiff has been looking after him and has provided him with all basic necessities, such as, food, shelter, clothing and medical assistance and taking care of him in all other aspects. Admittedly, the second plaintiff is also a spinster.

22. A careful examination of Ex.B1, which is an unregistered Will, will reveal that the recitals in the said Will are not true. It is also seen from the deposition that the first defendant's wife committed suicide, because of wavered life lead by the first defendant. The first defendant was addicted to alcohol and seem to have provoked his wife to commit suicide. Thereafter, the first defendant was arrested and later on, he was



*S.A.No.644 of 2021 etc*

acquitted honorarily. As seen from the evidence placed on record, it is clear that Late Mari Chettiar was taken care of only by the second plaintiff, who is a spinster. It is also seen from the deposition that Late Mari Chettiar, testator, had the assistance of his brother(PW2). One of the attesting witnesses to the Will (Ex.X1) is a driver, who used to accompany the testator/Mari Chettiar by taking him in a car owned by PW2's son. Despite the fact that the Will dated 06.12.2001 (Ex.X1) is not shrouded with suspicious circumstances, the Trial Court, by erroneously comparing both the Wills, namely, Ex.X1 and Ex.B1 (unregistered Will), has given an erroneous finding holding that Ex.B1-Will will prevail, without even looking at the suspicious circumstances shrouded in Ex.B1-Will.

23. The testator/Mari Chettiar has registered Ex.X1-Will and there is no reason for him to execute an unregistered Will, that too, to deprive his unmarried daughter/second plaintiff, who has taken care of his needs, which is also indirectly admitted by the first defendant in his written statement. Ex.B1 is an unregistered and subsequent Will. In Ex.B1-Will, there is no reference to Ex.X1-Will, nor is there any revocation clause. If really the father Mari Chettiar had executed Ex.B1-Will, the father would



*S.A.No.644 of 2021 etc*

have referred to the earlier Will-Ex.X1 and would have registered the subsequent Will as well, as he was very conscious about the registration of Ex.X1-Will.

24. The Testator / Mari Chettiar has taken care to carefully handover the original Will to his brother/PW2, in whom, he has reposed confidence. PW3, one of the attesting witnesses to Ex.X1-Will, is not a stranger to the family. He was a driver attached to PW2's son and he used to take the testator to the hospital as well as other places, as required by him, and on the instructions of the testator, PW3 has attested the Will-Ex.X1. The deposition of PW1, PW2 and PW3 is not disproved by the first defendant, as seen from the evidence available on record.

25. Insofar as the first defendant's witness, DW2, is concerned, he is a stranger to the family and there is also no evidence available on record to prove that the testator / Mari Chettiar, while he was alive, had acquaintance with DW2. DW2, in his deposition, says that he was working as a Manager in Jai Mahal Kalyana Mandapam and in his further chief examination, he has deposed that he has been working as a Clerk in a Yarn shop. A perusal of the deposition of DW2 would clearly reveal



*S.A.No.644 of 2021 etc*

that his evidence is artificial and unbelievable. On the other hand, PW3, one of the attesting witnesses to Ex.X1-Will, had accompanied the testator to the Sub Registrar Office by taking the testator in a car. The Trial Court has erroneously not taken into consideration the suspicious circumstances surrounding Ex.B1-Will and erred in disbelieving Ex.X1-Will, which is a registered Will.

26. The act of registration is a solemn act lending assurance to the genuineness of the Will. The Lower Appellate Court has rightly disbelieved Ex.B1-Will. However, it has failed to appreciate the recitals of Ex.X1-Will in the proper perspective. The testator/Mari Chettiar, in his Will-Ex.X1, had categorically stated that the first plaintiff is entitled to 1/6<sup>th</sup> share and the second plaintiff is entitled to 1/6<sup>th</sup> share and that the testator is entitled to 1/6<sup>th</sup> share, in respect of the properties allotted to him under Ex.A2-partition deed dated 14.12.1987. Therefore, the Lower Appellate Court having held that Ex.X1-Will is true and genuine and that Ex.B1-Will is a suspicious one, ought to have granted the relief of partition in favour of the plaintiffs allotting 1/6<sup>th</sup> share to each of the plaintiffs and allotting additional 1/6<sup>th</sup> share in respect of the properties allotted to Mari Chettiar under Ex.A2, partition deed dated 14.12.1987 to



*S.A.No.644 of 2021 etc*

the second plaintiff. But, instead, the Lower Appellate Court has erroneously allotted only 1/6<sup>th</sup> share to the second plaintiff in the properties allotted to Late Mari Chettiar under Ex.A2-partition deed dated 14.12.1987. Having held Ex.X1 to be a genuine one, the properties bequeathed to the plaintiffs under the said Will ought to have been allotted to the respective plaintiffs by the Lower Appellate Court as per the recitals in Ex.X1-Will dated 06.12.2001.

27. One of the contentions of the learned counsel for the appellant/first defendant is that on account of non-joinder of other legal heirs of the deceased Mari Chettiar, the suit is not maintainable. The said contention has to be rejected for the following reasons:-

(a) Only for the first time in the second appeal, such a contention has been raised by the first defendant.

(b) Eventhough the first defendant relies upon a subsequent unregistered Will dated 03.02.2004 (Ex.B1), to prove the said Will, the first defendant has not examined the other legal heirs of the deceased Mari Chettiar as witnesses, which goes to show that the subsequent Will-Ex.B1 is not a genuine one.

(c) The suit has been filed by the plaintiffs relying upon a



*S.A.No.644 of 2021 etc*

registered Will (Ex.X1), which is prior in point of time to Ex.B1-Will. It is necessary to make only the party, who is opposing the genuineness of the Will (Ex.X1), as a party defendant in the suit. There is no evidence to show that other legal heirs of the deceased Mari Chettiar have questioned the genuineness of the registered Will dated 06.12.2001 (Ex.X1).

28. It is also held by the Division Bench of this Court in ***J.Naval Kishore Vs. D.Swarna Bhadrans [2008 (1) CTC 97]***, which has been relied upon by the learned counsel for the respondents 1 and 2/plaintiffs, that though the registration by itself does not ensure genuineness of the will, the act of registration is a solemn act lending assurance to the genuineness of the Will. In the case on hand, the Will dated 06.12.2001 (Ex.X1) executed in favour of the plaintiffs is a registered Will and is prior in point of time. The subsequent Will dated 03.02.2004 (Ex.B1) relied upon by the first defendant is an unregistered Will and shrouded with suspicious circumstances. The Lower Appellate Court has rightly held that the registered Will executed in favour of the plaintiffs, which is prior in point of time, is a genuine Will and the said finding is based only by proper appreciation of evidence placed on record.



*S.A.No.644 of 2021 etc*

29. Though the learned counsel for the appellant/first defendant relies upon certain authorities, the said authorities do not have any relevance for the facts and circumstances of the present case. The first defendant has not proved that the Will executed in his favour is a genuine Will as seen from the evidence available on record. A testator, who has executed a registered Will earlier, would certainly refer to the earlier Will while executing a subsequent Will. But, in the case on hand, it is glaringly noticed that in the subsequent Will executed in favour of the first defendant, there is no reference to the earlier Will executed in favour of the plaintiffs and the earlier Will has also not been cancelled. Therefore, it is clear that only based on the evidence available on record, the Lower Appellate Court has held that the subsequent Will executed in favour of the first defendant is shrouded with suspicious circumstances and is not a genuine Will.

30. The judgments relied upon by the learned counsel for the appellant/first defendant that non-joinder of other legal representatives of the deceased testator is fatal to the plaintiffs' case has to be summarily rejected in view of the fact that the plaintiffs have filed the suit only for partition by only relying upon the registered Will dated 06.12.2001



*S.A.No.644 of 2021 etc*

(Ex.X1) executed in their favour by their father Mari Chettiar and the claim made by them in the suit is not to seek intestate succession, where the person concerned has not left behind him any Will.

31. For the foregoing reasons, the substantial questions of law formulated by this Court while admitting the Second Appeal has to be answered in favour of the plaintiffs by holding that the Lower Appellate Court was right in coming to the conclusion that Ex.X1-Will, which is a registered Will and is prior in point of time, is a genuine Will, and Ex.B1-Will, which is an unregistered Will, is shrouded with suspicious circumstances and is not a genuine Will. Since the Lower Appellate Court under the impugned judgment has not allotted shares as per Ex.X1-Will, eventhough it has found the said Will to be genuine, the shares allotted to the plaintiffs under Ex.X1-Will has to be awarded. Accordingly, 1/6<sup>th</sup> share each, out of the shares allotted to Mari Chettiar, the testator, is allotted to the plaintiffs, and in addition to that, the remaining 1/6<sup>th</sup> share of Mari Chettiar is allotted to the second plaintiff.

32. In the result, the impugned judgment and decree passed by the Trial Court in O.S.No.240 of 2010, dated 08.12.2017, is set aside, and the



*S.A.No.644 of 2021 etc*

impugned judgment and decree passed by the Lower Appellate Court in A.S.No.17 of 2018, dated 21.09.2020, is modified. In fine, the Second Appeal is dismissed and the Cross Objection is allowed to the extent mentioned above. No Costs. C.M.P.No.13232 of 2021 is closed.

20.06.2024

Index: Yes/ No  
Speaking order / Non speaking order  
Neutral citation : Yes / No  
rkm

**ABDUL QUDDHOSE, J.**  
rkm

To

1.Additional District Court,  
Namakkal.

2.Sub-Court,  
Tiruchengode.

**Judgment in**  
**S.A.No.644 of 2021**  
**and**  
**Cross. Obj.No.41 of 2023**



WEB COPY



*S.A.No.644 of 2021 etc*

20.06.2024