



S.A. No. 126 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 10.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.126 of 2009
and
M.P. No.1 of 2009

Kalyani

.. Appellant

Versus

Mariammal

.. Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 15.11.2008 passed in A.S. No. 114 of 2006 by the learned Principal Sub Judge, Villupuram, confirming the judgment and decree dated 07.08.2006 passed in O.S.No. 130 of 2004 by the learned Principal District Munsif, Ulundurpet.

For Appellant : Mr. Ravichandran Sundaresan

For Respondent : Mrs. V.Srimathi



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JUDGMENT

WEB COPY This Second Appeal had been filed against the judgment and decree dated 15.11.2008 passed in A.S. No. 114 of 2006 by the learned Principal Sub Judge, Villupuram, confirming the judgment and decree dated 07.08.2006 passed in O.S.No. 130 of 2004 by the learned Principal District Munsif, Ulundurpet.

2. The brief averments in the plaint, which are necessary for the disposal of this Second Appeal, are as follows:-

2.1. The case of the Plaintiff is that the suit property originally belonged to the Plaintiff's father Rajamanickam. The marriage of the Plaintiff was solemnized on 10.07.1970 with one Subramani. The Plaintiff's father executed a Will in favour of the Plaintiff for the suit property in lieu of dowry demanded by the father-in-law of the Plaintiff on 05.08.1970. The execution of the Will was maintained as secret. The execution of the Will only known to the knowledge of the Plaintiff, and her father, father-in-law and the Plaintiff's husband. After the death of the brother of the Plaintiff's husband, the Plaintiff's husband developed illegal intimacy with the wife of the deceased brother. Thereafter, the Plaintiff came to her father's house with her 3 children. The Plaintiff was with her father till her husband's death in the year of 1991. The



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Plaintiff's father also died in the year 1994. The Plaintiff stated that the

Plaintiff is in possession of the suit property till date without any interference

and disturbance based on the Will dated 05.08.1970 executed by her father.

The Plaintiff had the knowledge about the suit which was decreed against her

and sisters in O.S.No.244/1992 only on receipt of the E.P. notice. The Plaintiff

alleged that no summons were served in O.S.No.244/1992 without taking due

process in serving of summons. The Plaintiff was set *ex parte* and *ex parte*

decree was passed against the Plaintiff. The Defendant deliberately not taken

due service in O.S.No.244/1992. Therefore, the decree passed in

O.S.No.244/1992 will not bind the Plaintiff. The Plaintiff got the knowledge

about the suit of O.S. No. 244/1992 is based upon the sale deed dated

29.03.1984. The Defendant's husband, who is the Plaintiff's sisters husband, is

working in the Ulundurpet marketing committee after the death of the

Plaintiff's sister Gandarubi. He had illegal intimacy with the Defendant and

they joined together lived as husband and wife. Where the father of Plaintiff

had business at the Ulundurpet Marketing Committee. During the course of

business, the Defendant and her husband grew closer to her father. Since her

father being an alcoholic personality, Defendant is taking advantage of the

above said reason, sale deed dated 29.03.1984 might have been obtained from

the Plaintiff's father. Her father's signature might have been obtained under the



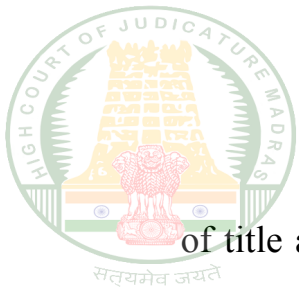
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influence of alcohol and the Plaintiff's father may compelled her mother to sign on the sale deed since the document created on coercive under influence and misrepresentation so Plaintiff inherited the suit property by way of Will which in force. Therefore, the sale deed and the decree passed in O.S.No. 244/1992 will not be binding on the Plaintiff and the same may be set aside and the suit property may be declared in favour of the Plaintiff. Hence, the suit has necessitated by the Plaintiff to declare the title to the suit property in favour of the Plaintiff and decree to be passed to set aside the sale deed dated 29.03.1984 in favour of the Defendant and also set aside the decree passed on O.S.No.244/1992 and consequential relief of injunction against the Defendant.

3. The brief averments in the written statement, which are necessary for the disposal of this Second Appeal, are as follows:

3.1. The case of the Defendant is that all the allegations stated in the Plaint are denied and the Defendant stated that the suit property originally belonged to Plaintiff's father and mother. The father and mother of the Plaintiff executed a sale deed in favour of the Defendant by way of sale deed dated 29.03.1984 for valid consideration of Rs.20,000/- in respect of suit property and another property. From the date of sale deed the Defendant is in possession and enjoyment of the suit property and filed a suit for declaration

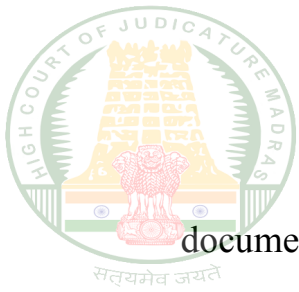


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of title and other consequential reliefs in O.S.No.244/1992 before the learned Subordinate Judge's Court of Villupuram. After full trial, the suit was decreed in favour of the Defendant who is the Plaintiff in O.S.No.244/1992, dated 26.11.1999. Based upon the decree, E.P. is filed before the Sub Court, Villupuram in E.P. No. 58/2003. The Suit in O.S.No. 244/1992 was dismissed in respect of other property which is not the subject matter of issue in this suit. The Defendant in the suit, who is the Plaintiff in O.S. No.244/1992, preferred appeal before the District Court in respect of the property which was dismissed in O.S.No.244/1992. The first Appeal also dismissed. Against the first Appeal, Second Appeal preferred before the Honourable High Court which is pending and further proceedings are going on. The Plaintiff in this suit is the 8th Defendant in O.S. No. 244/1992. Decree passed in O.S.No.244/1992 will bind the Plaintiff also now this suit has been filed for the very same relief which has been already decided so this suit has been hit by the principles of *Res judicata*. The intention of the Defendant is to obstruct the delivery of property through E. P. Proceedings which is pending before the Sub Court, Villupuram. The suit is unsustainable and devoid of merit. Hence, the suit is liable to be dismissed.

4. Based upon the averments of the Plaintiff, Written statement and



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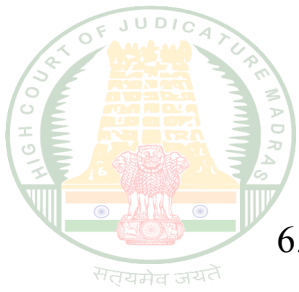
documents filed by both sides, the learned Principal District Muunsif,

Uluundurpet, framed the following issues:

1. Whether the will dated 05.08.1970 alleged to have been executed by the Plaintiff's father is true, came into force?
2. Whether the decree passed in O.S.No.244/1992 on the file of Sub Court, Villupuram is binding the Plaintiff?
3. Whether the suit property belongs to the Plaintiff?
4. Whether the Plaintiff is in possession of the suit property?
5. Whether the Plaintiff is entitled to the decree for declaration and injunction as prayed for?
6. To what relief and cost?

5. In the interest of justice and fair disposal, the above said issues are recasted as follows:

1. Whether the Plaintiff is entitled to the decree for declaration of title over the suit property and consequential relief of injunction against the Defendant in the suit?
2. Whether the Plaintiff is entitled to the decree for set aside the sale deed dated 29.03.1984 and the decree in O.S.No.244/1992, dated 26.11.1999?
3. Whether the suit is hit by the Principles of *Res judicata*?
4. To what relief and cost?



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6. On the side of the Plaintiff, the Plaintiff Kalyani examined herself

as P.W-1. The Plaintiff had marked 23 documents as Ex.A-1 to Ex.A-23.

Ex.A-1 is the invitation card regarding the marriage of the Plaintiff dated 10.07.1970. Ex.A-2 is the unregistered Will executed by the Plaintiff's father in favour of the Plaintiff dated 05.08.1970. Ex.A-3 is the certified copy of the sale deed dated 29.03.1984 executed by the Plaintiff's father in favour of the Defendant Mariammal. Ex.A-4 is the application dated 03.04.1996 given by the Plaintiff to the Tahsildar, Ulundurpet seeking patta for the suit property on the basis of the Will executed by her father. Ex.A-5 is also an application given by the Plaintiff dated 05.11.1997. Ex.A-6 is the application dated 04.12.1997 given by the Plaintiff to the Chief Minister's cell. Ex.A-7 is the acknowledgement card. Ex.A-8 is also an acknowledgement card. Ex.A-9 is the Electricity Consumer Card. Ex.A-10 to Ex.A-22 are the electricity payment receipts. Ex.A-23 is the certified copy of the decree dated 26.11.1999 in O.S. No.244 of 1992 passed by the learned Sub Judge, Villupuram.

7. The Plaintiff had examined two other witnesses viz., Subramanian and Govindasamy as P.W-2 and P.W-3 in support of her claim regarding execution of the Will. P.W-3 Govindasamy is her father-in-law. The Defendant



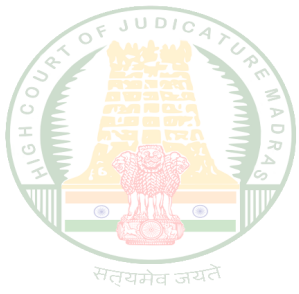
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Mariammal examined herself as D.W-1. During her evidence, documents relied by her were marked as Ex.B-1 to Ex.B-5. Ex.B-1 is the certified copy of the judgment dated 26.11.1999 in O.S.No.244 of 1992 by the learned Sub Judge, Villupuram (marked as Ex.A-23 on behalf of the Plaintiff also). Ex.B-2 is the certified copy of the decree in O.S.No. 244 of 1992 by the learned Sub Judge, Villupuram. Ex.B-3 is the judgment dated 10.09.2001 passed in Appeal in A.S.No. 53 of 2000 by the learned Principal Sub Judge, Villupuram. Ex.B-4 is the decree dated 10.09.2001 passed in A.S.No.53 of 2000 by the learned Principal Sub Judge, Villupuram. Ex.B-5 is the certified copy of the Execution Petition in E.P. No.58 of 2003 in O.S.No.244 of 1992.

8. On appreciation of evidence, the learned Principal District Munsif, Ulundurpet, by judgment dated 07.08.2006 dismissed the suit filed by the Plaintiff in O.S.No.130 of 2004.

9. Aggrieved, the Plaintiff in O.S.No.130 of 2004 on the file of the learned Principal District Munsif, Ulundurpet, preferred Appeal in A.S.No.114 of 2006 on the file of the learned Principal Sub Judge, Villupuram. After hearing both parties, the learned Principal Sub Judge, Villupuram, had raised the following points for determination:



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(i) The claim by the Appellant/Plaintiff that the father

executed a Will dated 05.08.1970 is true and valid in law?

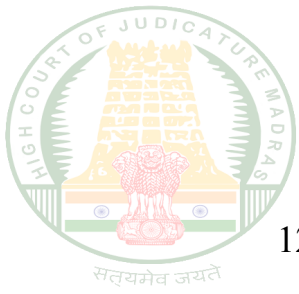
(ii) To what relief?

10. After hearing both parties and re-appreciation of evidence, the learned Principal Sub Judge, Villupuram, by judgment dated 15.11.2008 dismissed the Appeal in A.S.No.114 of 2006.

11. Aggrieved, the Plaintiff in O.S.No.130 of 2004 on the file of the learned Principal District Munsif, Ulundurpet, as Appellant in A.S.No.114 of 2006 on the file of the learned Principal Sub Judge, Villupuram, had filed this Second Appeal raising the following substantial questions of law:

(i) Are the Courts below justified in holding that the ex parte decree passed in O.S.No.244 of 1992 would operate as res judicata for the present suit, overlooking that admittedly no personal service of summons was effected on the Appellant and that service was completed by paper publication alone?

(ii) Is the Court below justified in holding that the Will Ex.A-2 is not proved by examining any attesor to the Will overlooking that P.W-2 an attesor is examined and Ex.A-2 is proved?



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12. When the Second Appeal came up for hearing on 17.03.2025, on perusal of the records, it is found that the Second Appeal was not admitted but summons had been sent and the Respondent had entered appearance. Therefore, both parties were directed to argue based on the substantial questions of law raised by the learned Counsel for the Appellant in the memorandum of grounds of appeal. Both sides sought repeated adjournments. On 07.04.2025 the learned Counsel for the Appellant submitted his written arguments. The learned Counsel for the Respondent sought adjournment. Therefore, the case was posted under the caption part-heard with a direction to the learned Counsel for the Respondent either to submit oral submission or to file written submission, failing which, at the end of the roster, the Second Appeal will be reserved for judgment. Accordingly, the case was adjourned repeatedly on 09.04.2025 and 17.04.2025. On 17.04.2025, the learned Counsel for the Respondent filed written submissions. Therefore, the case was reserved for orders.

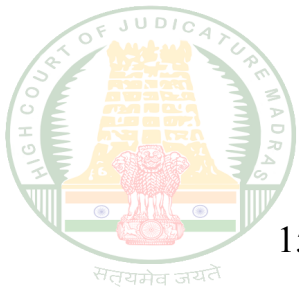
13. It is the submission of the learned Counsel for the Appellant that in the Suit in O.S.No.244 of 1992 filed by the Respondent herein, admittedly, suit summons was not served on the Appellant and that an *ex parte* decree was passed on the basis of service of notice by paper publication. Further, the



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evidence of the Respondent herein as D.W-1 who candidly admitted that the suit summons was not served on the Appellant/8th Defendant in O.S.No.244 of 1992 and as such, the *ex parte* decree passed therein will not bind the Appellant herein.

14. It is the further submission of the learned Counsel for the Appellant that the finding of the learned Appellate Court that the Will dated 05.08.1970 marked as Ex.A-2 executed by the father of the Appellant herein bequeathing the suit property to the Appellant is not proved by examining the attesor to the Will is not correct. P.W-3 Govindasamy attesor to Ex.A-2 Will proves the execution of the Will. However, the learned Appellate Judge failed to appreciate the admissions made by the Defendant/Respondent herein as D.W-1 that she did not know the circumstances under which Ex.A-3 was executed in her favour, after the death of Rajamanickam, as she did not know the address of the Appellant, a paper publication was effected and service completed. The D.W-1 in her evidence pleads total ignorance about the execution of Ex.A-3 Sale Deed and that she was not put in possession also on the date of sale. Therefore, the learned Counsel for the Appellant prayed for allowing this Second Appeal.



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15. It is the submission of the learned Counsel for the Respondent that Appellant herein is the 8th Defendant in O.S. No. 244 of 1992 in which she was duly served with summons. However, she has not entered appearance. Therefore, she was set *ex parte* and a decree was passed against her in O.S. No. 244 of 1992. The earlier suit in O.S. No. 244 of 1992 was decreed partly in favour of the Respondent herein granting declaration of title and possession in respect of “A” schedule property. Aggrieved by the same, the Respondent herein filed A.S.No.53 of 2000 on the file of the learned Principal District Judge, Villupuram. The learned Principal District Judge confirmed the judgment of the trial Court and dismissed the Appeal. Aggrieved, the Respondent herein filed S.A. No. 914 of 2002 before this Court and this Court had very clearly held that the Defendant 1 and 2 i.e, the father and mother of the Appellant herein had right to convey “A” schedule property but as regards “B” Schedule, it is a Government land and it cannot be conveyed. The Courts below held that the Plaintiff in the suit in O.S. No. 244 of 1992 is none other than the daughter of Defendants 1 and 2. The Appellant herein had not preferred any appeal or set aside the *ex-parte* decree passed against her. It is further submitted that P.W-3 specifically admitted in his evidence that he does not know anything about the Will. The Court also decided that the issue in O.S. No. 244 of 1992 was passed after the Defendants appeared and contested



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the case. However, she had sought the very same relief by filing O.S.No.130 of 2004 which had been decided by the competent Court between the same parties in O.S.No.244 of 1992. The very same substantial issue involved in this suit is already decided and declared in favour of the Respondent herein in O.S.No.244 of 1992 and therefore, the suit filed by the Appellant herein in O.S.No.130 of 2004 was dismissed. Against which, she had filed Appeal in A.S.No. 144 of 2006 on the file of the learned Principal Sub Judge, Villupuram. The learned Principal Sub Judge, Villupuram had also dismissed the Appeal by judgment dated 15.11.2008 in A.S.No.144 of 2006 which is a well reasoned judgment that does not warrant interference. Therefore, the learned Counsel for the Respondent prayed for dismissal of this Second Appeal.

16. Heard the learned Counsel for the Appellant Mr.Ravichandran Sundaresan and the learned Counsel for the Respondent Mrs.V.Srimathi.

17. Perused the certified copy of the original records in O.S.No.130 of 2004 on the file of the learned Principal District Munsif, Ulundurpet, the judgment dated 07.08.2006 passed in O.S.No. 130 of 2004 by the learned Principal District Munsif, Ulundurpet and the judgment dated 15.11.2008



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passed in A.S. No. 114 of 2006 by the learned Principal Sub Judge,
Villupuram.

18. It is the contention of the learned Counsel for the Appellant that the learned Principal District Munsif rejected the claim of the Plaintiff that her father Rajamanickam executed unregistered Will dated 05.08.1970 which was kept as secret. The execution of the Will is known only to her father, her husband and her father-in-law which was not disclosed to anyone outside. As per the Will, the suit property in O.S.No.130 of 2004 was bequeathed to her. Subsequently, the husband of the elder sister of the Plaintiff, Kaliyan married the Defendant after the death of the elder sister Gandha Rubini. After the death of Gandha Rubini in the year 1974, her husband developed intimacy with the Defendant in O.S.No. 130 of 2004 Mariammal. The brother-in-law of the Plaintiff, Kaliyan was employed in the marketing society where the father of the Plaintiff Rajamanickam was also employed. The father of the Plaintiff Rajamanickam was addicted to alcoholic drinks. The elder sister's husband Kaliyan misusing such relationship, intoxicated his father-in-law Rajamanickam and obtained a sale deed in favour of the Defendant Mariammal, the second wife of Kaliyan, the brother-in-law of the Plaintiff. The sale deed alleged to have been executed in favour of the Defendant



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Mariammal is dated 29.03.1984 which is sham and nominal to grab the property. The Defendant Mariammal instituted a suit in O.S.No.244 of 1992 on the file of the learned Sub Judge, Villupuram in which the Plaintiff was arrayed as 8th Defendant. Wantonly she has not served summons on the 8th Defendant. Therefore, the 8th Defendant was set *ex parte*. There are 8 Defendants in O.S.No.244 of 1992. The Defendants 7 and 8 remained *ex parte*. The suit was contested by the Defendants 1 to 6. Defendant-1 father of the Plaintiff Rajamanickam himself had filed written statement. The mother of the Plaintiff was also as party in the earlier suit in O.S.No.244 of 1992 filed by the Plaintiff in O.S.No.130 of 2004. The Defendants 3 to 6 were tenants of the property. They had filed written statement separately disputing the claim of the Plaintiff. After hot contest, the learned Principal Sub Judge had decreed the suit of the Plaintiff in O.S.No.244 of 1992 by judgment dated 26.11.1999.

19. The Defendant in O.S.No.130 of 2004 had in the written statement stated about the facts of the earlier suit and disputed the claim of the Plaintiff in O.S.No.130 of 2004 stating that the claim made by the Plaintiff is barred by *res judicata*.

20. It is the contention of the learned Counsel for Appellant in the

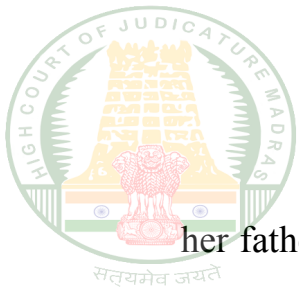


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Second Appeal (Plaintiff in O.S.No.130 of 2004) that the *res judicata* is not applicable to the Plaintiff herein as that decree was obtained behind their back.

Knowing fully well that the father of the Plaintiff Rajamanickam had executed a Will in the year 1970 in favour of the Plaintiff, the Defendants 7 and 8 as Plaintiff in O.S.No.244 of 1992 who are the husband and wife colluded and not served summons in the place of residence of the Plaintiff when she was residing in Cuddalore in her matrimonial home as Defendant-8 in O.S.No. 244 of 1992, Therefore, the claim of Defendant in the suit in O.S.No.130 of 2004 that the said judgment of the Suit instituted by the Defendant in O.S.No.130 of 2004 as Plaintiff in O.S.No.244 of 1992 is binding on the Plaintiff in O.S.No.130 of 2004 is not maintainable. The suit is hit by *res judicata*. The claim of the Respondent that the suit is hit by *res judicata* is not applicable to the Plaintiff in O.S.No.130 of 2004. As per her averments in the plaint, she came to know about the execution of the sale deed by her father in favour of the Defendant Mariammal only after execution petition was filed in E.P. in continuation of the decree in O.S.No.244 of 1992.

21. It is the contention of the Plaintiff in O.S.No.130 of 2004 that her elder sister Gandha Rubini's husband Kaliyan married the Defendant Mariammal had obtained the sale deed in favour of Mariammal influencing



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her father Rajamanickam who is given to intoxicating drinks. She had proved the Will under Ex.A-2 through examining the witnesses P.W-2 and P.W-3.

The learned Principal District Munsif, Ulundurpet in the judgment rejected the claim of the Will on the ground that the father during his lifetime executed the sale deed in favour of the Plaintiff in O.S.No. 244 of 1999 which is a registered document. It is to be noted that the circumstances stated by the Plaintiff also had to be analysed while assessing the evidence. The Plaintiff claims that the elder sister Gandha Rubini died. Subsequent to her death, her husband Kaliyan married Mariammal. Kaliyan and Rajamanickam, father of the Plaintiff, were working in the marketing society. Therefore, misusing the weakness of Rajamanickam's alcoholic drinks, the brother-in-law of the Plaintiff, Kaliyan had obtained sale deed in favour of Mariammal who is the second wife of Kaliyan (Kaliyan is the elder sister's husband of the Plaintiff) since the elder sister Gandha Rubini died, Kaliyan had married Mariammal. Therefore, by collusion between Defendant-7 Kaliyan and the Plaintiff Mariammal in the earlier suit in O.S.No.244 of 1992 a decree was obtained behind the back of 8th Defendant in O.S.No.244 of 1992, the Plaintiff herein. Kaliyan the husband of Plaintiff in O.S.No.244 of 1992 (the husband of the Defendant in O.S.No.130 of 2004) was aware of the place of residence of the 8th Defendant in O.S.No.244 of 1992 had not taken steps for proper service of



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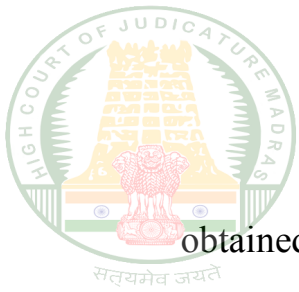
summons on the 8th Defendant, the Plaintiff herein in O.S.No.130 of 2004.

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Had she been served with summons, she would have defended the suit in O.S.No.244 of 1992 by proving the Will in the earlier suit in O.S.No.244 of 1992. Since she was prevented by agitating her rights in the earlier suit in O.S.No.244 of 1992 by filing additional written statement as Defendant-8 impleaded party after the death of Rajamanickam, she was prevented from putting forth her effective defence of the suit in O.S.No.244 of 1992 which had resulted in filing this suit in O.S.No.130 of 2004 wherein the Plaintiff had sought the following reliefs:-

1. Whether the will dated 05.08.1970 alleged to have been executed by the Plaintiff's father is true, came into force?
2. Whether the decree passed in O.S.No.244/1992 on the file of Sub Court, Villupuram is binding the Plaintiff?
3. Whether the suit property belongs to the Plaintiff?
4. Whether the Plaintiff is in possession of the suit property?
5. Whether the Plaintiff is entitled to the decree for declaration and injunction as prayed for?
6. To what relief and cost?

22. The learned Principal District Munsif, Ulundurpet failed to consider those facts. Therefore, the principle of *res judicata* cannot be invoked. In the facts and circumstances of this case, the judgment and decree



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obtained behind the back of 8th Defendant in O.S.No.244 of 1992 in which the contesting Defendant is the mother of the Plaintiff, she did not file any appeal which had resulted in the Plaintiff/8th Defendant in O.S.No.244 of 1992 as Plaintiff filing the subsequent suit in O.S.No.130 of 2004 seeking to set aside the decree in O.S.No.244 of 1992 and also to set aside the sale deed executed in favour of the Plaintiff in O.S.No.244 of 1992. When the Will is proved, naturally the sale deed has to be rejected as the circumstances indicate that the elder sister's husband Kaliyan is the husband of Mariammal. That is available in the cross-examination of Mariammal. The suggestion put to the Defendant Mariammal on behalf of the Plaintiff's Counsel was denied by her. That is natural. But Kaliyan is aware that the Plaintiff Kalyani was residing at her matrimonial home in Cuddalore. Therefore, merely by giving paper publication, her name was included in the suit proceedings and no effective steps were taken against her and thereby she was set *ex parte*. Also, the 7th Defendant Kaliyan remained *ex parte* because he is the beneficiary of the sale deed. The claim made by the Plaintiff is found probable. The father executing a Will which is not known to outside, which is only known to the husband of the Plaintiff and the father-in-law of the Plaintiff, and she had examined the scribe and the father-in-law as P.W-2 and P.W-3 to prove the Will. The Will was marked as Ex.A-2. Therefore, a person who had executed

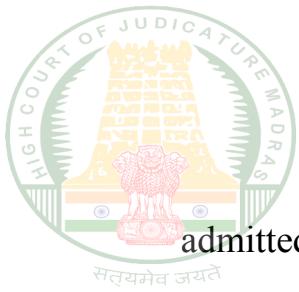


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a Will to his loving daughter, may not act against the interest of the daughter when he had executed sale deed. It shows that the Plaintiff in the earlier suit O.S.No.244 of 1992 Mariammal through her husband Kaliyan the brother-in-law of the Plaintiff in OS No.130 of 2004, the brother-in-law of the eight Defendant Kalyani in O.S. No.244 of 1992, had influenced the father of the Plaintiff, the father-in-law of the 7th Defendant Kaliyan. For which, direct evidence may not be available. The allegations levelled by the Plaintiff is found probable in the light of the facts and circumstances available in this case as the other daughter of Rajamanickam, Gandha Rubini died, her husband is the husband of the Plaintiff in the earlier in O.S. No. 244 of 1992, the Defendant in the present suit O.S.No.130 of 2004. Therefore, by all probabilities Kaliyan had played cleverly in usurping the property from the hands of Rajamanickam. The circumstances available in the earlier case, by which the Defendant-8 was set *ex parte* cannot be invoked against her by invoking the principle of *res judicata*.

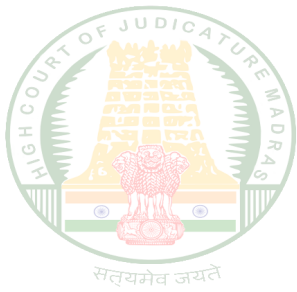
23. The submissions of the learned Counsel for the Respondent that the Second Appeal has no merit is to be rejected in the light of the claim by the Plaintiff that the Will had been proved in the earlier proceedings before the trial Court by examining the witnesses. At the same time, the Defendant-1



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admitted in her cross-examination that her husband is Kaliyan. Therefore, the circumstances surrounding the execution of the sale deed by the father of the Plaintiff against the interest of the Plaintiff after having executed a Will in her favour was lost sight by the learned Principal District Munsif on the ground that the Will is an unregistered Will and the sale deed is a registered sale deed. The learned Principal District Munsif failed to consider the circumstances raised by the Plaintiff that she was not served summons to her proper address at Cuddalore. After paper Publication, she was set *ex parte* in the earlier suit in O.S.No.244 of 1992 which had caused prejudice to her resulting in execution proceedings whereby she had lost her valuable right in the properties, that was vested in her by her father through execution of a Will.

24. The claim of *res judicata* is not attracted in this case against the Defendant in O.S.No.244 of 1992, the Will was proved in the judgment of the learned Principal District Munsif rejecting the Will is found perverse. Both the Courts below are not justified in holding that the *ex parte* decree passed against 8th Defendant in O.S.No.244 of 1992 will operate as *res judicata* for the present suit that there was no personal service of summons effected on the Appellant and the service was completed by paper publication alone.



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WEB COPY25. In the light of the above discussion from paragraphs 17 to 24, the Courts below are not justified in holding that the *ex parte* decree passed in O.S.No.244 of 1992 would operate as *res judicata* for the present suit, overlooking that admittedly no personal service of summons was effected on the Appellant and that service was completed by paper publication alone. Accordingly, **the substantial question of law 1 is answered in favour of the Plaintiff and against the Defendant in O.S.No. 130 of 2004 on the file of the learned Principal District Munsif, Ulundurpet.**

26. In the light of the above discussion from paragraphs 17 to 24, the Court below is not justified in holding that the Will Ex.A-2 is not proved by examining any attesor to the Will overlooking that P.W-2 an attesor is examined and Ex.A-2 is proved. Accordingly, **the substantial question of law 2 is answered in favour of the Plaintiff and against the Defendant in O.S.No. 130 of 2004 on the file of the learned Principal District Munsif, Ulundurpet.**

In the result, **this Second Appeal is allowed.** The judgment and decree dated 15.11.2008 passed in A.S. No. 114 of 2006 by the learned Principal Sub



S.A. No. 126 of 2009

Judge, Villupuram and the judgment and decree dated 07.08.2006 passed in O.S.No. 130 of 2004 by the learned Principal District Munsif, Ulundurpet are set aside. The sale deed dated 29.03.1984 in favour of the Defendant in O.S.No.130 of 2004 is also cancelled. The title to the suit property is declared in favour of the Plaintiff based on the Will executed by the father of the Plaintiff under Ex.A-2 dated 05.08.1970. The Plaintiff is granted permanent injunction restraining the Defendant Mariammal, her men, agents and servants from interfering the Plaintiff's peaceful possession and enjoyment of the suit property. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2025

srm

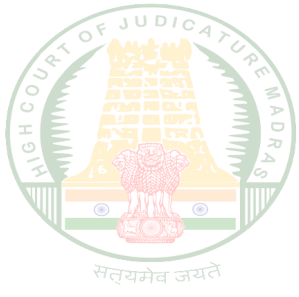
Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The Principal Sub Court,
Villupuram.
2. The Principal District Munsif,
Ulundurpet.
3. The Section Officer,
V.R. Section,
High Court Madras.



WEB COPY



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SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment made in
S.A.No.126 of 2009

10.07.2025