IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 345 of 2009
and
M.P.No. 1 of 2009
---

1. Sundaresan
2. Annapurani Ammal
3. Anusuya Devi .. Appellants

Versus

Kanchana .. Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.08.2007 made in A.S. No. 108 of 2006 on the file of the learned Additional Sub Judge, Salem, confirming the judgment and decree dated 03.04.2006 made in O.S. No. 1538 of 2004 on the file of the learned I Additional District Munsif, Salem.

For Appellants	:	Mr. V. Sekar for Mr. D. Shivakumaran
For Respondent	:	Mr. P. Veena Suresh for Mr. T. R. Rajaraman

JUDGMENT

This Second Appeal had been filed against the judgment and decree dated 21.08.2007 made in A.S. No. 108 of 2006 on the file of the learned Additional Sub Judge, Salem, confirming the judgment and decree dated 03.04.2006 made in O.S. No. 1538 of 2004 on the file of the learned I

Additional District Munsif, Salem.

2. The Plaint averments in brief are as follows:-

2.1. The suit property originally belonged to one Ramasamy Chettiar. He had only son namely Nagarajan who is the father of the 1st Defendant and the father-in-law of the Plaintiff. The said Nagarajan had two sons namely Purushothaman and the 1st Defendant. The Purushothaman died on 27.11.1997 leaving behind the Plaintiff as his legal heir. The said Ramasamy Chettiar executed a registered settlement deed in the year 1979 in favour of the 1st Defendant and the Purushothaman and both of them having equal share in the property. They enjoyed without partition and during his life time the said Purushothaman sold his undivided 1/2 share to the Plaintiff through a registered sale deed in the year 1997. From that onwards the Plaintiff is in joint possession of the property along with the 1st Defendant as she felt inconvenience she demanded for partition for which the 1st Defendant was not amenable and also they claimed unlawful claim over the property along with the Defendants 2 and 3. The Defendants 2 and 3 also created a Will to defraud the claim of the Plaintiff. Hence, she come forward this suit.

3. The averments in the written statement filed by the 1st Defendant in brief are as follows :-

3.1. The 1st Defendant admitted the relationship, but he denied the other allegations in the plaint. This Defendant denied that the said Purushothaman sold his undivided 1/2 share to this Plaintiff under sale deed. He submits that the said Purushothaman was suffered from incurable disease and he was given medical treatment, he has no intention to sell the property to anybody. Already there was a partition orally and the same was confirmed under Koor Chit Agreement dated 25.08.1997, on that "B" schedule property was allotted to the said Purushothaman. So there was no property in joint possession as stated by the Plaintiff. During life time, he said Purushothaman executed a will in favour of the 3rd Defendant and also given life interest to his mother 2nd Defendant. The Plaintiff was given only Rs. 50,000/- and also permitted to remarrying as per the Will dated 10.08.1997 executed by the said Purushothaman. But the Plaintiff unlawfully get a sale deed from the said Purushothaman and registered the said document in the Kerala State which is prohibited by Tamil Nadu Government, no consideration was passed. The suit is not maintainable in law and prayed for the dismissal of the same.

4. The averments in the written statement filed by the Defendants 2 and 3 in brief are as follows :-

4.1. They claimed right over the property as per Will said to be executed by the said Purushothaman on 10.08.1997. So they denied the right over the property under the sale deed.

5. The averments in the Additional written statement filed by the 1st Defendant are as follows:-

5.1. As per the oral partition, the eastern half share was allotted to the 1st Defendant and the western half share was allotted to the said Purushothaman. So the Plaintiff has to file only for the western half alone and the description of the property is erroneous one. This Defendant already sold full share to one Ramaraj, who is necessary party to the proceedings.

6. The averments in the reply statement filed by the Plaintiff as follows-

6.1. The alleged Koor Chit is fabricated one and also denied the oral partition. The Plaintiff also denied the execution of the Will as named by the Defendants 2 and 3. She also submits that the sale deed in favour of her duly registered and it is valid one.

7. On the above pleadings, the trial Court framed the following issues :-

1. Whether the sale deed dated 17.9.1997 is true?
2. Whether the Will dated 10.8.1997 is true, valid and genuine ?
3. Whether the suit is bad for non-joinder of necessary parties? 4.

Whether the suit property is available for partition?
5. Whether the Plaintiff is entitled to 1/2 share in the suit property?
6. To what relief if any is the Plaintiff is entitled ?

8. Apart from that, the following additional issue was also framed:

1. Whether the Will dated 10.8.1997 is true and valid?

9. The additional issue framed in the above suit on 27 10.2005 is deleted as unnecessary since the said issue reflects the second issue that is already framed. The first issue framed in the suit is re-casted as follows for effective and convenient adjudication.

10. The first issue was re-casted as follows:-

Whether the sale deed dated 17.9.1997 is true and valid ?

11. On the side of the Plaintiff, the Plaintiff examined herself as P.W-1 and one K.Palanisamy was examined as P.W-2 and marked three documents as Ex.A-1 to Ex.A-3. Ex.A-1 is the sale deed executed by Purushothaman in favour of Kanchana with letter from Special Deputy Collector, Salem, dated 17.09.1997. Ex.A-2 is the Encumbrance Certificate dated 06.01.2006. Ex.A-3 is the cash receipt issued by the Government of Tamil Nadu Registration Department, Thathagapatty, Salem, dated 05.01.2006. On the side of the Defendants, the first Defendant examined himself as D.W-1, one P.Alagesan

was examined as D.W-2, one N.Annnapoorani was examined as D.W-3 and one V.Ramaraj was examined as D.W-4 and eight documents were marked as Ex.B-1 to Ex.B-8. Ex.B-1 is the proceedings issued by the Tahsildar, Salem dated 04.02.1998. Ex.B-2 is the certified copy of the legal heirs certificate dated 23.12.1997. Ex.B-3 is the certified copy of Town Survey and Resettlement Register extract dated 19.02.1998. Ex.B-4 is the certified copy of Town Survey and Resettlement Register extract dated 19.02.1998. Ex.B-5 is the certified copy of sale deed executed by Purushothaman in favour of Vasantha dated 21.04.1997. Ex.B-6 is the certified copy of sale deed executed by Pruruchothaman in favour of Ramalingam dated 21.04.1997. Ex.B-7 is the certified xerox copy of circular issued by the Registration Office dated 07.04.1997 and Ex.B-8 is the Will executed by Purushothaman dated 10.08.1997. The third party document was marked as Ex.X-1 which is a certified xerox copy of covering letter dated 01.11.2004 with circular issued by Sub Registrar, Registration Office, Salem.

12. On appreciation of evidence and after hearing the Plaintiff and Defendants, the trial Court allowed the suit as prayed for granting preliminary decree in favour of the Plaintiff. Aggrieved, the Defendants preferred Appeal in A.S.No.108 of 2006 before the learned Additional Sub Judge, Salem. The learned Additional Sub Judge, Salem raised the following issues for

determination:

(i) Whether the trial Court's decree and judgment is liable to be set aside?

(ii) Whether the trial Court has erred in holding to appreciate the evidence of the Plaintiff and allowed the suit?

13. On re-appreciation of evidence and after hearing both parties, the learned Additional Sub Judge, Salem, dismissed the Appeal confirming the judgment dated 03.04.2006 passed by the learned I Additional District Munsif, Salem.

14. Aggrieved, the Defendants before the learned Additional Sub Judge, Salem, had preferred this Second Appeal.

15. The learned Counsel for the Appellants advanced his oral arguments stating that the Plaintiff is the wife of Purushothaman. Purushothaman died on 27.11.1997 due to incurable disease like Aids. Before his death, he had executed a Will on 28.05.1997 by which he had given right to his Mother and Sister. In the same Will, he had stated that Rs.50,000/- to be given to his wife Kanchana after his death. Prior to that, he had executed sale deed dated 17.09.1997 by which he had sold his undivided share in the property. This sale deed was registered in the State of Kerala.

16. It is the submission of the learned Counsel for the Appellants that the Registration Act was amended on 29.03.1997 under Section 28(b) of the Registration Act as amended on 29.03.1997 by which any document registered outside the State of Tamil Nadu is to be considered as *null and void.*

17. The learned Counsel for the Appellants invited the attention of this Court to the discussion of evidence by the learned I Additional District Munsif in Paragraph 8 of the judgment which is extracted as under:

> "The 3rd Defendant claims absolute right over the alleged divided share of the deceased Purushothaman by relying on a Will alleged to have been executed by the deceased Purushothaman on 10.08.1997. The said Will is unregistered and it is before this Court as Ex.B-8. Under the said Will a portion of the suit property that is said to have been allotted to the deceased Purushothaman under the Baga Koor Chit had been bequeathed to the 3rd Defendant after creating the prior life interest in favour of the second Defendant. The said Will is denied and challenged by the Plaintiff. At the out set, since the deceased Purushothaman had executed a sale deed in favour of the Plaintiff with reference to his share in the suit property, the Will can have no force even assuming it is true. So even if the Will is true, it cannot be valid since the deceased Purushothaman had no interest in the suit property at that time of his death. So Will cannot take effect even if it is true. So in this context, it is not necessary to analyse as to whether the Will is true or not. So irrespective of the fact whether the Will is true or not, this Court, without hesitation declared it as invalid. Thus this issue is answered."

18. It is the contention of the learned Counsel for the Appellants that the observation of the learned I Additional District Munsif, Salem, in judgment in O.S.No.1538 of 2004 in Paragraph 7 is perverse considering the amendment to Section 28 of the Registration Act, 1908 which came into force on

29.03.1997 as 28(b) of the Act. The Registration was on subsequent to this amendment Act i.e on 17.09.1997. Also in the course of the discussion of evidence, the learned Judge had observed, "when the issue was taken to the Hon'ble High Court of Judicature and upon the direction of the Hon'ble High Court, the Special Deputy Collector for stamps, Salem had collected a sum of Rs.42,901/- as difference stamp duty and a sum of Rs.3,125/- as the Registration fee payable on Ex.A-1." This part of the judgment is based on the Writ Petition order where W.P.No.33717 of 2005 was filed by the Plaintiff in O.S.No.1538 of 2004 as though it attracts Section 47A of the Stamp Act and suppressing the fact the Plaintiff had registered the sale deed executed by her husband in the State of Kerala, outside the State of Tamil Nadu whereas the properties are situated in Tamil Nadu. Therefore, the observation of the learned District Munsif is perverse. Even otherwise, the High Court cannot interpret the Act in such a way, the Section 28(b) of the Registration Act as amended is made null and void. Therefore, that part of the judgment placing reliance on the order in the writ petition will not help the Plaintiff to overcome the amended Section 28(b) of the Registration Act. Therefore, the sale deed relied by the Plaintiff has to be rejected.

19. The learned Counsel for the Appellants further submitted that it is the case of the Plaintiff that she had purchased the property paying

consideration and this was not proved and it was even upheld by the Trial Court. The burden is heavily on the Plaintiff to prove the sale deed is supported by consideration. The Plaintiff did not examine anybody. Moreover, the vendor is the husband of the Plaintiff and he was suffering from incurable disease and he was expecting the death at any moment. In these circumstances, the Plaintiff prevailed upon husband to write such a sale deed, that too, was registered in Kerala State outside the Tamil Nadu. The Section 16 of Contract Act is squarely applicable to the present case that the Plaintiff had coerced and forced the said Purushothaman to execute such a sale deed.

20. Further, the date of sale deed is 17.09.1997 prior to that the Government of Tamil Nadu brought an amendment to Section 28 of the Registration Act, 1908 on 29.03.1997 under the Act 19 of 1997 as Section 28(b), "*any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall deemed to be null and void*" The Clause 28(a) says: *"Save as in this part otherwise provided.- (a) every document in clauses a to h and i of sub-section (1) of Section 17 in so far as such document affects immoveable property and in clauses (a), (b), (c) and (cc) of Section 18 shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu and*

[Provided that every document mentioned in clause (h) of sub-section (1) of Section 17 may also be presented for registration in the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides]."

21. For the above provision, the trial Court wrongly interpreted that the Plaintiff obtained an order from the High Court in W.P.No.33717 of 2005 holding that "*When the issue was taken to the Hon'ble High Court of judicature and upon the direction of the Hon'ble High Court, the Special Deputy Collector for stamps, Salem had collected a sum of Rs.42,901/- as difference stamp duty and a sum of Rs.3,125/- as the registration fee payable on Ex.A-1 from the Plaintiff. In this regard relevant entries have bee made in Ex.A-1 itself. Apart from it Ex.A-3 is the receipt evidencing the receipt of deficit registration fee collected from the Plaintiff in Tamil Nadu. So, as such the defect pointed out by the Defendant is cure subsequently and hence there is no question of assailing or avoiding Ex.A-1 by relying on to the amendment made by the State of Tamil Nadu to Section 28 of Registration Act. So this Court is of firm conclusion that Ex.A-1 is true and valid.*"

22. The learned Counsel for the Appellants submitted that the order in W.P.No.33717 of 2005 is only with regard to payment of deficit stamp duty and not with regard to the question, whether the Ex.A-1 sale deed is sham and

nominal document and as such, the order in W.P.No.33717 of 2005 does not give a stamp of approval about the genuineness of the document Ex.A-1. Moreover, the subject matter of W.P.No.33717 of 2005 is not regarding the claim of right over a s property and the Court below ought to have considered the order in W.P.No.33717 of 2005 does not have any bearing, while deciding the right over the property covered under the order in W.P.No.33717 of 2005. Moreover, there is no discussion by the Courts below regarding the bar under Section 28(b) that the documents registered outside the State Tamil Nadu become null and void. This aspect also was not brought to the knowledge of the High Court in W.P.No.33717 of 2005. So the Plaintiff had played a fraud and misrepresentation on the High Court and obtained the order from the High Court in W.P.No.33717 of 2005 without disclosing the amended provision of Section 28(b) of Registration Act by the Act 19 of 1997 of Tamil Nadu.

23. The Courts below ought to have considered that the Defendants/Appellants herein have examined the Head Clerk from the office of the District Registrar on summons and marked Ex.X-1 the circular regarding the prohibition under Section 28(b) of Act 19 of 1997. It was not challenged in W.P.No.33717 of 2005. So the order in W.P.No.33717 of 2005 will not cure the defects under Section 28(b) of the Registration Act. In this aspect, the learned Counsel for the Appellants relied on a decision of reported in ***2014 (5)***

C.T.C 209 [M/s. Veena Textiles Limited vs. The Authorised Officer] in paragraph No.14 a Division Bench of this Court had held as follows:

> *"A perusal of the above said provision of law would show that the document registered outside the State of Tamil Nadu in contravention of the provisions of Clause (a) of Section 28 of the Registration Act shall be deemed to be null and void. Therefore, there cannot be any doubt that the Deed of Assignment dated 225.05.2011, was not entitled to initiate the proceedings before the Second Respondent under the SARFAESI Act, which has resulted in passing the impugned order by the Second Respondent under Section 14(3) of the SARFAESI Act."*

Therefore, the Appellants prays that this Court may be pleased to allow the above Second Appeal on the Substantial Questions of Law and set aside the concurrent judgment and decree of the Courts below.

24. The learned Counsel for the Respondent submitted that the subsequent registration of sale deed under Tamil Nadu Registration Act with the leave of the Court is valid. The Plaintiff was permitted by Court in I.A. No. 1841/2004 for presenting the document for Registering the Sale Deed under Section 35 of the Registration Act and when the same was kept pending on the issue of payment of Stamp duty, a direction was obtained from High Court and deficit stamp duty calculated on the Market Value of the Property was paid by the Plaintiff, hence, the same will amount to fresh Registration of the Document as per the Tamil Nadu Registration Act. Moreover, the Defendants did not question the orders in I.A.No. 1841/2004 when the Hon'ble Court, exercised its powers to permit the Plaintiff to present the Document for

Registration.

25. The learned Counsel for the Respondent further submitted that the sale deed cannot be without valid consideration. The Defendants admit in their evidence as D.W-1 and D.W-2 that Purushothaman and the Plaintiff were staying alone in a separate residence and further, it is also that admitted fact that the Plaintiff's husband was affected with an incurable disease and had to sell his properties to meet his medical expenses. Therefore, when there is no rebuttable evidence to the fact that the Plaintiff's father has also spent for the medical expenses of Purushothaman, he has executed the Sale Deed for the consideration he received for his medical treatment. Hence, it cannot be said that there is no valid consideration for the sale.

26. Also, the learned Counsel for the Respondent submitted that the alleged Will cannot be held to be a genuine or a proved one. The Will Dated 10.08.1997 under Ex.B-8 was not produced by the Defendants along with their Written Statement, when the Plaintiff has specifically raised such pleading in the reply statement, the Defendants 1 & 2 did not choose to file the same, when they were examined as D.W-1 & D.W-2, but only through D.W-3. This raises a serious doubt as to the existence of the Will and there is no reason assigned by the Defendants for non-production of the same at the earliest opportunity in the

suit. The mere examination of one attesting witness to the Will namely V.Ramaraj D.W-4, who is an interested witness, as he is the tenant under Defendant-1 and has admittedly purchased the portion of the suit property from Defendant-1 pending suit, cannot be taken as evidence for proof of Will as contemplated under Section 68 of the Evidence Act. In fact, the conduct of the 1st Defendant and the D.W-4 being a *pendente lite* purchaser was taken note of by the trial Court.

27. The learned Counsel for the Respondent further submitted that the oral partition and Koor Chit has not been established. The so-called oral partition pleaded and Koor Chit dated 28.05.1997 were never proved before Court, in fact, the year of such Oral partition was not even pleaded, nor any document was produced before the Court, despite being specifically pleaded. The trial Court rightly drew an adverse inference under Section 114(g) of the Indian Evidence Act for withholding the best evidence. No credible documentary or witness testimony proved any actual partition or separate possession. Thus, the property remains joint and undivided, warranting partition. As the purchaser of an undivided share and as the widow of a co-owner, the Plaintiff has a clear legal right over the Suit property. The trial Court and the First Appellate Court have concurrently held that the undivided ½ share in the Suit property was sold to the Plaintiff, in view of entire stamp

duty paid and registered under Ex.A-1, on the orders of the Court, and remains undivided. Hence, the Plaintiff holds a valid share, and the Will cannot be deemed to be proved and thus a preliminary decree for partition as prayed for is just and equitable. It is, therefore, prayed that this Hon'ble Court may be pleased to dismiss the above Second Appeal by confirming the Judgment and Decree of the Courts below.

28. At the time of admission, this Court had framed the following substantial questions of law:-

> ***"1. Whether the Courts below have committed an error in not applying Section 28(b) of the Registration Act to a document registered in another State regarding a property situated in Tamil Nadu?***
>
> ***2. Whether the Courts below have committed an error in holding that the bar under Section 28(b) of the Registration Act is not applicable to Ex.A-1, as the deficit stamp duty has been collected pursuant to an order of Court?***
>
> ***3. Whether the Courts below have committed an error in not considering the validity or otherwise of the Will relied on by the second and third Defendants (2nd and 3rd Appellants)?***

29. Heard the learned Counsel for the Appellants Thiru.V.Sekar for Mr.D.Shivakumaran and the learned Counsel for the Respondent Ms.P.Veena Suresh for Mr.T.R.Rajaraman.

30. Perused the original records in O.S.No.1538 of 2004 on the file of the learned I Additional District Munsif, Salem. Perused the judgment of the learned Additional Sub Judge, Salem in A.S.No.108 of 2006, dated 21.08.2007 and the judgment of the learned I Additional District Munsif, Salem in O.S.No.1538 of 2004, dated 03.04.2006.

31. On perusal of the judgment and on perusal of Section 28 of the Registration Act, it is found that the submission of the learned Counsel for the Appellants is acceptable in the facts and circumstances of this case. If it is a document registered outside the State of Taimil Nadu, the registration is not acceptable as per the provisions of Section 28(b) of the Registration Act. But the sale deed having been executed in Kerala, when the husband of the Plaintiff had undergone treatment in Kerala, therefore, there are extraordinary circumstances to meet out the expenses of the treatment that was carried out by the wife and her father to protect the life of the deceased Purushothaman who was suffering from incurable disease. There is evidence before the trial Court, learned I Additional District Munsif that the husband and wife were living separately from the family of the Defendants, who are the brother, mother and sister of Purushothaman. Under those circumstances, the claim made by the Defendant-1 that Purushothaman executed Will is denied by the Plaintiff stating that there is no circumstances for Purushothaman to execute the Will as

he was residing with the Plaintiff till his death and they were living outside the family consisting of Defendants 1 to 3. She had clearly disputed the claim of the Will made by the Defendants 2 and 3 by filing reply statement meeting out the contention of the Defendants 2 and 3. Therefore, when the trial proceeded, it is the duty of the Plaintiff to support her claim. She had marked the sale deed executed by her husband. The Defendants objected to the marking of the sale deed. Therefore, pending trial, the Plaintiff filed Writ Petition in W.P.No.33717 of 2005 before the High Court of Madras. Based on the orders by the Writ Court, the learned I Additional District Munsif impounded the document treating it as unregistered as per the instructions of the Tamil Nadu Registration Department which was marked as Ex.X-1 and based on the order of the Writ Court, Ex.A-1 relied by the Plaintiff was impounded by the learned I Additional District Munsif and the difference of the stamp duty between the registration at Kerala and registration at Tamil Nadu was imposed along with penalty under Ex.A-3. Based on the directions of the learned I Additional District Munsif, the Sub Registrar, Thathagapatti had registered the sale deed that was already registered in the State of Kerala at Palakad Sub Registrar Office by the Plaintiff and her husband. Therefore, by the orders of the learned I Additional District Munsif, the document that was objected to by the Defendants was the objection of the Defendants regarding unmarked document as the Registration outside the territory of Tamil Nadu cannot be treated as registered in Tamil Nadu. Therefore, the said objection regarding defective registration was set right by the learned I Additional District Munsif by issuing direction to the Sub Registrar to register the document after the defect in the document was set right by impounding the document.

32. Regarding unregistered document, as per the Registration Act, which mandates a transfer of property to be registered, if it is unregistered, it cannot be relied by the Court. It is inadmissible in evidence. Regarding documents that are not properly stamped, the Court can impound the documents and impose stamp duty for insufficient stamp duty under the Stamp Act. At the same time, when the unregistered document even though properly stamped after impounding the document, the non-registration cannot be set right by the Court. Here, the circumstances are extraordinary. The person who is in incurable had been taken for treatment to Kerala during the course of treatment apprehending death, the person who is suffering from incurable illness himself had executed a sale deed in favour of his wife. It is unusual for a person to execute a sale deed in favour of his wife. But that does not make it inadmissible document. It is between the seller and the purchaser. Here, the claim made by the Defendants to object the sale deed is that there was no consideration passed when Purushothaman had executed a sale deed. It is for Purushothaman if he is alive to object to the same that the sale deed was not

executed for valid consideration. It is not for the Defendants - mother and sister of Purushothaman to object to the same. It is the intention of the Plaintiff that she and her father had meted out the expenses for the protection of life, for the treatment of the incurable illness of her husband Purushothaman. Therefore, the money spent on his treatment the husband Purushothaman was aware. Therefore, to protect his right in the property, he had executed the sale deed in favour of his wife who had spent on his treatment. The evidence of the wife regarding that they were living separately was not challenged in the cross-examination. Her claim in the plaint as well as her evidence states that the deceased Purushothaman suffering from incurable disease was living separately outside the family of the Defendants and that was confirmed in cross-examination of first Defendant as D.W-1 and the second Defendant as D.W-3, the mother of the first Defendant and deceased Purushothaman.

33. Under those circumstances, it is an extraordinary circumstance where the person apprehending death executes his interest in favour of his wife which cannot be objected by the Defendants on technicalities of law. Therefore, the powers of the Civil Court to protect the right of the Plaintiff based on the order of the Writ Court, the document was impounded and in continuation of the impounding documents to set right the defect the registration which was executed outside the territorial limits of Tamil Nadu

was once again registered within the State of Tamil Nadu. It is a different issue whether an unregistered document is marked. Here, the sale deed which requires mandatory registration was registered in the State of Kerala as per the Registration Act. Therefore, mandatory provisions was observed. Therefore, the reasoning given by the learned I Additional District Munsif that the document under Ex.A-1 the defect had been cured cannot be found erroneous. The document was registered as per the Registration Act. It is only a departmental instruction of the Registration Department of Tamil Nadu to all the Sub Registrars in the State of Tamil Nadu that a document registered outside the State of Tamil Nadu for the property within the territorial limits of Tamil Nadu is not a valid registration. The registration is as per the Registration Act which is applicable to the State throughout the country. Except this circular of the Registration Department of the State of Tamil Nadu there is no restrictions or bar. Therefore the same cannot be treated as unregistered document. It is a registered document. The Plaintiff had to rely on that document to claim her right.

34. It is true that the deceased could have executed a settlement deed in favour of his wife, instead of sale deed. But a person apprehending death, had executed sale deed, for reasons best known to him. As per the evidence of the Plaintiff, she and her husband were residing away from the family of the

Defendants due to his incurable illness during which the treatment was meted out by the father of the Plaintiff and that is available through the evidence of P.W-2 the father of the Plaintiff which is unchallenged. Therefore, the learned I Additional District Munsif had accepted the document under Ex.A-1. The substantial questions of law raised by the Defendants herein that both the trial Court as well as the first Appellate Court failed to consider the provisions of Section 28(b) of the Registration Act will not help the Defendants in this case to deny the share to the Plaintiff.

35. Further, it is to be noted that the claim made by the Defendants 1 to 3 are against the interest of the Plaintiff thereby deny her share of the husband. To deny her share they claimed koor chit and sale by the first Defendant of his half share and the rest of the half share claimed by the Defendants 2 and 3 as though he had executed a Will in their favour. The said Will was not proved as per Section 68 of the Indian Evidence Act. The so-called witness attestor D.W-4 in his cross examination had clearly admitted that he did not know where the Plaintiff and her husband Purushothaman resided when he had executed the Will. He did not know when and where he executed the Will. The Will was marked only through the attesting witness D.W-4 during his evidence. When the attesting witness claims ignorance regarding execution of the Will, he had not seen Purushothaman executing the

Will. Therefore, the attesting witness's evidence has to be rejected. The learned I Additional District Munsif had rejected the Will without offering explanation. On comparison of the signature of Purushothaman in Ex.A-1 with the signature of Purushothaman found in Ex.B-8 it differes to the naked eye. When Purushothaman was alive and alleged to have executed sale deed, when the husband and wife was living together at Palakkad in Kerala, the execution of the sale deed is found proper. It is presumed to be proper. It is the signature of Purushothaman. When the Plaintiff challenged the Will claiming that there is no possibility for Purushothaman to execute a Will as he was never in the company of the Defendants, after suffering the incurable illness. Both of them, the Plaintiff and her husband were residing away from the Defendants is found probable. Under those circumstances, the Defendant-2 Annapoorani, the mother of the deceased Purushothaman even though volunteered to depose evidence she wantonly avoided marking the Koor Chit claimed by her in her written statement and the Will which she claimed to be under her custody to be marked during her evidence. That gives indication that the Will claimed by them is not true and contrary to that, it was created. That is why it was marked through the attesting witness. The evidence of the attesting witness D.W-4 disproves the claim of the Defendants. The attesting witness was not at all available at the time when the Will was executed and the Will is not also a registered Will whereas Ex.A-1 is a registered document, even though registered outside the State of Tamil Nadu. It is a registered document as per the Registration Act which is applicable throughout the country whereas the instructions of the Tamil Nadu Registration Department states that any document registered outside the territorial limits of the Tamil Nadu for the property situated in Tamil Nadu, it is not proper registration. The said defect had been cured by the orders of the learned I Additional District Munsif directing the Registration Department to register the document after having impounded the document and imposed penalty as per Stamp Act. Therefore, one part of the document regarding impounding had been carried out, in continuation of the same, the registration outside the Tamil Nadu had been set right. That cannot be considered as Court has no power to cure the defect. Civil Court has power when a registered document is produced but there is technical flaw that it had been registered outside the State of Tamil Nadu. The technical objection had been set right by the learned I Additional District Munsif, for which the Defendants had not raised any appeal or revision at the stage when the trial was pending under Article 227 of the Constitution of India or filed any appeal before the Sub Judge or the District Judge regarding marking of the document. Therefore the submission of the learned Counsel for the Appellants in the Second Appeal that the trial Court as well as the first Appellate Court failed to consider the provisions of Section 28 (b) of the Registration Act is found unacceptable in the peculiar facts of this case.

Therefore, the granting of preliminary decree in favour of the Pliantiff is found justified. The rejection of the Will is also found proper.

36. In the light of the above discussion from paragraphs 30 to 35, the substantial questions of law 1 to 3 are answered as follows:

<u>Substantial Question of Law-1</u>:

The Courts below have not committed any error in not applying Section 28(b) of the Registration Act to a document registered in another State regarding a property situated in Tamil Nadu. Accordingly, **the Substantial Question of Law-1 is answered in favour of the Respondent/Plaintiff and against the Appellants/Defendants.**

<u>Substantial Question of Law-2</u>:

The Courts below have not committed any error in holding that the bar under Section 28(b) of the Registration Act is not applicable to Ex.A-1, as the deficit stamp duty has been collected pursuant to an order of Court. **Therefore, the Substantial Question of Law-2 is answered in favour of the Respondent/Plaintiff and against the Appellants/Defendants.**

<u>Substantial Question of Law-3</u>:

The Courts below have not committed an error in not considering the validity or otherwise of the Will relied on by the second and third Defendants (2nd and 3rd Appellants). The trial Court had rejected the claim of Will made by the Defendants that the deceased Purushothaman had executed a Will in favour of Defendants, based on the appreciation of evidence, particularly, the difference in the signature of Purushothaman, the husband of the Plaintiff in the Will and the signature of Purushothaman in Ex.A-1 sale deed, registered in Kerala State during the period of stay at Palakkad in Kerala where the deceased Purushothaman had undergone treatment for his incurable illness with the money spent by the father of Plaintiff. Therefore, both the Courts had not committed any error in rejecting the Will, as the attesting witness was unaware where and when the deceased Purushothaman executed the Will. Therefore, the same was rightly rejected on strong reasoning based on evidence. Therefore, **the Substantial Question of Law-3 is answered in favour of the Respondent/Plaintiff and against the Appellants/Defendants.**

In the result, **this Second Appeal is dismissed.** The the judgment and decree dated 21.08.2007 passed in A.S. No. 108 of 2006 by the learned Additional Sub Judge, Salem, confirming the judgment and decree dated 03.04.2006 passed in O.S. No. 1538 of 2004 by the learned I Additional District Munsif, Salem, is upheld. No costs. Consequently, the connected miscellaneous petition is closed.

30.06.2025

srm
Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order

To

1. The Additional Sub Judge,
   Salem.

2. The I Additional District Munsif,
   Salem.

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

SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment made in

S.A.No.345 of 2009

30.06.2025