



S.A.Nos.405 of 2003 and 1452 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2025

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

S.A.Nos.405 of 2003 and 1452 of 2002

S.A.No.405 of 2003:

1.Easwariammal (died)

2.Savithri (died)

3.Rukmani

4.Selvamani

5.Manonmani

... Appellants/Appellants/Defendants

6.Gurusami

7.Suganthi

8.Sree Devi

...Appellants

.vs.

1.M.Subbaiyan, (died)

2.M.Rangasamy

3.Sarojini

...Respondents/Respondents/Plaintiffs

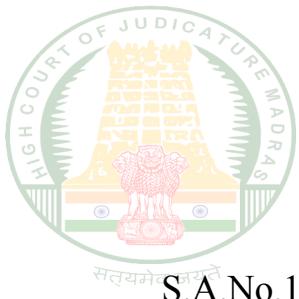
4.S. Udhaya Kumar

5.S. Suresh Kumar

6.S. Subashini

...Respondents

(Respondents 4 to 6 brought on record as LR's of the deceased 1st respondent, viz., M.Subbaiyan. Appellants 6 to 8 brought on record as LR's of the deceased 2nd appellant and the 1st appellant died. Appeal got abated against the 1st appellant vide Court order dated 01/08/2022 in C.M.P.No.12623, 12624, 12628, 10442, 10444 and 10448 of 2022 in S.A.No.405 of 2003 by CVKJ)



S.A.Nos.405 of 2003 and 1452 of 2002

S.A.No.1452 of 2002:

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- 1.M.Subbaiyan, (died)
- 2.M.Rangasamy
- 3.Sarojini
- 4.S. Udhaya Kumar
- 5.S. Suresh Kumar
- 6.S. Subashini

...Appellants/Respondents/Plaintiffs

...Appellants

(Appellants 4 to 6 brought on record as LR's of the deceased 1st appellant, namely, M.Subbaiyan vide Court order dated 05/08/2021 in C.M.P.No.7519 to 7521 of 2021 in S.A.Nos.1452 of 2002 and 405 of 2003 by AQJ)

Vs.

- 1.Easwariammal (died)
- 2.Savithri (died)
- 3.Rukmani
- 4.Selvamani
- 5.Manonmani
- 6.Suganthi
- 7.Sree Devi

... Respondents/Appellants/Defendants

... Respondents

(Respondents 6 and 7 brought on record as LR's of the deceased 2nd respondent, viz., Savithri vide Court order dated 01/08/2022 in C.M.P.Nos.14824, 14813 and 14819 of 2021 in SA.1452 of 2002 by CVKJ)

Prayer in S.A.No.405 of 2003: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 31.10.2001 made in A.S.No.28 of 2001 on the file of the learned Principal District Judge, Coimbatore, reversing the Judgment and Decree dated 06.11.2000 made in O.S.No.430 of 1995 on the file of the learned IV Additional Subordinate Judge, Coimbatore.



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Prayer in S.A.No.1452 of 2002: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 31.10.2001 made in A.S.No.28 of 2001 on the file of the learned Principal District Judge, Coimbatore, reversing the Judgment and Decree dated 06.11.2000 made in O.S.No.430 of 1995 on the file of the learned IV Additional Subordinate Judge, Coimbatore.

S.A.No.405 of 2003:

For Appellants : Mr.M.L.Ramesh

For Respondents : Mr.S.Mukunth,
Senior Counsel for
M/s. Sarvabhauman Associates
for R2 to R6

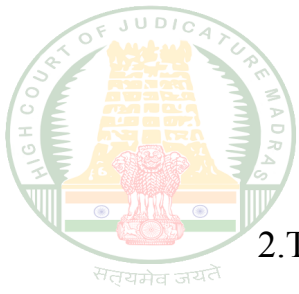
S.A.No.1452 of 2002:

For Appellants : Mr.S.Mukunth,
Senior Counsel for
M/s. Sarvabhauman Associates

For Respondents : Mr.M.L.Ramesh
for R3 to R7

COMMON JUDGMENT

Challenging the modified Judgment and Decree of the First Appellate Court, both the plaintiffs and the defendants preferred this Second Appeal.



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2.The parties are described in the same array as in the Original Suit.

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3.Before the Trial Court, the plaintiffs filed a suit for declaration in respect of 1st item of the property and for partition claiming 19/24 shares in 3 to 8 items of the properties and also directing the defendants to render the accounts for *mesne* profits for 3 to 8 items of the properties from the date of suit till the date of delivery of possession and pay 19/24 share to the plaintiffs 1 to 3.

4.The plaintiffs are sons and daughter of one Maranna Gowder born through his first wife. The defendants are the second wife and her daughters of the said Maranna Gowder. According to the plaintiffs, the 1st item of the suit property belongs to his grandfather settled in their favour through a Settlement Deed (Item 1) on 17.02.1958. The plaintiffs and their father Maranna Gowder were constituted a joint family and as a Kartha of the Joint family, their father has purchased Items 4 to 8 of the properties out of surplus income derived from the ancestral properties, namely, 3rd Item of the property. The refore, they are entitled to have a share in the 2 to 8 items of the properties. But, the defendant are not inclined to give shares in those items by claiming absolute right over the suit properties. Based upon two Wills said to have been executed by the said



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Maranna Gowder in their favour. Therefore, the dispute arose and the partition suit was filed.

5. Before the Trial Court, both the parties adduced evidence in respect of the Item 1 of the property. But, the defendants have not claimed any right and they admitted the Settlement Deed. The property belongs to the plaintiffs in respect of Item 2 of the property which was a dwelling house. But, the defendants contended that the superstructure has been damaged and there is no house as on date. In respect of Items 3 and 6 of the properties are the ancestral properties allotted to the plaintiffs' father Maranna Gowder by way of partition. According to the plaintiffs, their father Maranna Gowder was the Kartha of the joint family and out of the income derived from the ancestral properties (item 3), he purchased the items 4 to 8 of the properties. But, the defendants disputing the plaintiffs' claim in respect of 4 to 8 items of the properties claimed that it is a separate property of Maranna Gowder. During his lifetime, he bequeathed the properties in favour of the defendants and the son-in-laws through two Wills dated 16.05.1997 and 07.11.1994. Therefore, the burden was caused upon the execution of the Wills. However, there was no evidence to prove that Maranna Gowder had a separate income. There is no proof on the side of the defendants. Items 4 to 8 are the separate properties of Maranna



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Gowder, on the other hand, the plaintiffs proved that there was an ancestral nucleus and also doing agriculture. The said Maranna Gowder as a Kartha of the joint family purchased item 4 to 8 of the properties.

6. Therefore, the Trial Court held that the items 2 to 8 of the properties are joint family properties. Though the accounts for *mesne* profits were claimed, it was not accepted by the Trial Court holding that there was no proof for claiming mesne profits, so, it was negatived. In respect of two Wills relied by the defendants, the Trial Judge has held that at the time of alleged execution of the Wills, Maranna Gowder was suffered with cancer and he was under the treatment in the hospital. Therefore, the sound state of mind of the testator Maranna Gowder has not been established. So also, the recital of Ex.B.4 - Will was not clarified that the testator has not given any property by way of partition to the plaintiffs. To that effect, the recitals of the Will created suspicious in respect of sound state of mind of the testator and the Will has also not been executed covering all the properties. Besides one more Will was executed, after Ex.B.4 – Will that too in favour of the son-in-laws (Ex.B.5) and no reasons was assigned for executing the said Will nor the witness also proved that they knew the said Maranna Gowder, Some of the attestors of the Will known the testator and they were chance witness and also he was under the



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treatment at the time of alleged execution of Ex.B.4 – Will. Considering all the

surrounding circumstances, the Will is suspicious, therefore, Ex.B.4 and Ex.B.5

– Wills were not accepted. All the properties Items 3 to 8 treated as a joint family properties and directed to allot 19/24 share in favour of the plaintiffs.

The prayer for rendition of accounts was dismissed and the suit was dismissed.

7. Aggrieved over the Judgment and Decree of the Trial Court, the defendants preferred an appeal in A.S.No.28 of 2001 on the file of the learned Principal District Judge, Coimbatore and the Cross Objections was filed by the plaintiffs before the learned Principal District Judge, Coimbatore. The First Appellate Court also separately analyzed the entire facts and evidence on record and finally held that in respect of Item 1 of the property, the defendants are not made any claim. Accordingly, the suit item 1 of the property was allotted to the plaintiffs as per the Settlement Deed.

8. In respect of Item 2 of the properties, which is the dwelling house and in respect of Item 3, though they are the ancestral properties, out of income derived, the 4 to 8 items of the properties were purchased and as a Kartha of the joint family, with the aid of joint family income, items 4 to 8 were purchased. Hence, those items were treated as the joint family properties. Hence, those



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items 4 to 8 of the properties held as a joint family properties and concluded that the plaintiffs 1 and 2 are entitled to 1/3 share by birth and also held that the defendants have not proved that there is a separate income to Maranna Gowder to purchase the items 4 to 8 of the properties, thereby the plaintiffs 1 and 2 alone are entitled to 1/3 each share in items 2 to 8 and the deceased Maranna Gowder is entitled to 1/8 share. In respect of execution of the Will, the First Appellate Court held that though the testator was suffered with cancer, the attester who was examined on the side of the defendants, proved that he was in sound state of mind while executing the Will and therefore, both the Wills were held true and valid in respect of 1/3 share in respect of testator. Accordingly, the Cross objections filed by the plaintiff is not sustainable. Therefore, the Cross Objections was rejected. Finally, the First Appellate Court held that the Appeal Suit was allowed in part, by allotting 2/3 share to the plaintiffs 1 and 2 inn respect of 3 to 8 items of the properties.

9.Challenging the said findings of the First Appellate Court, the plaintiffs preferred S.A.No.1452 of 2002 and the defendants preferred S.A.No.405 of 2003.



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10.In S.A.No.405 of 2003, this Court had framed the following

Substantial Questions of Law:

“(1)Whether in Law the Lower Appellate Court is correct in holding Ex.B4 and Ex.B5 have been proved in accordance with Law relating to the proof of Wills?

(2)Whether in Law the First Appellate Court in the absence of any proof regarding of the mental capacity of the testator, is it correct in Law for a Court of probate to uphold the due execution of the Will, especially, when the propounder has failed to explain and remove the very many suspicious surrounding the execution of the Will?

(3)Whether the Lower Appellate Court is correct in law in not granting *mesne* profits to the plaintiffs in respect of their share in the suit properties?

(4)Whether the findings of the Courts below are right in holding that the items 4 to 8 are the joint family properties?”



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11.In S.A.No.1452 of 2002, this Court had framed the following

Substantial Questions of Law:

“Whether in law, the Lower Appellate Court is correct in holding Ex.B.4 and Ex.B.5 have been proved in accordance with the Law relating to the proof of Wills?”

12.The plaintiffs have filed S.A.No.1452 of 2002 and the defendants have filed S.A.NO.405 of 2003.

13.In S.A.No.1452 of 2002, the learned counsel appearing for the appellants/plaintiffs would argue that the First Appellate Court failed to take note of the fact that the alleged two Wills Ex.B.4 and Ex.B.5 were surrounded with suspicious and the propounder of the Will has not been removed those suspicious circumstances, by adducing proper evidence though it was rightly appreciated by the Trial Court. But, the First Appellate Court has erroneously held that both the Wills are not true and valid, as such, is illegal and liable to be set aside.



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14. In S.A.No.1452 of 2002, the learned counsel for the respondents/defendants would contend that the First Appellate Court erroneously held that items 4 to 8 of the properties were also treated as joint family properties. In fact, those properties were purchased by Maranna Gowder through his separate income. Therefore, he is entitled to write a Will in favour of the defendants, since already sufficient properties were given to the plaintiffs. Without considering the evidence on record, the Courts below erroneously held that item 4 to 8 of the properties were also purchased out of joint family nucleus and that in respect of 1/3 share of Maranna Gowder, he is entitled to execute Wills as such is erroneous and it is liable to be set aside.

15. Considering both side submissions, inspite of the suit was originally filed by the plaintiffs by way of a Settlement Deed executed by their grandfather dated 19.06.1958, is an admitted fact. Therefore, Bot the Courts below held that the plaintiffs are the absolute owners of the suit properties in which the defendants have not claimed any share. Therefore, item 1 of the property is declared as the property of the plaintiffs 1 to 3.



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16. In respect of items 2 to 8, the plaintiffs claimed that item 2 and 3 are the ancestral properties and out of income derived from the ancestral properties, items 4 and 8 were purchased. Therefore, all the properties are claimed as a joint family properties. Admittedly, the defendants disputed the character of the property. The defendants admitted that Maranna Gowder purchased item 4 to 8 of the properties and also admitted that item 2 and 3 are the ancestral properties. But, there is no proof that the said Maranna Gowder had separate income. Therefore, the Courts below have rightly held that with the aid of income derived from the items 2 and 3 of the properties, items 4 to 8 were purchased by Maranna Gowder. Therefore, the Courts below have rightly held that items 2 to 4 were joint family properties.

17. In respect of item 2 to 4 of the properties, the said Maranna Gowder executed two Wills marked as Ex.B.4 and Ex.B.5. Ex.B.4 was executed on 16.05.1994. During that period, it is an admitted fact that Maranna Gowder was suffered with cancer and he was discharged from the hospital. One of the testator was examined on the side of the defendants to prove the execution of the said Will, thereby, the defendants contended that the Will was proved beyond the reasonable doubt. Thereafter, another Will dated 07.11.1994



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marked as Ex.B.4 was executed in favour of son-in-law, after one month, the testator died. According to the plaintiffs, at the time of alleged execution of the Will, the testator was not in a sound state of mind and he was undergoing treatment, thereby, challenged the Will stating surrounded suspicious circumstances. One of the attestors of the Will was examined. The First Appellate Court held that though he was suffered with cancer, his mental capacity was stable while execution of the Will, was also proved. Therefore, both the Will are true and valid.

18.As rightly pointed out by the learned counsel appearing for the plaintiffs, in Ex.B.4 – Will, there is a recital that the plaintiffs were already given Partition, in fact, no such partition was acted upon. He also pointed out that one of the attestors is not known to the testator Maranna Gowder and they were chance witnesses. Hence, their presence on the date of the alleged execution of the document was created suspicion over the minds of this Court. It is settled proposition that the propounder of the Will should prove the Will all the circumstances beyond reasonable doubt and those recitals of the Will suspicious over the mental calibre of the testator which was rightly appreciated by the Trial Court. But, the First Appellate Court by giving weightage to the registration of the Will ignoring the fact that some of the attestors are not



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known Maranna Gowder, would not fatal, as such, it is improper appreciation of both the law and fact. To that effect, the findings of the First Appellate Court is set aside. Accordingly, the Substantial Question of Laws are answered.

19. Accordingly, these Second Appeals are disposed of. It is an undisputed fact that the 1st defendant is the second wife and the defendants 2 to 5 are the daughters of Maranna Gowder, who married the 1st defendant, after the death of his first wife. Therefore, his marriage with the 1st defendant is a valid one. Therefore, the defendants 2 to 5 who are the daughters of Maranna Gowder are also entitled to equal share to get off the sons' share. In the items 2 to 8 of the properties, the plaintiffs 1 to 3 and the defendants 1 to 5 are each entitled to 1/8 share. Pending proceedings, the 1st defendant Easwari Ammal died leaving behind her daughters as her legal heirs. Hence, her 1/8 share is devolved upon to the defendants 2 to 5. Therefore, the plaintiffs are entitled to 1/8 share each in the items 2 to 8 of the properties. The 1/8 share of the 1st defendant devolves upon to the defendants 2 to 8. Besides each of the defendants 2 to 5 are entitled to 1/8 share.



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Accordingly, Preliminary Decree is passed. All are Senior Citizens, if any Final Decree application is filed by the parties, the Trial Judge is directed to dispose of the Final Decree Application within a period of three months. There shall be no order as to costs.

09.04.2025

Speaking / Non Speaking order

Neutral Citation : Yes/No

Index : Yes/No

mps

To

1.The Principal District Judge,
Coimbatore.

2.The IV Additional Subordinate Judge,
Coimbatore.

3.The Section Officer,
VR Section,
Madras High Court.



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T.V.THAMAILSELVI, J.

mps

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