



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 13.06.2025

Pronounced on : 18.07.2025

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.575 of 2009

and

M.P.No.1 of 2009

- 1.P.Nagaraj (Deceased)
- 2.Saraswathi @ Sarasa (Died)
- 3.P.Radha
- 4.N.Manoj
- 5.N.Majosh
- 6.Marimuthu
- 7.Rajendran

...Appellants

A1 died, A3 to A5 are brought on record as LRs of the deceased A3 vide order dated 06.07.2015 in M.P.No.1 to 3 of 2011.

A2 died, A6 and A7 are brought on record as LRs of the deceased A2 vide order dated 04.03.2025 in C.M.P.No.4318 of 2025.

Vs

- 1.Rajammal (Died)
- 2.Devaraj
- 3.Pushpa



4.Raghupathi

...Respondents

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R1 died, RR2 to 4 are brought on record as LR's of the deceased R1 vide order dated 20.01.2025 in C.M.P.No.2448 of 2022.

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.99 of 2006 dated 06.01.2009 on the file of the Principal District Court, Coimbatore confirming the judgment and decree passed in O.S.No.380 of 2003 dated 12.09.2005 on the file of the II Additional Subordinate Court, Coimbatore.

For Appellants : Mr.S.Mukunth, Senior Counsel

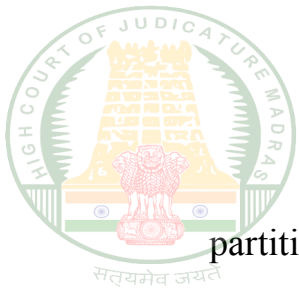
For RR2 to 4 : Mr.N.Ponraj

R1 : Died

JUDGMENT

The defendants in O.S.No.380 of 2003 on the file of the II Additional Subordinate Court, Coimbatore, are the appellants herein.

2.O.S.No.380 of 2003 had been filed by the respondent / Rajammal who died pending the Second Appeal against the 1st and 2nd appellants / P.Nagaraj and Saraswathi @ Sarasa respectively who also both died during the pendency of the Second Appeal seeking a judgment and decree for



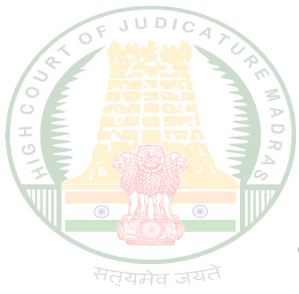
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partition and separation of the suit schedule properties into three equal parts and allot one such part to the respondent / plaintiff and direct the appellants / defendants to render true and proper accounts of the income derived by them from the tenants. The said suit came up for consideration before the II Additional Sub Court, Coimbatore on 12.09.2005 and the Suit was partly decreed with respect to A and C schedule properties and dismissed with respect to B schedule property. Challenging that judgment and decree, the appellants herein had filed A.S.No.99 of 2006 which came up for consideration before the Principal District Court, Coimbatore and by judgment dated 06.01.2009, the Appeal Suit was dismissed and the judgment and decree of the Trial Court was confirmed. Questioning that judgment, the defendants have filed the present Second Appeal.

3.The Second Appeal had been admitted on 25.06.2009 on the following Substantial Questions of Law:

“1.Whether the courts below have not adhered to the provisions of Section 63(c) of the Indian Succession Act r/w Section 68 of the Indian Evidence Act.

2.Whether rejection of the Will is correct on the ground



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of misdescription of age of testatrix and mentioning of one of her son as minor instead of major, when the Will has been proved as required by law.

3. Whether the courts below are justified in deciding the validity of gift deeds Ex.B4 and Ex.B5 while the gifts were acted upon by the beneficiaries.”

4. Heard arguments advanced by Mr.S.Mukunth, learned Senior Counsel for the appellants and Mr.N.Ponraj learned counsel for the 2nd, 3rd and 4th respondents.

O.S.No.380 of 2023 (II Additional Sub Court, Coimbatore):-

5. The Suit had been filed by Rajammal who was the respondent in the Second Appeal. The plaintiff, Rajammal and the defendants, Nagaraj and Saraswathy @ Sarasa are sisters and brother and children of Pattiammal @ Ammassiammal. There was one another son, Rama Boyan. It had been stated that during their life time, Rama Boyan and Pattiammal @ Ammassiammal had jointly purchased the A schedule property by a registered sale deed dated 04.11.1947. The A schedule property is land and building measuring 4851 sq.ft. at Sowripalayam Ward, Coimbatore. It had



been stated that the brother of the plaintiff and the defendants, Rama Boyan died intestate and thereafter, the plaintiff and the defendants and their mother became absolute owners of A schedule property. It had been further stated that on 20.05.1958, Pattiammal @ Ammassiammal and the plaintiff Rajammal jointly purchased the B schedule property under registered sale deed dated 20.05.1958. It had been stated that after the death of Pattiammal @ Ammassiammal, the plaintiff and the defendants had become absolute owners of the 1/2 share belonging to their mother. The B schedule property is vacant land measuring 2034 sq.ft. at Ramakrishnapuram, Sowripalayam Village, Coimbatore. It had been further stated that the mother of the plaintiff Pattiammal @ Ammassiammal had purchased the property in C schedule on 02.02.1970 under a registered sale deed. The C schedule property are houses bearing Door Nos.214 to 220 in land measuring 19166 sq.ft. at Sowripalayam Village, Coimbatore.

6.It had been further stated that the mother Pattiammal @ Ammassiammal died intestate on 25.03.200. It had been contended that the plaintiff and the defendants alone are entitled to her share in the properties. It had been stated that the plaintiff was entitled to an undivided 1/3rd share



in the suit schedule properties. It had been stated that she had sought partition but the defendants had refused to partition the properties. She issued an advocate notice on 27.06.2002. It had been stated that she issued another notice on 06.07.2002. A reply was received on 19.07.2002, wherein it had been stated that the mother Pattiammal @ Ammassiammal had executed two settlement deeds and a Will on 10.09.1979, 06.01.1999 and 05.07.1996 respectively. It had been stated that two settlement deeds were in favour of the 2nd defendant and the Will was in favour of the 1st defendant. It had been contended by the plaintiff, that the said Will and the settlement deeds were forged and fabricated documents. It was under those circumstances that the suit had been filed seeking partition and separate possession of the A, B and C schedule properties.

7.The defendants had filed their written statement admitting to the manner in which the suit schedule properties had been acquired. It had been stated that the funds for the purchase had been provided by the 2nd defendant by pledging the jewels of Rama Boyan's wife. It had been stated that the plaintiff had a recalcitrant attitude towards Pattiammal @ Ammassiammal throughout. It had been stated that she did not die intestate. She executed



documents with respect to the properties. It had been stated that the plaintiff and Pattiammal @ Ammassiammal were enjoying the properties. It had been stated that the two settlement deeds and the Will had also been executed by Pattiammal @ Ammassiammal with respect to her share of the properties. The A schedule property was settled in favour of the 2nd defendant by a gift deed dated 06.01.1999 registered as Document No.23 of 1999. It had been stated that Pattiammal @ Ammassiammal had also executed a Will dated 05.07.1996 registered as Document No.73 of 1996. It had been stated that under the Will her share in the properties were bequeathed to the 1st defendant. It had been further stated that the 1st defendant was absolutely entitled to the C schedule property. The claim of the plaintiff that she was entitled to an undivided 1/3rd share was denied and disputed. It was claimed that the suit should be dismissed.

8. On the basis of the pleading, the learned Trial Judge, had framed the following issues:

i). Whether A schedule property belonged absolutely to the mother of the plaintiff?

ii). Whether the mother of the plaintiff had executed



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settlement deed on 10.09.1979 in favour of the 2nd defendant?

iii). Whether the mother of the plaintiff had executed a Will dated 05.07.1996 and whether the said Will was true and valid?

iv). Whether the plaintiff was entitled to an undivided 1/2 share in the B schedule property?

v). Whether the plaintiff was entitled for partition as sought in the plaint?

vi). Whether the plaintiff was entitled to the relief of rendition of accounts?

vii). To what other reliefs was the plaintiff entitled to?

9. During the course of trial two witnesses were examined on the side of the plaintiff. The plaintiff was examined as PW-1 and one Selvaraj was examined as PW-2. On the side of the defendants, the 1st defendant Nagaraj was examined as DW-1 and Jayabal was examined as DW-2. An Assistant, Komala, from the Sub Registrar Office was examined as DW-3 and one Rajendran was examined as DW-4 and the 2nd defendant was examined as DW-5.



WEB COPY 10. The plaintiff marked Exs.A1 to A11. These included the sale deeds dated 04.11.1947, 20.05.1958 and 02.02.1970 as Exs.A1 to A3. The notices exchanged between the parties as Exs.A5 to A8 and A10. The copy of the Will dated 05.07.1996 was marked as Ex.A11. The defendants marked Exs.B1 to B33. The sale deeds dated 04.11.1947, 20.05.1958 and 02.02.1970 were marked as Exs.B1 to B3. The settlement deeds dated 10.09.1979 and 06.01.1999 were marked as Exs.B4 and B5. The original Will dated 05.07.1996 was marked as Ex.B7. Further documents were marked relating to property tax receipts and electricity charges.

11. The learned II Additional Sub Judge, Coimbatore, while appreciating the evidence had observed that Pattiammal @ Ammassiammal had executed two separate settlement deeds and also a Will. It was further observed that the settlement deed in Ex.B6, had not been proved in manner known to law. Further, the Will in Ex.B7 had also not been proved in manner known to law. It was not clear whether the Will had been canceled and thereafter, the settlement deed had been executed in favour of the 2nd defendant. It was also stated that it was not clear whether the A and C



schedule properties had been settled absolutely in favour of the defendants.

It was held that with respect to A schedule property since it had been purchased by Pattiammal @ Ammassiammal and Rama Boyan by a registered sale deed dated 04.11.1947 and on the death of Rama Boyan, Pattiammal @ Ammassiammal had become the absolute owner of the properties that even though she had executed a Will dated 05.07.1996, she had further executed another settlement deed in favour of the 2nd defendant which had not been proved in manner known to law and therefore, it had been observed that with respect to A schedule property, the plaintiff, 1st and 2nd defendants were entitled each to an undivided 1/3rd share and therefore, it is partitionable.

12. Similarly, with respect to C schedule property, it had been held that it had been purchased in the name of the Pattiammal @ Ammassiammal on 02.02.1970 under a registered sale deed. Again since the Will and the settlement deed had not been proved in manner known to law, both the documents had been rejected and it was held that on her death, the property had devolved to the plaintiff, 1st and 2nd defendants in equal shares. It had thus been observed that with respect to A and C schedule properties,



the plaintiff would be entitled to an undivided 1/3rd share. The suit was dismissed with respect to B schedule property. It had been very categorically held that B schedule property could not be the subject matter of any partition. The suit was partly decreed in the aforesaid terms.

A.S.No.90 of 2006 (The Principal District Court, Coimbatore):

13.The defendants filed the Appeal Suit. It must be noted that the plaintiff had not filed any appeal against the dismissal of the suit with respect to B schedule property. The first Appellate Court, in judgment dated 06.01.2009 framed points for consideration under Order 41 Rule 30 CPC. Again the evidence was carefully analysed. It was held that both the Will and settlement deeds had not been proved in manner known to law. It had also been further held that since the documents had not been proved in manner known to law, A and C schedule properties were to be considered as held in the hands of Pattiammal @ Ammassiammal on the date of her death and that she died intestate and therefore it was further held that with respect to A and C schedule properties, the plaintiff and the defendants were each entitled to an undivided 1/3rd share. However, the observations of the



learned trial Judge with respect to the B schedule were not interfered with.

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The first Appellate Court had therefore dismissed the appeal confirming partition and separate possession of undivided 1/3rd share with respect to A and C schedule properties alone and confirming the dismissal of the suit with respect to B schedule property.

S.A.No.575 of 2009:

14.Challenging that judgment, the defendants had filed the present Second Appeal.

15.It must be noted that the defendants died during the pendency of the appeal and their legal representatives had been brought on record as appellants 3 to 7. The respondent also died during the pendency of the appeal and her legal representatives were brought on records as respondents 2 to 4.

16.As pointed out earlier, the Second Appeal had been admitted on the three Substantial Questions of Law.



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17.The 1st first substantial question of law revolves around the Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

18.Section 63(c) of the Indian Succession Act, 1925 is as follows:

“63.Execution of unprivileged wills:

(c).The will shall be attested by two or more witnesses, each of who has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

19.Section 67 of the Bharatiya Sakshya Adhiniyam, 2023 which is equivalent to Section 68 of the Indian Evidence Act, 1872 is as follows:

“67.If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the



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Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.”

20. Section 63(c) of the Indian Succession Act, 1925 stipulates that when a Will is executed, it must be covenanted that the attesting witnesses affixed their signature in the presence of each other and in the presence of the testator and had seen the testator signing and all the three of them had signed together.

21. Section 67 of the Bharatiya Sakshya Adhiniyam, 2023 which is equivalent to Section 68 of the Indian Evidence Act, 1872 stipulates that the attesting witnesses must be examined to prove the Will.

22. In the instant case both the Courts below had very categorically come to a finding that the Will and the settlement deeds had not been proved in manner known to law. Both the documents had been marked but



in the absence of clear and cogent evidence that the attesting witnesses had signed in the presence of the testatrix, it necessarily had to be held that the Will had not been proved in manner known to law. Even with respect to the settlement deeds, the documents had not been again proved in manner known to law. The object of trial is to enable the parties to adduce credible oral and documentary evidence to substantiate their rival stands. If the Will or the settlement deeds are relied on by the appellants, then the burden was on them to prove the said documents in manner known to law. Unfortunately, the documents were not proved by examining the attesting witnesses.

23. In (2023) 8 SCC 537, *Ramabai Padmakar Patil (Dead) Through LRs. and others Vs. Rukminibai Vishnu Vekhande and others*, the Hon'ble Supreme Court had held as follows:

“5. it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. Section 63 of the Indian Succession Act deals with execution of unprivileged Wills. It lays down that the testator shall sign or shall affix his mark to the Will or it shall be signed by some other person in his



presence and by his direction. It further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and on the direction of the testator and each of the witnesses shall sign the Will in the presence of the testator. Section 68 of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a Will has been examined in considerable detail in several decisions of this Court viz. H. Venkatachala Iyengar v. B.N. Thimmajamma [AIR 1959 SC 443] , Rani Purnima Debi v. Kumar Khagendra Narayan Deb [AIR 1962 SC 567] and Shashi Kumar Banerjee v. Subodh Kumar Banerjee [AIR 1964 SC 529] . It will be useful to reproduce the relevant part of the observations made by this Court in the Constitution Bench decision in Shashi Kumar Banerjee [AIR 1964 SC 529] which are as under: (AIR p. 531, para 4)

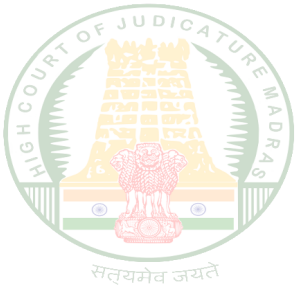
“The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution



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of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove



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the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations.”

24. In view of that particular fact, I hold that both the Courts below had correctly come to the conclusion that the Will and the settlement deeds had not been proved in manner known to law and that the appellants herein had failed to comply with the stipulations under Section 63(c) of the Indian Succession Act, 1925 and Section 67 of the Bharatiya Sakshya Adhiniyam, 2023 / Section 68 of the Indian Evidence Act, 1872. This substantial question of law is answered accordingly.

25. The second substantial question of law relates to the rejection of the Will on the ground of mis-description of age of the testatrix and mentioning of one of the sons as minor instead of major. The contents of the Will assumes significant particularly when written by a mother. There cannot be any mis-description of her own children. The Will had been executed by Pattiammal @ Ammassiammal. She had described the 1st



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defendant as her minor son. In fact he had attained the age of majority. This is a very significant error on the face of the Will. It is not only required that the document are proved in manner known to law, but it must also be proved that the testatrix had executed the documents in a sound and disposing state of mind. Among other aspects which determines whether the Will was executed when in a sound and disposing state of mind is proper and correct description of her own family members. When there is a mis-description of the age or other aspects, then a strong suspicion arises around execution of the documents. I hold that both the Courts below had correctly rejected that no right had flowed under the Will and that it had not been proved in manner know to law.

26.The third substantial question of law is the examination of the validity of the gift deeds / settlement deeds in Exs.B4 and B5 even though they had been acted upon by the beneficiaries. However, when the documents are denied and disputed by one side, in this case, by the respondents herein / plaintiff in the suit, an obligation was placed on the party who relies on the said documents to prove them in manner known to law. The attestors should have been examined as witness. When examined

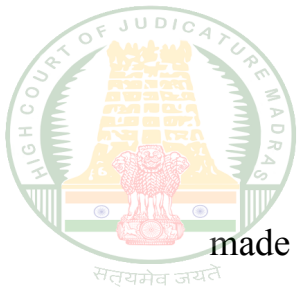


they should have tendered cogent evidence. If the documents are not proved in manner known to law, then its very execution is suspicious. No right can flow from such documents. The Courts below were indeed correct in insisting proof of the execution of the documents and in the absence of such proof, were again correct in rejecting the said documents.

27.It is not the case of the appellants that opportunity was not granted during the course of trial to adduce evidence to prove either the Will or the settlement deeds. Five witnesses had been examined on the side of the appellants. Both the appellants who died subsequently during the pendency of the appeal were examined as witnesses. They were examined as DW-1 and DW-5. But still they did not prove the Will or the settlement deeds in manner known to law.

28.I hold that the Courts below were justified in examining the validity of the gift deeds / settlement deeds / Exs.B4 and B5 and rejecting them since they were not proved in manner known to law even though the beneficiaries could have acted under them. Unless the documents are proved, no right would flow to the beneficiaries.

29.In view of the above discussions, I hold that no ground had been



made to revisit or interfere with the judgments of both the Trial Court and the First Appellate Court. The findings of the Trial Court had been confirmed in entirety by the First Appellate Court. The Second Appeal stands dismissed, however, in view of the relationship among the parties without costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2025

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Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No

To

- 1.The Principal District Court, Coimbatore.
- 2.The II Additional Subordinate Court, Coimbatore.
- 3.The Section Officer, VR Section, Madras High Court.

C.V.KARTHIKEYAN,J.



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Pre-Delivery Judgment made in
S.A.No.575 of 2009

18.07.2025