



A.S.No.56 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 05.06.2025

Pronounced on : 11.06.2025

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.56 of 2022
& C.M.P.No.2201 of 2022

1. J.Revathi.

2. J.Promodhini.

... Appellants/Defendants 1 & 3

/versus/

1. J.Muthukumar,

... 1st Respondent/Plaintiff

2. J.Sumithra,

... 2nd Respondent/2nd Defendant

3. Vincent,

4. Mohammed Amir.

... Respondents 3 & 4/Defendants 4 & 5

Prayer: Appeal Suit has been filed under Section 96 and order XLI Rule 1 & 2 of Code of Civil Procedure, pleaded to set aside the judgment and decree dated 14.03.2019 passed by the Learned III Additional District and Sessions Judge, Coimbatore in O.S.No.637 of 2010.

For Appellants : Mr.A.Sriram

For Respondents : Mr.B.Kumarasamy, for R1 & R2
: Not Ready Notice, for R3 & R4



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The appeal is filed by the defendants 1 and 3, being aggrieved by the judgment in O.S.No.637/2010 whereby the trial Court partly allowed the partition suit in favour of the plaintiff, who is the son of the first defendant and brother of the second defendant.

2. For the sake of convenience, the parties are hereinafter referred as per their status and ranking shown in the trial Court.

3. Brief facts of the case:

The plaintiff, J.Muthukumar is the only son of late of K.S.Jeyaraman. The first defendant is the wife of K.S.Jeyaraman, defendants 2 and 3 are the daughters of K.S.Jeyaraman. The 4th and 5th defendants are tenants in the suit property. The said K.S.Jeyaraman during his lifetime acquired the suit properties from out of his income. He purchased the properties shown as item Nos.1 and 2 in the schedule in his name and he purchased item No.3 in the name of his wife Revathi (the first defendant) and the 4th item property was purchased by K.S.Jeyaraman in the name of his son Muthukumar/the plaintiff. The 5th item consists of machineries and other movables kept in the factory shed which is



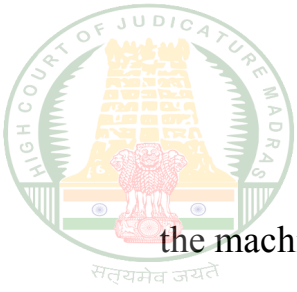
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within the 1st item property.

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4. The plaintiff claims that his father, K.S.Jeyaraman, died intestate on 14.06.2007. Thereafter, to meet out the family expenses, one of the properties left by K.S.Jeyaraman was jointly sold by his legal heirs. Due to the attitude of the first defendant and 3rd defendant, joint enjoyment of the property became impossible. Hence, the plaintiff filed a suit for partition of the properties into 4 equal share and allot one share to him.

5. In her written statement, the first defendant (widow of K.S.Jeyaraman) denied all the averments. According to her, in respect of item Nos.1 & 2 shown in the schedule, K.S.Jeyaraman during his lifetime i.e., on 06.06.2007 executed a *Will* in favour of his wife J.Revathi (first defendant). After the demise of K.S.Jeyaraman, she became the absolute owner of the property and on 24/06/2007, she settled the property in favour of her daughter J.Promodhini (the third defendant). In respect of item No.3 of property, she purchased it out of her own source. She admit that item No.4 was purchased in the name of the plaintiff and same to be divided and shared by all the four legal heirs of K.S.Jeyaraman equally. As far as the item No.5, she contended that the plaintiff had removed all



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the machineries and it his duty to produce the machineries and render accounts.

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6. The third defendant had filed written statement similar to the first defendant. Whereas, the other sister J.Sumithra (second defendant) made serious allegations against her mother and sister (1st and 2nd defendants) and conceded for partition, except item No.4 which according to her, was the self acquired property of the plaintiff.

7. The defendants 4 and 5 are tenants in the property, they have not taken any stand and submitted to abide the order of the Court.

8. Based on the pleadings, the following issues were framed for consideration:-

1. Whether the deceased K.S.Jayaraman died Intestate ?

2. Whether Item No.3 suit property forms part of the Hindu undivided joint family property ?

3. Whether the WILL dated 06.06.2007 is valid under the eye of law ?



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4. Whether the settlement deed dated 24.04.2009 is valid under the eye of law ?

5. Whether the 1st defendant and 2nd defendant are entitled for 1/4th share each in 4th and 5th item of suit properties ?

6. Whether the plaintiff is entitled for 1/4 share as prayed for ?

7. To what other relief the plaintiff is entitled for ?

9. On the side of the plaintiff, J.Muthukumar and Nagalingam were examined as P.W-1 and P.W-2. Eleven documents were marked as Ex.A-1 to Ex.A-11. On the side of the defendants, four witnesses (D.W.1 to D.W.4) and 13 documents were marked as Ex.B-1 to Ex.B-13. Two Court exhibits were marked as Ex.X-1 and Ex.X-2.

10. The trial Court, excluding the item No.3 (property which was purchased in the name of the first defendant) and item No.5 (movable properties), allowed the suit for partition in respect of items Nos.1, 2 and 4. The plea of testamentary succession through Ex.B-3, the unregistered *Will* of K.S.Jeyaraman, dated 06.06.2007 in respect of items 1 and 2 was disbelieved by the Court since out of two attesting witnesses, one died and another turned hostile. D.W-2 one of the



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attesting witness is the son of the other attesting witness. He, in his testimony

failed to satisfy the necessary ingredients to prove a *Will*. He deposed that when he and his father signed Ex.B-3 (*Will*), K.S.Jeyaraman was not present. He signed the document in the year 2009, whereas the *Will* is dated 06.06.2007 and K.S.Jeyaraman (died) within a week on 14.06.2007. D.W-5 is the Notary Public who had affixed his signature had not produced the Notary Register containing the entry and to be maintained compulsorily as per Notaries Act. In the absence of any contemporaneous document to prove the due execution of the *Will* and suspicious circumstances surrounding the Will held that the due execution of the Will Ex.B.3 not proved. taken note by the trial Court.

11. Further, the trial Court also considered the fact that after the demise of K.S.Jeyaraman, all his 4 legal heirs i.e., his wife, son and two daughters had jointly sold a part of his property to one Mrs.K.A.Shamna Rosy, *vide* sale deed dated 30/04/2008 (Ex.A-9). If the *Will* was genuine and available, the first and third defendants would not have sold the property jointly along with the plaintiff and the second defendant or atleast the existence of the *Will* Ex.B-3 would have been mentioned in the sale deed Ex.A-9.



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12. The first and third defendants, being aggrieved by the judgement and decree of partition in respect of item Nos.1, 2 and 4 of the plaint schedule, had preferred the appeal on the ground that, the trial Court erred in disbelieving the *Will* Ex.B-3 inspite of D.W-2 admitting his signature in the *Will* and the evidence of D.W-3, the Notary public, who had identified his signature and seal in the *Will*.

13. The Learned Counsel for the appellant further contended that, the trial Court ignoring the admission of the plaintiff that he came to know about the *Will* in the month of August, 2009, erred in holding that DW-1 failed to announce the existence of the *Will* at the earliest and it came to light only in the written statement.

Point for determination:-

Whether the trial Court correct in holding that the first defendant failed to prove the Will Ex.B.3 and whether the trial court correct in apportioning the item Nos.1 and 2 along with item No.4 of the suit schedule property into $\frac{1}{4}$ share equally among the legal heirs of K.S.Jeyaraman?



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14. Ex.A-1 is the death certificate of K.S.Jeyaraman. Ex.A-2 is the legal heir certificate. The death of K.S.Jeyaraman on 14.06.2007 and the relationship of the parties to K.S.Jeyaraman are not disputed. Ex.B-3 is the *Will* dated 06.06.2007. It is an unregistered *Will*, purported to have been executed by K.S.Jeyaraman in the presence of Namachivayam (died) and his son Arumugam (D.W-2) as witnesses. Apart from these two witnesses also, one Kulasekara Boopathy (D.W-3), Notary Public, had affixed his Notary seal and signed the document with date. The evidence of D.W-2 had totally demolished the case of the defendants about the execution of the *Will* by Jeyaraman. He had deposed that in the year 2009 when he and his father came to Coimbatore for treatment, he and his father signed the document. To prove that it was executed on 06.06.2007, Notary public D.W-3 was called to give evidence. Unfortunately, he could not produce his Notary Register which he is supposed to be maintained in his day to day affairs of a Notary as mandated under the Notaries Act. The place of execution of the *Will* is not mentioned in the written statement of defendants 1 and 3 or in the evidence of D.W-1 or D.W-3. The place of executing the *Will* not mentioned even in the *Will* Ex.B-3.



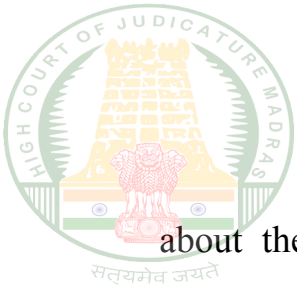
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15. The recital in the *Will* states that K.S.Jeyaraman was hale, healthy and in fit state of mind while signing the *Will*. Whereas, D.W-1 admits that he was suffering from cancer for past 4 to 5 years and also he was taking treatment for his heart ailment. In the cross examination, D.W.1 admits that the signature in the *Will* and the signature in the earlier document affixed by K.S.Jeyaraman varies but she explains that the variation is due to his ailment. There is no explanation from D.W-1 as to why a portion of the property given to her exclusively under the *Will* (Ex.B-3) was sold by her along with other legal heirs jointly on 30.04.2008 under Ex.A-9 stating K.S.Jeyaraman died intestate on 14.06.2007.

16. After declaring the sale deed (Ex.A-9), K.S.Jeyaraman died intestate on 14.06.2007, the defendants 1 and 3, who are signatories to Ex.A-9, had belatedly introduced a document, claiming it to be the *Will* of K.S.Jeyaraman. The trial Court had rightly held it is forged *Will*, since one of the attesting witnesses, (D.W-2) had categorically deposed that when he and his father signed the document Ex.B-3, K.S.Jeyaraman was not present. He further deposed that he signed the document in the year 2009 at the request of the defendant.

17. The suspicious circumstances underlined above causes doubt



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about the very execution of the Will. The surfacing of the Will after jointly alienating a portion of the property and after filing of a suit for bare injunction without disclosing the existence of the *Will*, put together improbably the defendants case that 7 days prior to his death K.S.Jeyaraman wrote the *Will* Ex.B.3 in good state of mind and health.

18. No further reason required to hold that Ex.B-3 is a fabricated document. Defendant 1 and 3 have failed to prove the *Will* in the manner known to law. Since the bequeath of items 1 and 2 through the *Will* (Ex.B-3) held not proved, the decree of division in respect of these two item of properties is confirmed. As far as item No.4, which stands in the name of the plaintiff, it is admitted by all the parties, including the plaintiff, that it was purchased by Jeyaraman in the name of the plaintiff. Therefore, item No.4 property is also to be subjected for division.

19. Regarding the moveable properties morefully described as item No.5, there no evidence about its existence in the factory shed or its value is placed before the Court by the parties for appreciation. In the absence of such evidence, the trial Court has rightly dismissed the suit in respect of item No.5.



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20. In the result, the Appeal Suit No.56 of 2022 stands dismissed with costs. The judgment and decree passed by the Learned III Additional District and Sessions Judge, Coimbatore in O.S.No.637 of 2010 is confirmed. Consequently, connected Miscellaneous Petition is closed.

11.06.2025

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non Speaking order
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To:-

1. The III Additional District and Sessions Judge, Coimbatore.
2. The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Appeal Suit No.56 of 2022

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