



SA No. 919 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 24-06-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 919 of 2013

1. Saraswathi
2. Parvathy

.. Appellants

Versus

1. Jayaraman
2. Balasaraswathi
3. Jagadeeswari
4. Saravanan
5. Srinivasan
6. Sankar Ganesh
7. Agilandeswari
8. Ranganathan
9. Jayalakshmi

.. Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.02.2013 made in A.S. No. 42 of 2010 on the file of the Subordinate Judge, Arani, Tiruvannamalai District reversing the judgment and decree dated 20.08.2010 made in O.S. No. 97 of 2002 on the file of the learned District Munsif Court, Polur.

For Appellant : Mr. M. Sriram for Mr.Ramesh Venkatachalapathy
For Respondents : Mr. P. Mani for RR2, 3, 5 and 7

JUDGMENT



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This appeal is filed against the judgment and decree dated 20.02.2013 made in A.S. No. 42 of 2010 on the file of the learned Sub Judge Arani, reversing the judgment and decree dated 20.08.2010 made in O.S. No.97 of 2002 on the file of the learned District Munsif Court, Polur.

2. The Plaintiffs 3 and 4 in O.S. No. 97 of 2002 on the file of the District Munsif, Polur are the appellants in this appeal.

3. Originally, the suit was filed by Rajammal but even during the pendency of the suit, Rajammal died. Therefore, her legal heirs were brought on record as Plaintiffs 2 to 4. The suit in O.S. No. 97 of 2002 was filed praying to

(i) Declare that the Will dated 21.02.1994 was executed by the deceased Chakravarthy Gounder while he was in a sound and disposing state of mind

(ii) Direct the first Defendant to pay a sum of Rs.2,000/- towards compensation to the Plaintiff for having illegally encroached the 'A' Schedule described property in the plaint

(iii) Direct the third Defendant to pay a sum of Rs.8,000/- towards compensation to the Plaintiff for having illegally encroached the 'B' Schedule described property in the plaint

(iv) Direct the Defendants 1 to 3 to pay future damages to the Plaintiff for having encroached the A and B Schedule described property in the Plaintiff

(v) Grant the cost of the suit



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4. According to the Plaintiff, she is the wife of the deceased Chakravarthy Gounder. The Plaintiffs 2 to 4 as well as the Defendants 1 to 3 are the sons and daughters born to the first Plaintiff as well as the deceased Chakravarthy Gounder. The Plaintiff's husband Chakravarthy was allotted the 'A' Schedule property described in the plaint through a deed of partition dated 12.06.1987 entered into among his family members. As per the partition deed dated 12.06.1987, the properties described in B to D Schedule was allotted to the Defendants 1 to 3. From the date of such partition, the deceased Chakravarthy Gounder and the Defendants 1 to 3 are in possession of the respective properties allotted to them. While so, on 04.05.2000, Chakravarthy Gounder died. Even during his life time, when he was in a sound and disposing state of mind and energy, Chakravarthy Gounder had executed a Written Will dated 21.02.1994 and entrusted it to the registering officer of Thiruvannamalai for safe custody. After the death of Chakravarthy Gounder, based on the requisition, the Will was retrieved and read over. It was the last testament of late. Chakravarthy Gounder, which he executed when he was in a sound and disposing state of mind and energy. In the Will dated 21.02.1994, the Property allotted to Chakravarthy Gounder as "A" Schedule was divided into A to F and allotted to the Defendants 1 to 3 as well as the Plaintiffs 2 to 4. As far as the deceased Plaintiff and wife of Chakravarthi Gounder is



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concerned, she was permitted to enjoy the plaint described property without causing any alienation of the same till her lifetime. It was further stated that the income generated thereof can be received by the Plaintiff (since deceased) until her lifetime.

5. According to the Plaintiff, the deceased Chakravarthy Gounder, during his life time, had leased out the B Schedule described property to the second Defendant for a sum of Rs.5,000/- and he was in receipt of the same. Further, the second Defendant was in enjoyment of a shop bearing Door No.4/60-A, in Vadamathimangalam for which the first Defendant paid a sum of Rs.100/- to Chakravarthy Gounder till his death. Similarly, the third Defendant was in occupation of the B Schedule described property and was paying Rs.2000/- to Chakravarthy Gounder till his life time. Further, the third Defendant was paying a sum of Rs.100/- per month for the occupation of 'G' Schedule Property. After the death of Chakravarthy Gounder, the Will dated 21.02.1994 came into effect as per which the sole Plaintiff, who has got life time interest in respect of the entire properties described in the Plaint schedule demanded the lease rent from the Defendants 1 and 3. The second Defendant, accepting the right of the first Plaintiff, paid the lease rent of Rs.5,000/- from 12.02.2000 to 11.01.2001. Subsequently, at the request of the Plaintiff, the lease rent was enhanced from Rs.5,000/- to Rs.6000/- and also paid the



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enhanced rent and the Plaintiff also issued receipt for having received the lease rent as well as rent. However, the Defendants 1 and 3 did not pay the lease rent and therefore, the Plaintiff issued a legal notice dated 15.10.2001. On receipt of the legal notice, the Defendants 1 to 3 sent a reply containing false statement. Therefore, on 27.10.2001, the Plaintiff sent a rejoinder to the Defendants specifically denying that Chakravarthy Gounder did not execute any other Will other than the Will dated 22.02.1994, which was his last and final Will. Therefore, the alleged Will dated 22.11.1996, said to have been executed by Chakravarthy Gounder, is false and called upon the Defendants to send a copy of the same.

6. In the plaint it was further contended that in respect of the lease hold lands, the second Defendant has filed a suit in O.S. No. 156 of 2000 for permanent injunction. In the said suit, after coming to know about the Will dated 22.02.1994 executed by the deceased, an application was filed in I.A. No. 361 of 2000 in O.S. No. 156 of 2000 to implead the Plaintiff as a party to the suit in O.S. No. 156 of 2000. In the said application, nothing was stated about the so-called Will said to have been executed on 22.11.1996. The Will dated 22.11.1996 is a ranked forgery and it will not bind the Plaintiff in any manner. Until the death of the husband of the Plaintiff, he resided along with Plaintiff. Due to his old age, he could not walk alone. Therefore, there is no chance for



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the deceased to have executed a Will dated 22.11.1996 without the knowledge of the Plaintiff. As per the directions issued in O.S. No. 156 of 2000, the second Defendant is depositing the lease amount in the Court deposit. The Will dated 22.11.1996 has been created to illegally acquire the lands of the deceased. In fact, the deceased executed the last Will dated 22.02.1994 in which she has given life interest to the Plaintiff with an intention that the Plaintiff should not be made to suffer in any manner. Accordingly, the Plaintiff (since deceased) has filed the suit in O.S. No. 97 of 2002.

7. On notice, the first Defendant filed a written statement contending that it is true that the deceased Chakravarthy Gounder acquired the properties through a partition among his family members. The deceased executed the Will dated 21.02.1994, but it was subsequently cancelled and another Will dated 22.11.1996 was executed by him. Therefore, the Will dated 22.11.1996 alone is legally enforceable and consequently, the first Plaintiff has no right under the Will dated 21.02.1994 to enjoy the property till her lifetime. In effect, the suit filed by the Plaintiff is not maintainable and it has to be dismissed. The second Defendant has already filed a suit in O.S. No. 156 of 2000 before this Court and obtained an order of interim injunction. The application filed for impleading the Plaintiff as a party to the suit in O.S. No. 156 of 2000 was dismissed. In the present suit, the Plaintiff did not file the

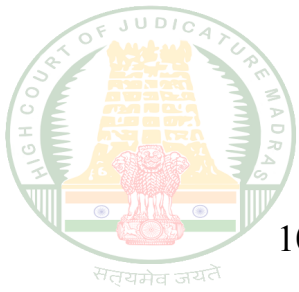


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original Will dated 21.02.1994, but only a copy of it was filed and therefore, the Plaintiff is not entitled to a relief of declaration in the present suit. The Plaintiff is attempting to grab the property, which is legitimately entitled to the Defendants. The present suit has been filed as a counter-blast to the suit in O.S. No. 156 of 2000. The suit has been filed only to harass the Defendants. The suit is filed with false and incorrect particulars by suppressing the material facts.

8. The written statement filed by the first Defendant was adopted by the third Defendant.

9. The first Defendant filed an additional written statement contending that in the written statement, it was alleged that the first Plaintiff did not produce the original Will dated 21.02.1994. However, it came to light that the original was tendered by the Testator with the Registering authority. On the death of the testator, the Registering Authority refused to part with the the original and only a copy of it was given to the first Plaintiff. This fact came to the notice of the first Defendant subsequently and therefore, additional written statement was filed to clarify that the first Plaintiff did not intentionally file the copy of the Will dated 21.02.1994.



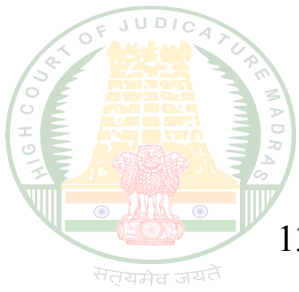
10. On the basis of the above pleadings in the plaint, written statement

as well as additional written statement, the trial court framed the following issues for consideration:-

- “1) Whether the Will dated 22.11.1996 is true?
- 2) Whether the Plaintiffs are entitled to the relief of declaration as prayed for?
- 3) Whether the Plaintiffs are entitled to claim damages?
- 4) To what other relief the parties are entitled to?

11. During trial, the first Plaintiff (since deceased) examined herself as PW1 along with 6 other witnesses as Pws 2 to 7. Exs. A1 to A7 have been marked by the Plaintiffs. On behalf of the Defendants, the first Defendant examined himself as DW1 along with two other witnesses as Dws 2 and 3 and 7 documents have been marked as Exs. D1 to D7.

12. The trial court, on analysing the oral and documentary evidence, come to the conclusion that the Will dated 22.02.1994 has been executed by the Testator while he was in a sound and disposing state of mind and energy and the Will dated 22.02.1994 has been proved by the Plaintiff in accordance with Section 73 of The Indian Evidence Act. Therefore, it was held that the said Will is genuine and accordingly, a declaratory relief was granted by a Judgment and Decree dated 20.08.2010 in O.S. No. 97 of 2002.



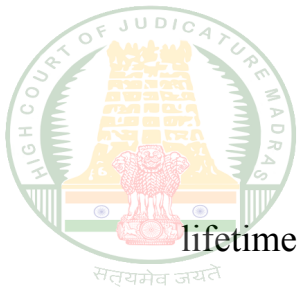
13. Assailing the Judgment and Decree dated 20.08.2010 in O.S. No. 97 of 2002, the Defendants 1 to 3 have filed A.S. No. 42 of 2010. The first Appellate Court reversed the Judgment and Decree dated 20.08.2010 in O.S. No. 97 of 2002 whereby allowed the Appeal on 20.02.2013. As against the same, the instant Second Appeal is filed under Section 100 of the Code of Civil Procedure.

14. At the time of admission, this Court formulated the following substantial questions of law, by order dated 27.08.2013:

(i) *Whether the lower Appellate Court is right in rejecting Ex.A-1 on the ground that it is not probated as per section 213 of the Indian Succession Act.*

(ii) *Whether the lower Appellate Court is right in dismissing the suit when Ex.A-1 is admitted and Ex.B-6 was not produced in earlier proceedings and not proved by the Respondents?*

15. Mr. Sriram, learned Counsel for the Plaintiffs 3 and 4/Appellants invited the attention of this Court to the plaint averments and contended that the title of the property is not disputed and it was vest with the husband of the first Plaintiff Chakkaravarthi Gounder, who got the property allotted in a family partition that took place in his family. The said Chakkaravarthi Gounder, while he was in a sound and disposing state of mind and energy had executed a registered Will dated 21.02.1994 in which it was stated that after his



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lifetime the property has to be equally divided between his daughters and sons while his wife, the first Plaintiff, shall enjoy the property till her lifetime without any power of alienation. The said Chakkaravarthi Gounder died on 04.05.2000. Thus, the Will came into force and as an owner of the property, the first Plaintiff leased out the property to the Defendant-1 and Defendant-3 who are her sons. The Defendants were also paying the lease rent for sometime to the first Plaintiff thereby they have admitted the Will dated 21.02.1994. However, when the first Plaintiff sent a legal notice on 15.10.2001 demanding lease rent, a reply dated 27.10.2001 was sent in which the Defendants 1 and 3 have come up with a theory as if the testator had cancelled the Will dated 21.02.1994 and executed another Will dated 22.11.1996. Therefore, the first Plaintiff sent a rejoinder calling upon the Defendants 1 and 3 to furnish a copy of the so-called Will dated 22.11.1996. The Defendants, who admitted the Will dated 21.02.1994 and paid the lease rent, have suddenly turned around and alleged that the Will dated 21.02.1994 was cancelled and a Will dated 22.11.1996 was executed by the testator. After institution of the suit, the first Plaintiff Rajammal died and therefore, Plaintiffs 2 to 5 were impleaded.

16. The learned Counsel appearing for the Appellant invited the attention of this Court to the written statement of the first Defendant, which



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was adopted by the third Defendant, the issues framed by the learned District Munsif, Polur and the judgment of the learned District Munsif, Polur in Para.60 and Para.80 to 91. According to the learned counsel, the learned District Munsif Court, Polur on a detailed assessment of evidence arrived at a conclusion that the Will executed by the Late. Chakkaravarthi Gounder is genuine and the Will claimed by the Defendants is not a bonafide Will. However, on appeal, the Appellate Court over turned the Judgment and Decree passed by the trial court without any basis. The observation in the judgment of the learned Sub-Judge, Arani is that the first Plaintiff did not probate the Will and therefore, the Will cannot be accepted in the legal proceedings. Further, the first Plaintiff Rajammal died and naturally, the Defendants, as legal heirs of Chakravarthi Gounder and Rajammal are entitled to succeed to their estate. According to the learned Counsel for the Appellants, the learned Principal Sub-Judge, Arani relied on Section 213 of Indian Succession Act, 1926 which is found erroneous. He further stated that the property over which the dispute arose is within the jurisdiction of District Munsif Court, Polur. Late. Chakkaravarthi Gounder died within the territorial limits of Polur. Therefore, the observation of the learned Sub-Judge, Arani that the Will has to be probated does not hold good. It is to be noted that only in the Presidential Township and Cosmopolitan cities like Chennai, Calcutta and Mumbai, the Will, if any executed, is required to be probated. Therefore, the finding of the



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learned Sub-Judge, Arani is erroneous and accordingly, he seeks to set aside the judgment of the learned first Appellate Judge and to restore the Judgment and Decree of the learned District Munsif Court, Polur in O.S. No. 97 of 2002.

17. Per contra, Mr. Mani, learned Counsel appearing for the Respondents 2, 3, 5 and 7 submitted that the first Appellate Court while discussing the evidence available before the trial Court had not raised points for determination as per Order 41 Rule 31 of C.P.C. Therefore the judgment of the learned Sub Judge, Arani is perverse. Accordingly, the learned Counsel for the Respondents seeks to remit the matter to the learned Sub Judge, Arani for fresh disposal after hearing both the parties and raising points for determination as per Order 41 Rule 31 of C.P.C. In this regard, the learned Counsel for the Respondents placed reliance on the judgment of this Court in S.A. No. 946 of 2002 dated 08.08.2022 in the case of ***N.S. Chokanatha Chettiar (died) and others -vs- Assistant Commissioner, HR & CE Department and another***, wherein the learned Judge of this Court placed reliance on the reported decision in the case of ***Manjula -vs- Shyam Sundar*** reported in ***(2022) 3 SCC 90***, in which it was held as follows:

“8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate



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court shall state:

(a) points for determination;

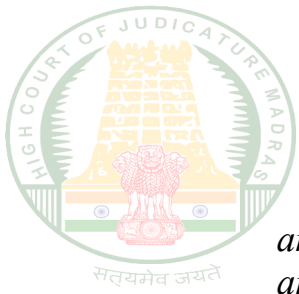
(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 C.P.C and nonobservance of these requirements lead to infirmity in the judgment.

18. The learned Counsel for the Respondents also relied on another judgment of this Court in **S.A. No. 1343 of 2000** dated 06.06.2024 in the case of **V. Gandhi -vs- Periannan (died) and others**, in which the learned Judge of this Court on the basis of the reported decision of the Hon'ble Supreme Court in **H.Siddiqui -vs A.Ramalingam** reported in **AIR 2011 SC 1492**, held as follows:

"Order XLI, Rule 31 CPC: 18. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would



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amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail."

19. In the light of the above decisions, the learned Counsel for the Respondent 2, 3, 5 and 7 submitted that the Appeal may be allowed and remit the matter to the Appellate Court for fresh consideration after hearing both sides.

20. By way of reply, Thiru. Sriram, learned Counsel for the Appellants objected to the line of arguments of the learned Counsel for the Respondents 2, 3, 5 and 7 seeking remand of the Appeal and submitted that this Court itself can dispose of the Second Appeal after setting aside the judgment of the first Appellate Court. In support of his submission, he relied on the decision of the Hon'ble Supreme Court in the case of ***R.S. Anjaiya Gupta -vs- Thipaiya Shetty and others*** reported in ***(2019) 7 SCC 300***. The learned Counsel for the Appellant also submitted that the discussion in the Appeal was with regard to the Will executed by the father of the Defendants in



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O.S. No. 97 of 2002. The learned District Munsif had clearly discussed the evidence and arrived at a conclusion that the Will dated 21.02.1994 was true and *bona fide* and the Will dated 22.11.1996 projected by the Defendants is not a *bona fide* Will. The Appellate Court had also discussed the very same evidence but reversed the judgment of the trial Court. The subject matter of the Second Appeal is also regarding the Will. Therefore the Appeal need not be sent back or remanded back to the learned Sub Judge, Arani for fresh consideration. The Will claimed by the Plaintiff in O.S. No. 97 of 2002 was not considered by the learned first Appellate Court Judge on the ground that the Will was not probated. That part of the judgment of the first Appellate Court is agitated by way of Second Appeal. Therefore there is no necessity for remanding the matter once again to the first Appellate Court. This Court can consider the Second Appeal and pass the judgment determining the substantial questions of law framed for consideration.

21. Perused the typed set furnished by the learned Counsel for the Appellant in S.A.No.919 of 2013 which contained, the plaint, written statement filed by the Defendant-1, judgment and decree in O.S. No. 97 of 2002 on the file of the learned District Munsif, Polur, Grounds of Appeal, judgment and decree in Appeal in A.S. No. 42 of 2010 dated 20.02.2013 on the file of the learned Sub Judge, Arani, the memorandum of grounds of Appeal in the

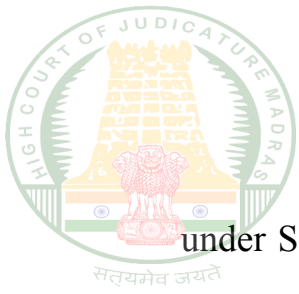


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Second Appeal as also the original records in this case.

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22. On consideration of the rival submissions, the submission of the learned Counsel for the Appellant Thiru. M. Sairam is found acceptable and reasonable. The Will executed by the testator has to be probated only if the property covered in the Will falls within the Metropolitan towns of Chennai, and Mumbai as per Part VI Section 59 (a) Indian Succession Act, 1925. As per the said Act, Wills executed in respect of the properties which fall outside the territorial jurisdiction of this Court need not be probated. But when a Will is claimed by the beneficiary of the Will in any civil proceedings, then the beneficiary of the Will has to prove the execution of the Will to remove the suspicious circumstances in execution of the Will by a testator of the Will in particular that the testator was in a clear state of mind and he was not under any influence. It must also be proved that the testator had executed the Will in a clear state of mind on his own volition and persons who had been witness to the testator executing the Will had to be examined as per Section 63 of the Indian Succession Act and as per Section 68 of the Indian Evidence Act. At least one witness who had seen the execution of the Will had to be examined by the beneficiary in support of his claim over the Will. In the absence of any witness due to the death of the witnesses, any person who is familiar with the signature of the Testator or signature of the witnesses had to be examined



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under Section 69 of the Indian Evidence Act. Until otherwise the person who claims the properties under the Will cannot claim interest over the properties.

In this case, the learned first Appellate Court Judge misdirected himself by rejecting the Will under Ex.A-1 in O.S. No. 97 of 2002 on the file of the learned District Munsif, Polur on specious reasons. During trial, the Plaintiff proved the due execution of the Will by examining the witnesses. The learned District Munsif, Polur had considered the claim of the Defendants, who had claimed that their father executed another Will dated 22.11.1996. The learned District Munsif, Polur on appreciation of evidence had drawn adverse inference against Defendants that they had not produced the Will in the earlier proceedings in O.S. No. 156 of 2000. The Defendants who claim that their father had executed the Will dated 22.11.1996 had not produced the Will during trial. Therefore in the earlier suit, the learned Judge had given an adverse finding against the Defendants 1, 2 and 3. The said judgment was marked on the side of the Plaintiff in O.S. No. 97 of 2002 in support of their claim that the Will dated 22.11.1996 as stated by the Defendants is not true and bonafide. Had it been true, they should have produced it in the earlier proceedings in O.S. No. 156 of 2000. Therefore on the basis of those findings and on the basis of the evidence before the learned District Munsif Polur it was concluded that the Will dated 21.02.1994 executed by father of the Defendants 1, 2 3 and Husband of Plaintiff Rajammal namely Chakravarthy Gounder is a



registered Will and that was the *bona fide* Will and the last Will executed by the Chakravarthy Gounder and decreed the suit filed by the Plaintiffs.

23. After letting in evidence as P.W-1 Rajammal died and her daughters were impleaded as Plaintiffs 2 and 3. Thereafter, the trial court passed the judgment on 20.08.2010 in favour of Rajammal/Plaintiff. In the Appeal before the learned Sub Judge, Arani, the judgment and decree of the learned District Munsif was set aside on the ground that the Will was not probated under Section 213 of the Indian Succession Act. Such finding of the learned Sub Judge Arani rejecting is found perverse. The Will is expected to be probated only in the Presidency towns or Cosmopolitan cities like Chennai and Mumbai as per Section 57 (a) of the Indian Succession Act, 1925. Section 57 of the Indian Succession Act reads as follows:

57. Application of certain provisions of Part to a class of wills made by Hindus, etc.—*The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—*

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or



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Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

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Provided that marriage shall not revoke any such will or codicil.]

24. Thus, Probate of a Will executed outside the territorial jurisdiction of original side of the High Court of Madras and Bombay does not require a probate. Therefore the rejection of Ex.A-1 on the ground that the Will has not been probated is legally not sustainable. The observations made to this effect by the learned Sub Judge, Arani in his judgment in paragraph 10 to 14 is found erroneous. Therefore that part of the judgment has to be set aside. The Substantial question of law-1 is answered in favour of the Appellants in the Second Appeal.

25. The lower Appellate Court is not right in dismissing the suit when Ex.A-1 is admitted and Ex.B-6 was not produced in earlier proceedings or not proved by the Respondents/Defendants. As per the discussion of evidence by the learned District Munsif, Polur in the judgment in O.S. No. 97 of 2002 in paragraph 88 to 96, it was found that Ex.A-1, Will is genuine and bonafide Will. Such a finding is based on appreciation of evidence before the trial Court. However, the learned Sub Judge in Paragraph 13, had misguided himself by placing reliance on Section 213 of the Indian Succession Act, 1926 and rejected the Will under Ex.A-1 thereby reversed the finding of the learned District Munsif, Polur.



WEB COPY 26. The request of the learned Counsel for the Respondents 2, 3, 5 and 7 to remand the matter for fresh consideration in this case is found not necessary. The subject matter of the dispute between the Plaintiff and the Defendant before the trial Court was with regard to the Will under Ex.A-1 executed by late. Chakravarthy Gounder on 21.02.1994. It was a registered Will and the Will claimed by the Defendants in O.S. No. 97 of 2002 marked as Ex.B-6 dated 22.11.1996 was not marked in the earlier proceedings in O.S. No. 295 of 2002 wherein there was a specific issue as to whether the Will dated 22.11.1996 is a bonafide Will. In that suit, the Defendants have not produced the so-called Will said to have been executed by the deceased Chakravarthy Gounder, after cancelling the earlier Will dated 21.02.1994. Similarly in O.S. No. 126 of 2000 there was an issue regarding the same Will. In that suit also, the Will was not marked. Therefore in the earlier suit in O.S. No. 156 of 2000 and O.S. No. 295 of 2002, the Will was not produced. If the Will dated 22.11.1996 was a bonafide and genuine, the Defendants in O.S.No.95 of 2002 who were parties to the proceedings in O.S. No. 156 of 2000 and O.S. No. 295 of 2002 would have produced it. The Will dated 22.11.1996 was not produced in the year 2000 as well as in 2002 and it has been produced in the year 2002 in O.S. No. 97 of 2002. Therefore the learned District Munsif, Polur had arrived at a correct conclusion that the Will marked as Ex.B-6 on the side of the



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Defendant in O.S. No. 97 of 2002 is not a genuine Will and rejected the same.

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Whereas the Will produced by the Plaintiff viz., the Will dated 21.02.1994 was the registered Will of Chakravarthy Gounder. Therefore the same was relied by the learned District Munsif. When the Plaintiff Rajammal demanded her dues from the property which was let out on lease to the Defendants 1 to 3 with the condition that they shall pay the dues to the mother Rajammal, after a lawyer notice sent on behalf of Rajammal, the Defendant-2 Ranganathan paid the dues. The lower Appellate Court is therefore not right in dismissing the suit when Ex.A-1 is admitted as bonafide Will. Accordingly, the Substantial question of law-2 is answered in favour of the Appellants and against the Respondents.

In the result, **this Second Appeal is allowed.** The Judgment and decree dated 20.02.2013 made in A.S. No. 42 of 2010 on the file of the Subordinate Judge, Arani, Tiruvannamalai District is set aside. Consequently, the judgment and decree dated 20.08.2010 made in O.S. No. 97 of 2002 on the file of the learned District Munsif Court, Polur is restored. No costs.

24.06.2025

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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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To

1. The Subordinate Judge
Arani, Tiruvannamalai District
2. The District Munsif
Polur, Tiruvannamalai
3. The Section Officer
VR Section,
High Court, Madras.



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Judgment in
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