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A.S.No.522 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2025

CORAM

THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

A.S.No.522 of 2020

K.P.B.Bhaktha Mohan Dass
S/o.Late Bakkianathan,
No.79, 7th Street, Tatabad,
Coimbatore - 641 012

Appellant/2nd Defendant

Vs

Dr.K.P.B.Vijaya Bhaskara Dass (died)

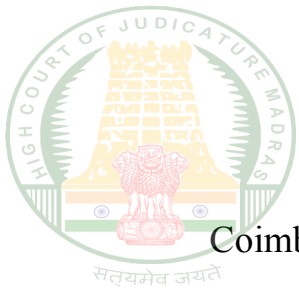
1.V.Vasumathi,
W/o Mr.P.Thirunavukarasu,
No.80, Kannan Illam, Sujan Nagar, S.V.Mills,
Kannammaaickanoor (PO),
Udumalaipettai - 642 154

1st Respondent/2nd Plaintiff

Dr.Sarojini Nachimuthu (deceased)
W/o.Late Natchimuthu

2.Susai Manickam
No.74-75, East Power House Road, Tatabad,
Coimbatore - 641 012

3.C.S.Sugunadass
No.74-75, East Power House Road, Tatabad,



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4.The City Co-op Bank
represented by its Secretary
Dr.Nanjappa Road, Coimbatore.

5.Bank of Baroda
represented by its Manager,
Tatabad Branch, Tatabad,
Coimbatore 641 012.

Respondents 2 to 5/Defendants 3 to 6

Natchimuthu (died)

6.Radhika
W/o.Ramana Babu,
No.9, Bharathi Park Cross Road,
No.4, Ramalinga Nagar, Saibaba Colony,
Coimbatore 641 011.

6th Respondent/8th Defendant

(RR 2 and 3 have been given up through a memorandum dated 15.12.2020 filed by the appellant and the same was recorded vide order of this Court dated 17.12.2020 in A.S.No.522 of 2020)

First Appeal filed under Section 96 CPC r/w Order XLI Rule 1 CPC
to set aside the judgment and preliminary decree dated 29-07-2019 passed
in O.S.No.684 of 2004 on the file of the III Additional District and Sessions
Court, Coimbatore.

For Appellant(s): Mr.S.Parthasarathy, Senior Advocate
for Mr.V.Venkatasamy

For R1: Mr.S.Karthikei Balan



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For R4: Mr.V.Ramesh, Government Advocate
For R5: No Appearance
For R6: Mr.A.K.Kumarasamy, Senior Advocate
for Mr.J.Prithivi

JUDGMENT

Unsuccessful second defendant has preferred the present appeal challenging the judgment and decree dated 29.07.2019 passed in O.S.No.684 of 2004 on the file of the III Additional District and Sessions Court, Coimbatore.

2. The parties are referred to as per rankings in the trial Court.

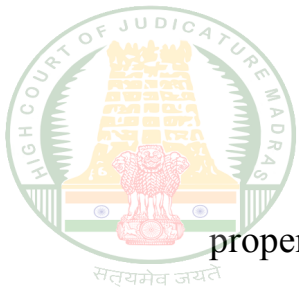
3. Suit is filed to declare that the first plaintiff and the defendants 1 and 2 are the only legal representatives of late K.P.B.Sundarambal and for partition of the suit properties into three equal shares and to allot one such share to the second plaintiff and to direct the second defendant to pay mesne profit to the plaintiff. The trial Court partly decreed the suit and declared that the second plaintiff is the daughter of the first plaintiff and she is entitled for 1/3 share in the suit 'A' and 'B' schedule properties and dismissed the relief of mesne profits.



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WEB COPY 4. The brief case of the plaintiffs is as follows:

The first plaintiff, first defendant and second defendant are siblings. The suit 'A' schedule property originally belonged to their father viz. K.P.Bakkiananthan. He died intestate on 06.03.1996 leaving behind his widow K.P.B.Sundarambal, first plaintiff, defendants 1 and 2 as his legal representatives. The said K.P.B.Sundarambal died intestate on 05.03.2000 leaving behind the first plaintiff and the defendants 1 and 2 as her legal representatives. The property described in 'B' schedule in the plaint originally belonged to the first plaintiff's father and he has executed a registered settlement deed dated 11.02.1963 in favour of his wife K.P.B.Sundarambal, thereby, the said K.P.B.Sundarambal became the absolute owner of the suit 'B' schedule property. The first plaintiff is residing in a portion of 'A' schedule property. The second defendant is residing in another portion of 'A' schedule property. The suit 'B' schedule property was in possession of the defendants 3 and 4. The suit properties are not divided in spite of the repeated requests made by the first plaintiff, the defendants 1 and 2 have not come forward for amicable partition of the



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properties. The first defendant has filed a suit in O.S.No.1595 of 2000 against the first plaintiff and the second defendant, for partition of 'A' schedule property alone, thereby, suppressing the rights of the parties in 'B' schedule property. The first plaintiff suspects that there is some illegal understanding between the defendants 1 and 2 and that is why, the first defendant has not included suit 'B' schedule property. The defendants 3 and 5 are paying monthly rent of Rs.4,000/- and Rs.3,000/-, respectively. The rent is being collected by the second defendant on behalf of the first plaintiff and defendants 1 and 2. The first plaintiff is entitled to get mesne profits. The defendants 1 and 2 have entered into some illegal arrangement with an intention to defeat the rights of the first plaintiff. The first plaintiff's mother K.P.B.Sundarambal had accounts with the defendants 5 and 6. The exact amount, nature of account, locker number, *etc.* are not known to the first plaintiff. During the pendency of the suit, the first defendant Dr.Sarojini died intestate on 24.06.2007 leaving behind the defendants 7 and 8. The seventh defendant is the husband and eight defendant is the only daughter of the deceased first defendant. The defendants 7 and 8 together are having 1/3 share in the suit properties. During the pendency of the suit, the first



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plaintiff K.P.B.Vijaya Bhaskara Dass died intestate on 21.01.2012 leaving behind his only daughter, who is the second plaintiff, as his only legal heir.

The first plaintiff's wife predeceased him. During the pendency of the suit, the seventh defendant died intestate leaving behind the eighth defendant as his only legal heir and she is entitled for 1/3 share in the suit property.

5. The brief case of the second defendant is as follows:

5.1 The first defendant has already filed two suits for partition against the second defendant and the plaintiff in O.S.Nos.1595 & 1597 of 2000, which are pending on the file of the Principal Subordinate Court, Coimbatore and II Additional Subordinate Court, Coimbatore, respectively, wherein, the parties, properties and claim of the respective parties are one and the same that of the present suit and in view of the said fact, the claim of the plaintiff became infructuous as the *res judicata* comes into operation. Neither the plaintiff nor the first defendant lived with the parents or taken care to maintain them. As doctors both proved of their profession, but, never bothered about their parents and it was only the second defendant, as loyal and obedient son, looked after them as a dutiful son, as a result of which,



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the mother allowed the second defendant to maintain, improve and look after the suit 'A' schedule property and under such circumstances, she executed a “Vardamana letter” to that effect. On the ill advise of the first defendant, K.P.B.Sundarambal filed a suit in O.S.No.1872 of 1989 on the file of the I Additional District Munsif Court, Coimbatore. Thereafter, an appeal in A.S.No.153 of 1990 was withdrawn in view of the compromise took place between them. K.P.B.Sundarambal has executed a Will dated 30.06.1995 in favour of the second defendant with respect to the 'B' schedule property. For the past more than fifteen years, the second defendant is in premises possession and occupation of the 'B' schedule property.

5.2 The second defendant has also filed an additional written statement, wherein, it has been stated that the second plaintiff is not the legal heir of the first plaintiff. One Lurtha Mary is the wife of the first plaintiff. The Will dated 30.06.1995 was attested by T.Rajan Babu and M.K.Chinniah. K.P.B.Sundarambal died on 05.03.2000 and thereafter, the Will came into force. After her demise, the second defendant became the



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absolute owner of the 'B' schedule property.

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6. The brief case of the fifth defendant is as follows:

K.P.B.Sundarambal was not having any bank accounts and locker with fifth respondent/bank. The fifth defendant/bank is an unnecessary party to the suit. There is no cause of action for filing the suit against fifth defendant.

7. The brief case of the seventh defendant is as follows:

The plaintiffs and the defendants 1 and 2 are brothers and sisters and children of K.P.Bakkianathan and K.P.B.Sundarammal. The suit 'A' schedule property was purchased by their father K.P.Bakkianathan under a registered sale deed dated 03.08.1939 and it was a self-acquired property. Under Hindu Succession Act, 1956, the first plaintiff and the defendants 1 and 2 being the Class-1 legal heirs are entitled to claim the property left by the deceased. The defendants 7 and 8 are the legal heirs of the deceased first defendant. Therefore, the defendants 7 and 8 are jointly entitled for 1/3 share of the deceased first defendant. During the lifetime of the first defendant viz. Dr.Sarojini has executed a Will in a sound disposing mind bequeathing all



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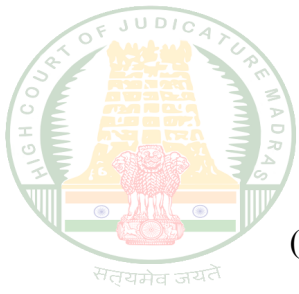
her properties and share in 'A' schedule and 'B' schedule in favour of the eighth defendant, who is her only daughter. The seventh defendant categorically denied the Will dated 30.06.1995, which was alleged to have been executed by K.P.B.Sundarambal.

8. The brief case of the eighth defendant is as follows:

It is prayed to allow 1/3 share of the first defendant to the defendants 7 and 8 jointly and allow a separate portion. The first defendant/Dr.Sarojini Natchimuthu is entitled to 1/3 share of the suit schedule properties. The first defendant had executed a Will in respect of her 1/3 share in favour of the eighth defendant and the same came into force after her demise. The eighth defendant have paid separate court fee and prayed to allot 1/3 share in the suit schedule properties.

9. On the basis of the above pleadings, the trial Court has framed the following issues:

(1)Whether the plaintiff, first defendant and second defendant are entitled for declaration as prayed for? [Struck down as unnecessary)



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(2)Whether the compromise decree passed in A.S.No.153/1990 in

respect of "A" Schedule property is valid and binds the plaintiff?

[Struck down as unnecessary]

(3)Whether the WILL dated 30.06.1995 said to have been executed by

K.P.B.Sundarambal in respect of "B" Schedule property is true and valid?

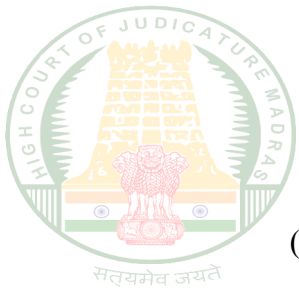
(4)Whether O.S.No.1595/2000 and O.S.No.1597/2000 pending on the file of Principal Subordinate Judge, Coimbatore, is similar to the present suit and of the same subject matter?

(5)Whether the second plaintiff is entitled for a share in the suit property. If so at what properties?

(6)Whether the second plaintiff is entitled for mesne profit as prayed for?

(7)Whether late K.P.B.Sundarambal had any bank account or bank locker with the fifth defendant ? [Struck down since the fifth defendant has filed written statement that no account or locker was maintained by Sundarambal with the said bank]

(8)Whether the suit is bad for non-joinder of necessary party viz. Lurtha Mary?



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(9)Whether the second plaintiff is the daughter of deceased first plaintiff as claimed by her?

(10)Whether the second plaintiff is entitled for any share in the suit schedule property? [Struck down as unnecessary]

10. During trial, on the side of the plaintiff, the second plaintiff examined herself as PW1 and Exs.A1 to A12 were marked. On the side of the defendants, the second defendant examined himself as DW1, Jayashankar was examined as DW2 and Karikalan was examined as DW3 and Exs.B1 to B9 were examined and through the witness DW2, Exs.X1 and X2 were marked.

11. Findings of the trial Court:

11.1 There is no dispute regarding title of the properties. The claim of the first plaintiff is that being the son of the deceased Bakkianathan, he is entitled for 1/3 share in suit 'A' schedule and 'B' schedule properties. The second defendant in his additional written submissions stated that such share regarding 'A' schedule property alone. Therefore, as far as 'A' schedule is concerned there is no dispute between the parties. The first plaintiff and

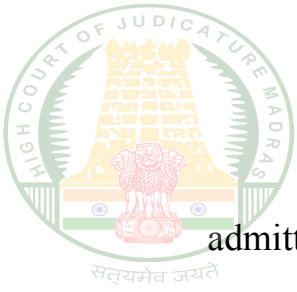


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first defendant, second defendant are entitled to 1/3 share each in respect of the suit 'A' schedule property. Pending suit, the first plaintiff died and the second plaintiff has been impleaded as his legal heir. Even at the time of impleading application, the second defendant had taken a stand that Vasumathi/second plaintiff is not the daughter of the first plaintiff and that Vasumathi's mother Vasanthamani was not married to the first plaintiff/Vijaya Baskara Dass and therefore, she has no rights in 'A' schedule and 'B' schedule properties, since the 'B' schedule property was acquired by the second defendant under the Will dated 30.06.1995.

11.2 From the evidence of DW1/second defendant reveals that all his answers are selectively suppressive and evasive. DW1 has also admitted that during the lifetime of the first plaintiff, marriage of the second plaintiff was conducted and he has also attended the marriage. DW1 also admitted that marriage was conducted when the suit was pending and that the first plaintiff and his wife Vasanthamani were living in Udumalpet for some time, since his daughter Vasumathi and son-in-law were living there and that the first plaintiff died there itself. Therefore, the trial Court held that the second defendant though admitted to give evasive answers and eventually

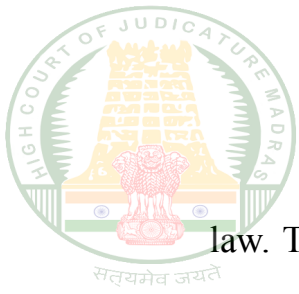


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admitted that the second plaintiff was the daughter of the first plaintiff and his wife is Vasanthamani. The suit is not bad for non-joinder of necessary party, as the second defendant failed to prove that one alleged Lurtha Mary is the wife of the first plaintiff. The propounder of the Will Ex.B1 has not removed the suspicion surrounding the execution of the will and the trial Court held that Ex.B1 Will is not proved in the manner known to law.

12. The learned Senior Counsel appearing for the appellant/second defendant would submit that the second plaintiff is not the daughter of the first plaintiff and she has no *locus standi* to claim any share in the suit schedule properties and the trial Court erred in holding that as far as 'A' schedule is concerned, there is no dispute between the parties. The trial Court ought to have framed an issue relating to relationship, especially, when the second defendant has raised a material proposition of fact at variance as to the relationship of the second plaintiff to the first plaintiff. In the absence of framing such an issue, the decree granted is unsustainable in



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law. The onus to prove that the second plaintiff is the daughter of the first plaintiff lies upon the second plaintiff and she has failed to prove her claim that she is the daughter of the deceased first plaintiff and therefore, the suit decreed without any material to support the claim of the second plaintiff is liable to be set aside. Further, the trial Court erred in holding that the second plaintiff is the daughter of the first plaintiff born through his wife Vasanthamani, as there is no pleadings as to the marriage between first plaintiff and Vasanthamani and she is the mother of the second plaintiff and wife of the first plaintiff in the plaint. The trial Court is incorrect in holding that the reply to the questions put to the second defendant in his cross-examination are selectively suppressive and evasive. Such alleged evasive answers would not support the second plaintiff's case and the same cannot be construed as an admission. The legal heir certificate, Voter ID card and Family Ration card would not prove either the marriage between the first plaintiff and Vasanthamani or their status as husband and wife and the second plaintiff is their daughter.

13. The learned Senior Counsel would further submit that neither



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the second plaintiff nor the eighth defendant has raised any suspicious circumstances in execution of the Will in Ex.B1 in their pleadings. In the absence of pleadings and evidence as to the suspicious circumstances in execution of the Will, the trial Court is inaccurate in holding that the Will in Ex.B1 is suspicious and not proved. Nothing has been elicited adversely in the cross-examination of DW2 and DW3 to disbelieve the execution of the Will and the disposition in the Will is not unfair in the circumstances stated thereon. Hence, the findings of the trial Court regarding the genuineness of the Will under Ex.B1 is unsustainable. The trial Court went wrong in holding that the second defendant had not declared the Will till the year 2018 without reference to the pleadings in the written statement filed on 28.01.2003, where, it has been specifically pleaded that the execution of the Will in his favour with date. DW2, in his cross-examination categorically deposed that he has already seen the Will at the time of execution. The trial Court failed to consider that DW2 was examined to prove the signature of the testatrix and his father *i.e.* one of the attesting witnesses, as per Section 69 of the Indian Evidence Act, 1872 and erred in disbelieving his evidence, as there was no pleadings that he was present at the time of execution of

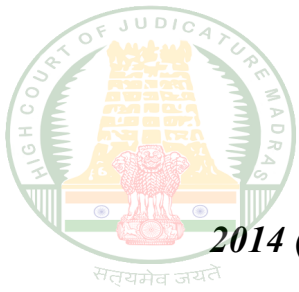


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Will in the written statement. The observation made by the trial Court that DW3 has not stated anywhere in his evidence that the testatrix was accompanied by his father is factually unsustainable. The trial Court is not correct in law disbelieving the evidence of DW3 without assigning any valid reasons.

14. To strengthen his contention, the learned Senior Counsel appearing for the appellant/second defendant has relied upon the judgment of the Hon'ble Supreme Court in *Dolgobinda Paricha vs. Nimai Charan Misra and Others* reported in *AIR 1959 SC 914*, to show that, “an opinion evidence of relationship that Section 50 of the Indian Evidence Act, 1872, does not make evidence of mere general reputation (without conduct) admissible as proof of relationship”. Another judgment of the Hon'ble Supreme Court in *Easwari Vs. Parvathi and Others* reported in *(2014) 15 SCC 255*, to show that, “no reliance can be placed on Voter ID card, legal heirship certificate and family card, as they only represent the unilateral description of the parties concerned”. Another judgment of this Court in *Kaliammal and Others Vs. Chenniappa Gounder and Others* reported in



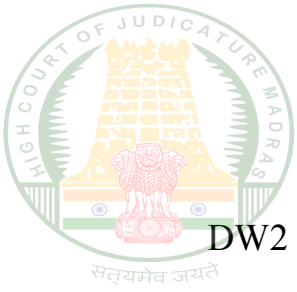
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2014 (1) MWN (Civil) 28, wherein, it has been stated as follows:

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“17. The Trial Court also considered Exs.B2, 9, 10 & 11 and held that Ex.B11, viz., the Legal Heirship Certificate cannot be relied upon to prove the status and when a dispute arises whether a person is the Legal Heir of another person, the same has to be proved in a Court of Law and the Legal Heirship Certificate issued in favour of the Defendants 1 & 2 will not prove the status. Similarly, Exs.B9 & B2, the Voter's ID and the Pension granted to Nallammal will not prove the status of Nallammal and having regard to Ex.A1 and Ex. X1 series, the Plaintiff has proved that Nallammal was not the legally wedded wife of Palaniappan and he was the wife of Nachimuthu Gounder and her marriage with Nachimuthu Gounder was not dissolved and the Second Defendant was born to Nachimuthu Gounder through Nallammal and therefore, the Defendants 1 & 2 were not the Legal Representative of Palaniappan.”

Yet another judgment of this Court in ***Chinnamuniamma and Another Vs. Pattammal and Others*** reported in **2017 (6) CTC 380** to show that, “when the plaintiff pleading particular relationship with the deceased must prove positively with appropriate evidence. When there is no ocular or documentary evidence to establish relationship, mere unproved recital found in a document is insufficient”. The trial Court is erroneous in stating that



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DW2 might be a well tutored witness and cannot be relied upon. Therefore, the judgment and preliminary decree passed by the Court below is liable to be set aside and prays to allow the appeal.

15. *Per contra*, the learned Senior Counsel appearing for the sixth respondent/eighth defendant would submit that the second defendant has produced the Will in Ex.B1 only in the year 2018, whereas, the suit is of the year 2004. The son of the deceased attesor, who was examined as DW2, deposed as if he was present at the time of execution of the Will, which was held to be unreliable. The minute details of the manner and execution of the Will by DW2 were unreliable after 30 years. The Advocate/DW3, who notarized the Will, does not provide any entry in his record about the Will. The propounder of the Will has to remove the suspicion surrounding the execution of Will and the Will is not proved in the manner known to law. The appeal has been preferred only with regard to the suit 'B' schedule property and there is no quarrel in decreeing the suit with respect to the suit 'A' schedule property. The second defendant has not chosen to get any expert opinion to prove the execution of Will. The trial court has rightly



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concluded that DW2, in his cross-examination, admitted that after the execution of Will, he was seeing the Will for the first time only before the trial Court. Admittedly, DW2 has not signed in the Will and even without signing the Will, he has spoken like an attesting witness. Further, DW3, who notarized the Will, has not produced any relevant document to show that he made entries in the relevant register maintained by him at the relevant point of time. Having signed the Will in the capacity of notary, mere oral submission without any corroborative piece of evidence cannot be accepted as such.

16. The learned Senior Counsel would further argue that the second defendant himself admitted that during the lifetime of first plaintiff, the marriage of the second plaintiff was conducted and that he had also attended the marriage. Further, the second defendant has admitted that the first plaintiff and his wife Vasanthamani were residing in Udumalpet, since his daughter and son-in-law were living there and the first plaintiff had died there itself. Except the second defendant, the other defendants have not disputed the status of the second plaintiff as daughter of the first plaintiff.



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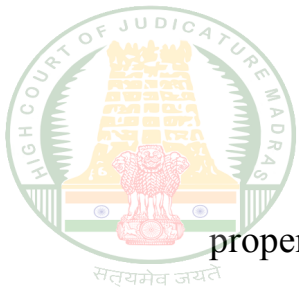
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There is no reason warrants to interfere with the impugned judgment and decree of the Court below.

17. The counsel appearing for the first respondent/second plaintiff would submit that the propounder of the Will has to establish that testator had signed the Will in a sound disposing state of mind and understanding nature and effect of disposition. To strengthen his contention, he has relied upon the judgment of the Hon'ble Supreme Court in *Leela and Others Vs. Muruganantham and Others* reported in (2025) 4 SCC 289, to show that, “if objection raised on genuineness of the Will by pointing out suspicious circumstances, the propounder of the Will has to remove them. Hence, there is no reason to interfere with the impugned judgment and decree passed by the Court below.

18. This Court has considered the submissions made on either side and perused the materials on record.

19. The points for determination that arise in this appeal are 1) whether the second plaintiff is the daughter of the first plaintiff? 2) whether the second plaintiff is entitled 1/3 share in the suit 'A' and 'B' schedule



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properties? and whether the Will in Ex.B1 is proved in the manner known to law, as claimed by the second defendant?

Point No.1:

20. It is not in dispute that the suit 'A' schedule property is the absolute property of K.P.Bakkianathan. It is not in dispute that the first plaintiff, first defendant and second defendant are siblings and the suit 'A' schedule property originally belonged to their father K.P.Bakkianathan. He died intestate on 06.03.1996 leaving behind his widow K.P.B.Sundarambal, first plaintiff and the defendants 1 and 2 as his legal representatives. The said K.P.B.Sundarambal died intestate on 05.03.2000 leaving behind the first plaintiff and the defendants 1 and 2 as her legal representatives. The suit 'B' schedule property belonged to the said K.P.Bakkianathan and he has executed a registered settlement dated 11.02.1963 in favour of his wife K.P.B.Sundarambal, thereby, K.P.B.Sundarambal became the absolute owner of the suit 'B' schedule property.

21. It is the specific case of the second plaintiff that both K.P.Bakkianathan and K.P.B.Sundarambal died intestate leaving behind



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their children *i.e.* first plaintiff, first defendant and second defendant and

they are entitled to 1/3 share each in the suit 'A' and 'B' schedule properties.

The first plaintiff died leaving behind the second plaintiff as his only legal heir, while pending suit. The first defendant died leaving behind the defendants 7 and 8 as her legal heirs.

22. It is the specific case of the second defendant that the first defendant has already filed O.S.Nos.1595 & 1597 of 2000 for partition, wherein, parties, properties and claim of the respective parties are one and the same that of the present suit. In view of the said facts, the claim of the plaintiffs become infructuous, when *res judicata* comes into existence. The Will dated 30.06.1995 was executed by K.P.B.Sundarambal out of her free and volition and the same was attested by T.Rajan Babu and M.K.Chinniah. As per the said Will, the suit 'B' schedule property had been given to the second defendant and the said Will has been given effect and acted upon after the death of K.P.B.Sundarambal. The second defendant is in possession and enjoyment of the suit 'B' schedule property and made improvement by paying tax and amenity charges.



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23. It is also the specific case of the second defendant that the second plaintiff is not the daughter of the first plaintiff and one Lurtha Mary is the wife of the first plaintiff and she is very much alive. The second plaintiff proclaimed herself as the daughter of the first plaintiff and got herself impleaded in the suit. Therefore, the suit is bad for non-joinder of necessary party. When the widow of the first plaintiff is alive, the second plaintiff is not entitled to prosecute the case. The suit 'A' schedule property was owned by the father and died intestate and therefore, the deceased first plaintiff and defendants 1 and 2 became entitled to 1/3 share in the suit schedule properties.

24. A perusal of Ex.A4 sale deed dated 06.09.1937 shows that the suit 'B' schedule property was purchased by the said K.P.Bakkianathan *vide* sale deed dated 06.09.1937. Subsequently, by way of settlement deed under Ex.A5 dated 11.02.1963, K.P.Bakkianathan executed in favour of his wife K.P.B.Sundarambal. The said K.P.Bakkianathan died on 06.03.1996 and K.P.B.Sundarambal died on 05.03.2000. The second defendant in his additional written statement has admitted that the first plaintiff and second



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defendant are entitled to 1/3 share each, but, he has contended that the second plaintiff is not the daughter of the first plaintiff and her mother Vasanthamani was not married to the first plaintiff and therefore, she has no rights in 'A' schedule property.

25. A perusal of Ex.A7 legal heir certificate, wherein, it has been mentioned that the second plaintiff is the daughter of the first plaintiff. A perusal of Ex.A8 Voter ID card and Ex.A11 Family Ration card show that the names of Vijaya Bhaskara Dass/first plaintiff, his wife Vasanthamani and daughter Vasumathi/second plaintiff and husband and children as family members and they are residing at Udumalpet address.

26. It is the specific contention of the learned Senior Counsel appearing for the appellant/second defendant that the factum of marriage between the first plaintiff and Vasanthamani has not been established. Mere production of legal heir certificate, Voter ID card and Family Ration card will not prove that the second plaintiff is the legal heir of the first plaintiff and therefore, the judgment and decree passed by the Court below has to be set aside.



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27. In this regard, admittedly, except the second defendant, the other defendants have not disputed the status of the second plaintiff as daughter of the first plaintiff. In this regard, the second defendant/DW1, in his cross-examination, has given evasive answers. He has also admitted that during the lifetime of the first plaintiff, the marriage of the second plaintiff was conducted and that he had also attended the marriage. DW1 further admitted that the first plaintiff and his wife Vasanthamani were living in Udumalpet, since his daughter Vasumathi/second plaintiff and son -in-law were living there and the first plaintiff died there itself. From the evidence of second defendant/DW1 reveals that the first plaintiff and his wife Vasanthamani were living as husband and wife and also reveals that the second plaintiff is the daughter of the first plaintiff.

28. It is the contention of the second defendant that Lurtha Mary is the first wife of the first plaintiff and she is very much alive. However, he has not chosen to implead her as party to the suit. In this regard, the second defendant has not produced any documents and not examined any witness.



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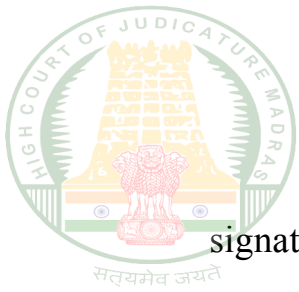
Point No.1 is answered in favour of the second plaintiff.

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Point Nos.2 and 3:

29. Ex.A2 is the legal notice dated 23.05.2000 sent by the first defendant to the first plaintiff and the second defendant seeking partition in respect of the suit 'A' schedule property. Ex.A3 is the legal notice dated 23.05.2000 sent by the first defendant against the first plaintiff and other defendants for depositing the rents and for partition in respect of suit 'B' schedule property. The list of documents shows that the second defendant had sent a reply on 06.06.2000. It is not known as to whether the second defendant had revealed about the Will in the said notice. There is no specific evidence available to show that the Will was revealed by the second defendant at the earliest point of time.

30. It is pertinent to note that though the suit was filed in the year 2001, the Will was produced before the trial Court only in the year 2018. There is no explanation as to what prevented the second defendant from declaring the Will from 1995 till 2018. It is the specific case of the first respondent/second plaintiff that the Will runs to four pages, but, the



signature of K.P.B.Sundarambal was found in the last page and not in other pages and so, the Will have to be totally disagreed.

31. At this juncture, it is relevant to refer Section 68 and 69 of the Indian Evidence Act, 1872, which reads as follows:

“68. Proof of execution of document required by law to be attested.—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 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 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.



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32. It is well settled that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandate under the provisions of Sections 63 of the Indian Succession Act, 1872 and Section 68 of the Indian Evidence Act (vide ***Leela and Others Vs. Muruganantham and Others*** reported in (2025) 4 SCC 289).

33. It is the evidence of second defendant that both the attesting witnesses of the Will are no more and relied upon Exs.B2 and B3 death certificates of M.K.Chinniah, who died on 09.08.2005 and T.Rajan Babu, who died on 09.02.2008, respectively, attestors of the Will.

34. In order to prove the due execution of Will, the second defendant has chosen to examine DW2/Jayasankar, who is the son of the deceased first attester in the Will viz. T.Rajan Babu. DW2, in his evidence, has deposed that he witnessed the execution of Will Ex.B1 and he witnessed his father T.Rajan Babu and another witness M.K.Chinniah signing the Will. DW2 also identified the signature of his father. It is pertinent to mention that the Will is of the year 1995. It is seen from the affidavit filed by DW2



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that he was 44 years old at the time deposing evidence. Therefore, at the time of execution of Will, he would be around approximately 21 years. On the contrary, DW2, in his cross-examination, has deposed that after the date of execution of Will, he was seeing the Will for the first time only in the trial Court. Therefore, the evidence of DW2 that he was present at the time of execution of Will is unreliable one. The minute details of the manner of execution of Will deposed by DW2 were unreliable after lapse of after more than 30 years. DW2, has not at all anywhere in his evidence stated that he has accompanied his father. The Advocate, who notarized the Will was examined as DW3, but, he has not produced any relevant documents to show that he has made entries in the relevant register maintained by him at the relevant point of time. Mere oral evidence without any corroborative piece of documentary evidence cannot be taken into consideration.

35. DW1, in his cross-examination has deposed that he got knowledge about the Will four days after the death of his mother, when he was searching the box. It is to be noted that his mother K.P.B.Sundarambal died on 05.03.2000. The Will was written on 30.06.1995. He further



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admitted in his cross-examination that his mother had informed about the Will two months before her death. It is not explained by DW1 as to why his mother did not hand over the Will to him at that time. Therefore, the version of DW1 that he got knowledge only after four days after his mother's death is inconsistent to his version that his mother had earlier informed about the Will. It is also to be noted that there is no evidence to show that after finding the Will, he declared the same to all the family members. Admittedly, the suit was pending between the second defendant and his mother and the same came up to this Court in A.S.No.153 of 1990 and ended in compromise on 28.06.1991. The evidence of DW2 and DW3 are not sufficient to prove the Will in the manner known to law. Hence, this Court is of the view that Ex.B1 Will is suspicious and the propounder of the Will has not removed the suspicion surrounding the execution of Will.

36. The rulings relied upon by the learned Senior Counsel appearing for the appellant/second defendant are not in support of the case of the appellant. Since the facts of the present case is different from those cases.



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WEB COPY 37. In the light of the above discussions, this Court do not find any reasons to interfere with impugned the judgment and decree of the trial Court. There is no merit in this appeal and the same is liable to be dismissed. The point are answered accordingly.

In the result, the First Appeal is dismissed by confirming the judgment and decree dated 29-07-2019 passed in O.S.No.684 of 2004 on the file of the III Additional District and Sessions Court, Coimbatore. No costs.

21.08.2025

nsd

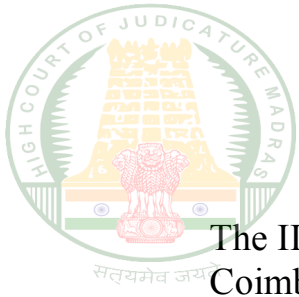
Index:Yes

Speaking/Non-speaking order

Internet:Yes; Neutral Citation:Yes

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The III Additional District and Sessions Judge,
Coimbatore.

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M.JOTHIRAMAN, J.

nsd



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