

A.S.No.139 of 2016 &
C.R.P.No.4755 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07..08..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

S.A.No.139 of 2016 & C.R.P.No.4755 of 2024

and

C.M.P.Nos.2818 of 2016, 26612 & 26614 of 2016

S.A.No.139 of 2016:

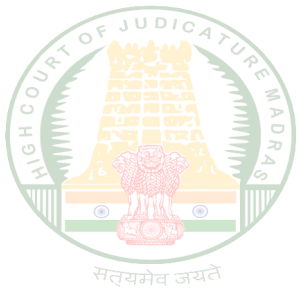
1. Chinnasamy Gounder (Died)
2. A.Shanmugavadivu
3. R.Thilagavathi

[Appellants 2 and 3 brought on record as legal representatives of the deceased 1st appellant as per order dated 01.10.2015 made in M.P.No.1 to 3 of 2015 in S.A.SR No.88399 of 2011]

..... Appellants

-Versus-

1. K.S.Thangavel (Died)
2. Sivasamy
3. Poovathal (Died)
4. Krishnaraj
5. Palaniammal
6. Muthu Rathinam
7. Saraswathi



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8. Easwari
9. Shenbagavalli
10. Marimuthu

[Respondents 8 to 10 brought as legal representatives of the deceased 1st respondent - K.S.Thangavel as per order dated 24.03.2022 made in C.M.P.No.5212 of 2022 in S.A.No.139 of 2016]

..... Respondents

Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the judgement and decree dated 12.04.2006 passed in A.S.No.10 of 2005 by the learned Subordinate Judge, Pollachi, reversing the judgement and decree dated 24.02.2023 passed by the learned District Munsif, Pollachi, in O.S.No.237 of 1996.

A.S.No.139 of 2016:

*For Appellant (s) : Mr.S.Ramesh for
Mr.T.Balaji*

For Respondent (s) : Mr.C.Veeraraghavan for R2

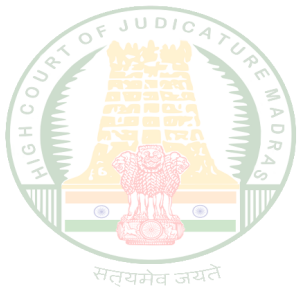
Ms.S.Kanimozhi for RR4 & 5

Mr.M.Guruprasad for RR6 & 7

*Mr.V.Raghavachari,
Senior Counsel for
Mr.A.Gouthaman for RR8 to 10*

R1 – Died

R3 – Reported Dead



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WEB COPY **C.R.P.No.4755 of 2024:**

1. A.Shanmugavadivu
2. R.Thilagavathy

.... Petitioners

-Versus-

1. K.Annakodi
2. T.Easwari
3. T.Shenbagavalli
4. T.Marimuthu

.... Respondents

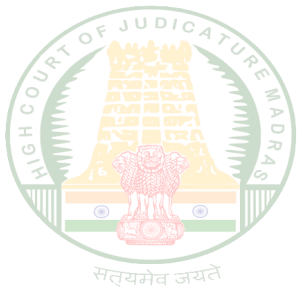
Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the judgement and decree dated 22.08.2022 passed by the learned I Additional District Judge, Coimbatore, in O.S.No.331 of 2022.

C.R.P.No.4755 of 2024:

*For Petitioner(s) : Mr.S.Ramesh for
Mr.T.Balaji*

For Respondent(s) : Mr.Deepan Uday for R1

*Mr.V.Raghavachari,
Senior Counsel for
Mr.A.Gouthaman for RR2 to 4*



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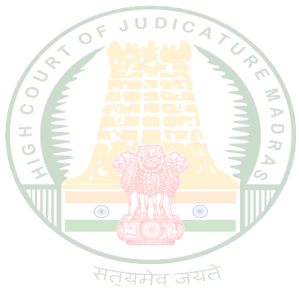
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COMMON JUDGEMENT

(i) Aggrieved by the judgement and decree of the first appellate court reversing the findings of the trial court, the 3rd defendant originally preferred this Second Appeal challenging the judgement and decree dated 12.04.2006, whereby the learned Subordinate Judge, Pollachi, set aside the judgement and decree dated 24.02.2003 passed by the learned District Munsif, Pollachi, insofar as it dismissed the suit in O.S.No.237 of 1996 with respect to the reliefs of declaration and partition for an enhanced share.

(ii) The trial court dismissed the suit insofar as it sought a declaration that the Will dated 20.04.1995 executed by Periamarappa Gounder is true and valid, but granted a preliminary decree holding that, although the plaintiff, K.S.Thangavel, is not entitled to any enhanced share under the Will as the legal heir of Chinnamarappa Gounder, he is entitled to 4/12 share in the suit properties by metes and bounds, as against his claim for partition into 12 equal shares and allotment of 7 such shares to him.

(iii) The first appellate court, on appeal, allowed the suit in its entirety, declared the Will valid and genuine, and granted a preliminary decree for



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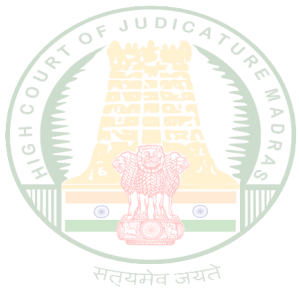
partition as prayed for.

2. The revision in C.R.P.No.4755 of 2024 has been filed by 3rd parties to the suit proceedings, challenging the judgement and decree dated 22.08.2022 passed by the learned I Additional District Judge, Coimbatore, pursuant to a mediation entered into between the parties.

3. The appellants 2 and 3 are the legal representatives of the deceased 3rd defendant, Chinnasamy Gounder (since deceased), in O.S.No.237 of 1996, and he was the sole appellant in S.A.No.139 of 2016. The 1st respondent was the plaintiff, and respondents 2 to 7 were defendants 1, 2, and 4 to 7 in O.S.No. 237 of 1996. The respondents 8 to 10, who were brought on record on the death of the 1st respondent/plaintiff, are the legal representatives of the deceased 1st respondent/plaintiff.

4.0 The facts leading to the filing of the second appeal, in brief, are as follows:

4.1 The common ancestor of the parties to the suit is one Ramee Gounder. He had two sons, namely (1) Periamarappa Gounder and (2)

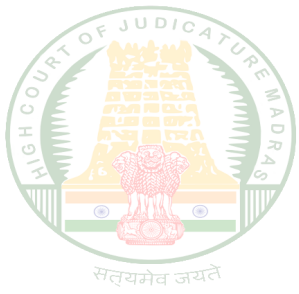


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4.2 The plaintiff and defendants 1 and 2 are the children of Chinnamarappa Gounder. The 2nd defendant is the daughter of Chinnamarappa Gounder. The 3rd defendant and one Nataraja Gounder are sons of Periamarappa Gounder. Nataraja Gounder predeceased his father, Periamarappa Gounder. The defendants 4 to 7 are the Class I legal heirs of the said Nataraja Gounder.

4.3 The 3rd defendant, his deceased brother Nataraja Gounder, and their mother, Chellammal, had jointly filed a suit in O.S.No.1453 of 1956 on the file of the learned District Munsif, Coimbatore, seeking partition and separate possession of their share in the family property against (i) Periamarappa Gounder, (ii) Chinnamarappa Gounder and Minor Mysami alias Ponnan, Minor Chinna Ponnan, represented by their Guardian and Mother - Kaliammal. In the said suit, a final decree was passed on 19.01.1962 in I.A.No.304 of 1959. In terms of the final decree, the share of the 3rd defendant and the father of the fourth defendant (who were the plaintiffs in that suit) was carved out and delivered to them. The remaining properties, as described in detail in the



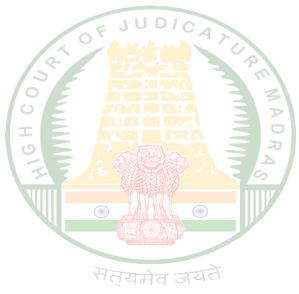
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schedule to the present suit in O.S.No.237 of 1996, were left for the joint enjoyment of the 1st defendant, Chinnamarappa Gounder, and Periamarappa Gounder, who had been in joint possession and enjoyment thereof.

4.4 In the meantime, Periamarappa Gounder, who was living with the plaintiff's family, died on 20.06.1995, leaving behind a registered WILL dated 20.04.1995, whereby he bequeathed his share of the property in favour of the plaintiff. As defendants 3 to 7 disputed the WILL, they were impleaded as parties to the suit. Chinnamarappa Gounder, the father of the plaintiff, had earlier died on 12.11.1994. The plaintiff and defendants 1 and 2 are the Class I legal heirs of the deceased Chinnamarappa Gounder. Hence, the present suit was filed seeking a declaration that the registered WILL dated 20.04.1995 executed by Periamarappa Gounder is true and valid, and for partition of the suit properties.

5.1 The 3rd defendant filed his written statement admitting that Chinnamarappa Gounder and Periamarappa Gounder are brothers and that the properties are the joint family properties of both. He further contended that, even during the lifetime of Periamarappa Gounder, the sons of Periamarappa



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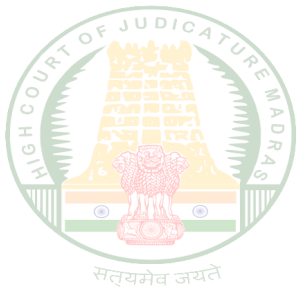
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Gounder, along with their mother Chellammal, filed a suit in O.S.No.1453 of 1956 on the file of the learned District Munsif, Coimbatore, for partition against both Periamarappa Gounder and Chinnamarappa Gounder.

5.2 According to the 3rd defendant, Periamarappa Gounder had only a 1/6th share, whereas Chinnamarappa Gounder had a 3/6th share in the suit properties. The 3rd defendant had already filed a separate suit in O.S.No.158 of 1996 on the file of the District Munsif, Coimbatore, for partition of his father Chinnamarappa Gounder's share in the property.

5.3 While the 3rd defendant admitting the relationship between the parties and the earlier partition suit in O.S.No.1453 of 1956, disputed the validity of the alleged WILL dated 20.04.1995 said to have been executed by Periamarappa Gounder. He contended that the said WILL was obtained when the testator was not in good health and sound mind, and that it was executed by taking undue advantage of his advanced age. The said WILL, according to him, is not binding on the defendants.

6. Two other suits, namely, O.S.No.158 of 1996 filed by the first defendant, Sivasamy, for partition and mesne profits, and O.S.No.198 of 1996



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filed by the third defendant, Chinnasamy Gounder, along with one Krishnaraj, for permanent injunction, were clubbed together with the present suit in O.S.No.237 of 1996, which was filed for a declaration that the Will dated 20.04.1995 executed by Periamarappa Gounder is true and valid, and for partition of the suit schedule properties. All three suits were tried together.

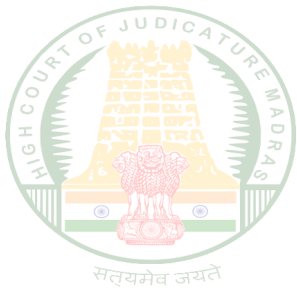
7. The trial court framed separate issues for each of the suits, which are as follows:

O.S.No.158 of 1996:

1. Whether the plaintiff is entitled to a share in the suit property, if so, to what share?
2. Whether the plaintiff is entitled to means profits
3. Whether the plaintiff is entitled to the relief of permanent injunction over the 'B' schedule property?
4. To what other relief?

O.S.No.198 of 1996:

1. Whether it is true that there was no oral partition alleged to have been effected between Periamarappa Gounder and Chinnamarappa Gounder?
2. Whether Periamarappa Gounder died intestate?
3. Whether the plaintiffs are entitled to permanent



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injunction as prayed?

4. To what other relief?

O.S.No.237 of 1996:

1. Whether the WILL dated 20.04.1995 is true and valid?

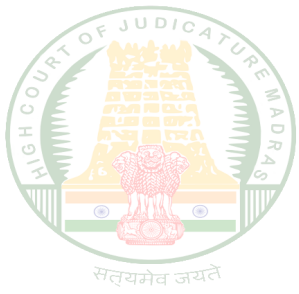
2. Whether the plaintiff is entitled to the relief of declaration as prayed for?

3. Whether the plaintiff is entitled to partition if so, to what share?

4. What reliefs is entitled to?

8. Considering the fact that the properties involved in the suits were the same, the parties were also the same, and the shares of the parties had to be determined, the issues in all three suits were identical. The trial court took up all three suits for joint trial and proceeded to record common evidence in O.S.No.237 of 1996. The evidence so recorded was treated as relevant for deciding the other two suits as well.

9. During the trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Narayanasamy was examined as P.W.2. Exhibits A1 to A12 were marked on the plaintiff's side. On the side of the defendants, the

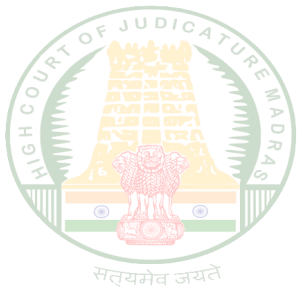


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1st defendant examined himself as D.W.1, Chinnasamy was examined as D.W.2, Shanmugavadivu as D.W.3 and Periya Kaliyappa Gounder as D.W.4. Exhibits B1 to B6 were marked on the defendants' side.

10. Upon considering the oral and documentary evidence, the trial court dismissed the suit in O.S.No.237 of 1996 in respect of the declaration that the Will is true and valid. However, the trial court granted a preliminary decree, holding that although the plaintiff, K.S. Thangavel, is not entitled to any enhanced share under the Will as the legal heir of Chinnamarappa Gounder, he is entitled to 4/12 share in the suit properties by metes and bounds. Similarly, the trial court held that, the 1st defendant - Sivasamy (plaintiff in O.S.No.158 of 1996) is entitled to 4/12 share; the 2nd defendant - Poovathal is entitled to 1/12 share; the 3rd defendant - Chinnasamy Gounder is entitled to 3/24 share; and the defendants 4 to 7 are collectively entitled to 3/24 share, all by metes and bounds. Accordingly, the trial court dismissed the suits in O.S.No.198 of 1996 and dismissed the other suit in O.S.No.158 of 1996 filed for permanent injunction and mesne profits,, while holding that the rights of the parties with respect to partition stood concluded in O.S.No.237 of 1996.

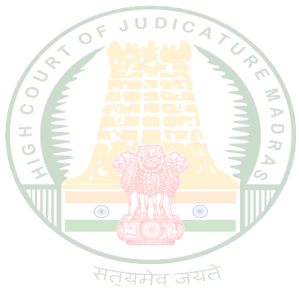


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11. Aggrieved by the dismissal of the suit in O.S.No.237 of 1996 insofar as it related to the declaration that the Will is true and valid and the consequential denial of enhanced shares, the plaintiff, K.S. Thangavel, preferred an appeal in A.S.No.10 of 2005 before the learned Subordinate Judge at Pollachi, Coimbatore District. By judgement dated 12.04.2006, the learned Subordinate Judge allowed the appeal, set aside the judgement and decree of the trial court, and decreed the suit in O.S.No.237 of 1996 as prayed for. The appellate court declared that the Will (Ex.A4) dated 20.04.1995, executed by the deceased Periamarappa Gounder in favour of the plaintiff, K.S. Thangavel, to be true and valid, and granted a preliminary decree directing that the suit properties be divided into 12 equal shares by metes and bounds, and that 7 such shares be allotted to the plaintiff with separate possession. Now, aggrieved by the judgement and decree of the first appellate court, the 3rd defendant, Chinnasamy Gounder, son of Periamarappa Gounder, preferred the present appeal. Upon his death, his daughters, being his legal representatives, continued to prosecute the second appeal.

12. As regards the civil revision petition, it is seen that during the

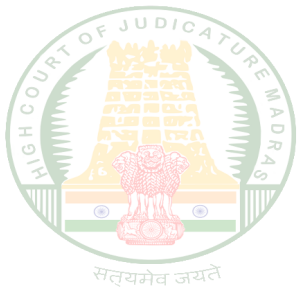


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pendency of the second appeal, appellants 2 and 3 filed O.S.No.331 of 2022 before the I Additional District Judge, Coimbatore, against K. Annakodi and others for partition directing division of suit properties in Item Nos.1 and 2 into 12 equal shares by metes and bounds with reference to good and bad soil and allotment of 5/12 share to the plaintiff (K.Annakodi) and directing division of suit property in item No.3 into 3 equal shares by metes and bounds with reference to good and bad soil and allotment of 2/3 share to the plaintiff and for separate possession and for permanent injunction against the defendants restraining them from alienating or in any manner encumbering, encroaching the plaintiff's share in the suit property till a partition of the same is effected. The said suit was decreed on 22.08.2022 pursuant to a mediation settlement between the parties. The revision petitioners, being third parties to those proceedings, now challenge the said judgement and decree passed on the basis of the mediation agreement.

13. At the time when the second appeal came up for hearing on 02.03.2016, this Court, while admitting the appeal, formulated the following substantial questions of law for consideration:



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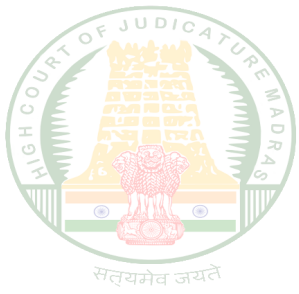
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(1) Whether the First Appellate Court has committed a serious error in not appreciating the serious inconsistencies in the deposition of PW.2, the attesting witness of the alleged Will, and consequently, whether the findings of the First Appellate Court are unjust and result in miscarriage of justice?

(2) Whether the First Appellate Court has committed a serious error in failing to notice the fact that the scribe of the Will has not been examined, when the circumstances relating to the inclusion of schedule of properties, the details thereunder surrounding execution and registration of the Will, necessitated the same?

14. Let this Court first decide the second appeal, as the determination on the validity of the Will in issue will decide the fate of the revision.

15. This court has heard Mr.S.Ramesh, learned counsel for Mr.T.Balaji, counsel on record for the appellants 1 and 2 and Mr.V.Raghavachari, learned senior counsel for Mr.A.Gouthaman, counsel on record for RR8 to 10.



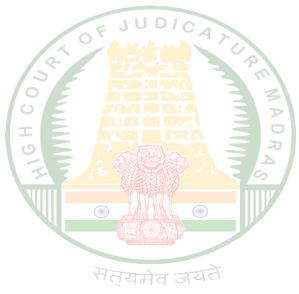
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Mr.C.Veeraraghavan, learned counsel for 2nd respondent, Ms.S.Kanimozhi, learned counsel for respondents 4 & 5 and Mr.M.Guruprasad, learned counsel for the respondents 6 & 7 sailed with the respondents 8 to 10 and adopted the arguments of the learned senior counsel Mr.V.Raghavachari.

16.1 The learned counsel for the appellants contended that the Will propounded by the 1st respondent is shrouded with serious suspicious circumstances, and since the 1st respondent has failed to dispel those suspicions, the Will cannot be regarded as valid and genuine. It is further submitted that one of the attesting witnesses, examined as P.W.2, is an interested witness who deposed only in favour of the beneficiary. It was therefore argued that the demeanour of P.W.2 clearly indicated that he had not spoken the truth before the Court.

16.2 The learned counsel for the appellants further contended that the Will contains interlineations with respect to the survey numbers, and certain portions appear to have been written in such a manner as to portray the document as the last testament of the testator. These factors, it was argued, clearly indicate that the Will was not proved in the manner known to law, and,



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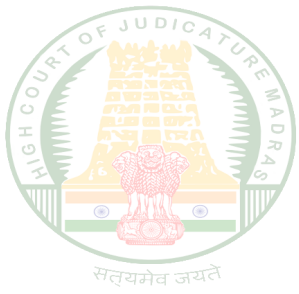
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moreover, there was no justifiable reason for disinheriting the natural heirs of the testator.

16.3 The learned counsel for the appellants furthermore contended that the trial court had rightly disbelieved the Will. However, the first appellate court, without properly re-appreciating the oral and documentary evidence, concluded that the Will was valid and true merely on the basis of the testimony of P.W.2. According to the learned counsel, when the suspicious circumstances surrounding the Will have not been dispelled by the propounder, the first appellate court ought not to have held the Will to be valid and genuine. Therefore, it was submitted that the judgement and decree of the first appellate court are unsustainable in law and warrant interference by this Court.

16.4 In support of his contentions, the learned counsel for the appellants relied on the judgement in **Ram Piari v. Bhagwant and others [(1990) 3 SCC 364]**.

17.1 Per contra, the learned senior counsel appearing on behalf of respondents 8 to 10 submitted that the evidence of P.W.2 clearly establishes not only the execution but also the attestation of the Will in accordance with



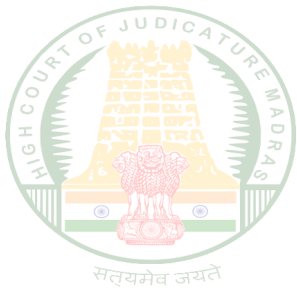
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law. Upon a consideration of the entire evidence on record, it was argued that no circumstances, much less any suspicious circumstances, were brought forth to cast doubt on the validity of the Will.

17.2 It was further contended by the learned senior counsel that the contesting defendants had not disputed the execution of the Will by the testator, their father. The only contention raised by the 3rd defendant, now deceased and represented by his daughters, was that the Will had not been executed by the testator while in good health and of sound disposing mind. Except for the above defence, there were absolutely no other circumstances brought on record, and, more importantly, there was not even a specific pleading in the written statement challenging the credibility of the Will.

17.3 The learned senior counsel furthermore contended that it is an admitted fact that the relationship between Periamarappa Gounder, father of the deceased appellant, and his wife Cheillammal, as well as another son, became strained as early as 1956. In that year, O.S.No.1453 of 1956 was filed by the appellant along with his mother seeking partition. Consequently, the relationship was completely estranged, and the appellant and his brother had



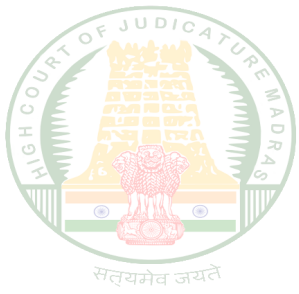
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been living separately with their mother. This fact, it was pointed out, was clearly admitted during the course of evidence. This estrangement was one of the reasons for disinheriting the natural son.

17.4 The learned senior counsel lastly submitted that the Will was validly executed and duly registered in accordance with law. When there was absolutely no material whatsoever brought on record to establish that the Will was shrouded in suspicion, the first appellate court was justified in re-appreciating the oral and documentary evidence and in interfering with the judgement and decree of the trial court dismissing the suit. The judgement of the first appellate court, it was argued, is perfectly sustainable and does not warrant any interference.

17.5 In support of his contentions, Mr.V.Raghavachari, learned senior counsel relied upon the judgements of the Hon'ble Supreme Court in the cases of (i) Metpalli Lasum Bai (since deceased) and others v. Metapalli Muthaiah (Died) by LRs, reported in [(2025) SCC OnLine SC 1488]; (ii) Meena Pradhan v. Kamla Pradhan reported in [(2023) 9 SCC 734]; (iii) Gopal Krishan and others v. Daulat Ram & others, reported in [(2025) 2 SCC 804]; and of this



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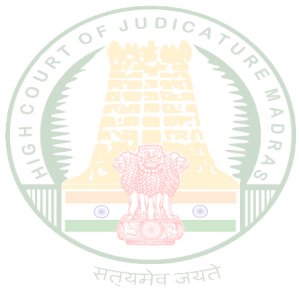
court in the case of Lalitha Mohan and another v. Pratap K. Moturi reported in 2020 (2) CTC 129.

18. The learned counsel appearing for the other respective contesting respondents adopted the submissions advanced on behalf of respondents 8 to 10.

19. In the light of the aforesaid rival submissions, this Court is now called upon to determine the substantial question of law.

Substantial Questions of Law 1 and 2:

20. It is an admitted fact that, though the suit in O.S.No.237 of 1996, which is the subject matter herein, was tried along with the other suits in O.S.No.198 of 1996 filed for permanent injunction by Sivasamy against K.S.Thangavel and O.S.No.158 of 1996 filed for partition and other reliefs by the deceased appellant (3rd defendant), Chinnasamy Gounder and another against Sivasamy Gounder and two others, was dismissed. There were no appeals preferred against the judgement and decree passed in O.S.No.158 of 1996 and O.S.No.198 of 1996 by any of the parties thereto.



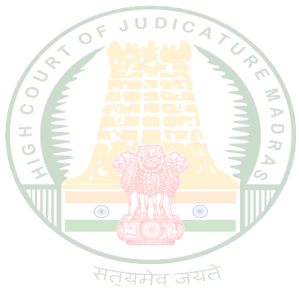
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21. Be that as it may, the crux of the issue pertains to the registered Will dated 20.04.1995 executed by Periamarappa Gounder in favour of K.S.Thangavel, the plaintiff/1st respondent herein (since deceased), who was the son of Chinnamarappa Gounder.

22. It is an admitted fact that the suit properties were originally owned by Ramae Gounder, who had two sons, namely Periamarappa Gounder, the testator of the Will and father of the 3rd defendant (deceased appellant herein) and Chinnamarappa Gounder. K.S. Thangavel, the plaintiff in O.S.No.237 of 1996, is one of the sons born to Chinnamarappa Gounder. The deceased appellant, Chinnasamy Gounder (3rd defendant), was one of the sons of Periamarappa Gounder. Upon the death of the said Chinnasamy Gounder, his legal representatives i.e, his daughters were brought on record as appellants 2 and 3, and they continued to prosecute the second appeal.

23. The marital relationship between Periamarappa Gounder and his wife Chellammal had been strained for decades, and the rift widened further due to litigation. As early as 1956, the wife and children of Periamarappa Gounder had filed a suit in O.S.No.1453 of 1956 for partition. In that suit, Periamarappa



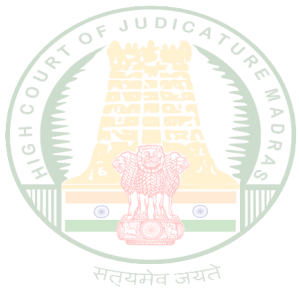
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Gounder had taken the defence that the appellant herein and his brother, Nataraja Gounder, were not born to him. Nevertheless, the suit was decreed, and a preliminary decree was granted for partition and separate possession of a 1/3 share. In that suit, Chinnamarappa Gounder was also made a party defendant and 1/6th share was declared in favour of Periamarappa Gounder. This fact is not in dispute.

24. It is the contention of the 1st respondent that Periamarappa Gounder was taken care of by him and, therefore, during his lifetime, he bequeathed his 1/6th share in the suit properties in his favour by executing the Will (Ex.A4). To prove the Will, he examined one of its attesting witnesses, as required by law, as P.W.2.

25. P.W.2, one of the attesting witnesses, in his evidence, clearly deposed that the testator was known to him; that the testator used to visit his shop frequently on his own; and that he was acquainted with him. He stated that, at the request of the testator, he had attested the Will along with another witness, on the Will prepared by the testator. According to P.W.2, the testator affixed his thumb impression on the Will (Ex.A4) in his presence and in the



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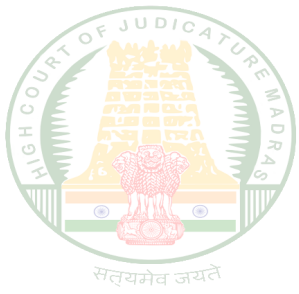
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presence of one Vasudevan, the other attesting witness, who is now deceased.

P.W.2 categorically stated that he had seen the testator affixing his thumb impression on the Will, and, likewise, the testator had seen the attesting witnesses subscribing their signatures to the Will.

26. P.W.2 further deposed that, although the Will had been prepared on the previous day by the scribe, due to paucity of time, it was presented for registration on the next day, when it was duly registered. P.W.2 also stated that the beneficiary was not present at the time of execution of the Will, and he spoke about the soundness of the mental faculties of the testator at the relevant time.

27. In *Ram Piari v. Bhagwant and Others* [(1990) 3 SCC 364], heavily relied upon by the learned counsel for appellants 2 and 3, the Hon'ble Supreme Court held that where a Will was alleged to have been executed just one day prior to the testator's death, bequeathing all his properties to the sons of one daughter while completely disinheriting the other, the mere proof of execution, such as through the testimony of the scribe or attesting witness, or proof of the testator's thumb impressions would not by itself establish the Will's validity.



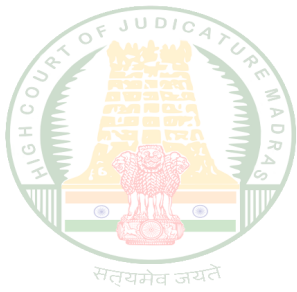
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Unless the suspicious circumstances, whether ordinary or special, are satisfactorily dispelled, and the Court's conscience is satisfied not only regarding execution but also authenticity, the Will cannot be upheld. The propounder bears the burden of removing such suspicious circumstances.

28. In ***Metpalli Lasum Bai (since deceased) and Others v. Metapalli Muthaih (Died) Rep. by LRs*** [2025 SCC OnLine SC 1488], upon which much reliance was placed by the learned senior counsel for respondents 8 to 10, the Hon'ble Supreme Court has held that in the case where a Will is a registered document, the burden of proof rests on the party disputing it to establish either that it was not executed in the manner alleged or that suspicious circumstances existed rendering it doubtful.

29. In ***Meena Pradhan v. Kamla Pradhan***, (2023) 9 SCC 734, relying upon *H. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 SC 443; *Bhagwan Kaur v. Kartar Kaur*, (1994) 5 SCC 135; *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91; *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*, (2009) 4 SCC 780; and *Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277, the Hon'ble Supreme Court deduced the



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following principles for proving the due execution and validity of a Will:

“**10.1.** The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

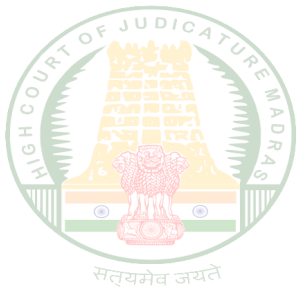
10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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



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the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

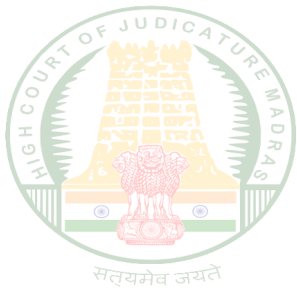
10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the



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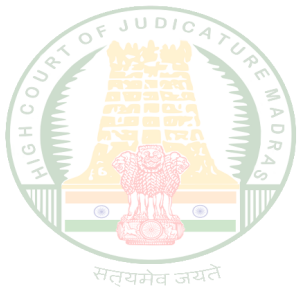
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propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277] ”. Whether a particular feature would



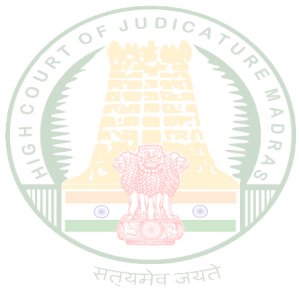
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qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances.

30. In ***Gopal Krishan v. Daulat Ram***, (2025) 2 SCC 804, the Hon’ble Supreme Court has elucidated the correct interpretation of the statutory requirements governing the proof of Wills. While setting aside the approach adopted by the High Court, the Court held that the attestation of a Will stands duly proved if at least one attesting witness unequivocally deposes that the testator personally signed or acknowledged the document in his presence. The



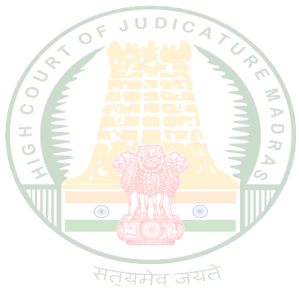
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judgement clarifies that the statutory mandate of “direction” by the testator is not to be read into circumstances where such a requirement is neither contemplated nor warranted by law.

31. In *Lalitha Mohan and Another v. Pratap K. Moturi* [2020 (2) CTC 129], yet another decision relied upon by the learned senior counsel for respondents 8 to 10, a Division Bench of this Court upheld the validity of a registered Will, observing that the testator had lived for several years after its execution without revoking it. Upon finding no substantial evidence to sustain the appellants’ contention regarding an alleged unregistered Will, the Division Bench dismissed the appeal and affirmed the Trial Court’s finding that the registered Will was valid and genuine. The Court further held that the evidence adduced by the appellants was insufficient to impeach the authenticity of the Will, and that registration of a Will affords additional strength to its propounder or beneficiary, inasmuch as Section 114(3) of the Indian Evidence Act, read with Section 60 of the Registration Act, raises a presumption attributable to the official act of registration.

32. Upon a careful and thorough scrutiny of the entire cross-examination

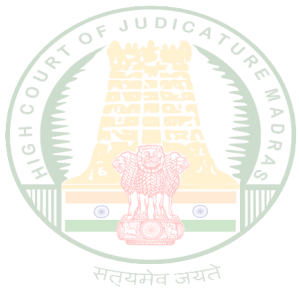


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of P.W.2, this Court is unable to discern any suspicious circumstances, even by way of probabilities. The evidence of P.W.2 regarding the mental capacity of the testator at the time of execution of the testament was not even challenged in cross-examination. Therefore, once execution and attestation, as required under law, have been duly proved, and when there are no circumstances, particularly in the form of suspicion shrouding the Will, the burden shifts to the person challenging its validity to establish that the Will is not genuine. In the present case, the initial burden had already been discharged by the propounder by examining one of the attesting witnesses. The entire cross-examination of the said attesting witness (P.W.2) did not elicit any material favouring the 3rd defendant/deceased appellant so as to cast doubt on the Will.

33. On the contrary, though a suggestion was put to P.W.1 to the effect that the Will had been obtained by coercion, nothing was elicited favourably. Likewise, no suggestion was made to P.W.2 during his cross-examination regarding the mental capacity of the testator at the time of execution of the testament. The Will was executed on 20.04.1995 and was duly registered before the Sub-Registrar concerned. The testator died two months thereafter. At



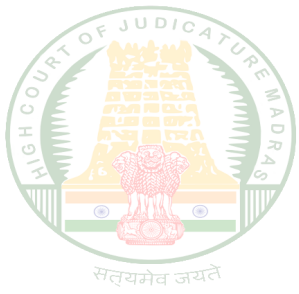
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the time of execution of the Will, the testator was over 80 years of age.

According to the 3rd defendant, the deceased appellant, the testator was not illiterate and used to sign, whereas the Will (Ex.A4) bears only the thumb impression of the testator. This, according to the appellant, constituted one of the suspicious circumstances surrounding the Will (Ex.A.4).

34. It is relevant to note that P.W.2, in his examination, categorically stated that the testator had affixed his thumb impression on the Will as his hands were shivering due to old age. The testator was admittedly over 80 years of age at the time of execution of the Will (Ex.A4). His mental capacity was not disputed during the examination of either P.W.1 or P.W.2. P.W.2 further deposed regarding the health condition of the testator and the frequent visits the testator made to his shop on a daily basis. Therefore, in the absence of any cogent or credible evidence to establish that the testator was not in good health or lacked sound disposing mind at the time of execution of the Will (Ex.A4), mere bald allegations are wholly insufficient to dislodge the testimony of P.W.2. It is also of significance that P.W.2 bore no animus and had no conceivable motive to depose falsely against the 3rd defendant.

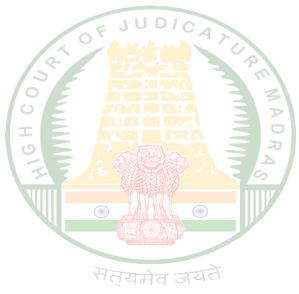


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35. As regards the suggestion put to P.W.1 during cross-examination that the thumb impression contained in the Will was not that of the father of the 3rd defendant, it is pertinent to note that the Will in question was a registered document. Where a party asserts that the thumb impression therein is not that of the testator, the burden squarely lies upon such party to establish the fact by adducing proper and reliable evidence. The 3rd defendant could, at the very least, have availed himself of scientific assistance to substantiate his contention by causing the disputed thumb impression in Ex.A4 to be compared with the admitted thumb impression of his father, Periamarappa Gounder, through competent forensic experts. This course of action was not pursued by the 3rd defendant/deceased appellant.

36. When the evidence of the attesting witness is cogent and convincing, free from embellishment or artificiality, the mere fact that a natural son has been disinherited under the Will cannot, by itself, constitute a ground to disbelieve it. Once the Will has been proved in the manner known to law, and when the registered Will enjoys the presumption of due execution, particularly as the registration was duly carried out, there also arises the presumption that



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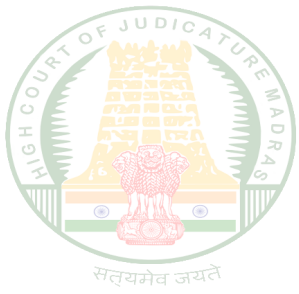
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every official act has been regularly performed in accordance with law.

Consequently, the onus on the part of the 3rd defendant/deceased appellant to challenge the Will on the ground of suspicious circumstances was not discharged. As held by this Court in ***Lalitha Mohan v. Pratap K. Moturi*** [2020 (2) CTC 129], registration of the Will in question gives additional strength to the propounder/beneficiary. The judgement of the Hon'ble Supreme Court in ***Ram Piari v. Bhagwant and Others*** [(1990) 3 SCC 364], upon which much reliance was placed by the learned counsel for appellants 2 and 3, would be of no avail to the facts of the present case.

37. On the contrary, the propounder of the Will, namely the plaintiff/1st respondent (since deceased), clearly established its genuineness by examining one of the attesting witnesses, P.W.2, whose testimony not only proved the execution of the Will but also its due attestation. No suspicious circumstances whatsoever were brought on record.

38. Though there was no such plea in the written statement, it was argued during the course of submissions by the learned counsel for appellants 2 and 3 that there were certain interlineations with respect to the survey number in the



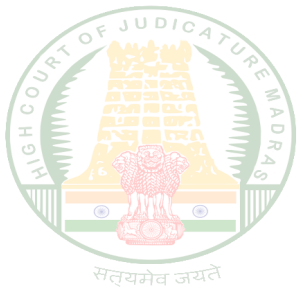
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Will. In this regard, it is relevant to note that when it was never the case of any party that the survey numbers had been altered in the Will, and when no such defence was raised in the pleadings, the same cannot later be urged as a suspicious circumstance so as to impeach the execution of the Will.

39. It is an admitted fact that the deceased appellant (3rd defendant) had earlier filed a suit along with his mother and deceased brother in O.S.No.1453 of 1956 against his father, wherein as already stated supra, the father of the 3rd defendant went to the extent of disowning the paternity of the 3rd defendant and his brother, Nataraja Gounder. This fact further supports the position that the deceased 3rd defendant/1st appellant, his brother, and their mother had not been residing with his father. The evidence of D.W.2 (the 3rd defendant) reveals that he admitted there had been a partition in the earlier suit and that, until the death of his mother, there was no relationship between his parents. He further admitted that he was raised by his mother, who resided separately at Mayilampalayam, while his father lived in another village. The relationship between his parents was strained and far from cordial.

40. The evidence also indicates that Periamarappa Gounder was cared for

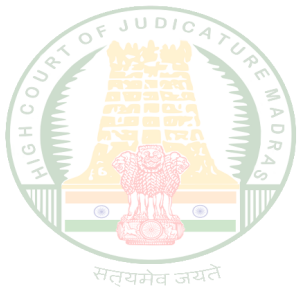


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by his brother, Chinnamarappa Gounder, after the matrimonial dispute arose in 1956. The 1st respondent, K.S. Thangavelu (plaintiff), is one of the sons of Chinnamarappa Gounder. It was the specific case of the 1st respondent that he maintained his uncle, Periamarappa Gounder, and, therefore, the latter executed the Will in his favour, bequeathing his share. In light of the strained relationship between the deceased appellant's parents, the lack of cordiality between the deceased appellant and his father, and the fact that the father was maintained by his paternal nephew, it would be in the ordinary course of human conduct for such a person to execute a Will in favour of the one who cared for him. Accordingly, merely because the natural heirs were disinherited does not, by itself, amount to a suspicious circumstance warranting the rejection of the Will.

41. In view of the foregoing discussion, this court finds that the plaintiff/1st respondent has duly proved the Will (Ex.A4) in accordance with Sections 63(c) of the Indian Succession Act and 68 of the Indian Evidence Act through the clear and convincing testimony of an attesting witness, which stands unshaken in cross-examination. No suspicious circumstances have been



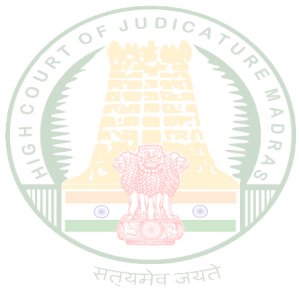
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established. The presumption of due execution of the registered Will stands un rebutted. Accordingly, substantial questions of law 1 and 2 are answered against appellants 2 and 3, and the second appeal is liable to be dismissed.

C.R.P.No.4755 of 2024:

42. With respect to the challenge against the judgment and decree dated 22.08.2022 in O.S.No.331 of 2022 on the file of the learned I Additional District Judge, Coimbatore, this court, having already held in the second appeal that the Will executed by Periamarappa Gounder in favour of the 1st respondent - K.S. Thangavel is valid and genuine, finds that the entire share of the testator stood bequeathed to the said beneficiary. Upon his demise, the legal representatives of the 1st respondent-K.S.Thangavel, as respondents 8 to 10, continued the proceedings and during the pendency of the appeal, instituted O.S.No.331 of 2022, which was decreed on the basis of a lawful mediation agreement between the co-owners. The revision petitioners, having no semblance of right or interest in the property so bequeathed, cannot assail the decree. The civil revision petition is, therefore, liable to be dismissed.



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In the result, (i) **S.A.No.139 of 2016** - The Second Appeal is dismissed.

The judgment and decree of the learned Subordinate Judge, Pollachi, reversing the judgment and decree of the learned District Munsif, Pollachi, and declaring the Will dated 20.04.1995 executed by Periamarappa Gounder to be valid and genuine, and granting a preliminary decree for partition, are hereby confirmed. In view of the facts, circumstances, and the relationship between the parties, they shall bear their respective costs in this Second Appeal. Consequently, the connected miscellaneous petition is closed.

(ii) **C.R.P.No.4755 of 2024** - The Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

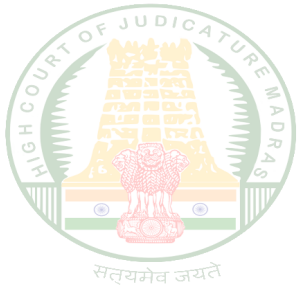
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To

- 1.The Subordinate Judge, Pollachi, Coimbatore District.*
- 2.The District Munsif, Pollachi, Coimbatore District.*
- 3.The I Additional District Judge, Coimbatore, Coimbatore.*



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N.SATHISH KUMAR.J.,
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