



S.A.No.592 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.08.2025
Pronounced on	21.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.592 of 2020 and
C.M.P. No.12402 of 2020

1. P. Sivagnanam

2. P. Ganesan

...Appellants

Vs.

1. Ramasamy

2. Gopalakrishnan

3. Muthammal @ Muthulakshmi

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 26.11.2019 passed in A.S. No.63 of 2019, on the file of the Principal District Court, Namakkal, reversing the Judgment and decree dated 03.07.2019 passed in O.S.No.349 of 2014, on the file of the Principal Sub Court, Namakkal.

For Appellants

: Mr. S. Mukunth, Senior Advocate
for Ms. T.R. Gayathri
for M/s. Sarvabhauman Associates



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WEB COPY For Respondents : Mr. K.A. Mariappan

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 26.11.2019 passed in A.S. No.63 of 2019, on the file of the Principal District Court, Namakkal, reversing the Judgment and decree dated 03.07.2019 passed in O.S.No.349 of 2014, on the file of the Principal Sub Court, Namakkal.

2. The unsuccessful plaintiff before the lower appellate court has preferred this Second Appeal.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. The case of the plaintiffs is that the suit properties belonged to Karuppayammal by way of succession through her husband by way of



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sale deed dated 09.06.1983. During her life time, she has executed Ex.A4 Will dated 29.09.1995 in favour of the plaintiffs. According to the plaintiffs, after the demise of Karuppayammal on 30.09.1995, EX.A4 Will came into force and they are the absolute owners of the suit property and since the defendants 1 and 2 have made a cloud over the title, the plaintiffs filed the suit for declaration and permanent injunction.

5. The claim of the plaintiffs was resisted by the defendants by stating that the 1st defendant is the son and the defendants 2 and 3 are the grand sons respectively, of the Karuppayammal's sister. The said Karuppayammal executed a Will in favour of Marimuthu (elder brother of the 1st defendant) on 17.11.1992 with regard to the items 1 to 3 of the suit properties. Further, Varudappa Asari, husband of Karuppayammal, during his life time executed a Will dated 02.07.1957 in favour of Marimuthu and 1st defendant with regard to the properties purchased by him, which is termed as 4th item of the suit properties. The 5th item of the suit properties originally belonged to the father of the 1st defendant and after his death, the 1st defendant inherited the same. The 6th item of the



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suit properties was purchased by Varudappa Asari and as per Will dated 02.07.1957, the defendants are entitled to the same. The 7th item of the suit properties belonged to Pappayammal (mother of the 1st defendant), Wife of Kuppanna Asari, vide settlement deed dated 02.04.1947. Since Pappayammal died intestate, the 7th item of the suit properties devolves upon the defendants by way of succession. According to the defendants, Ex.A4 Will executed in favour of the plaintiffs by Karuppayammal in respect of the suit properties is a forged one and prayed for dismissal of the suit.

6. The trial court, after framing the issues and recording the evidence, decreed the suit vide its judgment and decree dated 03.07.2019 by holding that the plaintiffs are the owners of the suit properties and directed the defendants to hand over the possession of the suit properties within a period of three months.

7. Being aggrieved by the judgment and decree passed by the trial court, the defendants preferred an appeal in A.S. No.63 of 2019 before



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the Principal District Court, Namakkal. The first appellate court, vide its judgment and decree dated 26.11.2019 allowed the appeal thereby dismissing the suit filed by the plaintiffs.

8. Challenging the judgment and decree passed by the first appellate court, the present Second Appeal is preferred.

9. The Second Appeal has been admitted on the following substantial questions of law.

- a) *"Whether the lower appellate court was justified in concluding that Ex.A4 Will has not been proved in accordance with law?*
- b) *Whether the lower appellate court was justified in upholding the Wills Exs.B3, B4 and B5, in the absence of the original Wills as well as the evidence of the attesting witnesses?*
- c) *Whether the lower appellate court was right in over looking the fact that dehors the Will Ex.A4, the plaintiffs would be entitled to claim the property as heirs of Karuppayammal, in view of Section 15 of the Hindu Succession Act?"*



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10. The learned counsel for the appellants / plaintiffs submitted that, the plaintiffs are entitled to the suit properties by virtue of the Will executed by the Karupayammal under Ex.A4 dated 29.09.1995. It is further submitted that the testatrix had every reason to execute a Will in favour of the plaintiffs with respect to the suit properties which she had agreed to convey them under the sale agreement executed on 16.07.1992 in favour of the plaintiffs, which was the subject matter of the suit in O.S.No.71/1993. In spite of the fact that the plaintiffs have proved the execution of the Will in the manner known to law, the first appellate court erroneously held that the Will is not genuine, believing the registration copy of the Wills marked on the side of the defendants. In fact, the defendants failed to produce the originals of the Wills and also failed to explain the reason for producing the secondary evidence. It is further submitted that even in the suit filed by the plaintiffs in O.S.No.71/1993 for the relief of specific performance against Karuppayammal, she had not whispered about the execution of Wills in favour of the defendants, which goes to show that she has not executed any such Will in respect of Item Nos. 1 to 3 respectively. It is further



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submitted that, the 4th item of the properties was purchased by Varadappa Asari on 17.03.1959, while so, the alleged Will marked as Ex.B5 in respect of the 4th item of properties is dated 02.07.1957. Hence, it is not possible to execute a Will even before Varadappa Asari could have purchased the property. Finally it is submitted that the Will projected by the defendants are suspicious and unbelievable. The first appellate court erred in dismissing the suit filed by the plaintiffs which warrants interference by this Court.

11. On the other hand, the learned counsel appearing for the respondents/defendants would submit that, in the suit filed by the plaintiffs in O.S. No.71/1993 against Karuppayammal for the relief of specific performance, the said Karuppayammal in her written statement had stated that the plaintiffs obtained her signatures in blank stamp papers by giving her sleeping pills. Thereafter, the said Karuppayammal filed a suit in O.S. No.120/1993 against the plaintiffs for the relief of permanent injunction. Hence, the Will propounded by the plaintiffs is a suspicious document, which was not proved by them as per Section 68 of



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Indian Evidence Act, 1872 and Section 63(c) of Indian Succession Act, 1925. The learned counsel appearing for the respondents / defendants would submit that the legal principles with regard to the proof of a Will are no longer *Res integra*. Section 63 of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the Will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the Will. The intention of the testator to make testament must be proved. To support his contentions, he has relied upon the following decisions.

- i. H. Venkatachala Iyengar vs. B.N.Thimmajamma and others reported in AIR 1959 Supreme Court 443.**
- ii. Murthy and others vs. C. Saradambal and others reported in (2022) 3 SCC 209.**
- iii. Judgment dated 28.07.2025 of Madhya Pradesh High Court in S.A. No.2510 of 2024 in the case of Rajkumar vs. Vijay Singh.**

The first appellate court having considered the materials on record and re-appreciating the facts and law rightly set aside the judgment and decree



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passed by the trial court and dismissed the suit filed by the plaintiffs,
which warrants any interference by this Court.

12. Heard on both sides. Records perused.

13. The solitary controversy raised in this Second Appeal relates to the genuineness or validity of Ex.A4 Will alleged to have been executed by Karuppayammal in favour of the plaintiffs on 29.09.1995. The said Karuppayammal died on 30.09.1995. The case set up by the plaintiffs is that they are the brother's sons of Varadappa Asari, husband of Karuppayammal. The said Karuppayammal executed a sale agreement in favour of the plaintiffs in respect of the suit properties and since she failed to execute the sale deed, the plaintiffs filed a suit in O.S.No.71/1993 for the relief of specific performance. Thereafter, since the said Karuppayammal executed the above mentioned Will in favour of the plaintiffs in respect of the suit properties, they did not proceed with the suit in O.S. No.71/1993. While so, the defendants, in order to grab the properties, have fabricated Ex.B3 to Ex.B5 Wills said to have been

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executed by Karuppayammal and Varadappa Asari in favour of the defendants.

14. It is not a matter of dispute that, by now different courts have laid down a number of tests to judge the nature and standard of evidence required to prove a Will, some of these being that but for the requirement of Section 63 of the Succession Act and Section 68 of the Evidence Act, a Will has to be proved like any other document to the satisfaction of a prudent mind. However, what makes a Will to differ from any other document is that it speaks from the death of the testator and this aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Further, cases in which the execution of the Will is surrounded by suspicious circumstances, such as, a shaky signature, a blurred thumb impression, a feeble mind, an unfair and unjust disposition of properties and the propounder himself taking a leading path in the making of the Will under which he receives a substantial benefit, have to be dispelled by the propounder. These



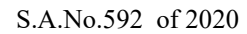
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suspicious cannot be removed by his mere assertions that the Will bears the signatures of the testator or that the testator was in a sound and disposing state of mind. The presence of such suspicious circumstances makes the initial onus heavier on the propounder. When genuineness of a Will is in question, apart from execution and attestation of the Will, it is also the duty of a person seeking declaration about the validity of the Will to dispel the surroundings suspicious circumstances existing, if any. Thus, in addition to proving the execution of a Will by examining the attesting witnesses, the propounder is also required to lead evidence to explain the surroundings suspicious circumstances, if any. Proof of execution of the Will would, *inter alia*, depend thereupon.

15. In the present case, it has to be tested whether the deceased Karuppayammal, on 29.09.1995 was in sound disposing state of mind when the fact remains that she died on the next day, i.e., on 30.09.1995.

16. Soundness of mind, for the purposes of contracting, is defined in Section 12 of the Indian Contract Act, 1872, and which in my view



- i. A person is said to be of sound mind, if, at the time of making of the contract, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests;
- ii. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind; and
- iii. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

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17. Examined in the light of these tests, I find that the appellants / plaintiffs have completely failed to establish the genuineness of the Will. The following facts and circumstances support this conclusion of mine.

17.1. It is not in dispute that the plaintiffs are the brother's sons of Varadappa Asari, husband of Karuppayammal. The entire case of the plaintiffs rests on Ex.A4 Will dated 29.09.1995. Though the Will, according to the plaintiffs, attested by two witnesses, none of them was examined on the side of the plaintiffs. The scribe alone was examined as P.W.2. There is nothing on record to show that he had attested the Will. Therefore, the evidence of P.W.2 will not help the case of the plaintiffs with regard to proof of Will. Section 68 of the Indian Evidence Act, 1872, provides for the mode and manner in which execution of the Will is to be proved. Proof of attestation of the Will is a mandatory requirement. A Will ordinarily must be proved keeping in view the provisions of Section 63 of the Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872. Hence, the requirements contemplated under Section 63(c) of the Indian Succession Act and Section 68 of the

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Indian Evidence Act was not satisfied by the plaintiffs to prove the genuineness of the Will. Though it was stated by the plaintiffs that the attesting witnesses were threatened by the defendants, the same is also not established. There is nothing on record to show that any step was taken to compel the appearance of attesting witness. There must be some evidence brought on record that the witnesses were threatened by the defendants. Further, Ex.A4 Will is dated 29.09.1995 and the testator Karuppayammal died on 30.09.1995. While so, the plaintiffs failed to establish that she was in sound state of mind at the time of execution of the Will. The earlier litigations, the manner in which the alleged signature of the testator subscribed in the Will, was extensively discussed by the first appellate court for disbelieving the Will.

17.2. Though it is contended on the side of the appellants / plaintiffs that the first appellate court was not justified in upholding the Wills Ex.B3, Ex.B4 and Ex.B5 in the absence of original Wills, it is for the plaintiffs to prove their case independently and cannot rely on the weakness in the defence case to win. The plaintiffs must present their



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own evidence to establish the facts and support their claim. The failure to meet this burden of proof can result in their case being dismissed, regardless of the strength of the defence. Furthermore, the plaintiffs failed to establish that they have right over the suit property as legal heirs of Karuppayammal in view of Section 15 of the Hindu Succession Act. No perversity or infirmity is found in the findings of the first appellate court. Therefore, all the substantial questions of law raised in the Second Appeal are answered against the appellants/plaintiffs.

18. For the foregoing reasons, I have no hesitation in upholding the findings recorded by the first appellate court. Accordingly, this Second Appeal is dismissed. The judgment and decree dated 26.11.2019 passed in A.S. No.63 of 2019, on the file of the Principal District Court, Namakkal, is upheld. No costs. Consequently connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Principal District Judge, Namakkal.
2. The Principal Subordinate Judge, Namakkal.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
bga

Pre delivery Judgment in
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