

S.A.No.173 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2025

PRONOUNCED ON : 08.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 173 of 2014

and

M.P. No. 1 of 2014

1.T Velayutham @ Chinnapaiyan
S/o Palani Gounder
Poolavari Village & Post,
Salem Taluk & Salem District.

2.Chinnamalai @ Nallammal
W/o. Sidhu
Poolavari Village & Post,
Salem Taluk & Salem District.

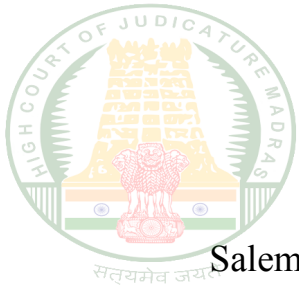
3.Vadivelu
S/o. Sindhu
Poolavari Village & Post,
Salem Taluk & Salem District.

4.Rajathi,
D/o. Sindhu,
Moonga Padi Village,
Omalur Taluk, Salem District.

...Appellants/Appellants/Defendants

Versus

1. Perumayee Ammal (died)
W/o.Palani Gounder
Poolavari Village & Post,



S.A.No.173 of 2014

Salem Taluk, Salem District.

WEB COPY

2.Chinnaponnu,
W/o. Rangasamy
Poolavari Village & Post,
Salem Taluk, Salem District.

3.Rathinammal
W/o. Chinnusamy Gounder,
Poolavari Village & Post,
Salem Taluk, Salem District.

4. Lakshmi
W/o. Balasubramaniam
Karukattam Palayam,
Rajapalayam Post, Attayampatti,
Salem Taluk & District.

5.Madhammal
W/o. Kannan,
Periaputhur Village & Post,
Salem Taluk.

6.Chandrasekaran,
Son of Rathinammal,
Poolavari Village & Post,
Salem Taluk,
Salem District.

(R1 died. R6 brought on record as legal heirs of the
deceased R1 vide court order dated 20.04.2022 made
in C.M.P.No.23999 of 2019 in S.A.No.173 of 2014
(NAVJ) ... Respondents/Respondents/Plaintiffs

PRAYER in S.A.:



S.A.No.173 of 2014

Second Appeal filed under Section 100 of the Civil Procedure

Code as against the Judgment and Decree dated 03.12.2008 made in A.S.No. 159 of 2007 on the file of the Principal Subordinate Judge, Salem, only in so far as it relates to the findings that are against the Appellants, reversing the Judgment and Decree dated 20.12.2005 made in O.S.No.318 of 1997 on the file of II Additional District Munsif, Salem.

PRAYER IN M.P.:

To stay the operation of the Judgment and decree dated 03.12.2008 in A.S.No.159 of 2007 on the file of the Principal Subordinate Judge, Salem only in so far as it relates to the findings as against the reversing the Judgment and decree dated 20.12.2005 in O.S.No.318 of 1997, II Additional District Munsif Salem pending disposal of the Second Appeal and thus render justice.

APPEARANCE OF PARTIES:

For Appellants : M/s. K. Selvaraj,
Sugirdha Selvaraj, Advocates.

For Respondents : Mr. P. Jagadeesan, Advocate
for R2 to R6.
R1 – Died.

J U D G M E N T



S.A.No.173 of 2014

Heard.

WEB COPY

2.This Second Appeal has been filed against the Judgment and Decree dated 03.12.2008 made in A.S.No.159 of 2007 on the file of the Principal Subordinate Judge, Salem, only in so far as it relates to the findings that are against the appellants, reversing the Judgment and Decree dated 20.12.2005 made in O.S.No.318 of 1997 on the file of the II Additional District Munsif, Salem.

3.In this appeal, the appellants are the defendants and the respondents are the plaintiffs before the trial Court. Parties are hereinafter referred as per their rank in the trial Court for the sake of convenience.

4.The plaintiffs instituted the suit seeking a declaration on the basis of a registered Will, Ex.A.8 and possession and mesne profits thereof. The defendants contested the claim asserting their rights over the suit properties under two other registered Wills, Ex.B.7 and Ex.B.8.



S.A.No.173 of 2014

5.The trial Court accepted the plaintiffs' case, holding that Ex.A.8 had been duly proved in accordance with law, and accordingly decreed the suit.

6.On appeal, the first appellate court held that Ex.A.8 had not been proved in the manner required by law, thereby rejecting the plaintiffs' case. The court also held that the two Wills produced by the defendants, Ex.B.7 and Ex.B.8, were not genuine. In reaching this conclusion, the court relied, among other things, on the report of the fingerprint expert, PW5 who compared the impressions found in Ex.B.7 and Ex.B.8 with those found in Ex.A.8 and Ex.A.10. Consequently, the appellate court allowed the appeal, dismissed the suit, and directed that the property would devolve by way of intestate succession.

7.The present defendants, having already succeeded before the first appellate court, have nevertheless preferred this Second Appeal, not against the Judgment and Decree of the first appellate court but only against the findings recorded by it.



S.A.No.173 of 2014

WEB COPY

8.The central question, therefore, is whether they can be regarded as “persons aggrieved” so as to be entitled to maintain the appeal.

9.While admitting the Second Appeal on 28.02.2014, this court framed the following substantial questions of law for consideration which is reproduced verbatim below;

“1.Whether the findings of the first appellate court is that the registered Will Ex.B7 and B8 relied on by the appellants are true and valid documents is perverse finding?

2.Whether the first appellate court findings regarding Ex.A8 registered Will relied on by the respondents is perverse finding?”

10.When the appeal was taken up for final hearing, preliminary issue arose regarding its maintainability as the defendants had already succeeded before the first appellate court and were not persons aggrieved by the operative decree. Further question considered was whether an appeal can lie solely against the adverse findings.



S.A.No.173 of 2014

WEB COPY

11. During arguments, relying on the Judgment of the Division Bench of this Court in ***Ammani Ammal Vs. Dhanalakshmi Bank, Ltd. Tiruppur and others [2008 (1) CTC 816]***, that signature can be compared with the admitted signature available prior in point of time and contemporaneous as lapse of time may result in difference in signature of the person, the learned counsel for the defendants contested that the comparisons with the Ex.A.8 was incorrect as the plaintiffs had neither admitted the Will nor said anything regarding the mortgage deed, (Ex.A.10). The learned counsel for the defendants contended that the adverse findings recorded by the first appellate court in respect of Ex.B.7 and Ex.B.10 would operate as *res judicata* in any future litigations and therefore, the present appeal seeking to set aside those findings was maintainable. It was further urged that the said findings were unsustainable both on facts and law.

12. However, for the purpose of deciding question of maintainability, it is not necessary to go into the merits of the Will or the findings recorded in relation there to.



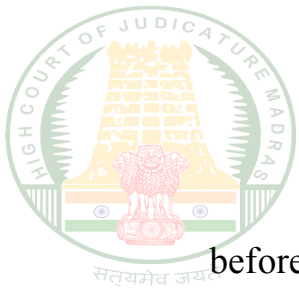
S.A.No.173 of 2014

WEB COPY

13.It is an admitted position that the defendants are not adversely affected by the decree of the first appellate court. Section 96 of the Code of Civil Procedure, 1908 permits an appeal against a Judgment and Decree only at the instance of “persons aggrieved”. The provision does not envisage an appeal directed merely against adverse findings, when the operative decree stands in favour of the appellants.

14.The contention as to the possible operation of *res judicata* in future proceedings cannot be examined on the basis of mere apprehension. In the event of any subsequent litigation, it would be for the court concerned to determine whether such findings operate as *res judicata*. This court cannot be called upon to decide hypothetical issues at this stage.

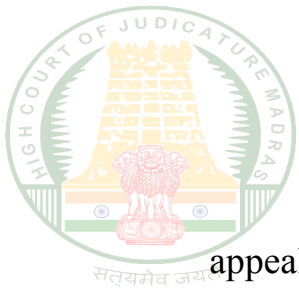
15.The learned counsel for the defendants placed reliance on ***Banarsi and Others Vs. Ram Phal [(2003) 9 SCC 606]***, drawing attention to paragraph 10 of the Judgment. In that decision, the Apex Court explained the position of the Code of Civil Procedure, 1908,



S.A.No.173 of 2014

before and after the 1976 amendment. It was held that, under the pre-amendment of Code of Civil Procedure, a respondent in an appeal could not file any cross-objection. However, post amendment, the respondent is permitted to file cross-objection even against the adverse finding recorded against him, and further, that even if the original appeal is withdrawn or dismissed for default, such cross-objection filed by the respondent must still be adjudicated on merits. From this, it is clear that the respondent is entitled to challenge an adverse finding by way of cross-objection, provided the appellant has preferred an appeal. In the present case, however, it is an admitted position that the plaintiffs, though an aggrieved party, has not chosen to file any appeal against the Judgment of the first appellate court. Hence, the citation relied upon by the defendants does not advance his case. The contention of the defendants that an appeal and a cross appeal stand on the same footing is misconceived and unsustainable.

16.Further, reliance was also placed on *Samikannu (Deceased) and Others Vs. Indira Gandhi [(2009) 5 MLJ 832]*, wherein this court, following the dictum of the Apex court in *Banarsi (supra)*, held that an



S.A.No.173 of 2014

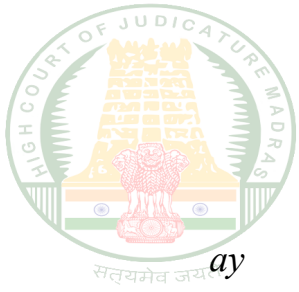
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appeal against the mere findings is not maintainable. The learned counsel for the defendants requested that this court may record that the adverse finding rendered against the defendants in the impugned Judgment shall not operated as *res judicata*. However, as already observed, no such blanket observation can be made in this appeal. In the event of any subsequent proceedings, it is for the concerned court to consider and decide the issue on its own merits. Accordingly, the request of the defendants in this regard stands declined.

17.In view of the settled legal position, and without entering into the merits of the case, this court holds that the present second appeal directed solely against the adverse findings is not maintainable.

18.Accordingly, this Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.10.2025



S.A.No.173 of 2014

WEB COPY

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1.The Principal Subordinate Judge, Salem.

2.The II Additional District Munsif, Salem.

3.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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S.A.No.173 of 2014

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
S.A. No. 173 of 2014
and
M.P. No. 1 of 2014

08.10.2025