

S.A.No.251 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2025

PRONOUNCED ON : 17.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 251 of 2014

and

M.P. No. 1 of 2014

A. Devaraj
S/o. Late Arumugam,
D.No.284, Railway Quarters,
Backside of Officers Rest House,
Coimbatore. ...Defendant/Respondent/Appellant

Versus

Vasanthi
W/o. Deivasigamani,
D.N.19, E.B. Colony,
Trichy 23. ...Plaintiff/Appellant/Respondent

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 01.10.2013 in AS No.33 of 2013 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 17.01.2013 in O.S. No.198 of 2010 on the file of the II Additional Subordinate Court, Erode.



S.A.No.251 of 2014

PRAYER IN M.P.:

WEB COPY To stay the passing of final decree proceedings in OS No.198 of 2010 on the file of II Additional Sub Court, Erode, pending the disposal of the above Appeal.

APPEARANCE OF PARTIES:

For Appellant : Mr.N.Manoharan
for M/s. P. Veena,
Mr.D.Chitra Maragatham, Advocates.

For Respondent : Mr. Naveen Kumar Murthi, Advocate.

J U D G M E N T

Heard.

2.This Second Appeal is directed against the judgment and decree dated 01.10.2013 made in A.S.No.33 of 2013 on the file of the learned Principal District Judge, Erode, reversing the well-considered judgment and decree dated 17.01.2013 passed in O.S.No.198 of 2010 by the learned II Additional Subordinate Judge, Erode.

3.The appellant is the defendant and the respondent is the plaintiff before the trial court. For the sake of convenience parties to be referred



S.A.No.251 of 2014

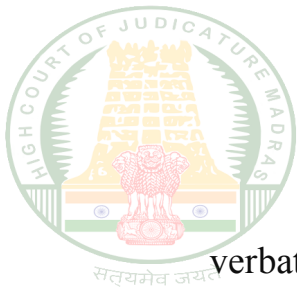
to as per their ranks before the trial court.

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4.Case in Brief: The plaintiff and defendant are daughter and son of one late Papathi. The suit properties originally belonged to the said Papathi under a registered partition deed dated 13.09.1990. On her death on 22.12.2002, the plaintiff claimed half share by succession, while the defendant resisted the claim relying on an unregistered Will dated 15.12.2002, said to have been executed by the deceased mother in his favour.

5.The Trial Court, on appreciation of oral and documentary evidence, found the Will genuine, valid and duly executed, and accordingly dismissed the plaintiff's suit for partition. On appeal, the First Appellate Court reversed the decree, holding the Will suspicious and declaring intestate succession. Hence, this Second Appeal.

6.This Court, while admitting the appeal on 10.03.2014, framed the following substantial questions of law, which are reproduced



S.A.No.251 of 2014

verbatim below:

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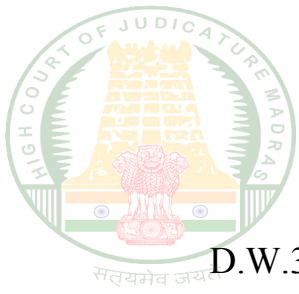
“1.The defendant having prove the Will in accordance with Sec.68 of the Evidence Act and Sec.63 (c) of the Indian Succession Act, 1925 by examining the witness, still is the learned Principal District Judge right in holding that the Will in question was not proved?

2.When it is well settled in law that if the Will is proved to the satisfaction of the Court as per Mandatory requirement under the Evidence Act and the Indian Succession Act, the question of suspicious circumstances automatically stood removed, still is the learned Principal District Judge right in ignoring the said principle while allowing the Appeal?

3.When the plaintiff having taken a mutual destructive plea, namely denying the signature of the mother in the Will under the same time raising the plea of execution of Will under suspicious circumstances, is the learned Principal District Judge right in allowing the appeal, when it is open to the plaintiff to question the execution of Will shrouded with suspicious circumstances though she had specifically pleaded that the Will was not executed at all?

4.Whether the relief of permanent injunction sought for in the plaint is maintainable in partition suits?”

7.The defendant examined both attesting witnesses (D.W.2 and



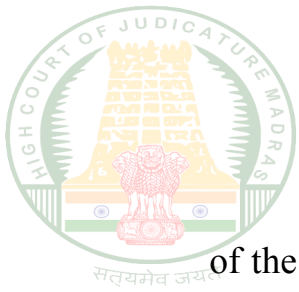
S.A.No.251 of 2014

WEB COPY

D.W.3) and the scribe (D.W.4). The plaintiff contends that there are inconsistencies in the depositions of the attesting witnesses regarding the circumstances under which the Will was executed. D.W.2, one of the attesting witnesses, deposed that when the Will was being prepared by the scribe (D.W.4), the testatrix was lying on a cot in the kitchen and thereafter came out to the *thinna*i to execute the Will. He further stated that at that time, the testatrix was wearing a ring on her hand. On the other hand, D.W.3, the other attesting witness, deposed that the testatrix was sitting on a chair and never returned to the kitchen, and that she was not wearing any ornaments.

8. Based on these variations, it was contended on behalf of the plaintiff that the testatrix, being a widow, would not have worn any ornament as per the customary practice prevailing in her community, and therefore, the testimony of the attesting witnesses should be viewed with suspicion. This is accepted by first appellate court, even though trial court considered it as insignificant.

9. This contention, however, does not merit acceptance. The witnesses were examined in court nearly eight years after the execution



S.A.No.251 of 2014

of the Will. Minor variations or inconsistencies as to peripheral details—

such as whether the testatrix was sitting on a chair or lying on a cot, or whether she was wearing a ring— are inconsequential and do not strike at the root of the matter. These are natural lapses after a long lapse of time and do not create any legal infirmity.

10.The practice of widows refraining from wearing ornaments, even if prevalent in the past, cannot be treated as a rigid or invariable custom in present times. Social practices have undergone substantial change, and the wearing of a simple ring by a widow cannot be viewed as so improbable as to render the witnesses' testimony untrustworthy.

11.On the core fact of execution of the Will, both witnesses have consistently and unequivocally deposed that the testatrix executed the Will in their presence and that they attested the same in her presence as well as in the presence of each other, thereby satisfying the mandatory requirements under Section 63(c) of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872.

12.It is a settled principle of evidence that the testimony of

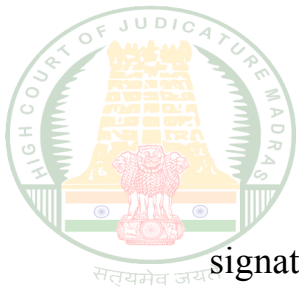


S.A.No.251 of 2014

witnesses must be read as a whole and harmoniously construed; the court should not pick isolated sentences or minor contradictions to discredit otherwise cogent and consistent evidence. Minor discrepancies in narration are natural and often lend credibility rather than suspicion, since witnesses are not expected to reproduce events in a parrot-like manner after a long lapse of time.

13. Therefore, on a cumulative reading of the depositions of both the attesting witnesses and the scribe, it is evident that their evidence substantially corroborates each other on the material aspects of the execution and attestation of the will. The minor inconsistencies pointed out by the defendant do not in any manner affect the genuineness or validity of the testamentary instrument. Hence, this objection also deserves to be rejected.

14. On the plaintiff's side, the genuineness of the Will was disputed, and it was specifically contended that the signature appearing on the testament was not that of the executrix. Pursuant to the request made by the plaintiff, the original Will was referred to the Forensic Science Department for expert opinion, along with the admitted



S.A.No.251 of 2014

signatures of the executrix available in the earlier partition deed and the compromise decree.

WEB COPY

15.The Forensic Department, after preliminary examination, returned the documents with a requisition seeking additional admitted signatures of the deceased for a more conclusive comparison. However, the plaintiff failed to furnish the required additional admitted documents as sought by the expert. Consequently, the opinion could not be furnished by the Forensic Department. In these circumstances, no adverse inference can be drawn against the defendant, since the failure to provide the requisite admitted documents was on the part of the plaintiff, at whose instance the document was sent for expert examination.

16.Be that as it may, the defendant has duly discharged the legal burden of proving the Will by examining both the attesting witnesses to the testament. Their testimonies satisfy the mandatory requirements laid down under Section 68 of the Indian Evidence Act, 1872, and Section 63(c) of the Indian Succession Act, 1925, which prescribe that a Will must be attested by at least two witnesses, and that at least one attesting witness must be examined to prove its execution.



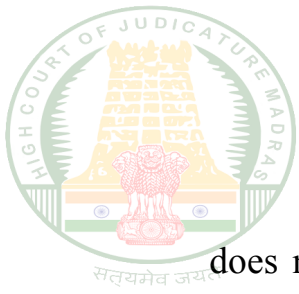
S.A.No.251 of 2014

WEB COPY

17. Accordingly, even in the absence of an expert's opinion, the due execution and attestation of the Will have been established through direct evidence of the attesting witnesses, and the same cannot be disbelieved merely on the speculative ground that the signature was not subjected to forensic verification due to the plaintiff's own default.

18. It is contended on the side of the respondent that the testatrix, being under treatment for cancer at the time of execution of the will, was not in a sound and disposing state of mind, and hence, incapable of making a valid testamentary disposition. It is further alleged that the death of the testatrix within a week from the execution of the Will strengthens the suspicion regarding her mental fitness.

19. However, such an argument cannot be sustained merely on the basis that the testatrix was undergoing medical treatment or suffering from a terminal illness. The plea of incapacity due to illness is not supported by medical or other evidence. Mere illness or proximity to death does not, in law, amount to mental incapacity. The testatrix was conscious and capable of understanding her act of disposition. The law is well settled that mere illness, bodily weakness, or proximity to death



S.A.No.251 of 2014

does not, by itself, establish incapacity. What is material is whether, at the time of execution, the testatrix possessed a sound and disposing state of mind, understood the nature and effect of the testamentary act, and executed the Will out of her free volition.

20. A person suffering from a serious ailment, such as cancer, may still retain full mental alertness and comprehension. Unless cogent and convincing medical evidence or reliable testimony is produced to show that the disease had impaired her mental faculties, the mere fact of illness cannot invalidate the Will. If the contention that a person under treatment is incapable of executing a Will were to be accepted, the very concept of a death-bed Will or Will executed in extremis would be rendered nugatory. The law, on the contrary, recognises and upholds such Wills, provided the essential requirements of testamentary capacity and voluntariness are satisfied.

21. Therefore, the argument of incapacity based solely on the ground of illness or hospitalization is legally untenable. The burden lies heavily on the person who challenges the Will to establish that the testatrix, at the relevant time, was not in a sound and disposing state of



S.A.No.251 of 2014

mind or that the Will was executed under suspicious circumstances which remain unexplained.

22. On the plaintiff's side, it was contended that the exclusion of the plaintiff, being the daughter of the testatrix, from the bequest under the Will constitutes a suspicious circumstance affecting its genuineness. In reply, the defendant has explained that the plaintiff had earlier filed a civil suit in O.S.No.380 of 1996 before the competent Civil Court against this defendant and their deceased mother, seeking partition in respect of the properties left behind by their late father.

23. The exclusion of the married daughter from the Will, after she was already provided for in an earlier family arrangement and partition (O.S.No.380 of 1996), is a plausible and reasonable circumstance, not a suspicious one. The First Appellate Court's inference that cordiality between mother and daughter necessarily rules out exclusion is speculative and contrary to settled principles governing testamentary freedom.

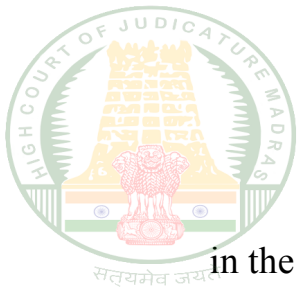


S.A.No.251 of 2014

WEB COPY

24. On the plaintiff's side, it was stated that the said suit had ultimately ended in a compromise, and that the suit itself was instituted only to give legal effect to a family arrangement already arrived at through mutual understanding. It was further contended that the suit was filed on the legal advice of the counsel, who is incidentally the same counsel now representing the present defendant, and that the filing of such a suit was only to regularize the earlier family settlement and to avoid the heavy expense of stamp duty on a formal partition deed. Hence, according to the plaintiff, there was no reason for the testatrix to exclude her from the Will.

25. However, on a close scrutiny of the evidence, it is seen that even though the earlier suit had ended in a compromise, the plaintiff herself has admitted in her cross-examination that there was a panchayat in which the terms of compromise were arrived at between the family members. This admission lends support to the defendant's case that the plaintiff had already demanded share in her father's property against the defendant and deceased mother this leads to convene panchayat in which share has been provided to the plaintiff towards her share or benefit



S.A.No.251 of 2014

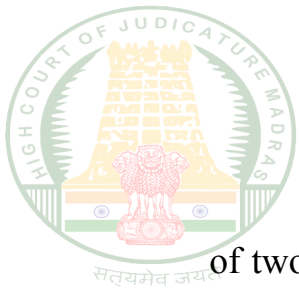
in the earlier arrangement relating to the father's property.

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26.It is not uncommon in several families, particularly, that daughters, after their marriage and having been suitably provided for, are excluded from inheritance under a parent's Will. In the present case, the contention of the defendant that the plaintiff was given in marriage and had already been provided a share in her father's property appears reasonable and probable. The exclusion of the plaintiff from the mother's Will, therefore, cannot by itself be treated as a suspicious circumstance.

27.The mere fact that the plaintiff maintained cordial relationship with the deceased mother or had occasionally accompanied her to the hospital does not in any way alter the testamentary intent of the executant. The testatrix, being the absolute owner, was legally competent to dispose of her property according to her own volition. Accordingly, the attack made on the Will on the ground of exclusion of the plaintiff is not convincing and does not constitute a valid ground to reject the genuineness of the Will.

28.Further it is established principle that when there is possibility



S.A.No.251 of 2014

of two views the view arrived by the trial court should be accepted. Here the trial court consider the wearing of ring by widow or not is insignificant and exclusion of married daughter from providing any thing in Will are accepted as prevailing practice among the community to which the parties belongs, but the first appellate court rejected these views of trial court and put forth its view it is not in accordance with settled law.

29.The delay in mutation of patta or disclosure of the Will also cannot invalidate a duly proved testamentary document, since mutation is only for fiscal purposes and not determinative of title.

30.This contention of the plaintiff was denied by the defendant, who has specifically pleaded that immediately after the demise of the testatrix, his mother, he had disclosed and declared the existence of the Will in question. In her evidence, the plaintiff, examined as P.W.1, has stated that she was not in speaking terms with the respondent, he was not invited to the marriage of her son as the defendant had “forged the Will.” This admission, in fact, establishes that the plaintiff was aware of the defendant’s claim under the Will from the very inception. Despite



S.A.No.251 of 2014

such knowledge, no steps were taken by her to challenge the said Will or to institute appropriate proceedings for declaration of its invalidity for a considerable period.

31.The conduct of the plaintiff, in remaining silent for a long duration even after having knowledge of the existence of the Will, clearly indicates acquiescence and undermines her present plea of forgery or fabrication. Mere assertion, without any contemporaneous action or corroborative evidence, cannot dislodge a duly executed and attested testamentary document.

32.The defendant being the only son and natural heir of the deceased testatrix was in possession and enjoyment of the suit property in pursuance of the said Will. The mere fact that the revenue records or patta were not mutated immediately in his name on the basis of the Will does not, by itself, cast any doubt on its genuineness. Mutation of revenue records is only an administrative act meant for fiscal purposes and does not create, extinguish, or confer title. The genuineness or validity of a Will has to be determined from the evidence relating to its execution and attestation, and not from subsequent entries or omissions



S.A.No.251 of 2014

in revenue records.

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33. Therefore, the absence of mutation in the name of the defendant cannot be treated as a circumstance adverse to the validity of the Will, particularly when its due execution and attestation have been satisfactorily proved through cogent evidence. The surrounding circumstances, including the conduct of the parties and the possession of the defendant, fully support the genuineness of the testamentary document.

34. On the plaintiff's side, reliance was placed upon several judgments to contend that the Will in question is surrounded by suspicious circumstances.

35. In *P. Jayajothi & Others v. J. Rajathi Ammal & Others*, (MANU/TN/1527/2019), this Court found that the attesting witnesses did not depose satisfactorily as to the execution of the Will. They admitted that they were unaware of where the Will had been prepared, and the court was not convinced with their evidence. Further, the testator had made no provision for his wife and his daughter, and the signatures



S.A.No.251 of 2014

found in the Will appeared shaky when compared with other registered documents. In such circumstances, the Court held that the suspicious circumstances were not dispelled and, consequently, the Will was not proved.

36.In *Lakshmi Devi Ammal & Others v. Ezhumalai & Others*, (MANU/TN/7655/2019), the propounder of the Will failed to disclose the existence of the Will to his sister even after the demise of the testator. Moreover, the propounder sold a portion of the property covered under the Will jointly with his widowed sister, and the Will contained no provision in favour of the widowed daughter. In those circumstances, the Court held that non-disclosure of the existence of the Will till the filing of the suit constituted a suspicious circumstance. However, the facts of the said case are clearly distinguishable from the present case, since here, the defendant—who is the propounder of the Will—has not dealt with or alienated any portion of the property after the demise of his mother, the testatrix.



S.A.No.251 of 2014

WEB COPY

37.In ***Kavitha Kanwar v. Pamela Mehta & Others***, [(2021) 11 SCC 209], the Supreme Court, in paragraph 24, observed that the existence of suspicious circumstances must be assessed on a holistic view of the entire matter, considering all unusual features collectively, and not on the basis of any single circumstance in isolation. The same principle is applied herein. On a holistic appreciation of the evidence and the overall circumstances of this case, the alleged suspicious circumstances projected by the plaintiff are not of such gravity as to warrant rejection of the Will.

38.In ***K. Chellappan v. Pancharani & Others***, (MANU/TN/9232/2019), it was held in paragraph 19 that whether a particular Will is surrounded by suspicious circumstances or not is essentially a question of fact, depending on the facts and circumstances of each case.

39.In ***Periyammal & Others v. Valli & Others***, (MANU/TN/1703/2024), the Court held that non-disclosure of the

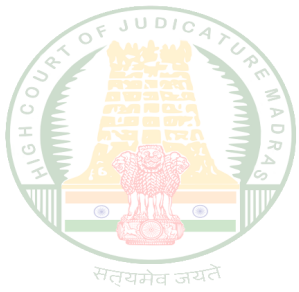


S.A.No.251 of 2014

existence of the Will was a suspicious circumstance when the propounder failed to mention it in the reply notice and disclosed it only after the filing of the suit. However, the facts of the present case stand on a different footing. Here, the defendant has not withheld or suppressed the Will, and there is no conduct suggestive of concealment or mala fide intention.

40.In *Leela & Others v. Muruganantham & Others*, (2025 SCC *OnLine SC 16*), the Supreme Court reiterated the settled position that mere proof of execution of a Will in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 would only establish that the Will was executed, but that alone does not render the Will genuine or conclusive for acting upon unless the surrounding circumstances inspire confidence.

41.In *Gurdial Singh (deceased) through LRs v. Jagir Kaur (deceased) & Another*, (2025 INSC 866), the Apex Court held that the exclusion of the wife in a Will constituted a suspicious circumstance that was not adequately dispelled by the propounder.



S.A.No.251 of 2014

WEB COPY

42. Similarly, in ***Lilian Coelho & Others v. Myra Philomena Coalho***, [(2025) 2 SCC 633], the Supreme Court reiterated that even if the execution of the Will is technically proved, the court may still hold it unworthy of acceptance if it is shrouded with suspicious circumstances which the propounder has failed to satisfactorily explain.

43. Further, in ***Ramesh Chand (deceased) through LRs v. Suresh Chand & Another***, (2025 INSC 1059), the Supreme Court held that the act of bequeathing the entire property by the father in favour of one child to the exclusion of the other three was a suspicious circumstance which was not satisfactorily removed.

44. However, on careful examination, it is evident that all the above decisions are distinguishable on facts and do not advance the case of the plaintiff. In the present case, the defendant has duly proved the due execution and attestation of the Will, and no comparable suspicious features exist. The conduct of the parties and the surrounding circumstances in this case inspire confidence in the genuineness of the testamentary document. Hence, the judgments cited on the side of the plaintiff do not support her case.



S.A.No.251 of 2014

WEB COPY

45.The First Appellate Court failed to properly appreciate the legal effect of the attesting witnesses' consistent and credible testimony and has proceeded on mere conjecture. Once the propounder proves due execution and attestation in the manner required by Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, and when the attesting witnesses withstand cross-examination on the material particulars, bare suspicion cannot override compliance with law. The so-called "suspicious circumstances" identified by the first appellate court are neither real nor substantial; they do not detract from the core, proved facts of execution and attestation. By disregarding material evidence and resting its conclusion on immaterial surmises, the lower appellate court has returned findings that are perverse and contrary to the evidence on record, warranting interference.

46.In respect of the first and second substantial questions of law, it is answered that the compliance with the statutory requirements for proving a Will, as contemplated under Section 68 of the Indian Evidence Act, 1872 and Section 63(c) of the Indian Succession Act, 1925, does not by itself automatically dispel all suspicious circumstances. However, such suspicious circumstances must be real, substantial, and of such a



S.A.No.251 of 2014

nature as to genuinely shake the conscience of the Court. Only when the surrounding circumstances create a serious doubt about the free and conscious execution of the testament can the Court conclude that the will has not been proved in the manner known to law.

47.In respect of the third substantial question of law, it is to be noted that even though the propounder of the Will happens to be the defendant in the present proceedings, since his entire claim and defence rest upon the said Will, the burden squarely lies upon him to prove the due execution and attestation of the Will in the manner required under Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1872.

48.At the same time, the person who challenges the will—though occupying the position of a plaintiff—is entitled to take inconsistent pleas questioning both the execution of the will and the existence of suspicious circumstances surrounding it. The law permits a person attacking a will to assail its genuineness on multiple grounds, including want of testamentary capacity, improper attestation, or existence of suspicious circumstances, even if such pleas appear alternative or



S.A.No.251 of 2014

overlapping in nature.

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49. Accordingly, this substantial question of law is answered to the effect that the burden of proving the Will lies on the propounder, and the person disputing the Will is not precluded from questioning its execution and surrounding circumstances, notwithstanding the position of parties in the suit.

50. In respect of the fourth substantial question of law, it is seen that the plaintiff, in the plaint, has sought a decree of injunction restraining the defendants from alienating or encumbering the suit properties, which are described with specific boundaries, until the passing of the final decree.

51. It is true that, as a general principle, no injunction can ordinarily be granted against a co-owner in respect of joint property,



S.A.No.251 of 2014

since each co-owner is entitled to enjoy and deal with the property in accordance with law. However, there is no legal prohibition in restraining any of the parties from creating third-party interests or altering the nature of the property pending adjudication, particularly when such restraint is necessary to preserve the subject-matter of the suit and to ensure that the final decree, if passed, is not rendered infructuous.

52. Therefore, the relief of injunction prayed for in the suit cannot be said to be unsustainable merely on the ground that the parties are co-owners. The injunction, being in the nature of a protective or preservative relief, is maintainable to the limited extent of maintaining *status quo* and preventing alienation or encumbrance of the suit properties till the disposal of the proceedings.

53. In the result, and in view of the findings rendered on the first and second substantial questions of law, this Court holds that the defendant/appellant has proved the Will in accordance with the statutory requirements, and that the suspicious circumstances alleged by the plaintiff are not of such a serious nature as to shake the conscience of the Court, as discussed in the foregoing paragraphs.



S.A.No.251 of 2014

54.Accordingly, it is held that the Will stands duly proved.

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Consequently, the the judgment and decree of the First Appellate Court dated 01.10.2013 in A.S.No.33 of 2013 on the file of the learned Principal District Judge, Erode, are set aside. The judgment and decree dated 17.01.2013 passed in O.S.No.198 of 2010 by the learned II Additional Subordinate Judge, Erode, are restored. The Second Appeal is allowed . If any connected Civil Miscellaneous Petitions are pending, the same shall stand closed. Considering the close and proximate relationship between the parties, there shall be no order as to costs.

17.10.2025

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Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

To

- 1.The Principal District Court, Erode.
- 2.The II Additional Subordinate Court, Erode.
3. The Section Officer, V.R.Records, Madras High Court.

25/26



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S.A.No.251 of 2014

DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
S.A. No. 251 of 2014
and
M.P. No. 1 of 2014

17.10.2025