

A.S.No.607 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 03.03.2025

PRONOUNCED ON : 11.03.2025

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

A.S.No. 607 of 2019

1. Rani

2. K. Arul Saravanan

...

Appellants

Vs.

1. Manickam

2. Jothimani

3. Rajeswari

...

Respondents

Prayer: First Appeal has been filed under Section 96(1) of the Civil Procedure Code against the preliminary decree and judgement dated 18.12.2018 in O.S.No.341 of 2015 on the file of the I Additional District Judge, Coimbatore.

For Appellants

: Mr. N. Karthikeyan

For Respondents

: Mr. T.R.Gayathri
for M/s.Sarvabhaman Associates,
for R1 to R3



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JUDGMENT

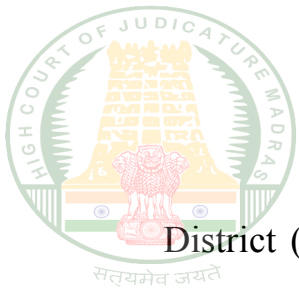
Aggrieved over the judgment and decree dated 18.12.2018 passed in O.S.No.341 of 2015 on the file of the I Additional District Court, Coimbatore, the defendants have preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The plaintiff filed the suit for partitioning the suit schedule properties and allot 3/4 share to the plaintiffs and for declaration and also for permanent injunction restraining the defendants or their men from alienating or encumbering the suit schedule properties and for cost.

4. The plaintiffs/respondents' case is as follows:

One Rangae Gowder and his wife Rayakkal had two sons, namely, Rayappa Gowder and Karae Gowder and both of them have jointly owned properties in S.F. No. 914/1 to an extent of 5.30 Acres situated at Thondamuthur Village, now within the Limits of Perur Taluk, Coimbatore



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District (previously Coimbatore South Taluk). They orally divided the above

said 5.30 Acres, thereby the suit "A" schedule properties, i.e., the western half of the property 2.65 Acres in the said Survey Number was allotted to Rayappa Gowder. The wife of the above said Rayappa Gowder, by name, Bommakkal had also owned properties in S.F. Nos. 215 and 216 of Thondamuthur Village now Perur Taluk to an extent of 0.28 Acre and 0.55 Acre totalling to an extent of 0.84 acres of Punja lands, i.e., suit "B" Schedule property.

5. The said Rayappa Gowder and Bommakkal died intestate leaving behind their only son R. Rangasamy Gowder. The said Rangasamy Gowder had also acquired a property, which is a dwelling house situated in old Natham 217/Part New Natham 965/2, No. 5, Thondamuthur Village now Peruru Taluk and previously Coimbatore South Taluk, Coimbatore District, i.e. suit "C" Schedule property. Thus, the said Rangasamy Gowder has enjoyed the plaint A, B and C schedule properties with all rights and he died intestate on 26.07.2004 leaving behind the plaintiffs and their only brother R.Krishnasamy, who is the husband and father of the defendants 1 and 2. The said Rangasamy Gowder's wife Poovathal predeceased him. Krishnasamy also died on 16.01.2014. The Plaintiffs and their brother, the said deceased R.Krishnasamy, each are entitled 1/4 share in all the suit properties and as the



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said R. Krishnasamy died, his share goes to the defendants.

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6. After the death of R. Krishnasamy, plaintiffs came to know that their father Rangasamy Gowder had executed a Will in favour of their brother R.Krishnasamy with regard to the Plaint 'A' schedule property and registered the same vide Document No. 37/1992 dated 18.05.1992 before the Sub Registrar's Office, Thondamuthur. In continuation of which, the Defendants have alleged that the said R. Krishnasamy has also executed a Settlement Deed, dated 26.11.2010 in favour of the 1st Defendant under Document No. 8404/2010 registered before the Sub Registrar's Office, Thondamuthur by incorporating 'A' and 'B' schedule properties as if he had acquired the said properties through the above said Will.

7. According to the plaintiffs, there is no possibility for executing a Will in favour of the Plaintiffs' brother as the Executor Rangasamy Gowder was all along in the intention of providing the plaint 'A' schedule property for all the Plaintiffs and Defendants and also till his lifetime, he had represented the same before the relatives and also with the Plaintiffs and by considering the same, the said Rangasamy Gowder had no intention to execute the Will in favour of the Plaintiffs' brother, R. Krishnasamy and so, the above said Will, dated 18.05.1992 executed in favour of R. Krishnasamy and likewise, based on that,



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the Settlement Deed in favour of 1st Defendant by the said R. Krishnasamy

for plaint 'A' and 'B' Schedule properties dated 26.11.2010 are presumed to be invalid in the eye of law and also to be declared as null and void and not binding upon the Plaintiffs and their legitimate shares over the same.

8. The suit 'A', 'B' and 'C' Schedule are the ancestral properties of the plaintiffs and the defendants are presumed to be in joint possession and enjoyment of the same and thus, the Plaintiffs are each entitled to 1/4 share and the Defendants are jointly entitled to 1/4 share by metes and bounds. Hence, the suit.

9. The contentions in the written statement filed by the defendants are as follows:-

Except the facts, which are admitted herein, all other allegations in plaint are denied. The relationship between the parties to suit is admitted and the division of the property between Rayappa Gowder and Karae Gowder with respect to 5.30 acres of land in S.F.No. 914/1 of Thondamuthur village are also admitted. Though the suit "B" schedule property was stands in the name of Bommakkal, the property was actually owned and enjoyed by Rayappa Gowder, the husband of Bommakkal. The house property described in



schedule 'C' has been given to the first plaintiff, Manickam for her residence purpose. She has been granted only a permissive possession of the said house.

The plaintiffs are not entitled to the relief of partition of the suit properties under any laws. The first defendant, Rani has disposed of her immovable property and invested the sale proceeds for the development/improvement of the suit properties, especially plaint "A" and "B" schedule properties. All the suit properties are the ancestral property of the second defendant. The plaintiffs have no right, title or interest in the suit properties. The plaintiffs have been married well before the coming into being of the Hindu Succession (amendment) Act, 2005 or the Tamilnadu Act No.1 of 1990. The present suit is an endeavour to make unlawful gains. The defendants have been paying the kist for the lands in schedule A and B and also the house tax for the property mentioned in schedule C in the plaint. Hence, prays for dismissal of the suit with costs.

10. On the basis of the abovesaid pleas set out by the respective parties, the trial Court framed the following issues for consideration:-

- 1) தாவா சொத்துக்களில் வாதிகளுக்கு 3/4 பாகம் கிடைக்கக்கூடியதா ?



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2) 18.05.1992 தேதிய உயில்சாசனம் மற்றும் 26.10.2010 தேதிய
தானப்பத்திரம் செல்லத்தக்கதா? அது வாதிகளை
கட்டுப்படுத்தக்கூடியதா ?

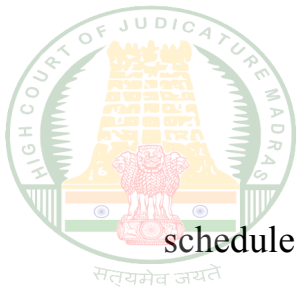
3) வாதிகளுக்கு கிடைக்கும் பரிகாரம் என்ன ?

11. Before the trial Court, the first plaintiff examined herself as PW1. Nineteen documents were marked as Ex.A1 to A19. The first defendant examined herself as DW1 and ten documents were marked as Ex.B1 to B10.

12. The Trial Court passed a preliminary decree of 3/8 share in the plaint schedule properties and declared the Will dated 18.05.1992 and the settlement deed dated 26.10.2010 as void besides granted permanent injunction not to alienate the properties and decreed the suit without cost. Aggrieved by this Court judgment and decree, the defendants preferred the appeal before this Court.

13. The points for consideration before this Court are as follows:-

1. Whether the plaintiffs are entitled to 3/4 share in the plaint A, B, & C



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schedule properties ?

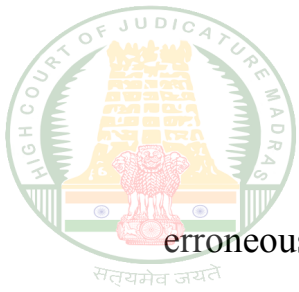
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2. Whether the Will dated 18.05.1992 is true, valid and proved ?

3. Whether the settlement deed dated 26.11.2010 executed by R.Krishnasamy in favour of his wife Rani is valid and whether the plaintiffs are entitled for permanent injunction against the defendants in any manner alienating or encumbering the plaint schedule properties?

4. To what other reliefs ?

14. The learned counsel for the appellants/defendants would submit that the judgment and decree of the Trial Court is contrary to law, against the weight of evidence and probabilities of the case. Further contended that the Trial Court overlooked the fact that suit "C" schedule property is not an ancestral property, which was in the name of Rangasamy Gowder under a patta granted by the Revenue Department. Further the Trial Court failed to appreciate the fact that suit A and B schedule properties are ancestral properties and Rangasamy Gowder as a sole heir is entitled to execute the Will in favour of his son. The plaintiffs being daughters are not entitled to succeed the property equally as they are not coparceners with the deceased Krishnasamy S/o. Rangasamy Gowder. The Trial Court not properly appreciated the fact of registration of the Will dated 18.05.1982 and



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erroneously held that the Will is not proved and consequentially held that the settlement deed executed by Krishnasamy in favour of his wife is invalid, which is also erroneous and contrary to law and on evidence on record. The learned counsel reiterated the other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the Trial Court and pleaded to allow the appeal.

15. The learned counsel for the respondents supported the judgment and decree of the Trial Court and further contended that in view of the judgment of Full Court Judges(contained 3 judges) of the Hon'ble Supreme Court in ***Vineeta Sharma /vs/ Rakesh Sharma*** reported in ***2020(9) SCC***, the daughters are coparceners, the daughters' right in co-partitioner property, is upheld, therefore, the plaintiffs are entitled for equal share with the Krishnasamy and thereby, they are entitled to 3/4 share in the suit properties. Further contended that the Will dated 18.05.1992 is not proved. The mandatory requirements of Section 63 of the Succession Act and Section 68 of the Evidence Act not satisfied. The Trial Court rightly rejected the claim of the defendants and decreed the suit. There is no valid ground for interference and thus pleaded to dismiss the appeal as it has no merits.



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WEB COPY 16. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

17. Point No.1

On perusal of the evidence on records, the fact reveals that Rangae Gowder had two sons, namely, Rayappa Gowder and Karae Gowder. Rangasamy Gowder is the only son of Rayappa Gowder and the wife of the said Rangasamy Gowder, namely, Poovathal predeceased Rangasamy Gowder. Rangasamy Gowder had one son, Krishnasamy and three daughters, i.e. plaintiffs. The Rangasamy Gowder died on 26.07.2004, which is evidenced by Ex.B.4. The Rangasamy Gowder's legal heirs are evidenced by Ex.A.5. Krishnasamy also died on 16.01.2014. The above said facts are admitted by the parties.

18. Further on perusal of the records, the fact reveals that joint patta was issued in favour of Rayappa Gowder and Karae Gowder with regard to the property in Thondamuthur Village Kasa No.914/1 to an extent of 5.30 acres of



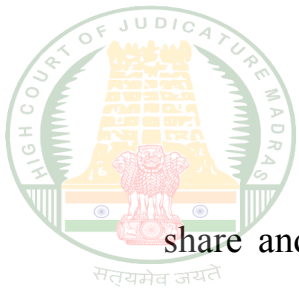
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Punja land, which is evidenced by Ex.A.1.

WEB COPY 19. Rayappa Gowder and Karae Gowder had orally partitioned the above said property in Kasa No.914/1 and thereby Rayappa Gowder got an extent of 2.65 acres, which is mentioned as plaint "A" schedule property. Therefore, "A" schedule property is an ancestral property, which is evidenced on record. The parties are also admitted this fact.

20. Originally, "B" schedule property owned by Rangae Gowder and it is evidenced by Ex.B.10 sale deed dated 03.10.1927. Further it is also evidenced by Ex.A14 encumbrance certificate. Though the plaintiffs claimed that "B" schedule property is owned by Boommakkal, W/o. Rayappa Gowder in view of Ex.A.2 patta, it has no merit. Admittedly, Rangae Gowder is the great grand father of the plaintiffs. Therefore, it is also evidenced as ancestral property. Plaint "C" schedule property owned to Rangasamy Gowder and patta was issued by the Special Tashildar, which is evidenced by Ex.A.3, in which, the plaintiffs are residing. It is also admitted by the parties.

21. In view of the above fact, by applying the principles stated by the Full Bench(containing 3 judges) of the Hon'ble Supreme Court in the case of ***Vineeta Sharma*** reported in **2020 (9) SCC**, the plaintiffs are entitled for 3/4



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share and the defendants being legal heirs of the deceased Krishnasamy are

entitled 1/4 share in the plaint A, B, C schedule properties. At the time of pronouncing judgment by the Trial Court, i.e., on 18.12.2018, the Hon'ble Supreme Court of India, not pronounced the said judgment. Therefore, since the appeal is in continuation of the suit, the share declared by the Trial Court has to be modified from 3/8 share to 3/4 share to the plaintiffs. and the point no.1 is answered accordingly.

22. Point Nos.2 to 4

Now, I have to consider about the validity of the Will dated 18.05.1992 and the settlement deed dated 26.11.2010. As stated above, plaint A & B schedule properties are ancestral properties. Rangasamy Gowder has no absolute right over the said properties to execute the Will dated 18.05.1992 in favour of his son R.Krishnasamy. He is having right with regard to his share alone, not for entire property received from him in the partition. Apart from this, the Will dated 18.05.1992 is not filed before the Trial Court. Though it is a registered Will, they filed a copy of the Will as Ex.A.6 and copy of the settlement deed was marked as Ex.A7 and original settlement deed was marked as Ex.B.7. The settlement deed dated 26.11.2010 is executed in



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WEB dated pursuance of the Will dated 18.05.1992. While considering whether the Will dated 18.05.1992 is proved, the defendants failed to prove the Will dated 18.05.1992. The law is well settled with regard to the proof of the Will. Hon'ble Supreme Court in *Janki Nayan Bhoir /vs/ Narayan Namdeo Kadam* reported in **2003(2) SCC 1991** observed a principle as follows :-

" The requirement of due execution of a will under Section 63(c) of the Succession Act is its attestation by two or more witnesses, which is mandatory. It flows from this section that if there be an attesting witness alive, capable of giving evidence and subject to the process of the court, he has to be necessarily examined before the document required by law to be arrested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but it must also be proved that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. In a way, Section 68 gives a concession to those who want to prove and establish a will in a court of law by examining at least one attesting witness even though the will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63 viz. attestation by two attesting witnesses in the



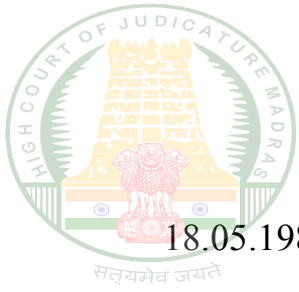
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manner contemplated therein, the examination of the other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act.

23. In this case, admittedly, the Will dated 18.05.1992 is not proved. The mandatory requirement is not satisfied by examining the attesting witnesses. The mandatory requirement of Section 63 of Succession Act and Section 68 of the Evidence Act is not satisfied. Therefore, the Trial Court rightly held that the Will dated 18.05.1992 is not proved and the settlement deed executed in favour of the first defendant in pursuance of the Will dated



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18.05.1982 is also invalid. I find no illegality in the findings of the Trial Court

in this regard and point nos. 2 to 4 are answered accordingly.

24. In view of the above, I find that the plaintiffs are entitled for preliminary decree of 3/4 share in the plaint schedule properties and the defendants are entitled for 1/4 share in the plaint schedule properties.

25. With these modifications, the judgment and decree of the Trial Court is hereby confirmed and the Appeal is dismissed as it has no merit. Consequently, connected miscellaneous petition, if any, is closed.

11.03.2025

Index : Yes / No
Speaking order: Yes/No

mrp

To

1. The I Additional District Court, Coimbatore.
2. The Section Officer, VR Section High Court, Madras.



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V.SIVAGNANAM, J.

mrp

Pre-delivery judgment made
in
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