



A.S.Nos.43 and 44 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.02.2025

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Appeal Suit Nos.43 and 44 of 2022

and

C.M.P.Nos.1888 and 1895 of 2022

A.S.No.43 of 2022:-

Armugam,
Son of Ramasamy Gounder,
S.R.Thottam,
85-A, Kamakkapalayam,
Attur Taluk, Salem District.

.. 1st Defendant/Appellant

/versus/

1.Gnanambal,
Wife of Kandasamy Gounder,
Nattu Kallar Veetu Thottam,
Belukurichi Post, Rasipuram Taluk,
Namakkal District.

.. Plaintiff/Respondent

2.Anand,
Son of Armugam,
No.85-A,Kamakkapalayam,
Attur Taluk,
Salem District.



A.S.Nos.43 and 44 of 2022

WEB COPY

3.Ayyappan,
Son of Armugam,
No.85-A, Kamakkapalayam,
Attur Taluk, Salem District.

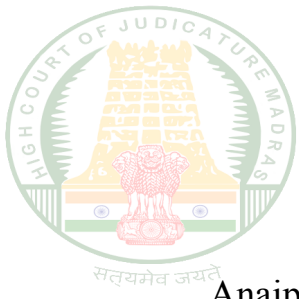
4.P.Kannan,
Son of Palanivel,
Nachikadu, Kalkattanoor Post,
Vennandur Via,
Rasipuram Taluk, Namakkal District.

5.Jayakodi,
Wife of Sengottayan,
No.3/21-B, Alankadu Nachipatti,
Vannandur Via, Rasipuram Taluk,
Namakkal District.

6.Pachiyammal,
Wife of Armugam,
S.R.Thottam,
85-A Kamakkapalayam,
Attur Taluk, Salem District.

7.Natarajan,
Son of Periasami,
Auakoil Road,
Anaikattipalayam Village,
Andakalur Post,
Rasipuram Taluk, Namakkal District.

8.Doraisamy,
Son of Muthu Gounder,



A.S.Nos.43 and 44 of 2022

Anaipalayathat Thottam,
Muthukalipatty Post,
Rasipuram Taluk,
Namakkal District.

.. Defendants 2 to 8/
Respondents

Prayer: Appeal Suit has been filed under Section 96 of C.P.C., r/w Order 41, Rule 2 of C.P.C., praying to set aside the judgment and decree dated 06.01.2021 made in O.S.No.117 of 2013 on the file of Sessions (Fast Trak Mahila) Judge, Namakkal and allow the above First Appeal.

For Appellant :Mr.V.V.Sathya

For R1 to R7 :Mr.B.K.Sreenivasan

A.S.No.44 of 2022:

Armugam,
Son of Ramasamy Gounder,
S.R.Thottam,
85-A, Kamakkapalayam,
Attur Taluk, Salem District.

.. Plaintiff/Appellant

/versus/

1.Gnanambal,
Wife of Kandasamy Gounder,
C/o Sabapathy Nattu Kallar Veetu Thottam,
Belukurichi Post, Rasipuram Taluk,
Namakkal District.

3/31



A.S.Nos.43 and 44 of 2022

WEB COPY

2.Anand,
Son of Armugam,
No.3/83-A Moottaikkaran Thottam,
Kamakkapalayam, Attur Taluk,
Salem District.

3.Ayyappan,
Son of Armugam,
No.3/83-A Moottaikkaran Thottam,
Kamakkapalayam, Attur Taluk,
Salem District.

4.P.Kannan,
Son of Palanivel,
Nachikadu, Kalkattanoor Post,
Vennandur Via,
Rasipuram Taluk, Namakkal District.

5.Jayakodi,
Wife of Sengottayan,
No.3/21-B, Alankadu Nachipatti,
Vannandur Via, Rasipuram Taluk,
Namakkal District.

6.Pachiyammal,
Wife of Armugam,
S.R.Thottam,
85-A Kamakkapalayam,
Attur Taluk, Salem District.



A.S.Nos.43 and 44 of 2022

WEB COPY

7.Natarajan,
Son of Periasami,
No.9/60B, Ayakoil Road
(Rasi Enterprises)
Anaikattipalayam Village,
Rasipuram Taluk,
Namakkal District.

.. Defendants/Respondents

Appeal Suit has been filed under Section 96 of C.P.C., r/w Order 41, Rule 2 of C.P.C., praying to set aside the judgment and decree dated 06.01.2021 made in O.S.No.213 of 2014 on the file of Sessions (Fast Trak Mahila) Judge, Namakkal and allow the above First Appeal.

For Appellant :Mr.V.V.Sathya

For R1 to R7 :Mr.B.K.Sreenivasan

COMMON JUDGMENT

These two appeals are filed by the unsuccessful plaintiff in O.S.No.213 of 2014 and the first defendant in O.S.No.117 of 2013. The suit in O.S.No.213 of 2014 was filed in respect of Item 1 of the property claiming 1/6th share and in respect of Item 2 of the suit property claiming 2/8th shares. Whereas the suit in O.S.No.117 of 2013 was filed by one

5/31



A.S.Nos.43 and 44 of 2022

WEB COPY

Gnanambal, who is the plaintiff in the said suit, claiming 8/24 shares in all the four items of property.

2. It is relevant to note that O.S.No.213 of 2014 was filed in respect of only two Items viz., Items 1 and 2. Whereas, the suit in O.S.No.117 of 2013 was filed for four items, viz., Items 1 to 4, in which Items 1 and 2 of the suit properties in O.S.No.213 of 2014 were also included.

3. Since these two suits have been filed and the parties are also one and the same, the Trial Court recorded a common evidence in O.S.No.117 of 2013. However, the Trial Court disposed of both the suits and granted decree in a different manner. The suit in O.S.No.117 of 2013 has been decreed with 1/2 share in the first item of the suit property; and decreed with 1/2 share in the second item of the suit property. The suit has been dismissed in respect of the items 3 and 4 of the suit properties.



A.S.Nos.43 and 44 of 2022

WEB COPY

4. It is relevant to note that as against the dismissal of the suit in respect of items 3 and 4, no appeal was filed by the plaintiff in O.S.No.117 of 2013. As far as the suit in O.S.No.213 of 2014 is concerned, the suit has been decreed, declaring a 1/6 share in the first item of the suit property and also granting an injunction restraining the seventh defendant from interfering with the plaintiff's 1/6 share in the first item of the suit property. Against which, two appeals have been filed by the plaintiff in O.S.No.213 of 2014 and the first defendant in O.S.No.117 of 2013.

5. Having recorded the common evidence in one suit, the trial Court ought not to have granted decree in both the suits, as the subject matter of the suit schedule properties in the two suits is one and the same. Therefore, to clarify the confusion and correct the mistake, this Court summarizes the necessary facts for disposal of the appeals. In the main suit, O.S.NO.117 of 2013, the pleadings are alone sufficient to dispose of both the appeals, as similar pleadings are made in other suit too as well.

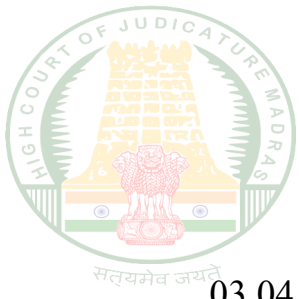


A.S.Nos.43 and 44 of 2022

WEB COPY

6. The brief facts of the cases are as follows:-

The plaintiff Gnanambal is the first defendant's brother's wife and the first defendant and the plaintiff's husband by name Kandasamy are brothers and they are sons of one Ramasamy Gounder. The daughter of Ramasamy Gounder by name Dhanam @ Dhanalakshmi, is already dead. It is the case of the plaintiff (Gnanambal) that the first item of the suit property was originally purchased by Ramasamy Gounder and his brother Muthu Gounder in the name of Aramathayammal in the year 1952. Aramathayammal's husband, Nalliyappa Gounder died, when his sons were of tender age. Therefore, Aramathayammal was in management of the properties and the family. The said properties was brought for public auction in a money suit decree in O.S.No.423 of 1942. Since the decree amount was not discharged, the decree holder A.K.N.Firm at Rasipuram by its Senior Partner Vallappa Chettiar brought the first item of the property for sale. One Gurusamy Iyer became the successful bidder in the auction conducted on



A.S.Nos.43 and 44 of 2022

WEB COPY

03.04.1952 and the sale was confirmed on 13.06.1952. However, the auction purchaser did not take possession of the property and one Gurusamy Iyer purchased the property and thereafter, Ramasamy Gounder and Muthu Gounder have re-purchased the property in their mother's name viz., Aramathayammal on 24.08.1952. Subsequently, the property in S.No.9/1 with an extent of 2.26 acres was purchased in joint name of the plaintiff, husband Kandasamy and his cousin Duraisamy. Thereafter, all the properties were partitioned on 06.12.1965 and 'A' schedule property was allotted to the share of Ramasamy.

7. According to the plaintiff, the joint family consisting of Ramasamy, his sons Kandasamy(plaintiff's husband) and Arumugam (first defendant) worked hard in the properties. Whiles, on 05.07.1977, Ramasamy Gounder and his son Arumugan sold an extent of 3.80 acres of land at Muthukalipatty Village in favour of one Kolanda Gounder. That apart, the said Ramasamy Gounder and his son the first defendant also sold the possessory right of the



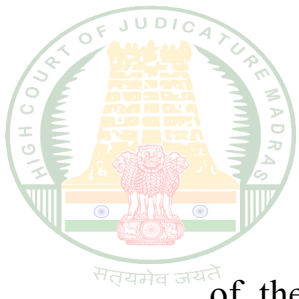
A.S.Nos.43 and 44 of 2022

WEB COPY

adjourning 90 cents of poramboke land. Subsequently, out of the joint family nucleus, items 3 and 4 were purchased by the first defendant.

8. Further, it is the case of the plaintiff Gnanambal that the plaintiff's husband Kandasamy Gounder died on 19.09.1997 leaving behind his wife the plaintiff, his mother Atthayamn as his only legal heirs. The husband of the plaintiff executed a Will in favour of the plaintiff on 13.09.1997 in respect of his undivided $1/3^{\text{rd}}$ share in the entire joint family properties. The plaintiff sold her share in items 1 and 2 of the properties on 13.12.2005 to the 7th defendant. Hence, she claimed a partition, dividing the remaining properties into 24 shares and allotting 8 shares to herself.

9. It is admitted by the first defendant that the first item of the property was purchased by Ramasamy Gounder and Muthu Gounder in their mother's name. According to him, the properties are self acquired property



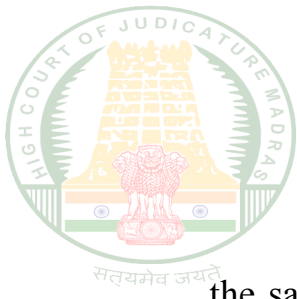
A.S.Nos.43 and 44 of 2022

WEB COPY

of the first defendant, Kandasamy Gounder, who is the husband of the plaintiff and he does not have any right to execute the Will.

10. According to the first defendant, in the partition deed dated 06.12.1965, A schedule was allotted to Ramasamy Gounder and he was in possession and enjoyment of the property. The said Ramasamy Gounder executed a Will dated 27.08.1999 bequeathing his self acquired property namely the first item to the plaintiff and the defendants 2 to 6. Therefore, the defendants 2 to 6 are the absolute owner of the other properties. The plaintiff's husband does not have any right in the said property.

11. The first defendant purchased the second item of the suit property in his name out of his own income. Thereafter, the first defendant and his children mortgaged the 3rd item of the suit property on 27.03.1999 in the Athur Primary Co-operative Society and raised loan of Rs.10,00,000/- and



A.S.Nos.43 and 44 of 2022

WEB COPY

the said loan is still not discharged. The first defendant has no right in the fourth item of the suit property.

12. The second defendant has also filed a similar defence. However, it is stated that the second schedule property is purchased by the plaintiff husband Kandasamy Gounder and Duraisamy. That Kandasamy Gounder has $\frac{1}{2}$ share and as the said Kandasamy Gounder is dead, the plaintiff gets the said $\frac{1}{2}$ share and the plaintiff has no right or share in other suit properties.

13. On the basis of the above pleadings, the following Issues were framed in O.S.No.117 of 2013:-

(i)Whether the 1st item of the suit property was purchased out of the income derived from the ancestral properties in the name of the family head Aramathayammal?

12/31



A.S.Nos.43 and 44 of 2022

(ii) Whether the 2 to 4 items of properties were purchased out of the income derived from the 1st item of the suit property?

(iii) Whether the suit properties are joint family properties?

(iv) Whether the alleged Will dated 13.09.1997 executed by the husband of the plaintiff Kandasamy is true and valid?

(v) Whether the alleged Will dated 27.08.1999 executed by the father of the 1st defendant Ramasamy Gounder is true and valid?

(vi) Whether the plaintiff is entitled to any share over the suit properties and if so, what is her share?

(vii) Whether the plaintiff is entitled to preliminary decree as prayed for?

(viii) What other relief is the plaintiff entitled to?

14. Based on the similar plea raised in O.S.No.117 of 2013, the following Issues were framed in O.S.No.213 of 2014:-

(i) Whether the suit is bad for non-joinder of



WEB COPY



A.S.Nos.43 and 44 of 2022

necessary party?

(ii) Whether the suit is bad for partial partition as the properties in Kamakapalayam and Muthukalipatti?

(iii) Whether the plaintiff is entitled to the relief of partition, if so, what share is he entitled to?

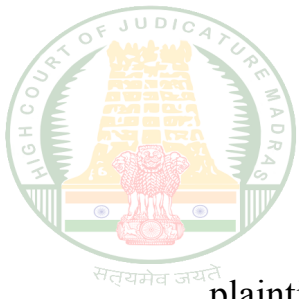
(iv) Whether the plaintiff is entitled to the relief of permanent injunction as claimed for?

(v) What other relief is the plaintiff entitled to?

15. The common evidence is recorded in O.S.No.117 of 2013. On the side of the plaintiff, PW-1 was examined and Ex.A1 to Ex.A12 were marked. On the side of the defendants, DW1 and DW-2 were examined and Ex.B1 to Ex.B6 were marked.

16. Based on the evidence, the trial Court decreed the suits as follows:-

In O.S.No.117 of 2013: In the result, the suit is partly decreed. The



A.S.Nos.43 and 44 of 2022

WEB COPY

plaintiff is decided to be entitled to $\frac{1}{2}$ share in the 1st item suit properties and the plaintiff is held to be entitled to $\frac{1}{2}$ share in the 2nd item suit property and preliminary decree is passed accordingly, with regard to 1st and 2nd item suit properties. The plaintiff is held to be not entitled to any share in the 3rd and 4th item suit properties. Suit is dismissed with regard to 3rd and 4th item suit properties. Both parties to bear their own cost.

In O.S.No.213 of 2014: In the result, the suit is partly decreed. The plaintiff is decided to be entitled to $\frac{1}{6}$ share in the 1st item suit property and preliminary decree is passed accordingly with regard to 1st item suit property. The 7th defendant is restrained from interfering with the $\frac{1}{6}$ share of the plaintiff in the 1st item suit property. The plaintiff is held to be not entitled to any share in the 2nd item of the suit property and the suit is dismissed with regard to 2nd item suit properties. Both parties to bear their costs.

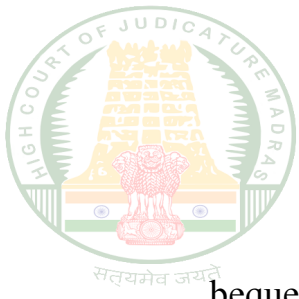


A.S.Nos.43 and 44 of 2022

WEB COPY

17. Challenging the said findings, the plaintiff in O.S.No.213 of 2014 and the first defendant in O.S.No.117 of 2013 filed two appeals. As already indicated above, as against the dismissal of the suit in respect of item Nos. 3 and 4 of the suit properties, no appeal was filed by the plaintiff in O.S.No.117 of 2013. The trial Court, while dismissing the suit, recorded the finding that the plaintiff has not proved that the items 3 and 4 of the suit properties were purchased out of the joint family nucleus. Therefore, as far as items 3 and 4 of the suit property in O.S.No.117 of 2013 is concerned, the case has reached finality and it is binding on the parties. Now, the dispute pertains to the items 1 and 2.

18. The learned counsel appearing for the appellant mainly submitted that item 1 of the suit property in the main suit in O.S.No.117 of 2013 was the subject matter of the partition deed Ex.A4. According to the learned counsel, the said property is a self acquired property of the mother of Ramasamy. Ramasamy had executed the Will dated 27.08.1999

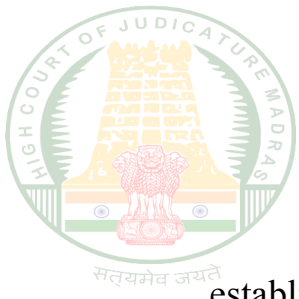


A.S.Nos.43 and 44 of 2022

bequeathing the entire A schedule property to the first defendant. Therefore, the plaintiff will not have any share in the property.

19. As far as the second item of the property is concerned, according to the learned counsel for the appellant, the property has been purchased by the plaintiff's husband Kandasamy and Duraisamy Gounder who was made as 8th defendant in the original suit in O.S.No.117 of 2013. Therefore, according to him, the Will (Ex.B6) dated 27.08.1999 has been clearly established and one of the attesting witness was examined as DW2(Tr.Picaikkaran). He has clearly spoken about the execution of the Will. Therefore, his contention that the trial Court granting ½ share in favour of the plaintiff is not correct.

20. Per contra, the learned counsel appearing for the respondents submitted that the Will projected by the appellant in Ex.B6 has not been



A.S.Nos.43 and 44 of 2022

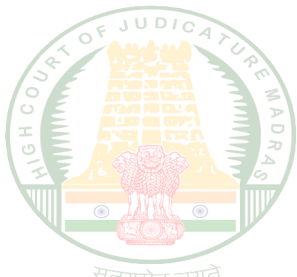
WEB COPY

established. The trial Court clearly recorded the finding that the same has not been established in the manner known to law. Further, it is submitted by the learned counsel for the respondents that under Ex.A4-partition deed, A schedule property was not allotted exclusively to Ramasamy Gounder. In fact, the said property has been allotted to Ramasamy Gounder along with his son namely, Kandasamy and Duraisamy. Therefore, his contention is that in fact Ramasamy Gounder had only 1/3 share as per Ex.A4. Therefore, even if it is established, he has no right to bequeath the entire property to the first defendant. Hence, he opposed both the appeals.

21. Now the point arises for consideration in these appeals are as follows:-

(1)Whether items 1 and 2 of the suit schedule properties are joint family properties?

(2)Whether the entire first item of the property was allotted to



A.S.Nos.43 and 44 of 2022

Ramasamy Gounder under Ex.A4 dated 06.12.1965?

WEB COPY

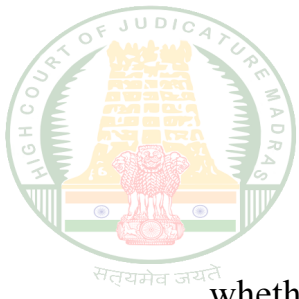
(3) Whether the Will dated 27.08.1999 is true and valid?

(4) What other relief the parties are entitled to?

22. Point Nos.1 and 2:

The two suits have been filed raising the same allegation, only difference is that in O.S.No.213 of 2014 partition is sought only in respect of item Nos. 1 and 2. Items 1 and 2 in that suit is also items 1 and 2 in O.S.No.117 of 2013. Whereas the suit in O.S.No.117 of 2013 items 3 and 4 were added as if those properties are also joint family properties. As far as items 3 and 4 of the suit property is concerned, the trial Court has dismissed the suit which has not been appealed.

23. In the light of the above background, now it has to be seen



A.S.Nos.43 and 44 of 2022

WEB COPY

whether the suit properties are ancestral properties as contended by the parties. Though it is the contention of the plaintiff in O.S.No.117 of 2013 that the properties are ancestral properties, it is being denied by the first defendant/appellant. According to him it is the self acquired properties.

24. Based on the pleadings and evidence, the following facts are admitted by both sides:-

Item No.1 of the suit property was originally purchased by Ramasamy Gounder and Muthu Gounder in the name of their mother Aramathayammal. The said property was sold in Court auction sale in O.S.No.423 of 1942. Thereafter, the said property once again repurchased in the name of Aramathayammal. It is the contention of both sides that, the property has been purchased by two sons of Aramathayammal viz., Ramasamy Gounder and his brother Muthu Gounder in their mother's name from the contribution made by them. The contention of both sides that sons have contributed to repurchase the property is supported by Ex.A4 partition deed executed

20/31



A.S.Nos.43 and 44 of 2022

WEB COPY

among Aramathayammal and others. On careful perusal of Ex.A4-partition deed, it is clearly seen that the recitals state that the property has been repurchased in the name of Aramathayammal and the entire amount has been paid by her two sons namely Ramasamy Gounder and Muthu Gounder. This fact clearly indicates that though there was no ancestral properties available, the joint family was constituted between the mother and her two sons. The recitals in Ex.A4-partition deed indicates that the 'A' schedule property was allotted to Ramasamy Gounder and his sons Kandasamy Gounder and Arumugam and the 'B' schedule property was allotted to the other son, Muthu Gounder, who is the father of of the 8th defendant.

25. It is the admitted case of both sides that Ramasamy Gounder had two sons and one daughter by name, Kandasamy, Arumugam and Dhanam. The plaintiff (Gnanambal) in O.S.No.117 of 2013 is the wife of Kandasamy. The first defendant is the other son namely, Arumugam and the defendants 4 and 5 are the son and daughter of Dhanam. Therefore, the contention of the



A.S.Nos.43 and 44 of 2022

WEB COPY

first defendant that the entire first item of the property was allotted to Ramasamy Gounder, cannot be countenanced, for the simple reason that in Ex.A4 partition deed, the A schedule property is not only allotted to Ramasamy Gounder, but also allotted to his sons namely, Kandasamy and Arumugam. Similarly, the 'B' schedule property was allotted to Aramathayammal's other son Muthu Gounder along with his legal heirs. As per the partition deed Ex.A4, Ramasamy Gounder and his two sons Kandasamy and Armugam are entitled to 1/3 share each in the first item of the suit property.

26. Though it is contended that this property is the ancestral property, this Court is of the view that it is not ancestral property. Instead, the property has been treated as joint family property after being purchased in the name of the mother of the parties. This property does not fall under ancestral property; it was only purchased and jointly enjoyed, therefore, it cannot be considered as ancestral property. It is not the case of the



A.S.Nos.43 and 44 of 2022

WEB COPY

defendants 4 and 5, who are the legal heirs of the daughter of Ramasamy Gounder by name Dhanam that the property is the ancestral property. In fact, they had taken a plea in the written statement that after that the property was purchased by Ramasamy Gounder and Muthu Gounder, the partition has been effected under Ex.A-4.

27. In such view of the matter, as the ancestral nucleus has not been established and it has to be held that it is only the property purchased by Ramasamy Gounder and Muthu Gounder, thereafter constituted joint family with their mother. Therefore, this Court is of the view that co-parcenary rights cannot be claimed. Hence, Points 1 and 2 are answered accordingly.

28. Point Nos.3 and 4:

It is the contention of the appellant that the entire property has been allotted to Ramasamy Gounder under Ex.A4, and the said Ramasamy

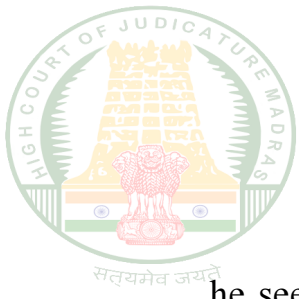


A.S.Nos.43 and 44 of 2022

WEB COPY

Gounder has executed a Will for the entire property in favour of Arumugam

Therefore, he is entitled to the Item No.1 of the property. As discussed above, the entire first item of the property was not allotted to Ramasamy. In fact, Ramasamy Gounder had only a 1/3 share at the relevant point of time. Therefore, even if the Will executed by Ramasamy Gounder under Ex.B6 is proved, it will not convey any better title in respect of the entire first item of the property. At the most, the Will will be valid only in respect of 1/3rd share of Ramasamy. The question is whether the Will has been proved in the manner known to law to be seen. Ex.B6 unregistered Will has been propounded by the appellant. One of the attesting witnesses was examined as DW-2. In his evidence, DW-2 deposed that Ramasamy Gounder executed the Will in favour of the appellant and that, after understanding the contents, Ramasamy put his thumb impression. DW-2 also deposed that he saw, the said Ramasamy put his thumb impression. Though DW2 spoke about Ramasamy putting his left thumb impression and saw DW-2 and other attesting witness signing the document as witnesses, DW-2 has not spoken about testator acknowledged the witnesses signing the document nor

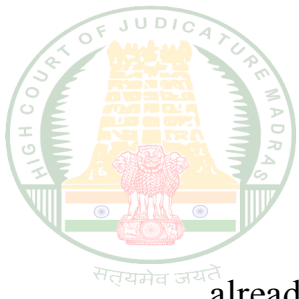


A.S.Nos.43 and 44 of 2022

WEB COPY

he seen attesting witness signing the document in his presence. Therefore, the evidence of DW-2 does not satisfy valid attestation as required under law.

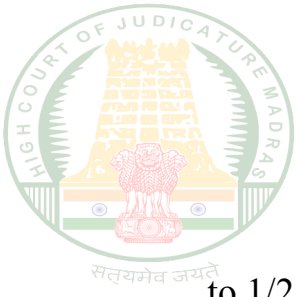
29. Further propounder has not dispelled the suspicious circumstances inherent in Ex.B6. Though it is stated in the evidence that the Will was executed in front of the registrar office and was also prepared by the document writer, having gone to such a place, there was no reason why the document was not registered. Furthermore, the document writer wrote the Will. There was no necessity for the Will to be written by hand and it should have been typed by typewriter when prepared by document writer. The thumb impression has been affixed in the place marked as 'X' on all pages. The manner in which the sentences have been accommodated on every page makes it clear that the contents were narrowed down and written only to accommodate writing before thumb impression. All these facts create serious doubt about the very execution of the Will by a person, who is



A.S.Nos.43 and 44 of 2022

already aged about 71 years. Further, the testator was residing in Athur at the relevant point of time. Therefore, the suspicious circumstances are also apparent under the Will. Hence, the finding of the trial Court that Ex.B6 has not been proved in the manner known to law, cannot be found fault with it. Accordingly, these points are answered.

30. As far as the second item of the property is concerned, the appellant himself in O.S.No.117 of 2013 has clearly admitted in the written statement that item 2 of the property was purchased by Kandasamy and Muthu Gounder, the father of the 8th defendant in the suit. In his pleadings it is also admitted that the ancestral nucleus has not been established, as held that the plaintiff is the only legal heir of her husband and she is entitled to ½ share in the second item of the property and the remaining ½ share will go to the son of Muthu Gounder. Ex.A3 has also been filed in this regard to prove that item 2 was purchased by Kandasamy and Duraisamy on 18.05.1961. Hence, the finding of the trial Court that the plaintiff is entitled



A.S.Nos.43 and 44 of 2022

to 1/2 share in the item 2 does not require interference.

WEB COPY

31. As far as the item 1 is concerned, the trial Court granting preliminary decree for 1/2 share is not correct since the plaintiff's husband Kandasamy had only 1/3rd share as per Ex.A4 partition deed. It is further to be noted that the plaintiff has admitted that her husband Kandasamy died on 19.02.1997 leaving behind the plaintiff and his mother Aramathayammal as only the legal heirs. Therefore, on the date of the death of plaintiff's husband, Kandasamy gounder has 1/3 share in the first item of the property. His 1/3 share will devolve upon the plaintiff and Aramathayammal, the mother of Kandasamy Gounder. Admittedly, Aramathayammal died in the year 2000 which has been admitted by the plaintiff in the cross examination.

32. In such view of the matter, out of 1/3rd share allotted to the plaintiff's husband in Ex.A4, the plaintiff is entitled to only 1/6 share in the 1/3 share of the first item of the property, the remaining share 1/6 which devolved upon the mother of the Kandasamy Gounder namely mother-in-



A.S.Nos.43 and 44 of 2022

WEB COPY

law of the plaintiff which will be distributed as per Section 15 of the Hindu Succession Act. Accordingly, Preliminary Decree is passed as follows:-

Plaintiff is entitled to preliminary decree dividing the suit property into seventy two shares out of which the plaintiff in O.S.No.117 of 2013 is entitled to $1/6^{\text{th}}$ share under Ex.A4/partition deed from her husband property and from father in law share $1/9^{\text{th}}$ share, totally $20/72$ shares.

The first defendant who is already having $1/3^{\text{rd}}$ share under Ex.A4/Partition Deed, after the death of his father and mother, he is entitled to $1/3+1/9+1/2$, total $38/72$ shares.

The fourth and fifth defendants being children of Dhanam is entitled to $1/9+1/12=14/72$ share.

Allotment shall be made subject to the Court fee.

33.In the result, *A.S.No.43 of 2022 is disposed of with the above modifications in respect of the first item of the suit property.*

Consequently, connected Miscellaneous Petition is closed. No order as to

28/31



A.S.Nos.43 and 44 of 2022

34. As far as the second item of the property is concerned, the plaintiff(Gnanambal) is entitled to 1/2 share in the second item of the suit property and preliminary decree was passed accordingly. Therefore, the decree of the trial Court is hereby confirmed.

35. As the share has been worked out in the main suit in O.S.No.117 of 2013, this Court is of the view that there may not be any second decree in respect of items 1 and 2 as declared by the trial Court in the main suit in O.S.No.213 of 2014. Therefore, the judgment and decree of the trial Court in O.S.No.213 of 2014 is hereby set aside.

36. In the result, ***Appeal Suit in A.S.No.44 of 2022 is allowed.*** Consequently connected Miscellaneous Petition is closed. No order as to costs.

18.02.2025

29/31



A.S.Nos.43 and 44 of 2022

WEB COPY

ari

Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

To

The Sessions (Fast Track Mahila) Judge,Namakkal.

30/31



WEB COPY



A.S.Nos.43 and 44 of 2022

N.SATHISH KUMAR,J.

ari

Appeal Suit Nos.43 and 44 of 2022
and
C.M.P.Nos.1888 and 1895 of 2022

18.02.2025