



SA No. 777 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-12-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 777 of 2025

and

CMP.No.29454 of 2025

1. V.Kannammal

W/o.Velusamy, No.169

Thutharipalayam, V.Kallipalayam,
Palladam via, Tiruppur tk and dist.

2. V.Kavitha

W/o.K.Mani, No.3/120, Kethanur Post,
Palladam via, tiruppur Tk and dist.

Appellant(s)

Vs

1. P.Jayalakshmi

W/o.Srinivasan, No.5/41, 43
Chitrambalam Layout, Porikara Lane
Palayur, pappanaickenpalayam,
Coimbatore 641 037.

2.P.Janaki

W/o.V.M.Devaraj, Masakalipalayam,
Periyar Nagar -2, Pelamedu,
Coimbatore.

3.P.Sasivarnam

W/o.Selvaraj, no.17-10-A, Balan Nagar
A, Peelamedu, Coimbatore,

P.Parimala Gandhimathi (died).

4.The Corporation Bank

Saibaba Colony Branch, Coimbatore.

K.Palanisamy (died).



5.P.Vanithamani
W/o.V.Devadass and D/o.Nagalakshmi,
no.12/36-A, Kuchinaidu Layout,
Lakshmipuram, Peelamedu,
Coimbatore 641 004.

6.G.Devi
w/o.Govindaraj, No.68-70-A-B,
Venkateswara Complex, Guru Bakery
Backside, Kalapatti Road, Nehru Nagar,
Coimbatore - 14.

7.P.Balasundararajan
S/o.Nagalakshmi, no.12/36-A,
Kuchinaidu Layout, Lakshmipuram,
Peelamedu, Coimbatore - 641 004.

Respondent(s)

PRAYER

This Second Appeal filed under Section 100 of Code of Civil Procedure, prays to set aside the judgement and decree of the learned II Additional District and Session Judge, Tiruppur made in A.S.No.29 of 2018 dated 17-04-2025 in reversing the Decree and Judgement of the learned Principal Subordinate Judge, Tiruppur made in OS.No.383 of 2011, dated 13-10-2014.

For Appellant(s): M.R.Thangavel

For Respondent(s): Mr.N.Krishnakumar for
R1 to R3 Sarvabhauman Associates

JUDGEMENT

The appellants have filed this appeal to set aside the judgement and decree of the learned II Additional District and Session Judge, Tiruppur made in A.S.No.29 of 2018 dated 17-04-2025 in reversing the Decree and Judgement of the learned Principal Subordinate Judge, Tiruppur made in OS.No.383 of 2011,



dated 13-10-2014.

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2. For the sake of convenience, the parties herein are referred to as they are ranked in the suit.

3. Challenging the reversing findings of the First Appellate Court, the defendants 1 and 2 have preferred the present appeal. Before the Trial Court, the respondents/plaintiffs filed a suit for partition claiming their lawful shares in the suit property as the legal heirs of one Palaniswami Naidu and Alvarammal. The appellants herein are the legal heir of the wife and daughter of the deceased son Velusami, born through Palaniswami Naidu and Alvarammal, and is also the brother of the plaintiffs.

4. Admittedly, the suit property is the absolute self-acquired property of Palaniswami Naidu, who died intestate on 15.02.1984, leaving behind five daughters and one son, namely Velusami Naidu. His wife Alvarammal had predeceased him in the year 1981. Since the property was self-acquired, all the legal heirs were equally entitled to a share upon the demise of Palaniswami Naidu. After the death of Palaniswami Naidu, his legal heirs, namely the plaintiffs and the son, were each entitled to an equal share. The plaintiffs thus claimed their lawful shares. The first and second defendants, being the legal heirs of the deceased Velusami Naidu and the daughter-in-law of Palaniswami



Naidu, claimed absolute rights over the suit property.

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5. The defendants based their claim on an unregistered Will alleged to have been executed by Palaniswami Naidu on 09.02.1984 in favour of his son Velusami Naidu. Thereafter, Velusami Naidu died on 03.06.1985, leaving behind defendants 1 and 2 as his legal heirs. Subsequently, patta was transferred in the name of the defendants on 30.11.2005. The defendants claimed to be in absolute possession of the suit property and denied the plaintiffs' right over the same.

6. Before the Trial Court, both parties adduced oral and documentary evidence. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B1 to B24 were marked.

7. Upon considering the oral and documentary evidence, the learned Trial Judge framed issues relating to the title of Palaniswami Naidu. The plaintiffs produced settlement deeds, sale deeds, and other relevant documents, including the legal heirship certificate. Since the defendants relied upon the Will, they examined one of the attesting witnesses to prove the said Will.

8. On consideration of the evidence on record, the learned Trial Judge



held that, as per the evidence of P.W.2, who deposed that he had seen the signature affixed by the testator, the Will stood proved. Accordingly, the Trial Court accepted the Will and dismissed the suit. Aggrieved by the said judgment, an appeal was filed in A.S. No.29 of 2018 before the II Additional District and Sessions Judge, Tiruppur. The learned First Appellate Judge re-appreciated the evidence on record and found that the Will had not been proved in the manner known to law. In that regard, the learned Judge extracted and relied upon the evidence of D.W.2 and held that the Will was not duly proved. Consequently, the findings of the Trial Court were set aside, the appeal was allowed, and the suit was decreed as prayed for. Challenging the reversal findings of the First Appellate Court, the defendants 1 and 2 have now preferred the present appeal.

9. The learned counsel appearing for the appellants contended that the learned Trial Judge had properly analyzed both oral and documentary evidence and rightly held that the Will was proved. However, without any supporting material, the learned First Appellate Judge presumed the existence of suspicious circumstances surrounding the Will and failed to take note of the fact that defendants 1 and 2 were in absolute possession and enjoyment of the suit property. He further argued that the alleged suspicious circumstances were not specifically pleaded by the plaintiffs. Despite this, the First Appellate Court reversed the well-reasoned findings of the Trial Court, which is erroneous and liable to be set aside. On these grounds, he submitted that substantial questions



of law arise for consideration and prayed for admission of the appeal.

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10. Considering the entire facts and circumstances of the case, the plaintiffs' case is that the suit property absolutely belonged to Palaniswami Naidu by way of purchase. As his legal heirs, the plaintiffs claimed their lawful shares in the property, which originally belonged to Palaniswami Naidu a fact that is not in dispute. Defendants 1 and 2 are the legal heirs of the deceased son Velusamy Naidu. They claimed that Palaniswami Naidu had executed an unregistered Will, marked as Ex.B2, in favour of his son Velusamy Naidu during his lifetime, and that within one week thereafter, Palaniswami Naidu died. After the death of Velusamy Naidu, his wife and daughters claimed absolute rights over the suit property.

11. Since the defendants relied upon the Will, they were bound to prove the same in accordance with law. The Will was marked as Ex.B1. One of the attesting witnesses to the Will was examined as D.W.2, who admitted that the Will was unregistered. Upon perusal of the evidence of D.W.2, it is seen that the Will was typed, but the witness was unaware as to who instructed for preparation of the Will. To that effect, the evidence of D.W.2 was extracted by the learned First Appellate Judge in paragraph 20 of the judgment. Further, though the legal heirs of Palaniswami Naidu, namely his wife and daughters, were alive at the time of execution of the Will, no reason was



assigned as to why no shares were given to the daughters. Admittedly, two of the daughters were unmarried at the relevant point of time. Therefore, the suspicious circumstances surrounding the Will were not removed. The Will, even after the closure of evidence, continued to raise serious doubts, which were not satisfactorily explained or dispelled by the defendants. Therefore, the learned First Appellate Judge rightly analyzed the evidence and held that the Will was not proved in the manner known to law. No substantial question of law arises for consideration. The defendants' claim was mainly based on patta, which is not a document of title. The reasons assigned by the learned First Appellate Judge are sustainable and needs no interference by this Court.

12. Accordingly, the Second appeal is dismissed as devoid of merits. The suit is decreed as prayed for. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

13. If the plaintiffs have filed any final decree proceedings, the Trial Court is directed to dispose of the same within a period of three months from the date of receipt of a copy of this judgment.

02-12-2025

Index: Yes/No



Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

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A, Peelamedu, Coimbatore, P.Parimala

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Peelamedu, Coimbatore - 641 004.

8. The II Additional District and

Sessions Judge, Tiruppur.



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9.The Subordinate Judge, Tiruppur.

10.The Section Officer, VR Section
High Court of Madras, Chennai.



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T.V.THAMILSELVI J.
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