



A.S.No.1158 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated 24.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.1158 of 2024
and CMP.No.29867 of 2024

S.Gopalasamy

... Appellant

Versus

V.K.Shanmuga Sundram

... Respondent

Prayer: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 10.06.2024 in O.S.No.1296 of 2022 on the file of I Additional District Court, Coimbatore.

For Appellant : Mr.P.K.Harinath Babu

For Respondent : Mr.M.Varun Kumar

JUDGMENT

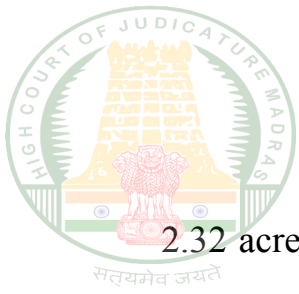
Challenge has been made to the decree and judgment of the Trial Court dismissing the suit for declaration and permanent injunction.



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WEB COPY 2. Brief facts in filing this appeal are as follows:

2.a. It is the case of the plaintiff that the suit properties were originally owned by his father Chennimalai Gounder, he had three daughters namely Lakshmi, Rathinam and Madhuramani and two sons namely, the plaintiff and Pattulingam. The total extent of the properties originally owned by his father is 2 acres 88 cents. The second item/house is purchased by him on 10.12.1944. During his lifetime, he has executed a will dated 22.06.1972 bequeathing Item No.1 in favour of the plaintiff and in respect of second item, plaintiff was bequeathed with half share and the remaining half share was bequeathed to one of the sister namely Lakshmi/mother of the defendant. It is the contention that Chennimalai Gounder died on 28.06.1983. Therefore, as per the will, the plaintiff is entitled to the suit properties. The plaintiff out of 2 acres 88 cents has sold the properties to Ranganathan on 12.05.1995 to an extent of 70 cents, Sundarasamy on 12.06.1996 to an extent of 20 cents, Jeeva Selvaraj on 19.06.1996 to an extent of 52 cents, C.Karuppasamy on 11.04.2008 to an extent of 21 cents, Jaganathan on 12.06.1996 to an extent of 58 cents and President Villankurich Village Panchayat to an extent of 11 cents. According to the plaintiff, out of the 2 acres 88 cents, an extent of



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2.32 acres have already been sold and remaining 56 cents is in possession of the plaintiff. Patta also stands in the name of the plaintiff. Therefore, he sought for declaration and permanent injunction. Written statement has been filed denying the will and the suit is also barred for non-joinder of necessary parties.

2.b. Based on the above pleadings, the Trial Court has framed the following issues:

- i) Whether the plaintiff is entitled to the relief of declaration as prayed for?
- ii) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
- iii) Whether the alleged will dated 22.06.1972 is true, valid and genuine?
- iv) Whether the alleged sale deeds pleaded by the plaintiff are true and valid?
- v) To what other relief the plaintiff is entitled to?

2.c. On the side of the plaintiff, the plaintiff was examined as PW1 and Exs.A1 to A20 were marked. On the side of the defendant, the defendant was examined as DW1 and no exhibits were marked.



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2.d. The Trial Court based on the oral and documentary evidences had dismissed the suit. Challenging the said decree and judgment, the present appeal is filed.

3. The only contention of the learned counsel for the appellant is that the plaintiff has already sold the properties based on the will. The said will has not been challenged all these days, therefore, the will has to be presumed to be valid. Merely because the attesting witnesses have not been examined, the right of the plaintiff cannot be defeated. Hence, seeks for allowing this appeal.

4. Whereas, the learned counsel for the respondent submitted that the plaintiff traced his right to the will Ex.A3 and such will has not been proved in the manner known to law, therefore, the Trial Court has rightly dismissed the suit. Hence, prayed for dismissal of this appeal suit.

5. In light of the above submissions, now, following issue arises in this appeal:-

i) Whether the plaintiff is entitled to declaration and permanent injunction without



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proving the will in the manner known to law?

WEB Point (i)

6. At the outset, this Court is of the view that merely because the properties have been sold by the plaintiff, the same will not validate the will. It is not disputed by both sides that the properties are originally owned by one Chennimalai Gounder, father of the plaintiff. The defendant is the son of one Lakshmi/sister of the plaintiff. Chennimalai Gounder, apart from the plaintiff and the defendant's mother had two other daughters and one son. Further, they have not been made as a party to the suit.

7. The plaintiff traces his right only on the basis of an unregistered will Ex.A3 dated 22.06.1972. On perusal of Ex.A3 and evidences makes it clear that the will has not been proved as required under law. None of the attesting witnesses have been examined to admit the will in evidence. The plaintiff has not taken any steps to examine anyone of the attesting witnesses. Therefore, once the will has not been established in the manner known to law, it cannot be admitted in evidence. Even assuming that the attesting witnesses are not available, the plaintiff ought to have taken steps to examine any other person who is acquainted with the



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signature of the attesting witnesses to comply with Section 69 of Indian Evidence

Act or Section 68 of Bharatiya Sakshya Adhinayam, 2023 which has not been resorted so by the plaintiff. Further, no steps have been taken to prove the will in any other manner by other evidences. Therefore, as long as the will has not been proved by examining the attesting witnesses, the plaintiff cannot seek declaration and permanent injunction based on the will merely on the ground that some properties have already been sold by him long back.

8. Such view of the matter, I do not find any merits in this appeal and the appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking/non speaking order
dhk



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To,

1. The I Additional District Judge,
I Additional District Court
Coimbatore

2.The Section Officer
VR Section, Madras High Court



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N. SATHISH KUMAR, J.

dhk

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