



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-04-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 279 of 2025

and

CMP No. 8288 of 2025

1. P.Rajagopal
 2. Rajavel (minor)
 3. Rajlatchumy (minor)
- Appellants 2 and 3 being minors are
represented by their father, first
appellant as their guardian

Appellant(s)

Vs

1. Sinouvassane
2. Gurunathan
3. Vijayalatchumy
4. Mangayarkarasi
5. Yogalatchumy

Respondent(s)

PRAYER :- Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the decree and judgement dated 31.07.2019 in AS.No.03 of 2012 on the file of Principal Sub Judge, Puducherry confirming the decree and judgment dated 28.04.2011 in OS.No.302 of 2006 on the file of Principal District Munsif, Puducherry.



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For Appellant(s): Mr. R.Rajarajan

For Respondent(s): Mr.S. Vadivel For RR 1, 3 To 5

JUDGMENT

Challenging the concurrent findings of the courts below rendered in A.S.No.03 of 2012 on the file of Principal Sub-Judge, Puducherry arising out of trial court findings in O.S.No.302 of 2006 on the file of Pricipoal District Munsif Court, Puducherry, this Second Appeal was preferred by the appellants/defendants 5 to 7.

2. The appellants/defendants 5 to 7 claiming right over the suit property based on a Will executed by Kamatchiammal, which was also marked as Ex.A3 said to be registered on 07.12.1993. Subsequently, Testator died on 14.12.1993 immediately after registration of the Will. Even the evidence of D.W.1, son-in-law of Kamatchimmal/Testator admits that she was aged about 70 years at the time of her death and she was bedridden for three months before her death and also deposed that she has not affixed her thump impression in his presence. But, they claimed that the said Will was attested by two witnesses viz., (1) Ramakrishnan and (2) Ramasamy, but before the trial court, the appellants have



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not taken any steps to prove the Will as per manner known to law as required under Sec.68 and 69 of Indian Evidence Act by examining any one of the alleged attestors. Accordingly, the trial court dismissed the suit. Against which, the defendants 5 to 7 have preferred an appeal in A.S.No.3 of 2012, wherein the first appellate judge independently analysed the facts and evidence on record and rightly held that the defendants 5 to 7 have failed to prove their claim. Furthermore, the first appellate court relied the ratio laid down in the authority reported in **2017 (2) CTC 35** in the case of **Kasthuri Bai vs. V.Ashok Kumar**, wherein this court held as follows:-

“Section 69 Proof of Will, when attesting witness not available :-

Signature of at least one of attesting witnesses as well as that of Testatrix to be proved – To prove handwriting of attesting witness, person, who had acquaintance with signature of such attesting witness as well as signature of Testatrix Executor has to be examined before court of law – Mere proof of signature of one attesting witness not sufficient, when signature of Testatrix not identified by any person.”

By relying the aforesaid proposition, the first appellate court dismissed the appeal by confirming the findings of the trial court holding that the Will was not



proved as per manner known to law, which needs no interference of this court.

Hence, there is no question of law involved for consideration of this Second

Appeal. Accordingly, this Second Appeal is dismissed as no merit and the

findings rendered by the first appellate court in A.S.No. 3 of 2012 is confirmed

and consequently, suit is decreed as prayed for. No costs. Consequently,

connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. Principal Sub Judge, Puducherry

2. Principal District Munsif, Puducherry

3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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