



S.A.No.238 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.09.2023
Pronounced on	28.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.Nos.238 & 239 of 2025

1.Vimaladevi

2.Thiruvengkadam ...Appellant in both S.As

Vs.

1.Jagadeesan

2.Premalatha ...Respondents in S.A.No.238/2025

1.Jagadeesan

2.Premalatha

3.The Sub Registrar
Omalur Town & Post,
Omalur Taluk, Salem District.

4.The District Registrar,
Salem.

5.The District Collector,

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Collectorate, Salem.

...Respondents in S.A.No.239 of 2025

Prayer in S.A. No.238 of 2025 : Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 25.07.2024 passed in A.S. No.5 of 2023, on the file of the Sub Judge, Omalur, confirming the Judgment and decree dated 07.03.2023 passed in O.S. No.238 of 2015, on the file of the District Munsif, Omalur.

Prayer in S.A. No.239 of 2025 : Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 25.07.2024 passed in A.S. No.6 of 2023, on the file of the Sub Judge, Omalur, Salem District confirming the Judgment and decree dated 07.03.2023 passed in O.S. No.390 of 2015, on the file of the District Munsif, Omalur.

For Appellant : Mr.T.Ganesan
in both the appeals

For Respondents :Mr.Naveen Kumar Murthi
in both the appeals for V.Vedachalam for R1 & R2

Mr.V.Ramesh,
Government Advocate for R3 to R5
in S.A.No.239 of 2025



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COMMON JUDGMENT

The above second appeals arise out of the judgment and decree dated 25.07.2024 passed in A.S. No.5 of 2023 and A.S. No.6 of 2023, on the file of the Sub Judge, Omalur, Salem District, confirming the judgment and decree dated 07.03.2023 in O.S. No.238 of 2015 & O.S. No.390 of 2015 respectively on the file of the District Munsif, Omalur.

2. The plaintiffs 2 and 3, the appellants herein, filed a suit in O.S.No.238 of 2015 for partition and for permanent injunction restraining the defendants from encumbering the suit property. The suit in O.S.No.390 of 2015 is filed for the relief of permanent injunction restraining the defendants 3 and 4 from entertaining or registering any kind of document in respect of the suit properties if placed by the defendants 1 and 2 in the above suit till the disposal of the partition suit in O.S.No.238 of 2015.

3. The case of the appellants (plaintiffs 2 and 3 herein) in



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3.1. The appellants, (the plaintiffs 2 and 3 herein), filed the suit in O.S.Nos.238 & 390 of 2015 for partition by stating that the 1st defendant is the brother of the plaintiffs. Originally, the suit properties and other properties belonged to the plaintiffs' mother of Akilandammal. The said Akilandammal had three sons namely Sairam, Plaintiff Vishwanathan and 1st defendant Jagadeesan and one daughter namely Kanmani @ Vijayalakshmi. The plaintiff's father Singaram had died. Thereafter, the said Akilandammal executed a Will in favour of the 1st defendant on 08.07.1999 and the same was registered before the Sub Registrar Office, Omalur. But the said Will was not acted upon. All the properties remained in common possession and enjoyment by the said Akilandammal and her children. On 23.09.2000 Akilandammal died, after the demise of Akilandammal, her sons and daughters entered into a registered partition deed on 19.10.2000 and in the said partition deed the participants of the document have taken 53 cents each out of 2.52 acres in S.No.27/3 and 1 acre out of 1.98 acre in S.No.27/1A2, which includes



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the property stated in the Will. Since the above properties were jointly enjoyed by the joint family, this would go to show that the Will was not acted upon. As per the partition deed, the plaintiff, 1st defendant, brother Sairam and sister Kanmani were separately allotted property and they had been in separate possession and enjoyment of the respective shares as per the partition deed. The properties which were not included in the partition deed are the suit properties. The 1st plaintiff has developed the suit properties by spending huge amount and he alone took care of his mother, brother Sairam and sister Kanmani. Hence, the plaintiff's mother Akilandammal gifted the suit properties to the 1st plaintiff and 1st defendant to be enjoyed by them jointly in the presence of elders. Thus the suit property absolutely belongs to the 1st plaintiff and the 1st defendant alone. There was no partition by metes and bounds in respect of the suit properties between the plaintiffs and the 1st defendant till date. Hence, the plaintiff and the 1st defendant are each entitled to half share in the suit properties. While so, the 1st plaintiff's another brother Sairam and his daughter Premlatha, who is the 2nd defendant, induced the 1st defendant to sell the suit properties in favour of the 2nd defendant. The



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panchayat was also convened on 28.06.2015 in this regard and it was the panchayatars advised the defendants to allot half share in the suit properties to the plaintiff. But, the 1st defendant did not agree for amicable settlement. Hence, the plaintiff was constrained to file the above suits for partition and for permanent injunction.

3.2. The claim of the Appellants/plaintiffs 2 and 3 was resisted by the respondents 1 & 2 /defendants in O.S.Nos.238 & 390 of 2015 by stating that the Will executed by the mother Akilandammal was duly proved in accordance with the mandatory provision under Indian Evidence Act, 1872. His further submission is that the courts below after considering the entire evidence available on record held that the Will has been proved in accordance with Section 68 of Indian Evidence Act, 1872, especially when the Will is duly executed, satisfying the requirements of Section 63(c) of Indian Succession Act. His further contention is that the plaintiffs themselves admitted the execution of Will and that as per Sections 56 to 58 of Indian Evidence Act, 1872, it leads to the only conclusion that the facts that are admitted are not required to be proved. His further contention is that the execution of the Will is categorically



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admitted and therefore, the same is binding on the plaintiffs.

4. The respondents 3,4 & 5 /defendants 3, 4 & 5 in O.S.No. 390 of 2015 resisted the claim of the appellants/plaintiffs 2 & 3 by stating that under Rule 55 of the Indian Registration Act, 1908, it is not the duty of the Registering Officer to inquire into oral or written objections that a document brought for registration is legally invalid, or that the person executing the document has no right to execute it. Hence, prayed for dismissal of the suit.

5.The trial Court, upon considering the materials on record, dismissed the above two suits against which the plaintiffs preferred appeal suits in A.S.Nos. 5 and 6 of 2023. The 1st Appellate Court dismissed the appeal suits filed by the plaintiffs. Aggrieved by this, the present second appeals are preferred by the appellant/plaintiffs.

6.Learned counsel appearing for the appellants/plaintiffs submits that the Courts below failed to consider the fact that the Will executed by Akilandammal in favour of the 1st defendant is not acted upon as the 1st defendant included part of the property in the Will, in the partition



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deed. He would further submit that merely cancelling the revenue records standing in the name of the 1st plaintiff will not effect the rights of the plaintiffs. His further contention is that the 1st defendant failed to prove the Will in accordance with law and the same was not considered by the Courts below. Hence, he prays for setting aside the judgment and decree passed by the Courts below.

7. On the other hand, the learned counsel for the respondents 1 & 2 /defendants 1 & 2 in O.S.Nos.238 & 390 of 2015 would submit that the Will executed by the mother Akilandammal was duly proved in accordance with the mandatory provision under Indian Evidence Act, 1872. His further submission is that the Courts below, after considering the entire evidence available on record, held that the Will has been proved in accordance with 68 of Indian Evidence Act, 1872, especially when the Will is duly executed satisfying the requirements of Section 63(c) of Indian Succession Act. His further contention is that the plaintiffs themselves admitted the execution of Will and that as per Section 56 to 58 of Indian Evidence Act, 1872, it leads to the only

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conclusion that the facts that are admitted are not required to be proved.

His further contention is that the execution of the Will is categorically admitted and therefore, the same is binding on the plaintiffs.

8.Further, the learned counsel for the respondents 3, 4 &5 /defendants 3, 4 & 5 in O.S.No.390 of 2015 would submit that under Rule 55 of the Indian Registration Act, 1908, it is not the duty of the Registering Officer to inquire into oral or written objections that a document brought for registration is legally invalid, or that the person executing the document has no right to execute it. However, the Sub-Registrar is bound to consider the objections raised on the following grounds:

i. the person appearing or about to appear before the Registering Officer is not who they claim to be.

ii the documents presented are fraudulently signed.

iii. the person claiming to act as an agent under a Power of Attorney has no authority to appear in that capacity.

iv. the executant, alleged to be the person who executed the



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document, is not actually dead as claimed.

v. the executant is a minor, or is of unsound mind, or is mentally incapacitated.

9.Only on these grounds, the Registering Officer have the authority to refuse registration of the document. If the case relates to property description being incorrect, such objection is liable to be dismissed. To support his contention he would rely upon the judgment reported in ***A.S.No.299 of 2013*** dated **09.03.2023** in ***Boomathy Vs. Murugesan and Others Manu/TN/1250/2023***. Hence, the Courts below have rightly dismissed the suits filed by the appellants/plaintiffs which warrants any interference by this Court.

10.Heard on both sides and records perused.

11.The Second Appeal No.238 of 2025 has been admitted on the following substantial questions of law:

"1.Whether the common property is eligible for getting partition, while the previous partition deed non-consist of the property?"



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2. Whether the unproved will is to be considered as a valid and acted upon will?

3. Whether the property mentioned in the will included in the partition deed then as the will is came into force?"

12. The Second Appeal No.239 of 2025 has been admitted on the following substantial question of law:

Whether the plaintiff have a right to get permanent injunction up on the property, which is to be partition with the defendant?"

13. Admittedly, the execution, genuineness and validity of the Will dated 08.07.1999 executed by the deceased Akilandammal in favour of the 1st defendant marked as Ex.B2 is not disputed by the plaintiffs/appellants. The only contention raised by the plaintiffs is that the Will was not acted upon by referring to the fact that certain portion of the properties found in the Will are dealt with while partitioning the family properties under a partition deed dated 19.10.2000 which is marked as Ex.A3. The contention of the 1st defendant is that since there was a dispute between the brothers with respect to the family properties,



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the 1st defendant agreed for partition of some portion of property mentioned in the Will which cannot be construed that the Will was not acted upon. He would further submit that after the said partition, the plaintiff and the 1st defendant and their other brother Sairam are in possession and enjoyment of their respective shares, the revenue records are mutated in their names. While so, the remaining portion of the properties mentioned in the Will is in possession and enjoyment of the 1st defendant and an exclusive patta was assigned in his name in the year 2003. While so, the 1st plaintiff fraudulently changed the patta in his favour for the above properties and when the same was brought to the knowledge of the 1st defendant, he approached the revenue authority stating that the patta was fraudulently provided in the name of 1st plaintiff and the same was cancelled after due enquiry. Since the plaintiffs/appellants have admitted the Will and failed to raise any issue on the validity and genuineness of the Will, as rightly put forth by the learned counsel for the respondent, the appellants/plaintiffs cannot agitate that the said Will was not acted upon. Moreover, by parting certain portion of the properties itself does not amount to, the Will not



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being acted upon. Therefore, the Courts below have rightly dismissed the suits filed by the appellants/plaintiffs in O.S.Nos.238 & 390 of 2015. No infirmity or perversity is found in the said finding of the Courts below, which warrants any interference by this Court. Moreover, the above questions raised in the second appeals are more of factual aspects and that there is no substantial questions of law to entertain in these second appeals.

14.In the result,

i. these second appeals are dismissed as devoid of merits. No costs.

ii. the judgment and decree dated 25.07.2024 passed in A.S. Nos.5 & 6 of 2023, on the file of the Sub Judge, Omalur, confirming the Judgment and decree dated 07.03.2023 passed in O.S. Nos.238 & 390 of 2015, on the file of the District Munsif, Omalur, is upheld.

28. 11.025

vsn

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order



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To

1. The Sub Judge, Omalur,
2. The District Munsif, Omalur.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
vsn

Pre- delivery judgment made in
S.A.Nos.238 & 239 of 2025

28.11.2025