



S.A.No.722 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2025

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.722 of 2018
and CMP No.21107 of 2018

1.Chandra
2.Jeya Pravi
3.Pachammal

..Appellants/Respondents/Plaintiffs

Vs.

Palanisamy

..Respondent/Appellant/Defendant

Prayer: The Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.07.2017 made in A.S.No.9 of 2015 on the file of the Principle District Judge, Salem and reversing the judgment and decree dated 25.11.2013 made in O.S.No.15 of 2011 on the file of the Sub-Judge, Mettur.

For Appellants : Mr.T.Saikrishnan

For Respondent : Mr.R.Singaravelan, Senior Counsel
for Mr.P.Tamilvelu

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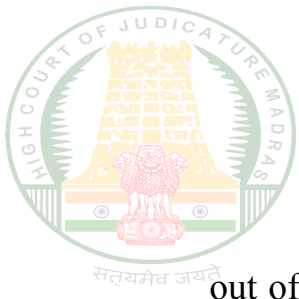
JUDGMENT

Aggrieved by the judgment and decree dated 05.07.2017 passed in A.S.No.9 of 2015 by the Principle District Judge, Salem, the plaintiffs/appellants herein have preferred this Second Appeal.

2.The appellants herein are the plaintiffs. Challenging the reversal findings of the 1st appellate Judge, they have preferred this appeal.

3.Before the trial Court, the plaintiffs have filed a suit in O.S.No.15 of 2011, against the respondent/defendant herein praying to declare the Will executed by the deceased, Mailaesan dated 07.03.1988 as valid and also to declare the Will relied by the defendant dated 18.02.1987 is null and void and other reliefs.

4.Plaintiffs are the wife and children of one Mailaesan. The said Milaesan and the defendant/Palanisamy were brothers and sons of one Pachamuthu. The suit property in R.S.No.161/2 measuring a total extent of 97 cents belongs to Pachamuthu absolutely. During his lifetime,



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out of love and affection, the said Pachamuthu executed a Will in favour of his son Milaesan by giving half share an extent of 48-1/2 cents with 4 boundaries in R.S.No.161/2 and died at the house of Milaesan on 25.08.1993. Thereafter the Will came into force and Milaesan along with plaintiffs possessed and enjoyed the property as absolute owner. While so on 14.01.2000 the said Milaesan died leaving behind the plaintiffs as his legal heirs, who inherited the property and enjoyed the suit property as absolute owners. The defendant who is an adjacent land owner of the suit property, with political background causing interference in the plaintiffs' enjoyment and also proclaimed that he is the owner of the suit property based on a Will executed by his father dated 18.02.1987 in his favour but the plaintiffs is not aware of the said Will, but only 2010 they came to know in the year 2010. However, the Will dated 07.03.1988 in favour of the Milaesan is the last Will. Therefore, the alleged Will relied by the defendant dated 18.02.1987 is invalid. Thereby the plaintiffs derived the title over the suit property based on the Will. Hence, they came forward with the present suit.

5.The defendant admits the relationship but disputing the Will

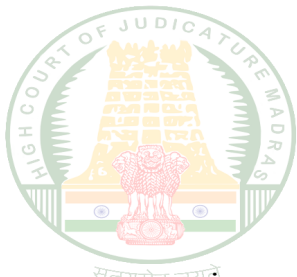


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relied by the plaintiffs dated 07.03.1988. He contends that his father executed a registered Will dated 18.02.1987 in his favour and after his father's demise, he enjoyed the property measuring a total extent of 97 cents. Even during his life time of his father, he alone look after his father, so the registered Will was executed in his favour. Thereafter dispute arose after the death of his father between his brother. So Panchayat was held and family properties were partitioned and also a partition deed dated 02.04.1994 was executed and registered. In that partition deed, the defendant got B-schedule property and the Milaesan was given A-schedule wherein also the Will was relied by the defendant was mentioned. Therefore, the plaintiffs aware of the Will relied by this defendant. Further more, the 2nd and 3rd plaintiffs filed a false suit in O.S.No.310 of 2010 for permanent injunction and the said suit was pending at this stage his sister had also filed a suit for partition in O.S.No.172 of 2010. Pending those suits, the plaintiffs have come forward this false suit and prayed to dismiss as no merits.

6.Both side parties adduced oral and documentary evidence before the trial Court. Based on that the learned trial Judge has framed the three



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Issues.
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7. Considering the evidence on record to prove the Will on the side of the plaintiffs, the said Will dated 07.03.1988 marked as Ex.A3 and to prove the execution, one of the attestors was examined as P.W.2. On the other hand, the defendant, to prove the Will dated 18.02.1987 which was marked as Ex.B2, examined the witnesses D.Ws.2, 3 & 4 and the partition deed relied by the defendant dated 02.04.1994 also marked as Ex.B3

8. Based upon the evidence of P.W.2 attesor of the Will Ex.A1, learned trial Judge conclude that his evidence is sufficient to prove the execution of the Will by the testator Pachamuthu thereby the Will relied by the plaintiffs was proved.

9.Per contra, the witnesses D.W.2, 3 and 4 examined on the side of the defendant to prove the Will dated 18.02.1987 not cogent, contradictory to each other and one of the witnesses more particularly P.W.2, stated that Pachamuthu executed a settlement deed and he was not

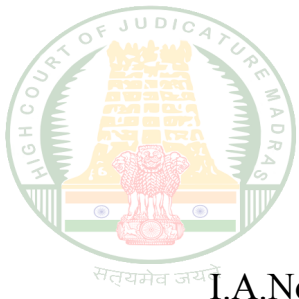


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aware of the nature of the document, P.W.3 deposed that he was not aware of the recitals of the Will nor he had seen the signature of the Pachamuthu so also the evidence of D.W. 4 also reveals that he was hearsay witness and he was not aware of the execution of the Will directly, thereby the trial Judge held that the Will relied by defendant has not been proved beyond reasonable doubt. Further, the defendant had also not taken any steps to get expert opinion in respect of the signature found in Ex.A1-Will relied by the plaintiffs though he is disputing the signature found in the Ex.A1-Will. Furthermore, in the last Will Ex.A1 the testator Pachamuthu cancelled the earlier Will relied by the defendant and gave half share to his elder son Milaesan and the remaining half share given to the 2nd son/defendant herein. Therefore the Will relied by the plaintiffs was proved and the Will relied by the defendant was already been cancelled thereby it is invalid one and not binding on the plaintiffs. Accordingly, the reliefs granted by the plaintiffs were granted as prayed for.

10.Challenging the said findings, the defendant preferred an appeal before the Principle District Judge, Salem in A.S.No.9 of 2015 along with

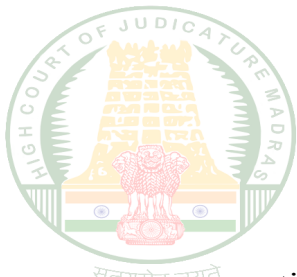


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I.A.No.49 of 2017. The 1st appellate Court framed separate points for consideration. By analysing the evidence on record, finally held that the execution of the Will Ex.B2 relied by the defendant dated 18.02.1987 was mentioned in the partition deed-Ex.B4. Therefore, the said Will is an admitted document. However, since the testator's signature found in Ex.A3 is disputed by the defendant, duty caste upon the propounder of the Will to prove the same by examining the expert. But the plaintiffs have not taken any steps, but on comparing the signatures with a naked eye, found some variation between Ex.A3 and Ex.B2-Will, thereby held that the plaintiffs have miserably failed to prove the signature found in Ex.A3 Will belongs to the testator Pachamuthu and non disclosure of the Will during the lifetime of the testator also fatal to the plaintiffs' case. Thereby the findings of the trial Court were set aside and the suit was dismissed. The IA filed by the appellant to implead person who is the purchaser of the subject property pending suit proceeding also came to be dismissed. Challenging the said findings of the 1st appellate Court dismissing the suit, the plaintiffs preferred this Second Appeal.

11. This Second Appeal was admitted on the following substantial



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questions of law:

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1. Whether the first appellate Court is right in holding the view of non-examination of the person who scribe the Will dated 17.03.1988 without considering the evidentiary value of deposition of P.W.2, one of the attesting witness?

2. Whether the Lower Appellate Court is correct in law in dismissing the suit only on the ground that the suit prayer is erroneous overlooking the pleadings as a whole?

12. The learned counsel appearing for the appellants argued that the Will Ex.A3 relied by the appellants/plaintiffs is the last Will of the testator Pachamuthu and the same has also been proved by examining one of the attestors as required under Section 68 of the Evidence Act and the same was properly appreciated by the learned trial Judge. He would further argue that the 1st appellate Judge has erroneously held that scribe to the document has not been examined by the plaintiffs, as such the is liable to be set aside for the reason that the plaintiffs complied with all mandatory requirements to prove the execution of the Will by examining one of the attestors. Further, he would argue that the evidence adduced on

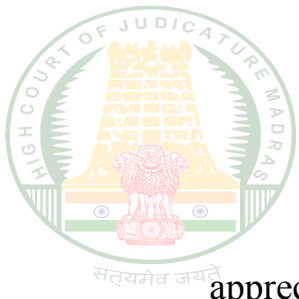


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the side of the defendant with regard to the execution of the Will Ex.B2, the evidence let in by the witnesses examined on behalf of the defendant, has also not been cogent and convincing, thereby the trial Judge not accepted their evidence, but the 1st appellate Court without analysing the evidence D.W.2, 3 & 4 in proper perspective, erroneously held that Ex.B2 is admitted by the plaintiffs, as such the findings of the 1st appellate Court are liable to be set aside. Further, he would also argue that the plaintiffs proved Ex.A3 as a last Will wherein Milaesan eldest son was given half share and the remaining half share was given to this defendant, who is none other than his second son and there is much contradiction elucidated from the mouth of the witnesses of the defendants, but the 1st appellate Court failed to appreciate the evidence as well as the documents relied by the plaintiffs, thereby dismissing the suit as total mis-consumption of law and fact and on this ground also the findings of the 1st appellate Court liable to be set aside.

13.The learned counsel also pointed out that in Ex.B3-partition deed dated 02.04.1994, the suit property was not included and therefore it would not bind on the plaintiffs, but the same was also not properly



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appreciated by the 1st appellate Court. Hence he prayed to set aside the findings of the 1st appellate Court.

14.By way of reply, the learned counsel for the respondent argues that the testator Pachamuthu was under the care of his 2nd son/defendant and he executed a Will on 18.02.1987 and the same was also not disputed by the plaintiffs. Further, even the witnesses D.Ws.2, 3, & 4 have not stated about the execution of the Will, however, the Will is admitted one and thereby the defendant proved his defence and same was rightly appreciated by the 1st appellate Court, which needs no interference. Hence, prayed to dismiss the appeal as no merits.

15. Heard the learned counsel appearing on both sides and perused the entire materials available on record.

16. Both the plaintiffs and the defendant each of them relied on the Wills which were separate Wills marked as Ex.A3 and Ex.B2. Admittedly, the testator Pachamuthu owned a total extent of 97 cents in R.S.No.161/2 took M.Kallipatti Village, Mecherry, Salem District.



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According to the plaintiffs, the elder son Milaesan had looked after his father till his lifetime, so he executed the last Will in his favour on 07.03.1988 bequeathing the suit property half share measuring an extent of 48 1/2 cents in his favour and after his demise, Milaesan possessed and enjoyed the same and in the year 2000, he also died leaving behind the plaintiffs as his legal heirs, who are in the possession and enjoyment of the suit property. But the defendant, who is none other than 2nd son of the deceased Pachamuthu, claims right over the suit property based on the Will dated 18.02.1987.

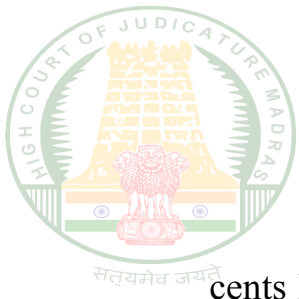
17.To prove the Will Ex.A2, the plaintiffs examined one of the attestors of the Will as P.W.2. As per his evidence, it reveals that Will was written as per instructions given by the testator Pachmuthu and he signed in the Will as an attestor and also seen the signature affixed by the Pachamuthu. Though it is unregistered, the execution of the Will was proved by plaintiffs by examining one of the attestors as required under Section 68 of the Evidence Act. But the defendant agitated that the Will relied by him marked as Ex.B2 is the last of Will of his father Pachamuthu. Further, he would contend that the said Will is admitted by



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the plaintiffs while there was a partition held in the year 1994 thereby he does not require to prove the Will separately, however he examined D.Ws.2, 3 & 4 to prove the Will dated 18.02.1987. But all the three witnesses are not cogent and their evidence is contradictory to each other. D.W.4 is hearsay witness, not an attester of the Will. D.W.3 also not stated that he has seen the signature affixed by the testator. D.W.2 also deposed that the said Pachamuthu had executed a settlement deed and he was not even aware of the nature of the document, but in all, he knows about the contents of the document. Therefore, the evidences of the D.W.2, 3 & 4 not inspired the confidence of the Court with regard to execution of the Will dated 18.02.1987 (Ex.B2). Therefore, the Will relied by the defendant has not been proved beyond reasonable doubt. But it is stated that in the partition deed dated 02.04.1994 marked as Ex.B3, the Will relied by the defendant was mentioned so that lesser extent was allotted to him, by this, the plaintiffs were aware of the said Will. Hence, there is no necessity to prove the execution of the said Will. But on perusal of the said partition deed, there is a mentioning of the Will without mentioning the date. Further, there is no disclosure about the property pertaining to the suit R.S.No.162/1 with a total extent of 0.96



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cents has not been shown as a property for division. All the joint family property was shown for division in the partition deed but the separate property of the said Pachamuthu was not included therein, which itself shows that in respect of the suit property, the said partition deed Ex.B3 would not have any binding over the plaintiffs. Therefore, mere recitals in the partition deed Ex.B3 is not sufficient to conclude that the Will relied by the defendant was true and valid one. As discussed above, the evidence adduced by the defendant through his witnesses also has not proved execution of the Ex.B2 Will beyond reasonable doubt but the 1st appellate Judge without appreciating the evidence let in by those witnesses, erroneously held that the Ex.B2-Will is an admitted document as such erroneous one.

18.On the other hand, the plaintiffs proved the Ex.A3-Will by examining one of the attestors who attested in the said Will and there is a recital that in the earlier Will executed by the testator was cancelled. Above all, in the Will relied by the plaintiffs, half share measuring an extent of 48 cents was given to the 1st plaintiff's husband Milaesan and the remaining half share measuring an extent of 48 cents was given to the



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defendant. Therefore the testator equally divided the R.S.No.162/1 and no prejudice caused to the 2nd son/the defendant also but the 1st appellate Judge erroneously concluded that the duty is cast upon the plaintiffs to prove the signature of the testator found in the Ex.A3-Will. By examining P.W.2 execution of the Will was proved by the plaintiffs. Therefore, the defendant, who disputed the signature of the testator is bound to take steps to send the document for expert's opinion, but he failed to do so and the same was rightly observed by the trial Judge. Therefore, the observation made by the 1st appellate Court is liable to be set aside. Therefore, the findings given by the 1st appellate Court in respect of the Will relied by the defendant (Ex.B3) is set aside.

19.As per Section 68 of the Evidence Act which mandates to prove the Will, one of the attester is to be examined. Accordingly, the plaintiffs complied with the same by examining the P.W.2 attester of the Will. However, the 1st appellate Judge erroneously held that this scribe of the Will has not been examined, as such it is erroneous one and the same is liable to be set aside. Accordingly question No.1 is answered.



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20. In respect of the prayers claimed in the suit, the 1st appellate Judge held that such prayers of declaration has not been granted by the Civil Court and it requires probate. Therefore, the suit filed by the plaintiffs is not maintainable. But as rightly pointed by the appellant counsel on considering the entire pleadings the plaintiffs claiming right over the suit property based on the Will-Ex.A3 and also disputing the Will relied by the defendant who made false claim over the suit property. Therefore there was a cause of action to file the present suit and the prayer as such also is sustainable in law. Hence, the finding rendered by the 1st appellate Court to that effect is liable to be set aside. Accordingly, question No.2 is answered.

21. Consequently, the findings of the 1st appellate Judge are set aside. The trial Court's finding confirmed. Accordingly, the suit is decreed as prayed for.

22. In the result, this Second Appeal stands allowed. Considering the relationship of the parties, there shall be no costs. Consequently,



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connected Miscellaneous Petition is closed.

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24.09.2025

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To

- 1.The Principle District Judge, Salem.
- 2.The Sub-Judge, Mettur.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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T.V.THAMILSELVI, J.

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