



S.A.(MD)No.434 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

S.A.(MD)No.434 of 2006

1.Pushpavalli(Died)

2.Lalitha(Died)

....Defendants 1 & 3/Respondents 1 & 3
Appellants

3.Arunganapathi

4.Pradeep

5.Prasna

(Appellants 3 to 5 are brought on record as LR's of the deceased

2nd Appellant vide Court order dated 03.08.2023 made in

C.M.P(MD)Nos.8597 to 8600 of 2023 in SA(MD)No.434 of 2006)

(Memo presented before the Court on 29.08.2024 is recorded,

as 1st appellant died and appellants 3 to 5 and respondents 2 to 6,

who are already on record, are recorded as LR's of the deceased

1st appellant vide Court order, dated 29.08.2024 made in S.A(MD)No.434 of 2006)

...Appellants

-Vs-

1.Saroja(Died)

2.Amirthajothi

3.Maheswari

4.Siva Balan

5.Seetha

6.Parameswaran

(Respondents 3 to 6 are brought on record as LR's of the deceased

1st Respondent vide Court order, dated 03.08.2003 made in

C.M.P(MD)Nos.8597 to 8600 of 2023 in S.A(MD)No.434 of 2006)

...Defendants/Respondents/Respondents



S.A.(MD)No.434 of 2006

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 30.09.2005 and made in A.S.No.45 of 2004 on the file of Subordinate Judge, Pattukottai, reversing the Judgment and Decree dated 09.07.2004 and made in O.S.No.71 of 2000 on the file of District Munsif Court, Pattukottai.

For Appellants : Mr.M.R.Srinivasan
for A3 to A5

For Respondents : Mr.M.Karuppasamy for R2
No appearance for R3 to R6

* * * * *

JUDGMENT

This Second Appeal has been filed against the Judgment and Decree dated 30.09.2005 and made in A.S.No.45 of 2004 on the file of Subordinate Judge, Pattukottai, reversing the Judgment and Decree dated 09.07.2004 and made in O.S.No.71 of 2000 on the file of District Munsif Court, Pattukottai.

2.For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3.The defendants in a suit in O.S.No.71 of 2000 on the file of the District Munsif Court, Pattukottai, are the appellants herein.



S.A.(MD)No.434 of 2006

4.The plaint averments in brief are as follows:-

WEB COPY The case of the plaintiff is that the plaint schedule properties are originally owned by one Chidambara Thevar. The plaintiff and the second and third defendant are the daughters of the Chidambara Thevar. The first defendant is the wife of the Chidambara Thevar. The Chidambara Thevar, six months before his death, had executed a Will, dated 23.06.1997 in the presence of witnesses without any influence to the plaintiff and the third defendant. The Chidambara Thevar has died on 25.12.1997. Therefore, the Will came into existence. Since the defendant interfered into the plaintiff's enjoyment, he has filed a suit for declaration of title over the plaint schedule property and to consequential injunction against the defendants.

5.The defendants filed the written statement and contested the suit in which, they denied the alleged Will, dated 23.06.1997 is the false forged one. Chidambara Thevar had executed a Will on 22.10.1991 and prepared the property to his grandchildren through the third defendant. Thereafter, he died. In pursuance of that Will, the property goes to the grandson of the third defendant and the grandchildren of Chidambaram Thevar. Therefore, the plaintiff is entitled for declaration and for injunction and thus, pleaded to dismiss the suit.



6. Upon pleadings, the trial Court has framed the following issues:-

“1. Whether the will dated 23.6.1997, which is said to have been made by the plaintiff, valid and enforceable?

2. As per the will dated 23.6.1997, the plaintiff is entitled to the property in this case, the property?

3. Whether is it considered that the plaintiff has settled all the debts purchased from Chidambaram?

4. Whether the plaintiff entitled to the judgment as claimed in the plaint?”

7. Before the trial Court, on the side of the plaintiffs, 3 witnesses were examined as P.W.1 to P.W.3 and 21 documents were marked as Ex.A1 to Ex.A21 and on the side of the defendants, the first and the third defendant were examined as D.W.1 and D.W.2 and 17 documents were marked as Ex.B1 to Ex.B.17.

8. The trial Court after considering the submissions of the Counsel for the parties and the evidence on record found that the Will is untrue and based upon the Will, the plaintiff is not entitled to get declaration over the plaint schedule property and dismissed the suit without costs. Aggrieved by this, the plaintiff filed an appeal in A.S.No.45 of 2004 on the file of the Sub Court, Pattukottai. The first appellate Court upon considering the evidence on record, set aside the judgment and decree of the trial Court, dated 09.07.2004 and allowed the appeal



S.A.(MD)No.434 of 2006

by its judgment and decree, dated 30.09.2005. Aggrieved by this, the defendants have preferred the Second Appeal before this Court.

9.This Court while admitting the Second Appeal has framed the following substantial questions of law:-

a)Whether the first appellate Court was right in holding that Ex.A.21 Will has been proved in accordance with Section 63 of Indian Evidence Act?

b)Whether the first appellate Court was right in granting a decree for injunction with regard to the first schedule property when admittedly the first defendants is in possession of the said property?

10.Before this Court, the learned Counsel appearing for the appellants has filed the petition in C.M.P.(MD)No.13321 of 2024 to send Ex.A21 unregistered Will, dated 23.06.1997 to the handwriting expert to be compared with the admitted signature found place in the registered documents Ex.A13 Sale deed, dated 13.05.1997 executed by the Chidambara Thevar in favour of Pasupathi Ammal. The petition was allowed on 22.10.2024 and the disputed Will forwarded to the handwriting expert, Forensic Department.

11.The handwriting expert after examining the disputed Will Ex.A21, dated 23.06.1997 to be compared with the admitted signature found place in the



S.A.(MD)No.434 of 2006

registered documents Ex.A13 Sale deed, dated 13.05.1997 executed by Chidambara Thevar in favour of Pasupathi Ammal sent the report in T.No.9181/2024/MDU/Doc.No.181/2024, dated 12.11.2004 before this Court. In the report, it is stated that the signature in the Will is not tallied with the admitted documents as Ex.A13 and finally hold that the person who wrote the red enclosed signatures stamped and marked A1 to A6 did not write the red enclosed signatures similarly stamped and marked Q1 to Q3 and also enclosed the reasoning sheet along with the report and returned the documents.

12.The learned Counsel appearing for the appellants submitted that the plaintiff filed a suit to declare the title over the plaint schedule property and for injunction. Admittedly, all the properties are owned by Chidambara Thevar. This fact is not disputed. The plaintiff claims the title over the plaint schedule property upon alleged Will executed by the Chidambara Thevar, dated 23.06.1997. The Will is untrue. Originally, the Chidambara Thevar has executed the registered Will dated 20.07.1982. It is evidence as Ex.A12 in favour of the plaintiff's minors son, namely, Siva Balan and Paramaswaran with regard to sixth item of the property. At the time, the third daughter did not give marriage. Thereafter, the third defendant Lalitha was given marriage and she was in their native place and taking care of her father and mother and leading a



S.A.(MD)No.434 of 2006

poor life. The plaintiff settled at Singapore and leading a rich life. The second daughter, namely, Amirtha Jothi/second defendant herein got the appointment as Assistant Professor at Coimbatore and well settled in Coimbatore. Considering the Welfare of the third defendant, her father Chidambara Thevar executed a registered Will on 22.10.1991 in favour of the third daughter Lalitha's Son, namely, Arun Ganapathy and Pradeep relating to 9th item of the properties.

13.The Chidambara Thevar died on 25.12.1997. The alleged Will, dated 23.06.1997, there are several suspicious circumstances in the said Will and the signature of the testator in the Will is more suspicious one. In order to prove the Will as untrue, filed an application in C.M.P.(MD)No.13321 of 2024 before this Court and this Court by its judgment and decree dated 22.10.2024 directed to send Ex.A21 unregistered Will, dated 23.06.1997 to the handwriting expert to be compared with the admitted signature found place in the registered documents Ex.A13 sale deed, dated 13.05.1997 executed by Chidambara Thevar in favour of Pasupathi Ammal. The handwriting expert sent a report and declared that the Will executed as Ex.A21 is not signed by the person who signed the documents Ex.A13, dated 13.05.1997. Thus, It is proved that the Will is untrue. Therefore, the plaintiff is not entitled to get declaration for the



S.A.(MD)No.434 of 2006

plaint schedule property with consequential injunction and thus pleaded to allow the Second Appeal.

14.The learned Counsel appearing for the second respondent supported the arguments of the appellants and assailed it.

15.The first respondent/plaintiff died and the legal representatives have not been impleaded as R3 to R6. Notice ordered and the paper publication also ordered and published and their name was printed in the cause list. No representation on behalf of the plaintiff's legal representatives.

16.I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

17.On perusal of records, the facts reveal that all the properties are owned by the Chidambara Thevar. The first defendant is the wife of Chidambara Thevar. The plaintiff and the second and third defendant are the daughters of the Chidambara Thevar. This fact is not disputed.



S.A.(MD)No.434 of 2006

18.The plaintiff filed the suit for declaration of title over the properties with a relief of permanent injunction based upon the alleged Will executed by the Chidambara Thevar on 23.06.1997 which is disputed by the defendant as untrue. It is evidence as Ex.A21. The trial Court found the Will is untrue and dismissed the suit against the plaintiff and appeal filed by the plaintiff. The first appellate Court found the Will is untrue and decreed as prayed for. Hence, he filed the Second Appeal before this Court.

19.Before this Court, the learned Counsel appearing for the appellant filed one C.M.P.(MD)No.12726 of 2024 to receive the certified copy of the registered Will, dated 22.10.1991 executed by the Chidambara Thevar as additional document and another C.M.P.(MD)No.13321 of 2024 to send Ex.A21 unregistered Will, dated 23.06.1997 to the handwriting expert to be compared with the admitted signature found place in the registered documents Ex.A13 sale deed, dated 13.05.1997 executed by Chidambara Thevar in favour of Pasupathi Ammal. This Court allowed both the petitions by its order dated 22.10.2024 and the Will, dated 22.10.1991 to receive as the additional documents as Ex.B18.



S.A.(MD)No.434 of 2006

20.The handwriting expert after examining the documents has sent the following report. For better appreciation, the report is reproduced hereunder:-

“The documents received along with your letter cited on 05.11.2024 through the Advocate Commissioner Selvi.V.Janaki Devi with seals intact were carefully examined by the undersigned experts in this laboratory and the result of the examination is furnished below.

The person who wrote the red enclosed signatures stamped and marked A1 to A6 did not write the red enclosed signatures similarly stamped and marked Q1 to Q3.

The reasoning sheet is enclosed.”

21.In view of the expert report, it is clear that the Will Ex.A21, dated 23.06.1997 is not the handwriting of the Chidambara Thevar and became untrue. Therefore, the plaintiff claims upon the Will has to be negative.

22.Further, on perusal of records reveal that the plaintiff filed the suit and claims the title over the properties in pursuance of the alleged unregistered Will, dated 23.06.1997 Ex.A21. Since it is untrue, and proved, she is not entitled for declaration of title over the suit schedule properties with injunction.



S.A.(MD)No.434 of 2006

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23. In view of the above findings, the first appellate Court is wrong in holding Ex.A21 has proved in accordance with Section 23 of the Indian Evidence Act and the Will is untrue and false one. The first appellate Court is wrong in granting the decree for injunction with regard to the plaint schedule property, since she is not having right over the property. The substantial questions of law framed by this Court are answered accordingly. Therefore, the findings of the first appellant Court is against the law and erroneous and unsustainable and it is liable to be set aside.

24. In the result, the Second Appeal is allowed. The Judgment and Decree, dated 30.09.2005 made in A.S.No.45 of 2004 on the file of the Subordinate Judge, Pattukottai, is hereby set aside and the Judgment and Decree dated 09.07.2004 and made in O.S.No.71 of 2000 on the file of District Munsif Court, Pattukottai, is restored. No costs.

23.01.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR



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S.A.(MD)No.434 of 2006

V.SIVAGNANAM. J,

RJR

To

- 1.The Subordinate Court, Pattukottai.
- 2.The District Munsif Court, Pattukottai.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

S.A.(MD)No.434 of 2006

23.01.2025