



W.P.(MD)Nos.3519 & 5499 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **03.03.2025**

Delivered on : **14.03.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)Nos.3519 & 5499 of 2025

and

W.M.P.(MD)Nos.2505, 3312 and 4024 of 2025

W.P.(MD)No.3519 of 2025

Backiyalakshmi

... Petitioner

/Vs./

1. The District Collector

Madurai District, Madurai.

2. The District Revenue Officer

Madurai.

3. The Revenue Divisional Officer,

Melur, Narasingampatti,

Madurai District.

4. The Tahsildar

Madurai East Taluk,

Madurai.

5. Bagampriyal

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the 4th respondent in his proceedings Na.Ka.No. 81/2025/E3 dated 09.01.2025 and quash the same.

For Petitioner : Mr.PT.S.Narendravasan

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1-4

: Mr.B.Saravanan, Senior Counsel
for M/s.Ajmal Associates for R5

W.P.(MD)No.5499 of 2025

1.S.V.Karuppasamy

2.Sundar

... Petitioners

/Vs./

1. The District Collector

District Collectorate, Madurai.

2. The Revenue Divisional Officer,

Melur, Narasingampatti,

Madurai District.

3. The Tahsildar

Madurai East Taluk,

Madurai.

4. Bagampriyal

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order in Ni.Mu.No.3071/2024/Aa4, dated 06.11.2024 on the file of the 2nd respondent and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners : Mr.G.Prabu Rajadurai
for M/s.Roy and Roy Associates

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1-3

: Mr.B.Saravanan, Senior Counsel
for M/s.Ajmal Associates for R4

COMMON ORDER

The writ petitioner in W.P.(MD)No.3519 of 2025 challenges the proceedings of the fourth respondent in Na.Ka.No. 81/2025/E3 dated 09.01.2025.

2. The writ petitioner in W.P.(MD)No.5499 of 2025 challenges the impugned order of the second respondent in Ni.Mu.No.3071/2024/Aa4, dated 06.11.2024 and quash the same insofar as the petitioners are concerned.



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3. I have heard Mr.PT.S.Narendravasan, learned counsel for the petitioner in W.P. (MD) No.3519 of 2025, Mr.G.Prabu Rajadurai, for M/s.Roy and Roy Associates, learned counsel for the petitioner in W.P. (MD) No.5499 of 2024, Mr.B.Saravanan, learned Additional Government Pleader, for the official respondents in both the writ petitions and Mr.B.Saravanan, learned Senior Counsel for M/s.Ajmal Associates, learned counsel for the private respondent, in both the writ petitions. I have gone through the records and also considered the submissions advanced by the learned counsel for the parties.

4. The case of the petitioner in W.P.(MD)No.3519 of 2025 is that the properties in S.No.5/3, measuring 9 cents, S.No.5/11 measuring 79 cents, S.No.37/4 measuring 74 cents, S.No.52/7 measuring 8 cents, S.No. 52/14 measuring 22 cents and 75 cents, besides house property, situated in Melamadaï Bit-2 Village, Madurai, belonged to one Nagammal, D/o. Veeran Servai. According to the petitioner, the said Nagammal executed a Will on 03.10.1981 in respect of property bequeathing the same to the Government expressing her desire to establish School in her name. The



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said Will was registered on the file of the Sub Registrar, Theppakulam, Madurai District vide document No.3/1981. The said Nagammal also caused a publication in the news paper on 06.10.1981, to inform the general public about her intention expressed in her Will dated 03.10.1981, especially with regard to setting up of a for School in her name, after her life time. According to the petitioner, a subsequent Will was created by Andi and Karuppannan on 07.07.1990, as if the properties in S.No.5/3 measuring 9 cents, S.No.5/11 measuring 79 cents and other properties had been bequeathed to them. A suit was also filed by the beneficiaries in O.S.No.273 of 1991 before the Principal Sub Court, Madurai, to declare their right over the subject lands. One of the issues in the said suit was whether the Will dated 07.07.1990 was true and genuine and the trial Court after elaborate discussion of the evidence adduced by the parties, held that the said Will dated 07.07.1990 was true and genuine and ultimately, the suit was decreed in favour of the said Andi and Karuppannan. The same was challenged by the District Collector in A.S.No.83 of 2008. The said appeal was also dismissed by order dated 23.12.2009 by the Principal District Court, Madurai. The learned counsel for the petitioners would therefore submit that in terms of the second Will



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dated 07.07.1990, the property has been alienated and the petitioners are lawful owners of the respective properties and the Government cannot take any claim in and over the property.

5. It is the further case of the petitioner that the landed property in S.No.5/11 was not even specifically mentioned in the Will dated 07.07.1990 and therefore, the beneficiaries under the second Will cannot claim any right, in respect of said land in S.No.5/11 measuring 79 cents based on the Will dated 07.07.1990 and the Will dated 03.10.1981, regarding in 79 cents R.S.No.5/11 would continue to remain valid. The beneficiaries, viz., Andi and Karuppanan conveyed the property measuring 32 cents out of 79 cents in S.No.5/11 in favour of one Karupaiah. The remaining lands were acquired by the Government for laying a road, even during the life time of Nagammal. The petitioner has purchased 2 cents and 332 sq.ft. from said Karuppaiah in S.No.5/11 in and by a registered sale deed dated 24.01.2017. The petitioner's father also purchased the land measuring 42 cents in S.No.5/11 dated 23.01.1998 and subsequently settled the same in favour of the petitioner on 10.09.2004.



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6. The case of the private respondent is that her access to the said property was only through the Government land in S.No.5/11, which has been bequeathed by Nagammal in favour of the Government.

7. The private respondent, viz., Bagampriyal, approached the third respondent, who in and by proceedings dated 06.11.2024 cancelled the patta in S.No.5/11 admeasuring 79 cents finding that the said lands were not mentioned in the Will dated 07.07.1990 and therefore, it would belong to the Government in terms of the earlier Will dated 03.10.1981. In the meantime, the fourth respondent has passed the impugned order on 09.01.2025 to stop the construction activity in a portion of the land in S.No.5/11. The said proceedings of the fourth respondent are challenged in the writ petition.

8. In the meantime, the fourth respondent directed the writ petitioner not to put up construction in S.No.5/11, which the subject matter of challenge in the writ petition in W.P.(MD)No.3519 of 2025.



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9. W.P.(MD)No.5499 of 2025 has been preferred by the purchasers of properties in S.No.5/29 measuring 4 cents 123 sq.ft, in furtherance of which patta has also been mutated in the name of the petitioners. The petitioners claim right under the second Will dated 07.07.1990, superseding the earlier Will dated 03.10.1981.

10. It is the case of the petitioner that the fourth respondent, who has also filed a vacate stay in W.M.P.(MD)No.3312 of 2025, is a total stranger to the subject property, owning lands in S.No.5/11, Melamadai Bit-2 Village, Madurai East, which lies behind the subject property and a false case set up by the said respondent as though she has no proper access to her property and her only access is through the S.No.5/11, which was originally bequeathed to the Government under the earlier Will. The case of the writ petitioner is that the competent civil Court has already declared the second Will dated 07.07.1990 to be valid and in view of the same, no rights could be claimed based on the earlier Will dated 03.10.1981 and therefore, the issue cannot be reagitated over and again at the instance of a person, who had no interest in the subject property. It is further contended that the impugned order passed by the



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second respondent assuming that the subject matter of lands are Government lands is totally perverse illegal and unsustainable.

11. The petitioners in both the writ petitions are claiming right under the second Will dated 07.07.1990. According to the petitioners, once the earlier Will dated 03.10.1981 was revoked by Nagammal, by executing the second Will and especially, when the second Will, was also tested by before the Civil court and found to be true and genuine, then no one can claim any right under the earlier Will dated 03.10.1981 and that the case of the vacate stay petitioner is that the bequest in favour of the Government, lands in S.No.5/11 ad-measuring 79 cents would survive and in that regard, the original Will dated 03.10.1981 would stand valid is totally unsustainable and against well settled principles of law of testamentary success.

12. I have also gone through both the Wills dated 03.10.1981 and 07.07.1990 and it is seen that the second Will clearly revokes the earlier Will dated 03.10.1981 and therefore, the non mention of specific property in S.No.5/11 measuring 79 cents in the second Will would not



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validate the earlier bequest in favour of the Government under the revoked Will dated 03.10.1981. More over, the civil suit in O.S. No.273 of 1991 has specifically framed an issue regarding truth and genuineness of the Will dated 07.07.1990 has rendered an affirmative finding which also has become final.

13. In fact, I also find that there is a specific reference to 79 cents in the second Will as well, but, however, by inadvertence, the survey number appears to have been typed as S.No.5/4 instead of 5/11. Admittedly, it is nobody's case that said Nagammal owned properties in S.No.5/4, that too for a very same extent of 79 cents and the said bequest in the second Will obviously pertains only to survey No.5/11. In any event, the claim based on a revoked Will can never be countenanced or validated by any Court. Therefore, the petitioners are entitled to relief. The impugned orders are perverse, patently illegal and against the settled principles of the law of testamentary succession.



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14. In fine, these Writ Petitions are allowed and the impugned orders are set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No

14.03.2025

NCC : Yes / No

LS

TO:-

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Madurai District, Madurai.
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P.B. BALAJI, J.

LS

Pre- delivery Orders made in
W.P.(MD)Nos.3519 & 5499 of 2025

Dated:
14.03.2025