

SA(MD)No.326 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.326 of 2025
and
C.M.P(MD)No.11388 of 2025

Pushpam ... Appellant / Appellant / 1st Defendant

Vs

1.Janaki Ammal ... 1st Respondent / 1st Respondent /
Plaintiff

Gnana Sigamani (Died)

2.Masilamani

3.Selvam

4.Bovas

5.Kalaiselvi

6.Devanesam ... 2 to 6 Respondents / 2 to 7 Respondents /
2 to 7 defendants

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree dated 28.03.2024 passed in A.S.No.16 of 2023 by the Subordinate Judge, Srivaikundam, confirming the decree and the judgment dated 27.06.2006 made in OS.No.314 of 2004 by the District Munsif of Srivaikundam.

For Appellants : Mr.G.Aravinthan



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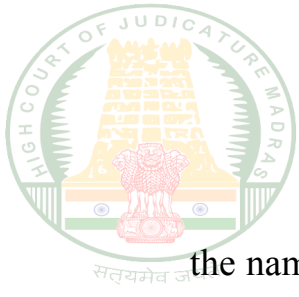
JUDGMENT

The first defendant in the suit is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 28.03.2024 passed in A.S.No.16 of 2023 by the Subordinate Judge, Srivaikundam, confirming the decree and the judgment dated 27.06.2006 made in OS.No.314 of 2004 on the file of the District Munsif of Srivaikundam.

2. For the sake of convenience, the parties are referred to as per the ranking before the trial Court.

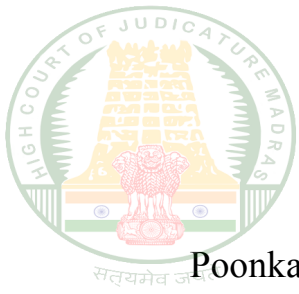
3. It is the case of the plaintiff that the suit first item of the property originally belong to Kaniyappa Nadar who is the plaintiff's husband. From her husband, the plaintiff's sister namely Poonkani Ammal purchased the first item through a registered sale deed dated 06.10.1994 for valuable consideration. Since Poonkani Ammal was employed in a rubber factory viz., Sai Industries, she purchased the property through her own funds. Pursuant to the purchase, the property tax was transferred in

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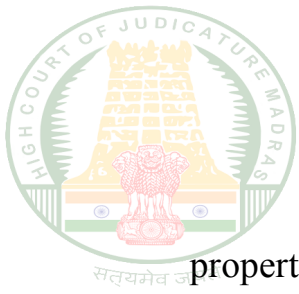
the name of Poonkani Ammal and she was in possession and enjoyment of the property. Thereafter, she constructed a room in the first schedule which is second item and also constructed a toilet and put up a bathroom. It is the further case of the plaintiff that the first defendant is the only daughter of Poonkani Ammal. The husband of Poonkani Ammal, Devairakkam Nadar had deserted the first defendant and she was under the care and custody of Poonkani Ammal. She had spent money and celebrated the marriage of the first defendant with the second defendant. During marriage, Poonkani Ammal had given 13 sovereigns of gold and also a cash of Rs.30,000/-. After she retired in December, 1997, she was living in the first item of the suit property. She allowed the first defendant and the second defendant to reside along with her in the first item house. Misunderstanding arose between them. The defendants developed a hostile attitude and the defendants sent out Poonkani Ammal from the house. After she was chased away, Poonkani Ammal came and lived with her sister, the plaintiff, in a rented house. The first defendant further issued an advertisement in Dhina Thanthi Tamil Daily dated 22.02.1999 claiming that Poonkani Ammal purchased the first item of the suit property through her money. Pursuant to which, the plaintiff sister



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Poonkani Ammal issued legal notice to the defendants on 05.07.1999

asking them to hand over the possession of the suit property. For which, they have sent a reply on 09.07.1999 with false allegations. Poonkani Ammal filed a suit against the defendants in O.S.No.100 of 1999 seeking for a mandatory injunction to direct the defendants to vacate and hand over the suit property to her. In the suit, since the defendants contended that the first item is worth more than Rs.30,000/- and it was not within the pecuniary jurisdiction of the Court and the suit ought to have been filed before the Subordinate Court and therefore the plaint was returned on 14.08.2000 in view of pecuniary jurisdiction. Thereafter, Poonkani Ammal filed a suit before the Subordinate Court, Thoothukudi for declaration and for recovery of possession. In fact, since she was an indigent person, she filed a popper O.P., in O.P.No.92 of 2000. However, in the meantime, since Poonkani Ammal died on 01.11.2002, the petition was dismissed as not pressed. In view of the dispute with the defendants, Poonkani Ammal during her lifetime, on her own volition and sound state of mind, had executed a Will on 23.09.2002 bequeathing the suit properties in favour of the plaintiff. After the death of Poonkani Ammal, as per the Will, the plaintiff became the absolute owner of the suit



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properties and had filed the suit seeking for declaration and recovery of possession and also for mesne profit.

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4. The defendants resisted the suit disputing that Poonkani Ammal had gifted 13 sovereigns and spent money during the marriage of the defendants. It is the specific contention of the defendants that the defendants had constructed the house in the suit property. The execution of the Will by Poonkani Ammal dated 23.09.2002 was disputed. It is the case of the defendant that the first defendant's mother Poonkani Ammal died intestate and there was a cordial relationship between the mother and the first defendant and pursuant to the death of Poonkani Ammal, the first defendant had inherited the suit property.

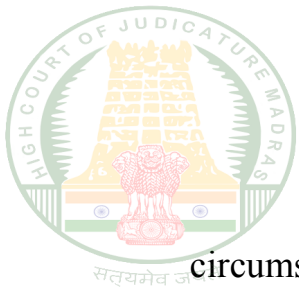
5. During trial, the plaintiff examined herself as P.W.1 and the attester as P.W.2 and marked Ex.A1 to Ex.A9. On the side of the defendants, none has been examined and no document was marked. The trial Court after analyzing the evidences came to the conclusion that the Will in Ex.A9 executed by Poonkani Ammal in favour of the plaintiff has been proved by examining the attester P.W.2. The trial Court found that



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there is no suspicious circumstances in view of the sore relationship between the first defendant and her mother. The trial Court decreed the suit. On appeal, the lower appellate Court reappraised the evidences and on coming to the conclusion that the P.W.2, the attester had given cogent evidence regarding execution of the Will as per Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act, held that the Will in Ex.A9 stands proved. The appellate Court also found that the Will in Ex.A9 being a registered instrument and the propounder, proved the Will in accordance to law, dismissed the appeal, confirming the judgment and decree of the trial Court. Assailing the concurrent finding of fact, the first defendant is before this Court on appeal.

6. Learned counsel appearing for the appellant argued that when the plaintiff claims right through the Will in Ex.A9, as the propounder, the onus was on the plaintiff to dispel all the suspicious circumstances surrounding the Will. It is the further contention that when the first defendant, being the only daughter had been disinherited in the Will and there has been no reason adduced, the same alone would be a suspicious circumstance and the propounder has not dispelled the suspicious



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circumstances. It is his further vehement contention that though there might have been some difference of opinion between the mother and daughter that alone cannot be taken to be a factor to accept the Will in Ex.A9 where the first defendant has been completely disinherited in the Will, which in the normal circumstances, is not acceptable. The Courts below have not considered these aspects and had merely come to the conclusion that the Will is proved and rendered the finding which are perverse and sought for interference of this Court.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. Poonkani Ammal had purchased the suit property through a registered sale deed dated 06.10.1994 for valuable consideration. It is the claim of the plaintiff that Poonkani Ammal had been working in a private company and out of the income earned by her, she had contributed towards the valuable sale consideration and had purchased the suit first item of the property. By purchase, the suit property is the absolute property of Poonkani Ammal. Poonkani Ammal had executed a registered



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Will dated 23.09.2002 in Ex.A9 in favour of the plaintiff. Poonkani Ammal died on 01.11.2002. Pursuant to the death of Poonkani Ammal, as per the registered Will in Ex.A9, the plaintiff became the absolute owner of the suit properties and had come up with the above suit seeking for declaration and recovery of possession.

9. Admittedly, the first defendant is the daughter of Poonkani Ammal and the second defendant is the husband of first defendant. The plaintiff in order to establish her case and prove the Will in Ex.A9 had examined herself as P.W.1 and had examined the attesor in the Will as P.W.2. The attesor P.W.2 had given a clear and cogent evidence that Poonkani Ammal had executed a Will on 23.09.2002 and in the Will, she along with one Murugesan stood as witnesses. Poonkani Ammal had affixed the signature in front of P.W.2 and the other witness Murugesan. Thereafter, P.W.2 and Murugesan had attested the Will before Poonkani Ammal. The Will was registered and during registration, P.W.2 and the other witness was present. The document which was registered and shown before him is Ex.A9-Will. In view of the clear and cogent evidence given by PW2, the attesor in the Will, the plaintiff had

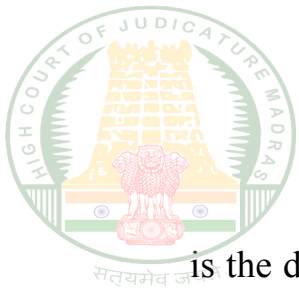


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discharged the onus and proved the execution of the Will in compliance of Section 63(c) of the Indian Succession Act read with Section 68 of the Indian Evidence Act.

10. It is the duty of the propounder, the plaintiff to dispel all the suspicious circumstances surrounding the Will. It is the vehement contention of the learned counsel for the appellant that since the first defendant being the natural legal heir daughter, was disinherited in the Will, it is a suspicious circumstances. The propounder had not dispelled the suspicious circumstances and therefore the Will in Ex.A9 cannot be taken to as proved. In this regard, it is to be noted that the first defendant's mother Poonkani Ammal who had purchased the suit property through the sale deed in Ex.A1 after her retirement had been residing in the suit property. She had allowed the first defendant, daughter and son in law, the second defendant, to reside along with her.

11. From the document filed in Ex.A6, it can be seen that the first defendant's mother Poonkani Ammal had herself filed a suit in O.S.No. 100 of 1999 as against the first defendant and the second defendant who



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is the daughter and son-in-law. According to Poonkani Ammal, she being the absolute owner of the suit property had allowed the first defendant to reside along with her, but however due to certain misunderstanding, the first defendant along with her husband, the second defendant, had chased her from the house in the suit property. The first defendant's mother by filing the suit had sought for recovery of possession of the suit property from the defendants. However, since the defendants therein contended that the Court was not having pecuniary jurisdiction in view of the valuation of the suit property, the plaint was returned.

12. In view of the order dated 14.08.2000 in Ex.A6, the first defendant's mother thereafter had again filed a suit seeking for declaration and recovery of possession before the Subordinate Court, Thoothukudi. Since the first defendant's mother Poonkani Ammal was not having sufficient means and she was already residing with the plaintiff her sister, she had also filed a popper O.P. in O.P.No.92 of 2000 before the Subordinate Court, Thoothukudi, seeking permission to contest the suit as popper. It is also to be noted that in fact, even as early as on 22.06.1999, the first defendant had issued a paper publication in a Tamil Daily,

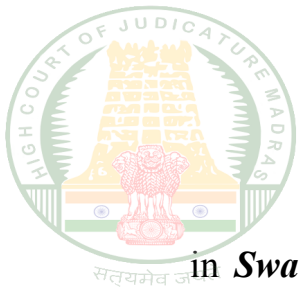


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claiming that she is the owner of the suit property. From the documents filed in Ex.A2 and Ex.A6, it is evidently clear that the relationship between the first defendant and her mother Poonkani Ammal had become sore and the defendants having chased out of her mother Poonkani Ammal from the suit property and also claimed ownership, it became necessary for Poonkani Ammal to file a suit as against her own daughter seeking for declaration and recovery of possession.

13. When the relationship between the mother and daughter became sore and it went to the extent of filing a suit by the mother seeking for recovery of possession, it is quite natural that Poonkani Ammal had executed a Will in favour of her sister, the plaintiff, who had given shelter to her and had been taken care during her old age. As such, there is every reason for the first defendant's mother to execute the Will in favour of her sister by excluding the first defendant who is her daughter. Therefore the mere disinheritance of the first defendant from the Will in Ex.A9 cannot alone be considered as a suspicious circumstance. It is also useful to refer to the decisions of the Hon'ble Supreme Court in the case of ***Dhanpat vs Sheo Ram and others, reported in (2020) 16 SCC 209*** and

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in ***Swarnalatha and others vs Kalavathy and others, reported in 2022***

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SCC Online SC 381, wherein it is held that mere disinheritance in the will alone cannot be taken to be a suspicious circumstance. Further as held by the Hon'ble Supreme Court in the case of ***Shivakumar v. Sharanabasappa, reported in (2021) 11 SCC 277***, suspicious circumstance must be real, germane and valid and not merely the fantasy of the doubting mind.

14. The Hon'ble Supreme Court also in a recent decision in the case in ***Metpalli Lasum Bai and others Vs Metapalli Muthaih(D)*** reported in ***2025 INSC 879*** has held that the registered Will has a presumption regarding genuineness and the person disputing the same has to establish that the will is doubtful. As such in the instant case, when the Will in Ex.A9 is a registered instrument, there is a presumption regarding genuineness thereof. Further when the plaintiff had also proved the Will in accordance to law, the defendants had not even examined any witness, nor marked any documents to create or establish any doubt regarding its genuineness. In fact, the first defendant herself did not choose to enter into the witness box. Moreover the first defendant who had claimed



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ownership over the suit property did not pursue her claim by letting in any evidence. When the defendants had remained silent and had not taken any effort, particularly when the Will in Ex.A9 has been proved and further in view of the presumption attached to the registered Will, the arguments advanced by the learned counsel for the appellant that the Courts below erred in accepting the Will as proved, cannot be accepted.

15. In view of the above deliberations, this Court does not find any illegality or perversity in the concurrent finding of fact rendered by the Courts below. No substantial question of law arise for consideration in this Second Appeal, for admission.

16. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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NCC :Yes/No
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G.ARUL MURUGAN, J.

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To

1. The Subordinate Judge, Srivaikundam.
2. The District Munsif, Srivaikundam.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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and
C.M.P(MD)No.11388 of 2025

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