



S.A.(MD).No.275 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2025

PRONOUNED ON : 10.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.275 of 2018

and

C.M.P.(MD)No.7670 of 2018

- 1.Selvarani
- 2.Subbulakshmi
- 3.Ganeshmurthy
- 4.Raja Gothai Nayagi
- 5.Jeyadurga
- 6.Vijaya Durga

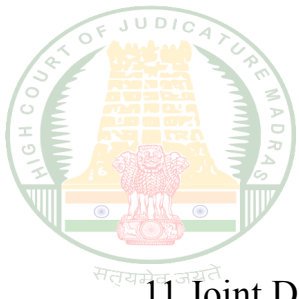
... Appellants

/Vs./

- 1.K.G.Kandakumar (Died)
- 2.K.G.Sivasankaranarayanan
- 3.K.G.Alagarammal
- 4.R.Krishnammal
- 5.K.G.Kothainayagi
- 6.K.G.Balamaheswari
- 7.K.G.Sooriyakala
- 8.K.G.Gajagowri

9.District Elementary Educational Officer,
Tirunelveli – 627 002.

10.Assistant Elementary Educational Officer,
Palai Nagar, Palayamkottai – 627 002,
Now at Perumalpuram.



S.A.(MD).No.275 of 2018

11.Joint Director,
Tamilnadu Elementary Education,
Tamilnadu,
Chennai – 600 006.

12.State of Tamil Nadu,
Through its District Collector,
Tirunelveli,
Having Office at Tirunelveli – 627 009.

...Respondents

(Cause title amended, vide Court order, dated
17.02.2020, made in CMP(MD)No.1703 of 2020
in SA(MD)No.275 of 2018)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 18.01.2018, made in A.S.No.77 of 2004 on the file of the 1st Additional District Court, Tirunelveli, modifying the Judgment and Decree, dated 23.03.2004, made in O.S.No.177 of 1998 on the file of the II Additional Sub Court, Tirunelveli.

For Appellants	: Mr.S.Parthasarathy for Mr.G.Prabhu Rajadurai
R1	: Died
For R2	: Mr.T.Selvan
For R3	: No appearance
For R4, R6 to R8	: Mr.V.Meenakshi Sundaram
For R5	: Mr.S.Kumar
For R9 to R12	: Mr.C.Satheesh Government Advocate



S.A.(MD).No.275 of 2018

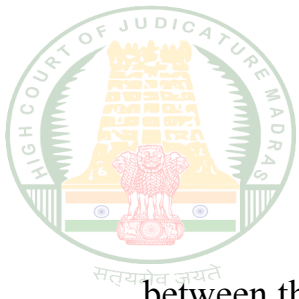
WEB COPY

JUDGMENT

The present second appeal is preferred by the defendants 8 to 13 against the Judgment and Decree, dated 18.01.2018, passed in A.S.No.77 of 2004 on the file of the 1st Additional District Court, Tirunelveli, modifying the Judgment and Decree, dated 23.03.2004, passed in O.S.No.177 of 1998 on the file of the II Additional Sub Court, Tirunelveli.

2. The plaintiffs in the suit are the respondents 4 to 8 herein, the defendants 1 to 3 in the suit are the respondents 1 to 3 herein, the defendants 4 to 7 are the respondents 9 to 12 herein and the defendants 8 to 13 are the appellants herein. For the sake of convenience, the parties shall be referred as plaintiffs and defendants, as per the ranking in the suit.

3. The suit is filed by the plaintiffs to declare that the plaintiffs and defendants 1 to 3 are Educational Agency of the Institution, consequential injunction restraining the defendants 1 to 3 from denying and functioning of the plaintiffs as Educational Agency, the Institution shall be managed by rotation



S.A.(MD).No.275 of 2018

between the plaintiffs and defendants 1 to 3 and to grant partition in respect of 2nd schedule of property and to allot 21/40 share.

4. The averments stated in the plaint are that the 1st plaintiff is the second wife of deceased Ganesamurthy. The plaintiffs 2 to 5 are the children of 1st plaintiff and Ganesamurthy. The defendants 1 to 3 are the children Ganesamurthy born through his first wife Late. Kothainayagi. Hence, the plaintiffs and defendants 1 to 3 are the legal heirs of Late.Ganesamurthy. One Kandasamy Pillai the father of deceased Ganesamurthy founded the school in the year 1932 in the name of Ganesamurthy Middle School at Kurichi, Palayamkottai Taluk. The said Kandasamy Pillai had purchased the properties for school and he was working as Correspondent of School. After the demise of Kandasamy Pillai, his only son Ganesamurthy and the female heirs inherited the rights in school. The female children bequeathed their rights in the school in favour of their brother Ganesamurthy. Thereafter, Ganesamurthy was serving as Correspondent of School as nominated and the same was recognised by Educational Department. The said Ganesamurthy married the 1st plaintiff as per Hindu rites after the demise of his first wife Kothainayagi. He was serving as a government servant and also served



S.A.(MD).No.275 of 2018

WEB COPY

as Head Master of School. The said Ganesamurthy purchased the suit 2nd schedule 1st and 2nd item of properties out of donations during the appointment of teachers in the year 1960, from the maintenance amount received from the government and out of the income of joint family properties. He purchased the plaintiff 1st schedule property as joint family property for improving the school and that property is in enjoyment along with other joint family properties. The 1st plaintiff was living with her husband Ganesamurthy at Door No.1 Kuruji Marudhupandiar Street. The 1st defendant after marriage was living with her father for five years, then lived in separate residence. The 1st defendant was residing in 1st item of suit 2nd schedule house which is opposite to the house of father. The 2nd defendant is also residing separately after the marriage. There is no cordial relationship between the plaintiffs and the defendants 1 to 3. The defendants claimed they have special status and consciously denied to accept the plaintiffs since the 1st plaintiff is the second wife of Ganesamurthy and the 2 to 5 plaintiffs are children born to the second wife. Hence the defendants were cautious that the plaintiffs should not claim right in the school and properties. But the said Ganesamurthy had treated the plaintiffs and the defendants 1 to 3 alike. The 1st defendant being the son of first wife was controlling the father Ganesamurthy and the father could not



S.A.(MD).No.275 of 2018

WEB COPY

overcome the control of his son, hence, the father mentally suffered. The father was stressed since the plaintiffs were illtreated by the defendants 1 to 3, thereby suffered mental illness and was treated for Schizophrenia from 05.09.1993 with Patient No.2918 at Dhanvanthri Hospital till his death. Due to his mental illness the said Ganesamurthy would behave violently, he would verbal and physically assault persons and would be uncontrollable and he was totally unaware of his own behaviour. The doctor advised that he should be treated continuously. In such circumstances, by showing the age of the said Ganesamurthy, the 1st defendant intended to take over the management, which may not be possible if the father is living with the 1st plaintiff / 2nd wife, hence the 1st defendant took the custody of Ganesamurthy forcibly from the 1st plaintiff, then denied access to the plaintiffs to see Ganesamurthy. There is no quarrel between the 1st plaintiff and Ganesamurthy. Hence, there is no reason for the 1st defendant to take custody of Ganesamurthy. The 1st defendant created a Will on 17.02.1995 wherein the second schedule items 1, 2 joint family properties and 3rd item ancestral property were bequeathed to the sons of first wife and the said Will was registered and the father was not in a position to understand the happenings around him. The recital of Will reads that the right to 1st schedule school was vested with 1st defendant and the school



S.A.(MD).No.275 of 2018

WEB COPY

should be run in 2nd schedule and the 2nd schedule is allotted to the 2nd defendant.

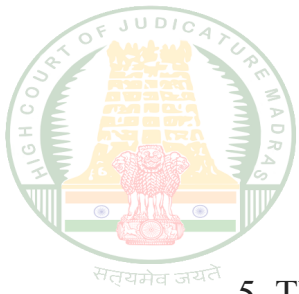
After 10 days, he created another Will on 28.02.1995 and the said Will reads that all the properties of Ganesamurthy and school building are vested to his two sons born through the second wife. Further, it reads that the 1st and 2nd defendants should conduct the marriage of 5th plaintiff and the 1st plaintiff have to live with 1st and 2nd defendants or at titled house at Door No.43 till her life time. The said Will is created and an afterthought. Both these Wills were executed when Ganesamurthy was not in sound state of mind and both the Wills are not valid since it is not executed with consciousness. Both are created by the 1st defendant by forging and both have not come into force. There is no recital in respect of first Will in the second Will. There is no necessity for Ganesamurthy to execute two Wills within 10 days. By using the insane condition of Ganesamurthy, the 1st defendant had created two Wills. The 1st defendant transferred the administration of school in his name and the same is not valid. While considering for approval, the Education Department got objection only from 3rd defendant. In fact, the Education Department ought to have got objection from all the legal heirs of Ganesamurthy. The 2nd plaintiff filed W.P.No.7566 of 1996 before the Madras High Court. After the demise of Ganesamurthy, the 2nd plaintiff had not conducted



S.A.(MD).No.275 of 2018

WEB COPY

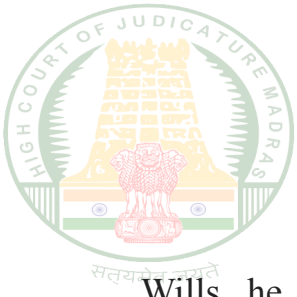
the case and asked his Counsel to withdraw writ petition. While nominating the 1st defendant as Secretary, the defendants 4 to 6 have not adhered to Tamil Nadu Private School (Regulation) Act. Though the 2nd plaintiff applied before the officials of Educational Department, they have not proceeded further on the application. The 1st defendant cannot act as Secretary of School Committee. There is no transparency in the Committee. Further, the 1st defendant has failed to give intensive treatment to the deceased Ganesamurthy and he died on 01.11.1996 at the house of the 1st defendant. The 1st defendant restrained the plaintiffs from seeing the dead body of Ganesamurthy. Then, after the police complaint, the 1st defendant allowed the plaintiffs to see the dead body. The plaintiffs and the defendants 1 to 3 are having right in the properties of Ganesamurthy. Hence, the plaintiffs have filed the suit for declaration that the plaintiffs and the defendants 1 to 3 are the Educational Agency of 1st schedule School and for restraining the defendants 1 to 3 from acting as Educational Agency without including the plaintiffs, thereby denying and functioning of the plaintiffs as Educational Agency and to order to administer the school by rotation and for partition of 21/40 share to plaintiffs in the suit 2nd schedule properties.



S.A.(MD).No.275 of 2018

WEB COPY

5. The contentions raised by the defendants 1 to 3 in their written statement are that the suit reliefs are not maintainable. The plaintiffs are not entitled for 21/40 share. There is no cause of action to file this suit. The name of 2nd defendant is not Sivasankaranarayanan and his name is Sankaranarayanan. Kandasamy Pillai the father of Ganesamurthy was not having any ancestral property and the said Kandasamy Pillai had acquired the properties out of his own income and he died on 06.12.1950. After his death, his son Ganesamurthy enjoyed the properties exclusively. The plaintiffs cannot claim right over the ancestral property. The female heirs have no right in the property. Hence, alleged relinquishment is necessary. It is not correct that the plaintiffs and the defendants have no cordial relationship. It is not true that Ganesamurthy was under the control of 1st defendant. In the year 1993, Ganesamurthy got treatment for insomnia for one week. He conducted the marriage reception of the 4th plaintiff in a grant manner. The health condition of Ganesamurthy stated in the plaint are all false. He was aged 73 years at the time of his death. Ganesamurthy executed a Will on 17.02.1995 without instigation of anybody in a sound state of mind. Then altering the said Will, he executed another Will on 28.02.1995. Both the Wills are genuine. After his death, the Wills came into force. At the time of execution of

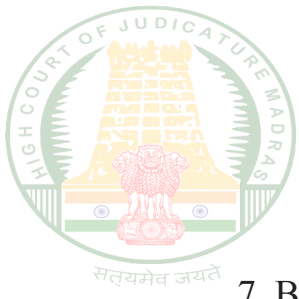


S.A.(MD).No.275 of 2018

WEB COPY

Wills, he was conscious and in sound state of mind. The allegation stated in respect of Wills are all denied as false. The defendants 4 to 6 are law abiding persons. The defendants 4 to 6 acted on the basis of Tamil Nadu Private School (Regulation) Act. During the life time of Ganesamurthy itself, he transferred the right in the school in favour of the 1st defendant. The Committee formed by the 1st plaintiff is not valid. It is not correct that the 1st defendant cannot act as Educational Agency. The properties are not in joint possession. Hence, the defendants 1 to 3 prayed to dismiss the suit with costs.

6. The written statement filed by the 5th defendant was adopted by defendants 4, 6 and 7, wherein it is stated that the plaintiffs are not entitled for the relief as claimed in the suit. The private schools are governed by Tamil Nadu Private School (Regulation) Act and Rules made thereunder. On the basis of documents only, the 1st defendant was nominated as Secretary. The plaintiffs cannot question the same before Civil Court. The defendants 4 to 7 are not necessary parties to the suit. Hence, the defendants 4 to 7 prayed to dismiss the suit with costs.



S.A.(MD).No.275 of 2018

WEB COPY

7. Based on the pleadings, the Trial Court has framed the following issues:

- i) Whether the 1st schedule property is a joint family property?
- ii) Whether the Will, dated 28.02.1995, executed by Late. Ganesamurthy is valid in law?
- iii) In respect of the 1st schedule property, is it correct that the plaintiffs along with the defendants 1 to 3 are the agents of the said properties?
- iv) Is it correct that defendants 1 to 3 are agents for the 1st schedule properties?
- v) Whether the defendants 1 to 3 and the plaintiffs are entitled to manage the school in rotation?
- vi) Whether the plaintiffs are entitled to 21/40 share in the 2nd schedule property?
- vii) Is it true that the defendants 4 and 5 are liable for the mismanagement in respect of 1st schedule property?
- viii) What is the other remedy available to the plaintiffs?

On the side of the plaintiffs, PW1 to 3 were examined and Ex.A-1 to 11 were marked. On the side of the defendants, DW1 to 5 were examined and Ex.B-1 to 26



S.A.(MD).No.275 of 2018

WEB COPY

were marked. After considering the pleadings, oral and documentary evidences, the Trial Court has decreed the suit as prayed for.

8. Aggrieved over the same, the defendants 1 to 3 have filed an appeal and the appeal was partly allowed. Aggrieved over the same, the defendants 8 to 13 have preferred the present second appeal. The second appeal was admitted on the following substantial questions of law:

“1. Whether the Lower Appellate Court was right in concluding that the first defendant (legal heir of the appellant) had not specifically explained the suspicious circumstances surrounding execution of Exs.B1 and B2 by Ganeshamurthy?

2. Whether the execution of Ex.B21, Settlement Deed would have the effect on cancellation of Ex.B1 and B2?.”

9. The first substantial question of law is the suspicious circumstance in executing the Wills B1 and B2. The contention of the defendants is that the plaintiffs had admitted the execution of the Will, hence the initial burden cast on the defendants are discharged and therefore the Will is proved. On the other hand,



S.A.(MD).No.275 of 2018

WEB COPY

the contention of the plaintiffs is that mere admission of execution of Will is not sufficient, the defendants ought to prove that there is no suspicious circumstance in execution of Will. But the defendants submitted, it is the plaintiff who has to prove that there is suspicious circumstance, since the person who is claiming suspicious circumstance ought to state what are the suspicious circumstance and establish the suspicious circumstance exists, hence the burden is on the plaintiffs to state and establish the same.

10. The suspicious circumstance pointed out by the plaintiffs are that there are two Wills executed within 10 days, the first Will was executed on 17.02.1995 and marked as Ex.B3. The second Will was executed on 28.02.1995 and marked as Ex.B1. And the second Will has not stated the earlier Will was withdrawn. Further in the second Will there is no description of properties. Hence, it is not clear which are the properties were bequeathed to the sons of the first wife. Further in the first Will it has been stated that the management of the school and school properties ought to be inherited by the first son and the other properties ought to be inherited by the second son. But in the second Will it has been stated that the both the sons are entitled to equal share to all the properties.



WEB COPY

11. On perusal of the two Wills, it is seen that the plea raise by the plaintiffs are true, both the Wills are inconsistent. In the first Will it is stated that the first son in entitled to management of the school and school properties and the second son is entitled to the properties stated in the schedule. But in the second Will it is stated that the both the sons are entitled to all the properties equally and the second wife is entitled to life interest in the titled house. Further the second Will has not even referred the first Will at all. The defendants had not explained under what circumstances and what is the necessity for execution of the second Will.

12. Further when the Will was executed, the defendants had not explained why the settlement deed dated 19.10.1996 marked as Ex.21 was executed. On perusal of the settlement deed, it is seen that the same is executed regarding the properties given to the first son through the first Will and it is not stating anything regarding the properties given to the second son. Once the Settlement Deed is executed on the subsequent date, then the earlier Wills which had not come into force would automatically be cancelled. In other words, once the settlement is executed then the property would not be available which is shown under the Will. Therefore, the Will would be automatically cancelled.

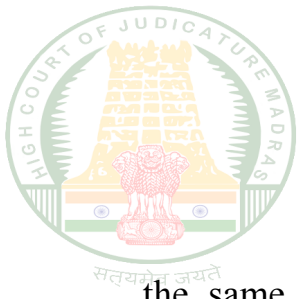


S.A.(MD).No.275 of 2018

WEB COPY

13. The attesting witness Muthukumarasamy examined as PW3 had attested in both the Wills had deposed that he had not seen Ganesamurthy signing the Wills. Further he had stated that the Wills were not written at the house of Ganesamurthy. On the other hand, one Abdul Azees examined as DW2 who had attested the second Will had stated he had seen Ganesamurthy signing the Will. One Balamurugan examined as DW3 who had attested the first Will had stated he had seen Ganesamurthy signing the Will. But both are employees of the school, one is retired and the other was still in service, hence there may some undue influence by the defendants who are in management of the school. Therefore, this Court is of the considered opinion that the defendants have not dispel the suspicious circumstances while executing the alleged Wills.

14. The Appellate Court had elaborated dealt with all the suspicious circumstances. This Court is of the considered opinion that there is no clarity in the Wills, which leads to suspicious circumstances. Therefore, this Court is of the considered opinion that the suspicious circumstances exists and the defendants had not discharged their burden to dispel with the said suspicious circumstances. Also, this Court is of the considered opinion once the Settlement is executed for



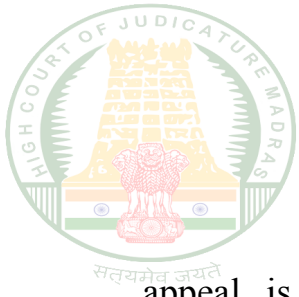
S.A.(MD).No.275 of 2018

WEB COPY

the same property shown in the Will, then the Will would be automatically cancelled. Both the substantial question of law is answered against the defendants.

15. Have held so, this Court is of the considered opinion that the properties are available for partition among the legal heirs. However, instead of dividing the properties to each legal heirs, if the properties are divided $\frac{1}{2}$ share to both the wives, the same would meet the ends of justice. And also, the management of school also be granted under rotation. Therefore, all the properties shall be divided into equal halves for the said two wives. Thereafter, the legal heirs under them share divide as per the surviving members. As far as management of school by rotation is concerned, the same shall be granted to the two wives and in turn the legal heirs shall take charge within themselves.

16. The Judgment and Decree, dated 18.01.2018, passed in A.S.No.77 of 2004 on the file of the 1st Additional District Court, Tirunelveli is modified and the Judgment and Decree, dated 23.03.2004, made in O.S.No.177 of 1998 on the file of the II Additional Sub Court, Tirunelveli is confirmed. Therefore, the second



S.A.(MD).No.275 of 2018

appeal is disposed as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2025

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. 1st Additional District Court, Tirunelveli.

2.II Additional Sub Court, Tirunelveli.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

4.District Elementary Educational Officer,
Tirunelveli – 627 002.

5.Assistant Elementary Educational Officer,
Palai Nagar, Palayamkottai – 627 002,
Now at Perumalpuram.

6.Joint Director,
Tamilnadu Elementary Education,
Tamilnadu, Chennai – 600 006.

7. District Collector,
Tirunelveli – 627 009.



WEB COPY



S.A.(MD).No.275 of 2018

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.275 of 2018

Dated:
10.03.2025