



S.A.(MD)No.302 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.302 of 2019

1.A.Karuppiiah
2.Rajendran

... Appellants/Appellants/
Defendants 2 and 3

VS

1.Mayakkal

...1st Respondent/1st Respondent/
Plaintiff

2.Kaluvayammal(died)
(Memo dated 18.01.2024, filed on
24.01.2024 in USR No.3006 is
recorded, as R.2 died and
appellants 1, 2 and first respondent
who are already on record, recorded as
LRs of the deceased R.2, vide order
dated 25.03.2024)

3.Uthayapandi
4.P.Rani
5.Natarajan
6.Muniyasamy

... Respondents 2-6/Respondents 2-6/
Defendants 1, 4 to 7

(Memo dated 18.01.2004 filed on 24.01.2024
in USR No.3007 is recorded to the effect that R.3
R.6 are given up, vide Court order dated 25.03.2024)

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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.46 of 2011, dated 13.01.2015 on the file of learned I Additional District Judge, Madurai, confirming the judgment and decree passed in O.S.No.451 of 2002, dated 22.08.2011, on the file of learned II Additional Subordinate Judge, Madurai.

For Appellants : Mr.S.Pon Senthilkumar

For Respondents : Mr.T.Pon Ramkumar
for R.1

: R2 – died

: R.3 to R.6 – given up

JUDGMENT

The defendants 2 and 3 are before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 13.01.2015, in A.S.No.46 of 2011, on the file of I Additional District Judge, Madurai, confirming the judgment and decree, dated 22.08.2011, made in A.S.No.451 of 2002, on th file of II Additional Subordinate Judge, Madurai.



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3. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

4. It is the case of the plaintiff that “A” schedule suit property originally belonged to her father one Animuthu Thevar. It is his self-acquired property. The first defendant is the wife of Animuthu Thevar and the plaintiff and the defendants 2 and 3 are the children born to the first defendant and Animuthu Thevar. According to the plaintiff, Animuthu Thevar executed a registered Will dated 13.07.1998 in Ex.A.1 on his own volition in sound state of mind. Animuthu Thevar died on 15.06.2000 leaving behind the plaintiff and the defendants 1 to 3 as his legal heirs. Pursuant to his death, the Will in Ex.A.1 came into effect, whereby the first defendant became the absolute owner of “A” schedule property. The first defendant – mother had been in possession and enjoyment of the property by collecting rents from the tenants.

5. It is the further case of the plaintiff that the first defendant had executed a registered settlement deed dated 18.09.2000 by settling a portion of “A” schedule property which is more fully mentioned in “C” schedule in



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favour of the plaintiff. Pursuant to the settlement executed, the plaintiff had attained the tenancy and she has become the absolute owner of “C” schedule suit property. Since the defendants 2 and 3 prevented the tenants from paying rents to the plaintiff, the first defendant – mother had issued a legal notice on 30.10.2000 for which, the defendants 2 and 3 sent a reply on 09.12.2000. The defendants 2 and 3 had contended that Animuthu Thevar had cancelled the Will in Ex.A.1 and had executed another Will on 24.01.2000 in Ex.B.1 and therefore, they claimed right over the entire “A” schedule property. Hence, the plaintiff had come up with the suit seeking for declaration in respect of “C” schedule property and for mandatory injunction against the tenants to pay rents to the plaintiff.

6. The defendants 2 and 3 resisted the suit by filing a written statement admitting that “A” schedule property was the absolute property of Animuthu Thevar and he had executed a Will in Ex.A.1 in favour of his wife – first defendant and he died on 15.06.2000 leaving behind the plaintiff and the defendants 1 to 3 as his legal heirs. The defendants had denied that the Will dated 13.07.1998 in Ex.A.1 had come into effect and had also disputed the settlement dated 18.09.2000 executed by the first defendant in

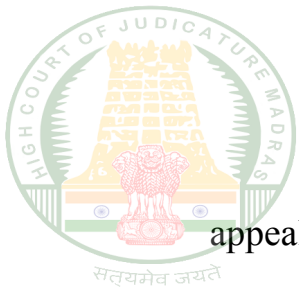


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favour of the plaintiff in Ex.A.3. It is the specific case of the defendants that Animuthu Thevar had cancelled the Will in Ex.A.1 and had executed the Will dated 24.01.2000 in Ex.B.1 and as such, since the Will dated 24.01.2000 is the last Will of Animuthu Thevar and he died on 15.06.2000, as per the Will, the defendants 2 and 3 are alone entitled to the suit “A” schedule property and sought for dismissal of the suit.

7. During trial, the plaintiff examined herself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and marked Exs.A.1 to A.22. On the side of the defendants, the second defendant examined himself as D.W.1 and the attesor in Ex.B.1 Will as D.W.2 and marked Exs.B.1 and B.2.

8. The trial Court, after analysing the evidences, came to the conclusion that since Ex.A.1 Will has been admitted, the Will had been acted upon and the first defendant had also executed a settlement in favour of the plaintiff. The trial Court disbelieved the Will in Ex.B.1, as the defendants failed to dispel the suspicious circumstances surrounding the Will. The trial Court had also rejected the evidence of D.W.2, as he did not support the case of the defendants. The trial Court decreed the suit. On



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appeal, the lower appellate Court, on finding that the defendants 2 and 3 had never disputed the mutation of the revenue records created in favour of the first defendant and also subsequently in favour of the plaintiff, based on the settlement deed, had neither challenged those documents nor had sought for any relief based on the Will Ex.B.1, had concurred with the findings of the trial Court and dismissed the appeal. Assailing the concurrent findings of facts, the defendant had preferred the above Second Appeal.

9. The Second Appeal has not been admitted and by order dated 11.07.2019, this Court had only issued notice to the respondents.

10. The learned Counsel appearing for the appellants argued that the Courts below had merely rejected the Will in Ex.B.1 only on the ground that it is an unregistered Will, whereas the Will in Ex.A.1 is registered. It is his contention that merely because a Will is not registered, that does not make any difference and if the parties are able to prove the Will in the manner known to law, that will be suffice to seek for a relief under the Will. It is his further contention that when the Will in Ex.B.1 is the last Will of Animuthu Thevar, wherein he had cancelled the Will in Ex.A.1, the decision



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of the Courts below in granting a declaration based on the Will in Ex.A.1 is not sustainable. It is his vehement contention that further reasonings of the Courts that since Animuthu Thevar was 80 years old and he had gone to an adjacent place, which is 20 minutes away to execute an unregistered Will, are all suspicious circumstances for disbelieving the Will are erroneous. It is his further contention that the defendants 1 and 2 have duly examined the attestor in the Will of Ex.B.1 and had proved the execution of the Will as per Section 68 of the Indian Evidence Act. The Courts below had merely made reliance on the earlier mutation conducted and that cannot be a basis to reject the claim made in Ex.B.1 – Will and therefore, the findings rendered by the Courts below are perverse and sought for interference of this Court.

11. Contending contra, the learned Counsel for the first respondent / plaintiff argued that when Animuthu Thevar had executed a registered Will in Ex.A.1, pursuant to his death, based on the Will, the first defendant got the properties and obtained the mutation of the revenue records. The first defendant had also executed a settlement deed in favour of the plaintiff and



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the records had also been mutated in favour of the plaintiff and the plaintiff started to collect the rents from the year 2000.

12. The learned Counsel contended that the defendants, who were aware about all the developments and were silent, all of a sudden in the year 2002, came up with the claim through the Will in Ex.B.1, that too when the legal notice was issued. It is his vehement contention that if at all there had been a Will executed by Animuthu Thevar as claimed by the defendants 2 and 3, the defendants would have claimed right through the Will and not remained silent all along. It is his further contention that the very perusal of the Will relied on by the defendants in Ex.B.1 reveals that it is not executed by Animuthu Thevar, as the signatures found in the admitted registered Will in Ex.A.1 are completely different than the one in Ex.B.1. The defendants 2 and 3 did not dispell the suspicious circumstances and as propounders, the onus was on them to prove that the testator had executed the Will in a sound state of mind and when the defendants miserably failed to do so, the Courts below have rightly rejected the Will in Ex.B.1 and decreed the suit, which is based on the available materials and needs no intereference and hence, sought for dismissal of the Second Appeal.



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13. Heard the rival submissions and perused the materials available on record.

14. Animuthu Thevar is admittedly the absolute owner of the suit “A” schedule property, measuring an extent of 5 cents (2150 sqft). It is also admitted by the parties that Animuthu Thevar had executed a registered Will dated 13.07.1998 in Ex.A.1. Animuthu Thevar died on 15.06.2000, leaving behind the first defendant – his wife, the plaintiff – daughter and the defendants 2 and 3 – sons as his legal heirs. To this extent, the relationship and the position is admitted by the parties.

15. Pursuant to the death of Animuthu Thevar, according to the plaintiff, the first defendant became the absolute owner of “A” schedule property. Out of the total extent in the “A” schedule, the first defendant had executed a registered settlement deed, dated 18.09.2000 in Ex.A.3 settling “C” schedule property measuring an extent of 1150 sqft in favour of the plaintiff. After the first defendant got the property through the Will, the first defendant had executed the settlement deed in favour of her daughter



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and thereby had dealt with a portion of the suit property. In view of the

Will in Ex.A.1 and settlement deed executed in favour of the plaintiff in Ex.A.3, the revenue records have been mutated in favour of the first defendant and thereafter, in favour of the plaintiff in respect of “C” schedule property in Ex.A.22 and A.21. Based on which, the second defendant had been paying the taxes to the “C” schedule property in Exs.A.11 to A.20 and had been collecting the rents from the tenants – defendants 4 to 7. When the defendants 2 and 3 prevented the tenants from paying rents to the plaintiff, the plaintiff through her mother – first defendant had issued a legal notice in Ex.A.5, for which reply was issued by the defendants in Ex.A.7.

16. The defendants 2 and 3 though had admitted the Will executed by Animuthu Thevar in favour of her mother – first defendant in Ex.A.1, contents that subsequently Animuthu Thevar had executed an unregistered Will dated 24.01.2000 in Ex.B.1 wherein their father had cancelled the earlier Will in Ex.A.1 and had bequeathed “A” schedule property in favour of his two sons – defendants 2 and 3. The defendants, in order to prove the Will, had examined the attester as D.W.2. It is to be noted that when the defendants 2 and 3 had admitted the Will in Ex.A.1 and they claimed that



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there was a second and last Will executed by their father – Animuthu Thevar and when their father died on 15.06.2000, the defendants had not made any claim on the basis of the Will in Ex.B.1. When the defendants 2 and 3 had claimed that their mother – first defendant was residing with them, then there was no explanation on their part regarding the mutation of revenue records in favour of the first defendant based on the Will in Ex.A.1 and also the subsequent registered settlement deed executed by the first defendant in favour of her daughter – plaintiff in Ex.A.3. The defendants 2 and 3 had not chosen to examine their mother in this regard, but whereas the fact remains that the first defendant – mother herself had issued the legal notice to the defendants 2 and 3 in Ex.A.5 and Ex.A.6 for her daughter.

17. When the defendants 2 and 3 had admitted the Will in Ex.A.1 and had made a claim based on the subsequent Will dated 24.01.2000 in Ex.B.1, as propounders, onus is on the defendants 2 and 3 to dispel the suspicious circumstances and to prove that the Will in Ex.B.1 has been executed by the testator Animuthu Thevar. The Courts below had noted down the following suspicious circumstances surrounding the Will in Ex.B.1:



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(i) the signature of the testator in Ex.B.1 is completely different from the one that is found in the admitted registered Will in Ex.A.1;

(ii) the testator was 80 years old at the time of execution of Ex.B.1 and it is not proved that he was healthy and in sound state of mind;

(iii) the testator for the purpose of executing the unregistered Will, had gone to the adjacent village which is nearly 20 minutes away by walk and had executed the Will;

(iv) when the Will in Ex.B.1 is a typed instrument, the name of the scribe, who had typed the Will is absent and no signature of scribe is found in the Will.

(v) There is no explanation on the part of the defendants 2 and 3 for not having made a claim based on the Will for nearly 2 years pursuant to the death of Animuthu Thevar.

18. As rightly noted by the Courts below, the defendants 2 and 3 had not dispelled the suspicious circumstances surrounding the Will in Ex.B.1 and the attesor examined as D.W.2 had also not supported the case of the defendants 2 and 3. When the defendants failed to discharge their onus, by dispelling the suspicious circumstances and prove that the Will has been



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executed by the testator in a sound state of mind, the Courts below have rightly rejected the Will in Ex.B.1

19. It is also to be noted that pending suit, at the instigation of the defendants 2 and 3, they had taken the first defendant and had executed a cancellation of settlement in Ex.B.2, unilaterally cancelling the settlement made in favour of the plaintiff. The document in Ex.B.2 which has been executed pending suit, unilaterally cancelling the settlement is a void document as held by the decision of the Full Bench of this Court in *M/s.Latif Estate Line India vs Hadeeja Ammal and others*, reported in **2011-1-L.W.673**. Therefore, the execution of the document in Ex.B.2 will not take away the right of the plaintiff over the suit “C” schedule property in view of the settlement executed in her favour in Ex.A.3.

20. The Courts below have rightly considered the documents and having rejected the Will in Ex.B.1 and decreed the suit, by finding that the plaintiff is having title over the “C” schedule suit property, based on the settlement deed in Ex.A.3 executed by her mother, in view of the Will in Ex.A.1.



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21. The concurrent findings of the fact arrived at by the Courts below are based on the materials available on record. This Court does not find any illegality or perversity in the findings arrived at by the Courts below. No question of law, much less a substantial question of law arises for consideration in the Second Appeal.

22. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs.

14.07.2025

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

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To

1. I Additional District Court, Madurai.
2. II Additional Subordinate Court, Madurai
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ARUL MURUGAN, J.

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Judgment made in
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