



S.A.No.1098 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 28.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

S.A.No. 1098 of 2002

and C.M.P.No.8842 of 2002

1. Nagarathinam
2. Karthikeyan

... Appellants

Vs

1. Amirthathammal
 2. Meenakshi
 3. Gurumorthy
 4. Suseela
 5. Sundaravalli
 6. Minor Karnan
 7. Minor Arul
- [Minors R6 & R7 are represented
by their mother and guardian
Sundaravalli - R5]

...Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.10.2001 made in A.S.No. 243 of 1999 on the file of the Principal District Court, Karur, reversing the judgment and decree dated 29.1.1999 made in O.S.No.169 of 1995 on the file of the Subordinate Court, Kulithalai.

1st Appellant in



S.A.No.1098 of 2002

S.A.No.1098 of 2002 : died

For 2nd Appellant in
S.A.No.1098 of 2002 : Mr.T.M.Hariharan

R1 in S.A.No.1098 of 2002 : Mr.K.Govindarajan

For R2 in
S.A.No.1098 of 2002 : Tapal returned as
no such address

For R3 in
S.A.No.1098 of 2002 : Mr.R.Murali

For R4 to R7 in
S.A.No.1098 of 2002 : Served &
No appearance

JUDGEMENT

S.A.No.1098 of 2002 has been filed against the judgment and decree dated 04.10.2001 made in A.S.No.243 of 1999 on the file of the Principal District Court, Karur, reversing the judgment and decree dated 29.1.1999 made in O.S.No.169 of 1995 on the file of the Subordinate Court, Kulithalai.

2. The averments as contained in the plaint in O.S.No.169 of 1995,



S.A.No.1098 of 2002

are as follows:

(i) The suit properties were the self acquired properties of one Mr.Raju Pillai, who died on 02.8.1991 intestate, leaving behind him Mrs.Amirtham Ammal and the defendants 1 to 6 as his legal heirs. As per law, the said Mrs.Amirtham Ammal is deemed to be in joint possession of the suit properties. She would be entitled to 1/7 share. She came to know that her brothers and mother had created a fraudulent Will as if the said Mr.Raju Pillai had executed a testament during his life time. The said Mr.Raju Pillai had paralytic attack about 6 months before his death and the entire left limb of his body was paralysed.

(ii) The said Mrs.Amirtham Ammal demanded partition of the suit properties immediately after the obsequies day on 18.8.1991. The defendants 1, 3, 4 and 6 paid a sum of Rs.50,000/- on 18.4.1993 towards part of her 1/7 share. They attempted to get signatures of the said Mrs.Amirtham Ammal on two blank promissory notes. But, the defendants did not pay the remaining amount towards the share of the said Mrs.Amirtham Ammal, nor did they partition the suit properties. As the said Mrs.Amirtham Ammal married one Mr.Murugan and it was an inter-



S.A.No.1098 of 2002

caste love marriage, no money was given to her at the time of marriage.

(iii) The said Mrs.Amirtham Ammal was ready to return the above said amount of Rs.50,000/- received towards part of her 1/7 share. As stated earlier, she would be entitled to a 1/7 share in the suit properties and also entitled to the future mesne profits. She issued a legal notice on 11.11.1993 demanding partition, for which, the defendants issued two reply notices dated 17.11.1993 and 29.11.1993. The contentions in the reply notices were false. It was not true that the said Mr.Raju Pillai executed a Will while he was in sound and disposing state of mind. He had never put his thumb impression on any paper. Somebody impersonated and created the fraudulent Will. He was in coma stage from the last week of April 1991. Therefore, the alleged Will was a forged document. Hence, the suit.

3. The first and third defendants filed their written statement separately and the same was adopted by the defendants 2 and 4 to 6. The contentions raised in both the written statements are one and the same, which are as follows:

(i) The relationship is not in dispute. Items 5 and 8 of the suit



S.A.No.1098 of 2002

properties were the self-acquired properties of the mother of the said Mrs.Amirtham Ammal, namely the said Mrs.Nagarathinam Ammal and the remaining items were the self-acquired properties of the said Mr.Raju Pillai. The said Mr.Raju Pillai died on 02.8.1991, leaving behind him the plaintiff and the defendants 1 to 6 as his legal heirs. The defendants denied the contention of the plaintiff that they had created a fraudulent Will. The further contention of the plaintiff that the said Mr.Raju Pillai had suffered paralytic attack for nearly 6 months before his death and that his entire left limb was paralysed was false whereas the said Mr.Raju Pillai died due to sudden heart-attack. The plaintiff knew very well about the execution of the Will.

ii) Further, it is not true that defendants 1, 3, 4 and 6 had paid a sum of Rs.50,000/- to the plaintiff towards part of her 1/7 share, whereas, the plaintiff had received a sum of Rs.1,15,000/- for purchase of lands on 16.01.1993 and she had also executed two promissory notes for Rs.65,000/- and Rs.50,000/-. Subsequently, the above said two promissory notes had been assigned in favour of the 6th defendant. The said Mr.Raju Pillai approved the marriage of the plaintiff with the said Mr.Murugan and



S.A.No.1098 of 2002

presented jewels and other articles. The said Mr.Raju Pillai had purchased acres 2.36 cents in S.No.383/2 for a sum of Rs.85,000/- in the name of the plaintiff.

(iii) It is not true to state that the plaintiff was in joint possession of the suit properties and that the said Mr.Raju Pillai was not in a sound and disposing state of mind at the time of execution of the Will as alleged by the plaintiff. It is also not true that the registration of Will had taken place by impersonation as alleged by the plaintiff. In fact, the said Mr.Raju Pillai, while he was in a sound and disposing state of mind, had executed a registered Will in favour of defendants 1, 3, 4 and 6, bequeathing specific properties to each of them. The said Will had been duly executed, attested and registered. Defendants 1, 3, 4 and 6 were enjoying the properties as per the Will. The plaintiff and the defendants 2 and 5 are not entitled to any share in the suit properties. The plaintiff is not entitled to future mesne profits. There is no cause of action for the suit and hence prayed for dismissal of the suit.

4. The said Mrs.Amirtham Ammal filed a reply to the written



S.A.No.1098 of 2002

statements filed by the defendants wherein, it is stated as follows:

The plaintiff denied the contention that items 5 and 8 of the suit properties are the self-acquired properties of the first defendant. The first defendant had no means to acquire any property. Item No.5, which is a house, had been purchased by the said Mr.Raju Pillai in the name of the first defendant, in order to avoid tax. Similarly, the 8th item had also been purchased by the said Mr.Raju Pillai in the name of the first defendant. The above said items had been treated and considered only as the properties of the said Mr.Raju Pillai and hence, she prayed to decree the suit.

5. In O.S.No.169 of 1995, on the side of the plaintiff, P.Ws. 1 to 4 were examined and Exs.A1 to A11 were marked. On the side of the defendants, D.Ws.1 to 4 were examined and Exs.B1 to B4 were marked. The trial Court, vide judgment dated 29.1.1999, dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred A.S.No.243 of 1999 before the Lower Appellate Court, which, vide judgment dated 04.10.2001, allowed the appeal filed by the plaintiff, set aside the judgment and decree passed by the Trial Court dated 29.01.1999 in O.S.No.169 of



S.A.No.1098 of 2002

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1995 and passed a preliminary decree for partition. As against the same, the defendants 1 and 3 have filed S.A.No.1098 of 2002.

6. S.A.No.1098 of 2002 was admitted by this Court on 28.02.2003 on the following substantial questions of law:

i. Whether the first appellate court was correct in rejecting Ex.B1, a registered Will, while there was sufficient evidence adduced by the appellant in proving the same as required in law?

ii. Whether the first appellate court was right in reversing the judgment and decree of the trial court when the findings were recorded by the trial court on sufficient evidence adduced by the appellant.

7. Learned counsel for the appellants submitted as follows:

(a) Mr.Raju Pillai is the owner of the property in Item Nos.1 to 4 and 6 and 7. The mother Mrs.Nagarathinam Ammal is the owner of the property in Item Nos.5 and 8. Since the first respondent/plaintiff married a man of other caste against the wish and will of Mr.Raju Pillai, and the said



S.A.No.1098 of 2002

Mr.Raju Pillai was not interested in giving her any share. Therefore, he bequeathed his property by way of registered Will under Ex.B1 dated 02.5.1991. In order to prove the Will, the attester of the Will was examined as D.W.2. Hence, the Will was proved under Section 68 of the Indian Evidence Act. Since the said Mr.Raju Pillai was the absolute owner of the suit properties, as they are the self acquired properties, it is for him to decide to whom he can give the property. During his lifetime and when he was hale and healthy, he bequeathed the properties under Ex.B1-Will. The first respondent/plaintiff has no authority to question the same.

(b) Item Nos.5 and 8 are the properties of the mother Mrs.Nagarathinam Ammal who has got independent source of income. If the property stands in the name of a woman and it is her own property, the person who stated that it is not the property of the woman, has to prove the same. In this case, the first respondent-plaintiff has not proved the same, whereas the appellants have proved that the Mrs.Nagarathinam Ammal has independent source of income, even during the life time of Mr.Raju Pillai and she was maintaining the Bank Accounts and also the source of income



S.A.No.1098 of 2002

and hence the properties were purchased in her name out of her own source of income. The trial Court rightly appreciated the same. However, the appeal was allowed and the suit was decreed only in respect of the property standing in the name of Mr.Raju Pillai.

(c) Though the Trial Court rightly dismissed the suit, however, the first appellate Court failed to re-appreciate the oral and documentary evidence and has drawn certain discrepancies and contradictions from the evidence of D.Ws.1 and 2, which are not materials contradictions. The propounder has to prove the execution of the original Will by examining the attestors as per Section 68 of the Indian Evidence Act. The reasons assigned by the first Appellate Court rejecting the plea of the defendants and accepting the case of the plaintiff is not legally tenable. The first Appellate Court failed to consider the material evidence. The reason for rejecting Ex.B1 registered Will is not legally sustainable. Without any valid reason, the first appellate Court reversed the judgment and decree passed by the Trial Court and hence, the present second appeal has been filed which was admitted by this Court on the abovesaid substantial



S.A.No.1098 of 2002

questions of law.

8. Learned counsel for the first respondent/plaintiff submitted as follows:

(a) The suit properties belonged to the plaintiff's father Mr.Raju Pillai. Her mother had no means or source to purchase the property. Item Nos.5 and 8 of the suit properties are self -acquired properties of her father Mr.Raju Pillai. Since the mother of the first respondent, viz., Mrs.Nagarathinam Ammal is a house wife, she had no independent income to purchase Item Nos.5 and 8 of the suit properties. Out of the father's income, she purchased the property in the name of her mother, the first defendant. The said items were also treated as the properties of Mr.Raju Pillai. Therefore, the entire suit properties were belonged to the father Mr.Raju Pillai.

(b) After death of Raju Pillai, the plaintiff demanded partition.



S.A.No.1098 of 2002

The first respondent/plaintiff came to know that the defendants have created a fraudulent Will said to have been executed by Mr.Raju Pillai excluding the first respondent/plaintiff, since she married the other caste man. However, even prior to 6 months from the date of death of his father, he was suffering with paralytic attack and he was not in a position to execute the Will and he has no animosity with the first respondent/plaintiff and he never executed a Will by excluding the first respondent/plaintiff. Therefore, she filed the suit for partition.

(c)The appellants have not proved the Will. There are suspicious surrounding circumstances in the Will and as the propounder of the Will, they have to remove the suspicious surrounding circumstances. There are lot of contradictions in the evidence of DW1/ the first defendant, the mother of the first plaintiff, the evidence of D.W.2, the so called attestor and other independent witnesses.

(d) D.W.1, the mother of the first plaintiff has stated that one week



S.A.No.1098 of 2002

WEB COPY

prior to the date of death of Raju Pillai, he was doing agricultural activities. Whereas the Will was said to have been executed just three months prior to the date of death of Mr.Raju Pillai. He was in the habit of signing the documents. The alleged Will was not signed by the testator Mr.Rajupillai. Thumb impression was alone obtained in the said Will. They have not explained the same properly. They have not approached the family Advocate of the said Mr.Raju Pillai for preparing the Will. One Mr.Kaja Mohideen had prepared the Will, but he has not been examined as a witness. The deposition of witnesses P.Ws.1 to 3 are contrary to each other.

(e) It is settled proposition of law that the propounder of the Will has to prove the Will. If any suspicious circumstances are raised by the person, or the right has been denied or exclusive right of one of the natural legal heirs, it is for the propounder to remove the suspicious surrounding circumstances, whereas, from the evidence of D.Ws.1 and 2, it is clear that there were suspicious circumstances, but the appellants have not removed the same in the manner known to law. Therefore, this appeal is liable to be



S.A.No.1098 of 2002

dismissed.

9. The specific case of the appellants is that the suit properties are self-acquired properties, which originally belonged to Mr.Raju Pillai who had executed a registered Will under Ex.B1. Hence, the first respondent/plaintiff is not entitled to any share in the partition. Since the properties are the self acquired properties of the testator, he has a valid reason to exclude the first respondent/plaintiff being allotted any share in the properties. The first respondent/plaintiff herself has no reason to claim otherwise. There are no suspicious circumstances surrounding the Will, which has been proved in the manner known to law. Hence, the trial Court dismissed the suit for partition filed by the plaintiff. However, the first Appellate Court wrongly interpreted the evidence and failed to re-appreciate the entire materials and granted the decree passed on the sympathetic grounds which are not legally sustainable.

10. The specific case of the first respondent/plaintiff is that the suit



S.A.No.1098 of 2002

properties which are self acquired properties, originally belonged to her father. He died intestate. After death of her father, she approached the mother and brothers for allotment of her share, for which, they wanted to avoid by giving share to the first respondent and impersonated the thumb impression of her father as if her father executed the registered Will. The mere registration of the Will itself will not amount to proof of its genuineness of the Will. The Will is a unique nature of testamentary succession, which has to be proved in the manner known to law. Especially, when the plaintiff has raised a suspicious circumstances surrounding the Will, it is for the propounder of the said Will to remove such suspicious. In this case, they have not done it. However, though the trial Court failed to appreciate the entire evidence, the first Appellate Court rightly re-appreciated both the oral and documentary evidence and decreed the suit for partition. Therefore, there is no merit in the Second Appeal.

11. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on



S.A.No.1098 of 2002

record, more particularly, the judgments of both the Courts below.

12. The first respondent/plaintiff filed a suit for partition, in which, she would claim right that her father was the absolute owner of the properties which are his self acquired properties. He died intestate. The defendants have taken a plea that the said Mr.Raju Pillai bequeathed the suit properties by executing Ex.B1 registered Will. Therefore the Court has to see whether Ex.B1 said to have been executed by the said Mr.Raju Pillai is genuine or not.

13. The main contention of the plaintiff is that her father was suffering from a paralytic attack about six months prior to the date of the Will and that he was not in a position to execute any document. On the other hand, the specific case of the appellants/defendants is that the father was hale and healthy and was doing agricultural work even one week prior to his death. According to the evidence of D.W.1, the mother, he was capable of using both his hands and was attending to all his daily activities till a week before his death. While the plaintiff contends that her father was



S.A.No.1098 of 2002

incapacitated due to paralysis and hence incapable of executing the Will, D.W.1 has stated that he was hale and healthy at the relevant point of time. Ex.B1 Will is said to have been executed by the deceased just three months prior to his death. According to D.W.1, he was in a sound state of mind and was capable of signing the Will. However, the Will bears only the left-hand thumb impression of the testator. The appellants have explained in the written statement that, at the relevant time, his hand was shivering, and therefore he could not affix his signature and instead put his left-hand thumb impression.

14. There are other contradictions regarding the attestors and their signatures. One of the main reason given by the first appellate Court is that the Advocate who is said to have prepared the Will was not the Family Advocate of the said Mr.Raju Pillai. One Mr.Kaja Mohideen, the Advocate who prepared the Will in hand writing and gave it for typing and thereafter he handed over the Will to the propounder in front of the Court campus. At that time, he was not aware of the status of the testator and as to whether he was in a position to sign or not. In the evidence of D.W.2, the attestor



S.A.No.1098 of 2002

has stated that since the testator was not in a position to sign, he had not executed any document for six months, and hence he put a thumb impression. D.W.3 has stated otherwise. Further Mr.Kaja Mohidheen, the Scribe of the Will was not examined. Though all the persons need not be examined, however, Will has to be proved as contemplated under Section 68 of the Indian Evidence Act. If the Will is duly executed as per Section 63 of the Indian Succession Act, the same has to be proved in the manner known to law under Section 68 of the Indian Evidence Act.

15. Admittedly, the plaintiff is one of the legal heirs of Mr.Raju Pillai. Since the suit properties are the self acquired properties of the said Mr.Raju Pillai, the said Mr.Raju Pillai can decide to give the properties during his life time, to any person or even to the third party or even to the stranger and it is for the owner of the properties to decide it during his lifetime. However, when the plaintiff filed the suit for partition, stating that her father died intestate and she is one of the legal heirs and therefore, the plaintiff is entitled to 1/7 share. The appellants/defendants have not taken any other ground to exclude the plaintiff's right except that her father



S.A.No.1098 of 2002

bequeathed the properties by executing Ex.B1 registered Will.

16. Admittedly, the father was a well-educated person. He knew to read and write and had the habit of signing documents. However, in this case, the Will was not signed by the testator but bears only his left-hand thumb impression. When the normal course of execution has been deviated from, the reason for such deviation must be convincingly explained. In the present case, the main contention of the plaintiff is that Ex.B1 is a forged document and that the left-hand thumb impression appearing on it does not belong to Mr.Raju Pillai but was affixed by some other person impersonating him.

17. A reading of the evidence of D.Ws.1 to 3, show that there are suspicious circumstances surrounding the Will. If that be the case, the appellants ought to have examined the other attestors and also the said Mr.Khaja Mohideen. Section 68 of the Indian Evidence Act deals with the proof of execution of documents required by law to be attested. It also states that if a document requires attestation by law, it cannot be used as



S.A.No.1098 of 2002

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evidence unless at least one attesting witness is called to prove its execution, provided the witness is alive, subject to the court's process and capable of giving evidence. When there is no dispute and when there is no suspicious surrounding circumstances, examination one attester is enough. If the other attestors are not found or no more, then other attestors cannot be examined. But in this case, there is no such material with regard to whereabouts of the other attestors. The substantial questions of law are answered in the above terms.

18. The first appellate Court has rightly re-appreciated both oral and documentary evidence, especially the evidence of D.W.1, D.W.2 and D.W.3 and found that the appellants have not removed the surrounding suspicious circumstances. The first appellate court, as a fact finding Court, while deciding the first appeal, re-appreciated the entire evidence and has elaborately discussed the issues.

19. For the abovesaid reasons, this Second Appeal is dismissed.



S.A.No.1098 of 2002

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There shall be no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

28.08.2025
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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



S.A.No.1098 of 2002

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To

1. The II Additional District Court, Tiruchirapalli.
2. The Subordinate Court, Kulithalai.

Copy to

The Section Officer,
VR Section, High Court, Chennai.



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S.A.No.1098 of 2002

P.VELMURUGAN, J.

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**JUDGMENT made in
S.A.No.1098 of 2002
and C.M.P.No.8842 of 2002**

28.08.2025