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A.S.No.351 of 1993
Tr.A.S.Nos.317 & 318 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2026

Pronounced on : 12.06.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.S.No.351 of 1993

and

Tr.A.S.Nos.317 & 318 of 2015

A.S.No.351 of 1993

C.Duraisamy (Died)

A2.D.S.Gunasekaran

(Sole Appellant died, A2, R9 to R11 are brought on record as Lrs of deceased sole appellant, vide order of Court dated 23.04.2024 made in CMP.Nos.21124 & 21121 of 2019 in A.S.No.317 of 2015 and C.M.P.Nos.21126 & 21128 of 2019 in A.S.No.351 of 1993)

A3.G.S.Nivashan

(1st appellant died. A3 is brought on record as Lrs of the deceased A1 vide court order dated 16.03.2026 made in CMP.NO.27309 of 2025 in A.S.No.351 of 1993)

..Appellant(s)

Vs

C.Sengottian (Died)

R2 – Samiyathal (Died)

R3 – Kolandasamy

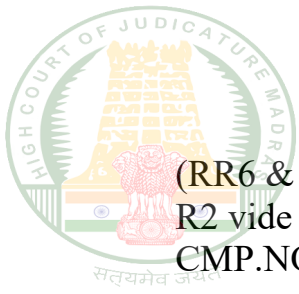
R4-Dhachanamoorthy

R5-(Chinnathal) Chinnathal @ Nirmaladevi

RR3 to R5 brought on record as Lrs of deceased R2 vide order of Court dated 10.09.1997 made in CMP.No.15404 of 1993

R6 – (Saroja) Saroja @ Saraswathi

R7 – Thulasiammal



(RR6 & R7 brought on record as Lrs of deceased R2 vide order of Court dated 02.07.2010 made in CMP.NO.15404/1993)

R8 – Vijayakumar

(RR5 & R6 name amended and R8 impleaded as party respondent vide order of Court dated 19.07.2017)

R9 – D.Kanakaraj (Died)

R10-Damayanthi

R11-Selvanayagi

(Sole Appellant Died, A2, R9 Died, R9 to R11 are brought on record as Lrs of deceased sole appellant, vide order of Court dated 23.04.2024 made in CMP.Nos.21124 & 21121 of 2019 in A.S.No.317 of 2015 and CMP.Nos.21126 & 21128 of 2019 in A.S.No.351 of 1993)

LRS of R9

R12 – Tmt.Gajalakshmi

(R9-Died. R12 is brought on record as Lrs of the deceased R9 vide court order dated 04.08.2025 made in CMP.Nos.16638, 16640, 16647 of 2025 in A.S.No.351/1993)

LRS of R1

R13. Karunai Ammal

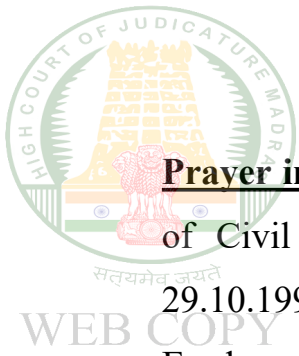
R14. Sumathi

R15. Mani @ Loganathan

R16. Paripoornam

(R1 Died. R13 to R16 are brought on record as Lrs of the deceased R1 vide court order dated 04.08.2025 made in CMP.Nos.16652, 16656, 16663 of 2025 in A.S.No.351/1993)

..Respondent(s)



Prayer in A.S.No.351 of 1993: Appeal Suit filed under Section 96 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 29.10.1992 and made in O.S.No.164 of 1992, on the file of Principal Sub Court, Erode.

For Appellant(s): Mr.T.Murugamanickam
(Senior Counsel)
For Mr.D.Selvaraju

For Respondent(s): Mr.A.K.Kumarasamy
(Senior Counsel)
For Mr.S.Kaithamalai Kumaran
(For RR13 to R16)

RR1, R2 & R9 – Died
For RR3 to R5 – No appearance
For RR6, 7 & 12 – Served – No appearance

Mr.Ruban Chakravarthy (For R8)

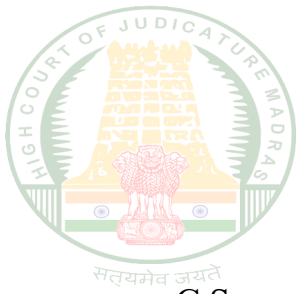
Mr.G.Sabari Vishnu
For Mr.S.Vijaya Kumar (For RR10 & R11)

Tr.A.S.No.317 of 2015

C.Duraisamy (Died)
A2.D.S.Gunasekaran
(Sole Appellant died, A2, R9 to R11 are brought on record as Lrs of deceased sole appellant, vide order of Court dated 23.04.2024 made in CMP.Nos.21124 & 21121 of 2019 in A.S.No.317 of 2015 and C.M.P.Nos.21126 & 21128 of 2019 in A.S.No.351 of 1993)

A3.G.S.Nivashan
(1st appellant died. 3rd appellant is brought on record as Lrs of the deceased 1st appellant vide Court order dated 16.03.2026 made in C.M.P.No.27423 of 2020 in A.S.No.317 of 2015)

..Appellant(s)



vs.

C.Sengottian (Died)

R2 – Samiyathal (Died)

R3 – Kolandasamy

R4-Dhachanamoorthy

R5-(Chinnathal) Chinnathal @ Nirmaladevi

RR3 to R5 brought on record as Lrs of deceased

R2 vide order of Court dated 10.09.1997 made in

CMP.No.15404 of 1993

R6 – (Saroja) Saroja @ Saraswathi

R7 – Thulasiammal

(RR6 & R7 brought on record as Lrs of deceased

R2 vide order of Court dated 02.07.2010 made in

CMP.NO.15404/1993)

R8 – Vijayakumar

(RR5 & R6 name amended and R8 impleaded as
party respondent vide order of Court dated
19.07.2017)

R9 – D.Kanakaraj (Died)

R10-Damayanthi

R11-Selvanayagi

(Sole Appellant Died, A2, R9 (Died) R9 to R11 are
brought on record as Lrs of deceased sole
appellant, vide order of Court dated 23.04.2024
made in CMP.Nos.21124 & 21121 of 2019 in
A.S.No.317 of 2015 and CMP.Nos.21126 & 21128
of 2019 in A.S.No.351 of 1993)

LRS of R9

R12 – Tmt.Gajalakshmi

(R9-Died. R12 is brought on record as Lrs of the
deceased R9 vide court order dated 04.08.2025
made in CMP.Nos.16691, 16693, 16695 of 2025 in
A.S.No.317/2015)



LRS of R1

R13. Karunai Ammal
R14. Sumathi
R15. Mani @ Loganathan
R16. Paripoornam

(R1 Died. R13 to R16 are brought on record as Lrs
of the deceased R1 vide court order dated
04.08.2025 made in CMP.Nos.16673, 16685,
16685 of 2025 in A.S.No.317/2015)

..Respondent(s)

Prayer in TR.A.S.No.317 of 2015: Transfer Appeal Suit filed under Section 96
and Order 41 Rule 1 of the Code of Civil Procedure, praying to set aside the
judgment and decree of the Principal Sub Court, Erode in O.S.No.160 of 1992
dated 29.10.1992.

For Appellant(s):	Mr.T.Murugamanickam (Senior Counsel) For Mr.D.Selvaraju
For Respondent(s):	Mr.A.K.Kumarasamy (Senior Counsel) For Mr.S.Kaithamalai Kumaran (For RR13 to R16)

RR1, R2 & R9 – Died
For RR3 to R5 – No appearance
For RR6, 7 & 12 – Served – No appearance

Mr.Ruban Chakravarthy (For R8)

Mr.G.Sabari Vishnu
For Mr.S.Vijaya Kumar (For RR10 & R11)

Tr.A.S.No.318 of 2015

A1 – Sengottian (Died)
A2 – Karunai Ammal
A3 – Smt.Sumathi



A4 – Mani @ Loganathan

A5 – S.Parippornam

(Sole Appellant Died. A2 to A5 are brought on record as Lrs of the deceased A1 vide court order dated 06.08.2025 made in CMP.Nos.16696, 16854, 16856 of 2025 in A.S.No.318/2015)

..Appellant(s)

vs.

R1 – Duraisamy (Died)
R2 – Samiyathal (Died)
R3 – Kolandasamy
R4 – Dhachinamoorthy
R5 – (Saroja) Saroja @ Saraswathi
R6 – (Chinnathal) Chinnathal @ Nirmaladevi
R7 – Thulasiammal
R8 – Vijayakumar
R9 – D.S.Gunasekaran
R10 – Gajalakshmi
R11 – Damanyanthi
R12 – Selvanayagi

(First respondent R1 Died. R9 to R12 are brought on record as Lrs of the deceased R1 vide court order dated 06.08.2025 made in CMP.No.17056, 17060, 17063 of 2025 in A.S.No.318/2015)

R-13 – G.S.Nivashan
[R1(C.Duraisamy) Died. Respondent 13 is brought on record as Lrs of the deceased R1 vide court order dated 16.03.2026 made in CMP.NO.27307 of 2025 in A.S.No.318 of 2015]

..Respondent(s)

Prayer in TR.A.S.No.318 of 2015: Transfer Appeal Suit filed under Section 96 and Order 41 Rule 1 of the Code of Civil Procedure, praying to set aside the judgment and decree of the Principal Sub Court, Erode in O.S.No.160 of 1992 dated 29.10.1992.



For Appellant(s):

Mr.A.K.Kumarasamy
(Senior Counsel)
For Mr.S.Kaithamalai Kumaran

For Respondent(s):

RR1, R2 – Died
Mr.T.Murugamanickam
(Senior Counsel)
For Mr.D.Selvaraju
(For RR9 & R13)

No appearance (For RR4 to R6 & R8)

COMMON JUDGMENT

The appeal suits had been filed by the respective parties as being aggrieved against the common judgment and decree passed in O.S. Nos.164 of 1992 and 160 of 1992 on the file of the Principal Sub Court, Erode, dated 29.10.1992.

2. The parties to the *lis* are brothers and sister, and the dispute relates to the properties owned by their father, namely Chinnathambi Gounder.

3. The suit in O.S. No.160 of 1992 was instituted by the younger son of Chinnathambi Gounder, seeking relief of declaration of title of the suit properties and for a permanent injunction as against his elder brother and sister from interfering with his possession of the property. The cause of action for the suit was that the joint family properties that have been inherited by his father had been bequeathed upon him by a registered Will executed on 03.01.1992, and since his father died on 08.01.1992, he had claimed title over the property



on the strength of the said Will. The said suit was resisted by the defendants, challenging the Will upon which the plaintiff had claimed title, and they had independently instituted a suit in O.S. No.164 of 1992. The elder son, namely Sengottian, instituted the said suit, arraying the younger son and the daughter as parties, seeking for partition of the suit properties into three equal shares and allotment of one such share to himself. The said suit was resisted to by the younger son on the strength of the Will. The daughter had also resisted the suit filed by the younger son and supported the claim for partition made by the elder son. Based upon the pleadings in the respective suits, the following issues were framed:

O.S.No.160 of 1992:

*1. Whether the Will dated 03.01.1992 is genuine and valid?
Whether the allegation that the said Will was fraudulently brought into existence is true?*

2. Whether Chinnathambi had no authority to bequeath the entirety of the 1st item of the suit property under the said Will?

3. Whether the plaintiff is entitled to the relief of declaration in respect of the suit properties?

4. Whether the plaintiff is entitled to the relief of permanent injunction in respect of the suit properties?

5. To what other reliefs, if any, are the parties entitled?



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O.S.No.164 of 1992:

*1. Whether the Will dated 03.01.1992 is genuine and valid?
Whether the allegation that the said Will was fraudulently brought
into existence is true?*

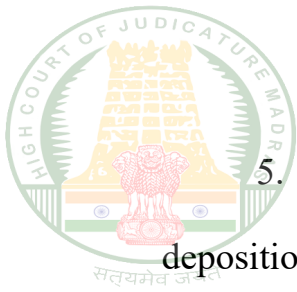
*2. Whether Chinnathambi had no authority to bequeath the
entirety of the 1st item of the suit property under the said Will?*

*3. Whether the plaintiff has a share in the suit properties?
Whether the suit properties are liable to be partitioned? If so,
what is the share to which the plaintiff is entitled?*

*4. Whether the plaintiff is entitled to the relief of permanent
injunction in respect of the suit properties?*

5. To what other reliefs, if any, are the parties entitled?

4. The suits were jointly tried and the younger son, who had filed the earlier suit, had examined himself and six other witnesses as PW1 to 7 and had marked various exhibits as Exs.A1 to A38. The defendants had examined two witnesses, namely DW1 and DW2, and had marked Exs. B1 to B21. Exs.C1 to C8 were marked through PW3, 4 and 7.

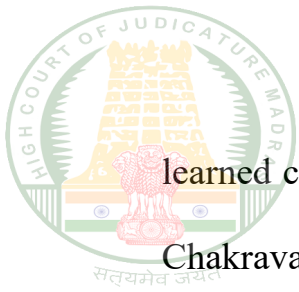


5. On consideration of the various issues in conjunction with the deposition of the witnesses and the documents marked, the trial Court had come to the conclusion that the Will had been executed in a suspicious circumstances and therefore did not disbelieve the Will and refused to grant the declaratory relief of title, which had been based solely upon the said Will. However, having found that the younger son was in possession of the suit property, the trial Court granted injunction as prayed for. On the strength of the above decision, the partition suit filed by the elder son was decreed, granting 1/3rd share to each of the parties.

6. Challenging the same, the younger son had filed appeals before this Court in Tr.A.S.No.317 of 2015, wherein he had challenged the rejection of the declaratory relief, and in A.S. No.351 of 1993, challenging the decree for partition.

7. The elder son had also filed an appeal before this Court in Tr.A.S.No.318 of 2015, wherein he had challenged the grant of injunction against him.

8. Heard Mr.T.Murugamanickam, learned Senior counsel, for Mr.D.Selvaraju, learned counsel for the appellant in A.S.No.351 of 1993 and Mr.A.K.Kumarasamy, learned Senior Counsel, for Mr.S.Kaithamalai Kumaran,

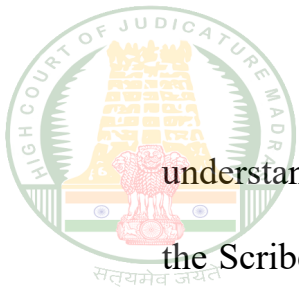


learned counsel for respondents 13 to 16 in A.S.No.351 of 1993 and Mr.Ruban Chakravarthy, learned counsel for the 8th respondent in A.S.No.351 of 1993 and Mr.G.Sabari Vishnu, learned counsel, for Mr.S.Vijaya Kumar, learned counsel for respondents 10 to 11 in A.S.No.351 of 1993.

9. Pending these appeal suits, the original parties to the suits had passed away and the respective legal heirs have been brought on record.

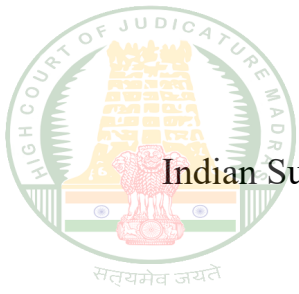
10. For the sake of convenience, the younger son is referred to as the appellant, the elder son as the first respondent, and the daughter as the second respondent. In the place of the sole appellant, the second appellant and respondents 9 to 11 had been brought on record. Respondents 3 to 8 had been brought on record as the legal heirs of the deceased second defendant. Respondents 13 to 16 had been brought on record as legal heirs of the deceased first respondent. The 12th respondent had been brought on record as legal heir of the deceased 9th respondent.

11. The learned Senior Counsel appearing for the appellant would submit that a registered Will had been executed by his father on 03.01.1992, which had been substantiated by examining the Scribe as PW2, the first attesting witness as PW3, and the Sub-Registrar, who had registered the Will as PW7. He would submit that the testator was of good sound mind, and is capable of



understanding the nature of the document. He would submit that PW2, who was the Scribe, had categorically deposed that the testator had called him and, upon his arrival, he was instructed to prepare the Will, which he had accordingly prepared, and thereafter the contents of the Will had been read over and explained to the testator. Only after understanding the nature of the document, the testator had affixed his thumb impression in the Will, which had been attested by PW3 as the first attesting witness and another witness, and the same had thereafter been registered by PW7, who had also spoken about such registration. He would submit that no witnesses were marched in by the respondents to substantiate their claim that the testator was of unsound mind and suffering from ill health, and in such circumstances, he would find fault with the findings of the trial Court that the Will had come into existence under suspicious circumstances. He would submit that the registration of the Will itself is suffice to presume genuineness of the Will, and in that context, he seeks indulgence of this Court on the findings made thereon.

12. He would further submit that the first respondent, in fact, had not cross-examined the witnesses to discredit their chief examination regarding the execution of the Will. Taking this Court through the evidence of PW2, who is the Scribe, he would submit that the Scribe had deposed about the manner in which the Will came to be executed, and the same had not been discredited even in his cross-examination. Hence, there is a clear compliance of Section 63 of the



Indian Succession Act.

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13. Further taking this Court through the evidence of PW3, he would submit that PW3 was the first attesting witness to the document and had also spoken about the manner in which the Will had been executed in his presence and in the presence of the second attesting witness, and therefore the criteria as prescribed under Section 68 of the Indian Evidence Act had also been substantiated.

14. He would further submit that when both Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act have been complied with, the burden shifts upon the respondents, who claim that the testator was suffering from ill health and unsound of mind, to substantiate the same.

15. Having failed to enter upon the box to substantiate such plea, the Court ought not to have presumed that the testator was of ill health and unsound mind and thereby come to the conclusion that the Will had come into existence under suspicious circumstances and consequently refuse the declaratory relief sought for by the appellant. In that context, he would submit that the respondents were not entitled to partition of the suit properties, and hence he seeks indulgence of this Court in setting aside the judgment and decree insofar as it refused the relief of declaration and consequently also setting aside the



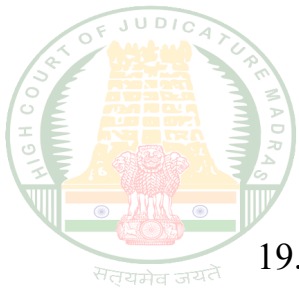
decree for partition granted in favour of the respondents.

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16. The learned counsel appearing for respondents 10 and 11 had adopted the arguments made by the learned Senior Counsel appearing for the appellant.

17. The learned Senior Counsel appearing for the legal heirs of the deceased first respondent, at the outset, would submit that the Will claimed to have been executed by the testator had not disinherited the other natural legal heirs, namely the other sons and daughter of the testator, and on that score itself, the Will would have to be only considered as being come into existence under suspicious circumstances. He would submit that the appellant, who had examined himself as PW1, had admitted with regard to the ill health of the testator. He would also draw the attention of this Court to the contradictions brought about in the cross-examination of PW1 with regard to the appellant's knowledge about the Will. He would submit that when the appellant himself had admitted the ill health of the testator, there was no necessity for the respondents to further examine any independent witness to substantiate the same.

18. He would also draw the attention of this Court to Ex.A37, namely the Will, and submit that the same was executed on 03.01.1992, and within a week thereafter, namely on 08.01.1992, the testator had died.

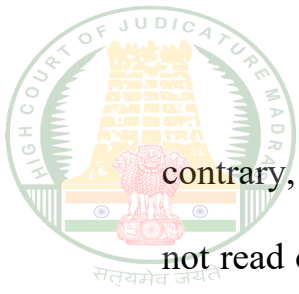


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19. Taking this Court through the depositions of PW2 and PW3, he would submit that the evidence of both witnesses that there is a discrepancy with the timing at which Ex.A37 was executed and also with regard to the presence of witnesses. He would submit that PW2 had deposed that the testator had executed the Will between 9.00 a.m. and 9.30 a.m., at which time both the first and second attesting witnesses were present and they had witnessed the execution of the document by the testator and had attested the same in his presence.

20. On the other hand, he would submit that PW3, who was the first attesting witness, had stated that the Will had been executed between 10.00 a.m. and 10.30 a.m., and that at the said time, he alone was present and had attested the Will, while the second attesting witness was not present. He would further take this Court through the deposition of PW7, namely the Sub-Registrar, who had registered the Will. He would heavily rely upon the contradictions found in the chief examination and cross-examination of PW7.

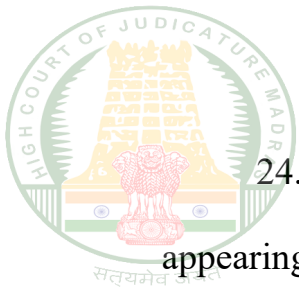
21. Taking this Court through the chief examination, he would submit that PW7 had categorically deposed that he had read over the Will to the testator, that the testator had given his consent for execution and registration of the Will, and that the same had also been recorded in Ex.X7. But, on the



contrary, in his cross-examination, PW7 had categorically admitted that he had not read over Ex.X7 to the testator. He would further submit that PW7 had also admitted that he had not enquired about the health of the testator, and a reading of his cross-examination would itself show that PW7 had not recorded either the soundness of mind or the health condition of the testator. He would submit that the analysis of the evidence of PW7 would itself show that PW7 was unaware of the nature of the document that was being registered and had also not performed his duties as required under the Registration Act while registering the document, particularly when the Will had been registered at the residence of the testator.

22. He would further submit that the Court below, having found that the Will was not genuine and having consequently held that the respondents were entitled for partition of the suit properties, ought not to have granted injunction, as grant of injunction against a co-owner of the property is impermissible in law. Hence, he seeks appropriate orders from this Court.

23. The learned counsel appearing for the 8th respondent, who is the legal heir of the deceased second respondent, would submit that he is adopting the arguments advanced by the learned Senior Counsel appearing for the respondents.



24. I have considered the submissions made by the learned counsel appearing on behalf of the respective parties and perused the materials available on record.

25. The following issues arise for consideration before this Court:

(1) *Whether the Court below was right in concluding that Ex.A37 had come into existence under suspicious circumstances?*

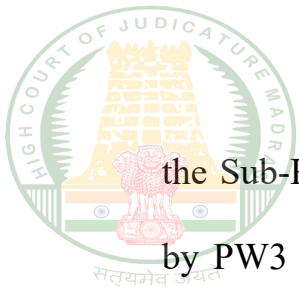
(2) *Whether the Court below was right in granting the relief of partition?*

(3) *Whether the Court below was right in granting the relief of injunction as prayed for by the appellants?*

Issues Nos.1 and 2:

26. These issues are interlinked, for the simple reason that if the Will is found to be genuine and valid, then the properties would not be available for partition between the parties. On the other hand, if the Will is held to be not genuine, then partition of the suit properties had to follow in view of the admitted relationship between the parties and their right to inherit the properties left behind by their father.

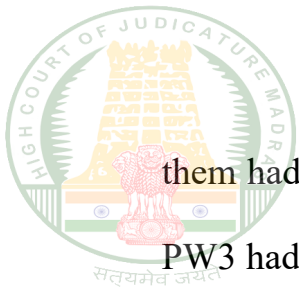
27. To substantiate the Will under Ex.A37, the appellants had marched in PW2, the scribe, PW3, the attesting witness, and PW7, the Sub-Registrar. PW7,



the Sub-Registrar, had not witnessed the execution of Ex.A37 or its attestation by PW3 and the second attesting witness, and he had only deposed about the registration of the Will. The execution of the Will had been spoken to by PWs 2 and 3. PW2 had deposed in his chief examination that on 02.01.1992, he had been called upon by the testator for execution of the Will in favour of his younger son, namely the appellant, and was also requested to make arrangements for registration of the same at the residence of the testator.

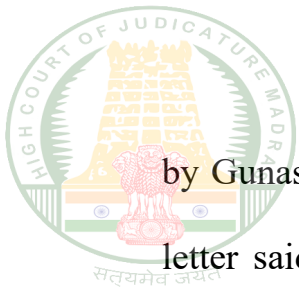
28. According to him, based on the instructions, he had prepared the Will from the details given by grandson of the testator and had again met the testator on 03.01.1992 and had read over the Will to him, and the testator had signed the Will in the presence of both the attesting witnesses. He had also specifically deposed that he had made the payment towards the registration charges as handed over to him by the testator. PW2 had further deposed that the Sub-Registrar, had enquired with the testator as to whether he was executing the Will, for which the testator had replied that he was executing the Will in favour of his younger son. PW2, in his evidence, had also admitted discrepancies in the thumb impressions found in the first and second pages of Ex.A37.

29. PW3, who was the first attesting witness, had also categorically deposed in his chief examination that both himself and the second attesting witness had witnessed the execution of the Will by the testator and that both of



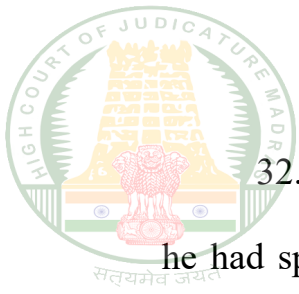
them had signed it in favour of the testator. However, in his cross-examination, PW3 had stated that the Will would have been executed between 10.00 a.m. and 10.30a.m. and had specifically admitted that he had not seen the second attesting witness in the morning, and that even in the evening, when the Registrar had come for registration, only he was present during registration of the document. Further, PW2 had admitted in his cross-examination that the testator was not keeping good health. PW7, in his chief examination, had deposed that he had gone and registered the Will at the residence of the testator on the basis of the application marked as Ex.X5, supported by Ex.X6, namely the Medical Certificate issued by the Doctor. PW7 had also deposed in his chief examination that he had read over the Will to the testator and only thereafter obtained his consent for registration of the same. However, shockingly, in his cross-examination, he had specifically admitted that he had not read over the Will to the testator and was also not sure about the physical and mental well-being of the testator. He had further specifically deposed that he had not verified the physical and mental well being of the testator.

30. It is to be noted that with regard to payment of charges, PW2 in his deposition had clearly deposed that he had paid a sum of Rs.107/- towards transportation charges, which was given to him by Gunasekaran, the son of the appellant, and that he had further paid a sum of Rs.200/- in the evening. Whereas, PW7 in his evidence had deposed that the sum of Rs.107/- was given



by Gunasekaran through the testator. A reading of Ex.X5, which is the alleged letter said to have been addressed by the testator to the registering authority, namely PW7, would show that the said application had been made by the testator through his grandson Gunasekaran, who is the son of the appellant, enclosing a Medical Certificate issued by a Doctor. This goes contrary to the evidence of PW2, who had claimed that he had paid the amount given to him by Gunasekaran at 10.00 a.m. and thereafter only the Medical Certificate under Ex.X6 had been handed over to him by Gunasekaran. Had PW2 submitted the application under Ex.X5 at 10.00 a.m., then the Medical Certificate would have also been available at the relevant point of time, as seen in Ex.X5. This creates a suspicion in the manner in which the Will had been registered.

31. Now coming to the compliance of Section 63 of the Indian Succession Act, it could be seen that PW2 had deposed that at the time of execution of the Will by the testator, both the attesting witnesses were present and had witnessed execution by the testator, and had also attested the same as witnesses. But on the other hand, PW3, who was the first attesting witness, even though in his chief examination had claimed that both the attesting witnesses were present, had clearly admitted in his cross-examination that the second attesting witness was not present in the morning. He had also not spoken about the presence of the second attesting witness in the evening when registration took place.

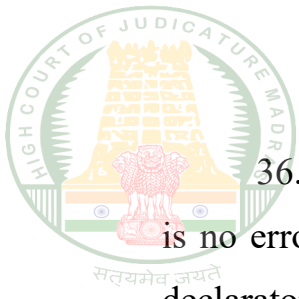


32. Now coming to the deposition of PW1, namely the son of the testator, he had specifically admitted in his cross-examination that the testator was not keeping good health and had been undergoing treatment. The same is also corroborated by the deposition of PW3, who also admits the ill health of the testator. The Medical Certificate produced through PW7 also indicates that the testator was bedridden and was suffering from respiratory illness.

33. It is trite law that the propounder of the Will carries the onus to substantiate that the testator had executed the Will in a sound mind and good health. The same cannot be shifted to a person, challenging the Will. If the onus on the propounder is substantiated, then it is for the person challenging the Will to disprove the same, and not otherwise.

34. The said principle had been reiterated by the Hon'ble Apex Court in the case of *Lilian Coelho and others Vs. Myra Philomena Coelho*, reported in (2025) 2 SCC 633. On a similar issue, it would also be useful to note down the judgment in the case of *Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao and others*, reported in (2006) 13 SCC 433.

35. In the present case, not only the execution of the Will is surrounded by suspicious circumstances, but also, from the evidence of PW3 as found out earlier supra, there is a violation of Section 63 of the Indian Succession Act.



36. Coupled with the aforesaid reasons, this Court is of the view that there is no error of the trial Court in disbelieving the Will and refusing to grant the declaratory relief, and consequently granting the relief of partition as claimed by the first respondent.

Issue No.3:

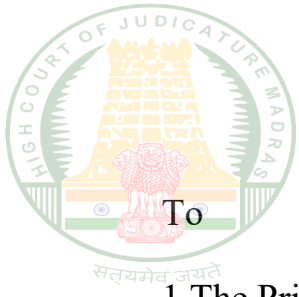
37. Having found that the Will was not genuine and that the respondents were entitled to a share in the property, it is axiomatic that the respondents are joint owners of the property, having inherited the same from Chinnathambi Gounder as his natural legal heirs. When that be so, the Court ought not to have granted an injunction against persons who have got rights in the property.

38. For the said reason, this Court is of the view that the grant of permanent injunction as against the respondents was wholly improper and the same is liable to be interfered with.

39. For the aforesaid reasons, the Appeal Suit in A.S.No.351 of 1993 and the Transfer Appeal Suit in Tr.A.S.No.317 of 2015 stand dismissed. The Transfer Appeal Suit in Tr.A.S.No.318 of 2015 stands allowed by setting aside the judgment and decree of the Principal Sub Court, Erode in O.S.No.160 of 1992 dated 29.10.1992. No costs.

12-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
kak



To

1. The Principal Sub-Court,
Erode.

2. The Section Officer,
V.R. Section, High Court,
Madras.

A.S.No.351 of 199
Tr.A.S.Nos.317 & 318 of 2





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A.S.No.351 of 1993
Tr.A.S.Nos.317 & 318 of 2015



K.KUMARESH BABU, J.

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**A.S.No.351 of 1993
and
Tr.A.S.Nos.317 & 318 of 2015**

12-06-2026