

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
07.04.2026PRONOUNCED ON
12.06.2026

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CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 461 of 2008
and CMP.No.12529 of 2024

1. M. Ramasamy
2. R. Sundaresan
3. R. Velmurugan
4. R. Venkatachalapathy
5. R. Thamaraikannan

..Appellant(s)

Vs

1. V. Muthulakshmi
2. V. Radhakrishnan
3. V. Verrappan

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Additional District Court, Pondicherry at Karaikal made in O.S.No.69 of 2004, dated 29.06.2007.

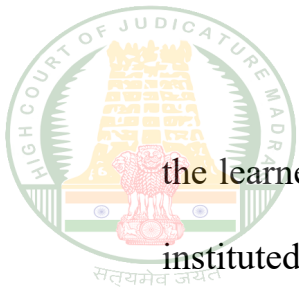
For Appellant(s):

Mr.A.Arun Babu for Appl.1 & 2
Appl.3 to 5 already dismissed for prosecution

For Respondent(s):

R1 – Died
Mr.R.Natarajan for RR2 & 3**JUDGMENT**

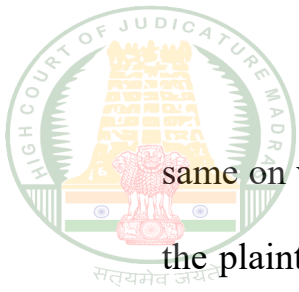
This Appeal Suit has been preferred as against the judgment and preliminary decree dated 29.06.2007 passed in O.S.No.69 of 2004 on the file of



the learned Additional District Judge, Puducherry at Karaikal, whereby the suit instituted by the plaintiffs for partition, separate possession, permanent injunction and decreed. Aggrieved over the said findings, the defendants before the trial Court have preferred the present appeal.

2. The case of plaintiff is that the suit properties originally belonged to one Murugaiya Pillai, who was the father of deceased Vaithiyanatha Pillai and the first defendant. During his lifetime, Murugaiya Pillai had executed a registered partition deed dated 23.03.1970, whereby certain properties were allotted to his sons and certain properties were retained by him. Thereafter, he executed a registered Will dated 01.06.1977, while he was in a sound and disposing state of mind, under which he divided his remaining properties among his two sons and five daughters, while granting life interest in favour of his wife Ponnurangathammal.

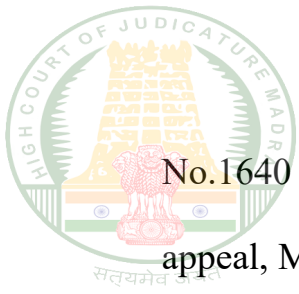
3. According to the plaintiffs, upon the death of Murugaiya Pillai on 27.10.1981 and thereafter the death of his wife on 13.11.1981, the said Will came into force and was acted upon by all the beneficiaries. The deceased Vaithiyanatha Pillai had taken possession of certain properties allotted to him, however, the suit 'A' and 'B' schedule properties remained undivided. Despite repeated requests made by Vaithiyanatha Pillai to the first defendant for partition and allotment of his lawful share, the first defendant postponed the



same on various pretexts. After the death of Vaithiyanatha Pillai on 15.03.2001, the plaintiffs, being his legal heirs, succeeded to his estate and became entitled to his share in the suit properties.

4. The plaintiffs would further contend that the defendants were attempting to interfere with their possession and enjoyment of the 'C' schedule properties and were unlawfully denying their rightful share in the remaining suit properties. Hence, they instituted the suit seeking partition and separate possession of their $\frac{1}{2}$ share in the 'A' and 'B' schedule properties, permanent injunction in respect of 'C' schedule properties.

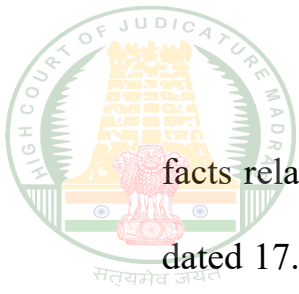
5. The contention of the defendants, is that although Murugaiya Pillai had admittedly executed an earlier Will dated 01.06.1977, the said Will never became operative and did not come into force, since the same was subsequently revoked by Murugaiya Pillai during his lifetime. According to the defendants, one of the daughters of Murugaiya Pillai and her husband, who were permitted to reside in the 'B' schedule property, subsequently set up an adverse claim over the said property, due to which Murugaiya Pillai institute a suit in O.S.No.131 of 1977 before the District Munsif Court, Karaikal, seeking declaration of title and recovery of possession. Though the said suit was initially decreed in favour of Murugaiya Pillai, the decree was reversed by Sub – Ordinate judge in appeal in A.S.No.25 of 1978, against which Murugaiya Pillai preferred Second Appeal



No.1640 of 1979 before the High Court. During the pendency of the said second appeal, Murugaiya Pillai and his wife Ponnurangathammal died. The defendants would further contend that in the proceedings before the High Court in the aforementioned second appeal, the first defendant was recognised as the legal representative of deceased Murugaiya Pillai on the strength of the said subsequent Will and, thereafter, first defendant through execution proceedings in E.P.No.1 of 1989 and recovered possession of the 'B' schedule property through process of Court.

6. The defendants specifically denied the allegation that deceased Vaithiyanatha Pillai had at any point of time demanded partition of the "A" and "B" suitscheduled properties or sought allotment of his alleged share. According to them, neither Vaithiyanatha Pillai nor the plaintiffs were ever in joint possession of the suit properties and the defendants alone had been in exclusive possession and enjoyment of the same. It was further contended that the 'C' schedule properties were being cultivated by the 1st Defendant after the death of Murugaiya Pillai and subsequently by the 4th Defendant. The defendants also pointed out that the 4th defendant had independently instituted O.S.No.187 of 2004 before District Munsiff, Karaikkal against the second plaintiff in respect of the 'C' schedule property.

7. Defendants denied that the Plaintiffs deliberately suppressed material

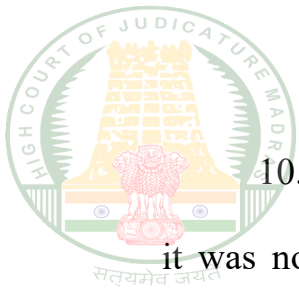


facts relating to the earlier rounds of litigation and the alleged subsequent Will dated 17.10.1981. According to the defendants , unless and until the subsequent testamentary disposition is declared invalid, the plaintiffscannot seek the relief of partition based on the earlier Will. They further contended that the plaintiffs were not in possession of the suit properties andaccording to them, the suit ought to have been valued under Section 37(1) of the Act based on the market value of the properties, which, according to the defendants , was approximately Rs.7.5 lakhs.

8. Based on the Pleadings made on both sides the following issues were framed by Trial court :

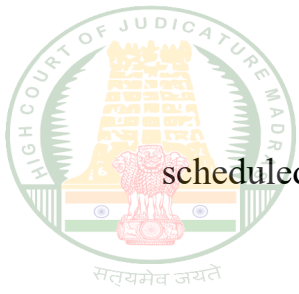
- 1. Whether the suit has not been properly valued and correct court fees has not been paid ?***
- 2. Whether the plaintiffs are entitled for a partition of the suit properties and if to what share?***
- 3. To what reliefs the parties in the suit are entitled?***

9. On Plaintiffs side examined as PW 1 to PW 3 and Ex. A1 to Ex. A 21 were marked as plaintiffs side evidence and first defendant DW1 himself was examined and Ex. B1 to B 16 were marked as Defendant's side Witness.



10. Upon considering Issue No.2 is concerned, the trial Court found that it was not in dispute that the suit properties originally belonged to deceased Murugaiya Pillai, father of deceased Vaithiyanatha Pillai and the first defendant. The plaintiffs traced their claim through the Will (Ex.A2) dated 01.06.1977, whereas the defendants claimed exclusive title based on an alleged subsequent Will dated 17.10.1981. The trial Court observed that the defendants had admitted the execution of the earlier Will dated 01.06.1977, but contended that the same was subsequently cancelled. However, though such a plea was raised, the defendants failed to produce either the alleged deed of cancellation or the subsequent Will dated 17.10.1981. Further, Notproved the alleged subsequent Will in the manner required under Section 68 of the Indian Evidence Act.

11.The Trial Court further observed that,D.W.1 under the Will dated 01.06.1977, properties had been allotted to both sons and daughters and that the daughters had alienated the properties allotted to them only after the death of Murugaiya Pillai. DW1 relied upon High Court Judgment in S.A. 1640/1979(Ex.B1), that through the will he has been declared as the legal heir of the Murugaiyapillai. There is no scope to decide in the second appeal whether the will claimed by the 1st defendant is true and genuine. Except the judgment other evidence produced by DW1 does not confer the subsequent will executed by the Murugaiyapillai , and none of the documents confer title to the 1st defendant for “B ”schedule property or Defendants 2 to 5 in “A” or “ C“

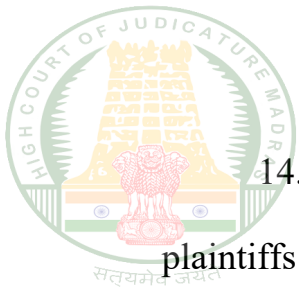


scheduled properties.

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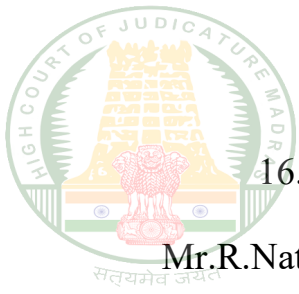
12. The documentary evidence produced by the plaintiffs, particularly the sale deeds executed by the beneficiaries under the Will and the revenue records, clearly established that the Will dated 01.06.1977 had been acted upon. On appreciation of the oral and documentary evidence, the trial Court concluded that the Will dated 01.06.1977 remained the last valid testament of Murugaiya Pillai and had come into force upon his death. Consequently, it was held that the plaintiffs, being the legal heirs of deceased Vaithiyanatha Pillai, were entitled to $\frac{1}{2}$ share in 'A' and 'B' schedule properties and entitled to exclusive possession and enjoyment of the 'C' schedule properties. Accordingly, Issue No.2 was answered in favour of the plaintiffs.

13. Upon considering Issue.No.1 that the plaintiff being undivided co-sharers and in joint possession of the suit properties with first defendants. The defence taken by defendant that the plaintiffs were ousted and therefore the valuation of Suit Schedule properties were incorrect. However the learned Trial Court had held that the Plaintiffs were not ousted from the suit properties and therefore the valuation of the suit properties by the plaintiffs under the section 37(2) of Pondicherry Court Fees Act was valid. Accordingly the Issue No.1 was decided in favour of the Plaintiffs.



14. Further Trial Court observed that the defence by defendant that the plaintiffs had suppressed material particularly with reference to the earlier litigation initiated by Murugaiya Pillai against his daughter and son-in-law and the pendency of the Second Appeal before the High Court. The trial Court, however, found that the plaintiffs had traced their claim through the Will dated 01.06.1977 allegedly executed by their father. During the course of evidence, D.W.1 admitted that the deceased Vaithiyanathan had not participated in the High Court proceedings and had also not disclosed the said Will to him. The Court held that the plaintiffs had sufficiently disclosed the basis of their title and had not suppressed any material fact relevant for adjudication of the suit. Further the issue was decided Accordingly the Issue No.1 was decided in favour of the Plaintiffs.

15. Upon considering Issue 3, trial court observed that, the suit is decreed with cost and decree and judgment delivered as Preliminary decree passed for division of “A” and “B” schedule properties into equal shares and allotment of one share to plaintiffs. Plaintiffs were permitted to seek appointment of commissioner for division by metes and bounds if defendants fail to effect partition. Defendants refrained from interfering with the plaintiff’s possession and enjoyment of “C” scheduled property. Defendants directed to render accounts of income; failing which plaintiff may seek mesne profits.



16. Heard Mr. A.Arun babu for Learned Counsel for Appellants and Mr.R.Natarajan, learned counsel appearing on behalf 2nd Respondent and Mr.T.Saravanan learned counsel appearing for 4th to 6th Respondents.

17. Mr. A.Arun babu, Learned Counsel appearing for the appellant contends that the learned Trial court ought to have dismissed the suit instead of granting a decree for partition. He contends that the Trial Court failed to see that respondents/plaintiff they were neither in possession nor in enjoyment of the suit properties, the suit ought to be valued under section 37(1) of Pondicherry Court Fees Act.

18. Learned counsel for Appellant contend that Trial court failed to appreciate that the suit properties has already been delivered to the first appellant through Court Proceedings in E.P. No. 1 of 1989 therefore the property constituted the separate properties of appellant and not joint family properties. He further contented that respondents claimed through deceased Vaithianathan who had been party to earlier proceedings, in O.S.No. 131 of 1977 and S.A.No. 1640 of 1979 were estopped from disputing the appellant's title.

19. Learned Counsel contend that first appellant was impleaded as the legal heir of his deceased father in S.A. 1640 of 1979 had asserted title based



on will dated 17.10.1981 executed by his father in favour of the appellants, subsequently EP 1 of 1989. Vaidhianathan had also joined the appellants in defending O.S. 22/1989 by sister and had admitted will dated 17.10.1981. None of the Respondents/Defendants has objected/challenged the truth and validity of the will. He further contended that plaintiffs were ousted and therefore the valuation of Suit Schedule properties were incorrect. Valuation must be made under Section 37 (1) of Pondicherry Court fees and suit valuation act.

20. Per contra, The learned counsel appearing for the respondents/plaintiffs would contend that the judgment and preliminary decree passed by the trial Court are well founded on proper appreciation of both oral and documentary evidence and do not warrant interference by this Court.

21. Learned counsel for the Petitioner contended that the execution of the registered Will dated 01.06.1977 by deceased Murugaiya Pillai is admitted by the appellants themselves and the only defence by them was that the said Will had been subsequently revoked by a later Will dated 17.10.1981.

22. The learned counsel would further submit that though the appellants specifically pleaded execution of a subsequent Will, they failed to produce the said document before the trial Court and also failed to prove the same in the manner known to law by examining the attesting witnesses as under Section 68



of the Indian Evidence Act. In the absence of proof of the alleged subsequent Will, the appellants cannot dispute the validity and enforceability of the earlier Will dated 01.06.1977.

23. It is further contended that the Will dated 01.06.1977 had already been acted upon by all the beneficiaries and the daughters, who were allotted properties thereunder, had alienated their respective shares, which clearly establishes that the Will had come into force and was accepted by all concerned parties.

24. The learned counsel for the respondents would also submit that the reliance placed by the appellants on the proceedings in S.A.No.1640 of 1979, wherein the first appellant was brought on record as legal representative of deceased Murugaiya Pillai, is wholly misconceived, since such impleadment proceedings do not amount to adjudication of title nor do they validate the alleged subsequent Will.

25. It is further argued that the respondents/plaintiffs, being co-sharers, were in joint possession of the suit properties and in the absence of any evidence establishing ouster, the trial Court rightly held that the suit was properly valued under Section 37(2) of the Pondicherry Court Fees Act.



26. The respondents would further contend that the allegation regarding suppression of material facts is unsustainable, as the plaintiffs had clearly disclosed the source of their title and the earlier litigations relied upon by the appellants have no bearing on the present claim for partition. He further contended that the appellants failed to produce any document establishing exclusive title over the suit properties, whereas the plaintiffs had produced sufficient documentary evidence to establish that the Will dated 01.06.1977 remained the last valid testament of Murugaiya Pillai. Therefore, it is contended that the trial Court had rightly decreed the suit for partition, permanent injunction and the present appeal is liable to be dismissed.

27. I have considered the submissions made by the learned counsels appearing on either side and had perused the materials available on record.

28. The issue for consideration that arises in this Appeal suit are as follows:-

1) Whether the Court below was right in granting a decree of partition?

2) Whether the Court below was right in holding that the suit had been properly valued?



29. Before advertng to the said issue, an application had been taken out by the appellant under Order XLI Rul 27 CPC to receive a certified copy of one alleged Will executed by Murugaiya Pillai, whose property is involved in the lis. According to him, the original of the Will dated 17.10.1981 executed by his father was handed over to his counsel in the lower Court and hence, he was unable to trace the said Will during the proceedings in the suit.

30. He had further averred that he had found the certified copy of the Will that had been obtained from the District Court, Karaikal and hence had become necessitated to take out an application. Even though, the said Will is a certified copy that had been issued by the District Court, no details of the case in which the same had been filed is not reflected in the said certified copy. That apart, no reasons had also been attributed by the appellant as to its non-production during the trial in the instant suit. It is to be noted that the instant suit had been instituted in the year 2004 and came to be disposed of by a judgment and decree in the year 2007 which is under an Appeal.

31. As noted from the endorsements made by the Court which issued a certified copy, it could be seen that such an application had been made in the year 2018 and the copy was delivered in the very same year. No reasons have also been attributed as to why there was a delay in taking out the said



application except for a bald statement that during the search of the case papers, he had found the certified copy. When he had consciously applied for a certified copy that too in a disposed suit, it would also be relevant to give details in which proceedings he has made such an application, that has also not been given.

32. For the aforesaid reasons, this Court is not inclined to entertain the said miscellaneous petitioner and reject and prayer for the respective said Will.

33. It is not disputed by the appellant that his father had executed a Will as early as on 01.06.1977. He had strongly relied upon the judgment and decree of this Court under Exs.B1 & B2 to claim that he is bequeathed with the property under the Will date 17.10.1981. As rightly held by the Trial Court, the genuinity of the Will had not been gone into by this Court, only in a summary proceedings he had been impleaded as an appellant and other legal heirs of the said Murugaiya Pillai has been impleaded as respondents. The Appellate Court has also given a judgment and decree favouring Murugaiya Pillai and it is for the appellant to substantiate in the subsequent proceedings of the existence of a subsequent Will posterior to Ex.A2.

34. During the pendency of the suit, the appellant had failed to produce the said Will and in that course failed to substantiate the said Will. Further, he

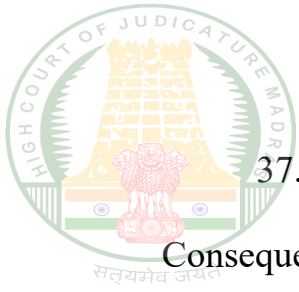


had also not disputed the existence of the Will under Ex.A2, but his case is that in view of the posterior Will in the year 1981 before the death of the testator Murugaiya Pillai he has inherited the property. Having failed to produce the said Will, the appellant cannot be heard to contest that the judgment and the decree of the Court below is manifestly irregular.

35. As noted above, an attempt to produce the Will after nearly two decade of passing a decree and judgment that too based upon a certified copy issued in the year 2018 in an unknown suit/ proceedings cannot support the case of the petitioner. For the foregoing reasons, this Court is of the view that there is no error or infirmity in the judgment and decree impugned herein.

ISSUE (2):-

36. The primordial contention of the appellant that the Court fee had not been properly paid was on the strength of the ouster pleaded on the basis of the Will dated 17.10.1981. As already discussed above, the said Will has not been placed before the Court and the attempt made to receive the same now has been rejected. The conclusion of the Court below that on the basis of the Will under Ex.A2 they were in joint possession cannot be said to be infirmity or irregularity committed by the Court.



37. For the aforesaid reasons, the Appeal suit stands dismissed.

Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to cost.

12.06.2026

Index: Yes/No

Speaking/Non-speaking order

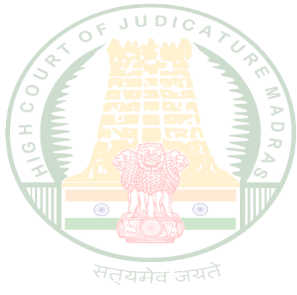
Neutral Citation: Yes/No

GBA

To

1.The Additional District Court, Pondicherry at Karaikal

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



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AS No. 461 of 2



K.KUMARESH BABU, J.

GBA

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