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A.S.Nos.638, 656 and 675 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2026

Pronounced on : 6.02.2026

CORAM :

The Hon'ble Mr.Justice N.SATHISH KUMAR
and
The Hon'ble Mr.Justice R.SAKTHIVEL

A.S.Nos.638, 656 and 675 of 2016
and
Cross objection No.21 of 2017

A.S.No.638 of 2016 :

T.K.Karupannasamy

.. Appellant

Vs.

Masilamani (died)
by LRs.
1.Mrs.Prema
2,Balasubramaniam
3.Karthikeyan

Natarajan (died)
by LRs
4.Sarojini (died)
5.Sulochana
6.Tamilselvi (deceased)

7.M/s.Sree Karthikeya Ginning Factory,
31,M/s. Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore
A partnership firm
rep by its Partner Balasubramaniam



A.S.Nos.638, 656 and 675 of 2016

8.M/s.Maruthachala Textiles,
31, M/s.Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
A partnership firm
rep by its Partner Balasubramaniam

9.M/s.Maruthachala Mudaliar & Co.,
represented by its Partner Balasubramaniam,
31, M/s.Maruthachala Textiles,
SITRA Road, Kalapatti, Coimbatore

Narayanan (Died)
by LRs.

10.Mohanasundari

11.Chandrakala

12.Minor Vivek Sundar,

rep by mother guardian/next friend Chandrakala

13.Kuppuraj

14.Mounasamy

15.Angathal

16.E.Rathinam @ Vetharathinam

17.V.Keshav

(RR16 and 17 brought into record as legal
heirs of deceased R6 vide court order

dated 5.8.2021 made in CMP No.7482 of 2017
in A.S.No.638 of 2016)

18.C.R.Shanmugasundaram

19.S.Kamalakannan

20.S.Chitradevi

(RR18 to 20 are brought on record as LRs of
deceased 4th respondent vide order dated 15.3.2023
made in CMP No.20352, 20356 an 20356 of 2022
in AS No.638 of 2016)

.. Respondents

A.S.No.656 of 2016 :

Masilamani (died) by LRs
Prema

.. Appellant



A.S.Nos.638, 656 and 675 of 2016

Vs.

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- 1.Balasubramaniam
- 2.Karthikeyan
Natarajan (died)
- 3.Sarojini (died)
- 4.Sulochana
- 5.Tamilselvi (deceased)
- 6.M/s.Sree Karthikeya Ginning Factory,
No.31, M/s.Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
a partnership firm represented by its
Partner Balasubramaniam
- 7.M/s.Maruthachala Textiles.
No.31, M/s.Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
a partnership firm represented by its
Partner Balasubramaniam
- 8.M/s.Maruthachala Mudaliar & Co.,
No.31, M/s.Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
a partnership firm represented by its
Partner Balasubramaniam
- 9.Karuppannasamy

K.Narayanan (died) by LRs.
- 10.Mohanasundari
- 11.Chandrakala
- 12.Minor Vivek Sundar,
rep by mother guardian/next friend Chandrakala
- 13.Kuppuraj
- 14.Mounasamy



A.S.Nos.638, 656 and 675 of 2016

15.Angathal

16.E.Rathinam @ Vetharathinam

17.V.Keshav

(RR16 and 17 brought on record as legal heirs
of the deceased R5 vide court order dated
05.08.2021 in CMP No.5176 of 2017
in AS No.656 of 2016)

18.C.R.Shanmugasundaram

19.S.Kamalakannan

20.S.Chitradevi

[RR18 to 20 are brought on record as LR's of
3rd respondent Sarojini vide order dated 31.3.2023
made in CMP Nos.6139, 6141 and 6142 of 2023
in AS No.656 of 2016]

.. Respondents

A.S.No.675 of 2016 :

1.Balasubramaniam

2.Karthikeyan

3.M/s.Maruthachala Textiles,
No.31, Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
rep by its Partner Balasubramaniam.

4.M/s.Maruthachalam Mudaliar and Co.,
No.31, Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore.

Rep by its Partner Balasubramaniam

5.Mohanasundari

6.Chandrakala

7.Minor Vivek Sundar

rep by mother guardian/next friend Chandrakala

.. Appellants

Vs.

1.Prema

2.Sarojini (died)

3.Sulochana

4.Tamilselvi (died)



A.S.Nos.638, 656 and 675 of 2016

5.M/s.Sree Karthikeya Ginning Factory,
No.31, Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
rep by its Partner Balasubramaniam
6.Karuppanasamy
7.Kuppuraj
8.Mounasamy
9.Angathal

L.Rs of Tamilselvi

10.E.Rathinam @ Vetharathinam
11.V.Keshav

12.C.R.Shanmugasundaram
13.S.Kamalakannan
14.S.Chitradevi

[RR12 to 14 are brought on record as L.Rs of
deceased 2nd respondent Sarojini vide order
dated 15.03.2023 made in CMP Nos.20127,
20132 and 20138 of 2022 in AS No.675 of 2016] .. Respondents

Cross Objection No.21 of 2017 :

Prema

.. Cross Objector

Vs.

1.Balasubramaniam
2.Karthikeyan
3.M/s.Maruthachala Textiles,
No.31, Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore.
4.M/s.Maruthachalam Mudaliar and Co.,
No.31, Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore.
Rep by its Partner Balasubramaniam
5.Mohanasundari



A.S.Nos.638, 656 and 675 of 2016

- 6.Chandrakala
- 7.Minor Vivek Sundar,
rep by mother guardian/next friend Chandrakala
- 8.Sarojini (died)
- 9.Sulochana
- 10.M/s.Sree Karthikeya Ginning Factory,
No.31, M/s.Maruthachala Textiles,
SITRA Road, Kalapatti,
Coimbatore,
rep by its Partner Balasubramaniam
- 11.Karuppannasamy
- 12.Kuppuraj
- 13.Mounasamy
- 14.Angathal
- 15.E.Rathinam @ Vetharathinam
- 16.V.Keshav
- 17.C.R.Shanmugasundaram
- 18.S.Kamalakannan
- 19.S.Chitradevi
[RR17 to 19 are brought on record as L.Rs of
deceased 8th respondent vide order
dated 03.12.2025 made in CMP Nos.12292,
12317 and 12318 of 2023 in Cross
Objection No.21 of 2017]

.. Respondents

A.S.No.638 of 2016 has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, 1908 seeking to set aside the decree and judgment of the III Additional District and Sessions Court, Coimbatore dated 01.06.2016 passed in O.S.No.952 of 2004 and to grant costs of the suit throughout and thus render justice.

A.S.No.656 of 2016 has been filed under Section 96 of the Civil Procedure Code, 1908 seeking to set aside the decree and judgment of the III Additional District and Sessions Court, Coimbatore dated 01.06.2016 passed in O.S.No.952 of 2004 as against the claim of partition pertaining to items 10 and 11 of suit properties and for rendition of accounts by

6/58



A.S.Nos.638, 656 and 675 of 2016

allowing this appeal with costs and pass such other further relief which this Hon'ble Court deems fit and proper according to the circumstances of the case and thus render justice.

A.S.No.675 of 2016 has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, 1908 seeking to set aside the decree and judgment of the III Additional District and Sessions Court, Coimbatore dated 01.06.2016 passed in O.S.No.952 of 2004 and allow the appeal and thus render justice.

Cross Objection No.21 of 2017 has been preferred under Order 41 Rule 22 of CPC seeking to allow the cross objections and to set aside the findings in issue No.1 in the judgment passed by learned III Additional District and Sessions Court, Coimbatore in O.S.No.952 of 2004 dated 01.06.2016 and pass an order that the suit properties were purchased out of joint family income and thus render justice.

For Appellants in

AS.No.638 of 2016 : Mr.V.Anand

AS No.656 of 2016 : Mr.A.K.Sriram, Senior Advocate
for Mr.T.Balaji

AS No.675 of 2016 : Mr.C.R.Prasanan

For Cross objector in

Cros.Obj.No.21/2017 : Mr.A.K.Sriram, Senior Advocate
for Mr.T.Balaji

For Respondents in

AS No.638 of 2016 : Mr.A.K.Sriram, Senior Advocate
for Mr.T.Balaji for R-1
Mr.C.R.Prasanan for RR2,3,8 to 12
Mr.S.Thangavel for RR5,16 to 20,



A.S.Nos.638, 656 and 675 of 2016

RR4 and 6 – died
R-7 given up vide order dated 31.03.2023
No appearance for RR13,14 and 15

AS No.656 of 2016 : Mr.C.R.Prasanan for RR1,2,7,8,10 to 12
Mr.V.Anand for R9
Mr.S.Thangavel for RR4,16,17,18, 19,20
RR3 and 5 - died
RR6, 13 to 15 – unserved – Batta not paid

AS No.675 of 2016 : Mr.A.K.Sriram, Senior Advocate
for Mr.T.Balaji for R-1
Mr.S.Thangavel for RR3, 10 to 14
Mr.V.Anand for R-6
No appearance for RR5, 7 to 9
RR2 and 4 – died

Cros.Obj.No.21/2017: Mr.C.R.Prasanan for RR1 to 7
Mr.S.Thangavel for RR15 to 19 and 9
Mr.V.Anand for R-11

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COMMON JUDGMENT

N.SATHISH KUMAR, J.

The unsuccessful plaintiff in O.S.No.952 of 2004 on the file of III Additional District and Sessions Court, Coimbatore has filed A.S.No.656 of 2016 against the rejection of reliefs in respect of item nos.10 and 11 of the suit schedule properties and also for rendition of accounts. The 10th defendant before the trial court has filed A.S.No.638 of 2016 seeking to



A.S.Nos.638, 656 and 675 of 2016

set aside the preliminary decree granted to the plaintiffs. Defendants 1, 2, 8, 9, 12 to 14 have also filed an appeal in A.S.No.675 of 2016 challenging the judgment and decree of the trial court. A cross objection has also been filed by the plaintiff Prema in A.S.No.675 of 2016.

2.In this common judgment, the parties shall be referred to as per their rankings in the trial court.

3.The facts which are necessary for disposal of these appeals and cross objection are as follows:

(a)One Maruthachalam Mudaliar along with his two sons, Periya Maruthachalam and Chinna Maruthachalam were doing business in agriculture and cotton. After the death of Maruthachalam, his two sons, namely Periya Maruthachalam and Chinna Maruthachalam continued to do the said cotton business. They used to procure cotton from various agriculturists and to supply the same to the cotton buyers and they were doing the said business for more than 70 years and it is a joint family business. The first plaintiff being the eldest son of Periya Maruthachalam also joined in the joint family business. Periya Maruthachalam and Chinna Maruthachalam sold two acres of joint family property in S.F.No.1112/1 and 2 at Kalapatti village and the said sale price was used to purchase the land in and around the year 1957 in the name of



A.S.Nos.638, 656 and 675 of 2016

Ayyammal, who is the wife of Periya Maruthachalam, for the welfare of the family and thereafter, constructions were made over the said property and a Ginning Factory was started in the year 1961 and according to the plaintiff, the said Karthikeya Ginning Factory was a partnership firm in which Periya Maruthachalam and Chinna Maruthachalam along with their respective sons including the first plaintiff as coparceners were partners. The Karthikeya Ginning Factory was started out of the joint family business utilizing ancestral nucleus. All the suit properties, according to the plaintiff, were purchased in the name of Ayyammal due to sentimental reasons out of the joint family nucleus.

(b) All the coparceners were made as partners in the firm, i.e., defendants 7, 8 and 9. Items 1 to 11 are the joint family properties purchased out of the joint family nucleus. In the year 1995, after receiving their respective shares, Periya Maruthachalam and Chinna Maruthachalam had moved out of the joint family. Thereafter, the first plaintiff and his family continued the joint family business and were living as joint family till the filing of the suit. The first plaintiff was looking after the business of ginning cotton inside the factory premises and his brothers have taken care of purchase, sales and maintaining of accounts. The first plaintiff has been suffering from physical problems for



the past several years and due to the same, he was not able to decide the things as he was physically and mentally weak and he was not in a position to take decision by himself and he believed his brothers defendants 1 to 3.

(c) Taking advantage of the ill health and weak mind and incapacibilities of the first plaintiff, defendants 1 to 6 made attempts to manipulate and fabricate the documents with an intention to deprive the first plaintiff's share in the property. The first plaintiff's father died on 05.07.1996 and his mother died on 23.09.1999. The defendants 1 to 3 along with their sisters, namely defendants 4 to 6 colluded with each other and started illtreating the plaintiff. They have not even paid medical expenses of the plaintiff and therefore, the plaintiff had issued legal notice dated 09.12.2002. The defendants sent a reply alleging that Ayyammal executed a Will bequeathing the properties in favour of defendants 1 to 3 and it is further stated that Ayyammal was a house wife and all the properties were the self acquired properties of said Ayyammal. According to the plaintiff, the Will said to have been executed by said Ayyammal was not genuine and she has no capacity to execute the Will on her own volition and the Will was the result of fraud. It is also stated by the plaintiffs that defendants 10 and 11 are not bona fide purchasers of



A.S.Nos.638, 656 and 675 of 2016

the suit properties. Hence, the plaintiffs have filed the suit for division of suit properties into 42 equal shares and to allot eight such shares to second plaintiff with respect to good and bad soil and to appoint a Commissioner for division of suit properties and also to direct defendants 6 to 9 for rendition of accounts.

4. Defendants 1 to 3, 8 and 9 have filed written statement admitting that Periya Maruthachalam and Chinna Maruthachalam were doing cotton business along with their father Maruthachalam Mudaliar. According to them, the self acquired jewels and cash of Ayyammal were invested as capital in the business and the said Ayyammal had executed a Will dated 31.10.1996 in respect of item No.4, a portion of item No.5, and item Nos.6 to 9. The said Will was also acted upon and one of the properties was also sold. It is also stated that the said Ayyammal was not afflicted by any disease and she died naturally during the year 1999. It is also denied by them that the plaintiff along with his father Periya Maruthachalam and these defendants were carrying on business jointly. According to these defendants, Periya Maruthachalam and Chinna Maruthachalam were doing business jointly for a limited period of time and it is only a partnership business and not a joint family business. The 8th and 9th defendants firm were started much prior to the period claimed



by the plaintiffs and which were run only by Periya Maruthachalam and defendants 1 to 3. The first plaintiff was not involved in the 8th defendant business. It was defendants 1 to 3 and Periya Maruthachalam were running the said business and after the death of Periya Maruthachalam, it was defendants 1 to 3 who are running the said business. The 10th item of property was purchased in the name of 8th defendant and the same has been bequeathed by Periya Maruthachalam in favour of defendants 1 to 3. Hence, according to defendants 1 to 3, the 8th defendant and the property mentioned as item no.10 in the suit belonged to them.

5.According to defendants 1 to 3, 8 and 9, item nos.1 to 9 and 11 in the suit schedule are self acquired properties of Ayyammal and she has executed the Will dated 31.10.1996 bequeathing the properties described as item nos.4 to 9 in favour of defendants 1 to 3. Item No.10 belonged to 8th defendant firm in which defendants 1 to 3, Periya Maruthachalam were alone partners and as per the Will executed by Periya Maruthachalam, this property belonged to defendants 1 to 3.

6.Further, it is the contention of defendants 4 to 6 that the entire suit property belonged to their mother. Further, it is their contention that 7th defendant firm is not a partnership firm. The Ginning Factory was being run by the 8th defendant firm in the property belonging to



Ayyammal and that has been described as item no.4 in the suit schedule.

8th and 9th defendants firm are partnership firm which were constituted by two separate partnership deeds dated 01.07.1974 in which Periya Maruthachalam and Chinna Maruthachalam were the main partners. The first plaintiff along with first defendant who were major at that time were made partners in the said firms. Defendants 2 and 3 who were minors were admitted to the benefit of the said firm. The plaintiff, Chinna Maruthachalam and his son Vijaya Kumar have retired from 8th and 9th defendants firms as per the two dissolution deeds dated 15.07.1989. Therefore, the plaintiff is not entitled to any share in the plaint 10th item property and he is not entitled to seek rendition of accounts.

7.Further it is the contention of the defendants in the additional written statement that as far as item no.11 of the suit property is concerned, Periya Maruthachalam had purchased 2 acres and 4 cents in S.No.1093 of Kalapatti village during the year 1957 and he is the absolute owner of the said property. According to them, Ayyammal never owned the said land described as item no.11 of the suit property. After the death of Periya Maruthachalam on 05.07.1996, the land in S.F.No.1093 was succeeded by his wife Ayyammal and his four sons, namely the first plaintiff and defendants 1 to 3 besides his daughters, namely defendants 4



to 6. Ayyammal, first plaintiff and defendants 1 to 3 have relinquished their 5/8th share in the said land in favour of defendants 4 to 6 by release deed dated 31.10.1996. Therefore, defendants 4 to 6 have become absolute owner of the said land. The plaintiffs as well as defendants 1 to 3 did not have any right over the said land. Apart from the release deed in respect of S.F.No.1093 executed on 31.10.1996, Ayyammal had executed three separate gift deeds in favour of her daughters, namely defendants 4 to 6 and therefore, these defendants have become absolute owners of item nos.1 to 3. That apart, the fifth respondent Sulochana sold a site which was so gifted by her mother to Veermathiamman temple, Kalapatti village. On the same day, Ayyammal had also executed a will dated 31.10.1996 in respect of remaining properties, i.e., items 4 to 9 bequeathing the same in favour of defendants 1 to 3 to be enjoyed by them absolutely. Since the plaintiffs had no issues, Ayyammal thought it fit to give her properties to defendants 1 to 3. The said will had come into force on the death of Ayyammal on 23.09.1999. The defendants 1 to 3 have become the absolute owner of the properties covered under the Will; they have formed layouts of house sites in the land measuring 3.47 acres in S.F.No.1046/2, Kalapatti village described as item nos.6 and 7 in the plaint and named as Marudham Nagar. They sold and conveyed site



A.S.Nos.638, 656 and 675 of 2016

Nos.50, 51 and 52 admeasuring 12 cents to one K.Narayanan.

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8.Further, it is the contention in the additional written statement that the factory building existed in S.F.No.1044/1 was agreed to be given to first defendant and accordingly, defendants 2 and 3 have executed a release deed dated 24.07.2002 relinquishing their 2/3rd share in the land of 59 cents out of 3.20 acres in S.F.No.1044/1 with Ginning factory thereon in favour of first defendant. Further the defendants 1 to 3 have also sold about 2 acres in S.F.Nos.1043/1, 1044/1 and 1045/2 to the 10th defendant by two sale deeds dated 05.03.2003. Hence it is the contention of defendants 1 to 3 that the will dated 31.10.1996 executed by Ayyammal was acted upon and the first plaintiff was aware of the release deed, gift deed and sale deeds but had suppressed the same and had filed the present suit. It is their further case that the first plaintiff had attested the gift deed executed by Ayyammal in favour of defendants on 31.10.1996 in respect of items 1 to 3. Similarly, the first plaintiff is one of the executants to the release deed dated 31.10.1996 executed in favour of defendants 4 to 6 in respect of a portion of item no.11. Therefore, the suit for partition filed without the prayer for setting aside these documents referred to above is not maintainable.

9.The 10th defendant filed written statement claiming that he has



A.S.Nos.638, 656 and 675 of 2016

purchased the property admeasuring 2 acres and 4 cents from defendants 1 to 3 in S.F.Nos.1043/1, 1044/1 and 1045/2 of Kalapatti village and he has paid the total sale consideration of Rs.13,45,000/- and was in exclusive possession and enjoyment of the said properties. Hence, the plaintiff's plea for joint possession along with him who is not a member of the alleged joint family cannot be sustained and therefore, the suit is not properly valued. According to 10th defendant, he is a bona fide purchaser.

10. Similarly, 11th defendant had purchased three sites in site Nos.50, 51, and 53 in S.F.No.1046/2 in Kalapatti village, being portion of suit item nos.6 and 7. According to him, the properties are self acquired properties of Ayyammal and he is the bona fide purchaser for the valuable consideration and that the suit properties may be allotted to him on equity. In the reply statement, the first plaintiff has denied the Will and other documents.

11. Based on the above pleadings, the following issues have been framed by the trial court:

(i) Whether it is true that properties purchased in the name of Ayyammal were purchased from joint family income or whether they are her self-acquired properties?

(ii) Whether Ayyammal executed a Will dated 31.10.1996 and whether the same is true and valid?



(iii) Whether the suit is maintainable without seeking relief of setting aside the Settlement deed and Release Deed dated 31.10.1996 executed by Ayyammal?

(iv) Whether the suit is bad for non-joinder of necessary party Veeramthiamman temple?

(v) Whether the plaintiff is deemed to be in joint possession or excluded from the possession of some portion of the suit property?

(vi) Whether the court fees paid u/s.37(2) of Tamilnadu Court Fees Act is correct?

(vii) Whether the Will dated 03.06.1994 (Ex.B48) said to have been executed by Marudhachala Mudaliar is genuine?

(viii) Whether the plaintiff is entitled for partition as prayed for?

(ix) Whether the Dissolution Deeds dated 15.07.1989 (Ex.B36 and Ex.B49) are true, genuine and binding on 1st plaintiff?

(x) Whether the plaintiff is entitled for the relief of rendition of accounts?

(xi) For what other reliefs the plaintiff is entitled to?

12. On the side of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A.1 to A.27 were marked. On the side of defendants, D.Ws.1 to 12 were examined and Exs.B.1 to 70 were marked. Court documents Exs.X1 to X7 were also marked.

13. Based on the evidence and materials, the trial court had granted preliminary decree in favour of the second plaintiff declaring that she is



A.S.Nos.638, 656 and 675 of 2016

entitled to 1/7th share in item nos.1 to 9 of the suit schedule properties.

However, the trial court has dismissed the suit in respect of item nos.10 and 11 of the suit schedule properties and also dismissed the suit for the relief of rendition of accounts. Challenging the same, instant three appeals came to be filed along with one cross objection.

14. Aggrieved over the judgment and decree of the trial court, the 10th defendant has filed A.S.No.638 of 2016. The plaintiffs have filed A.S.No.656 of 2016 against the rejection of the relief in respect of items 10 and 11 of the suit schedule properties and also for negating the prayer for rendition of accounts. Defendants 1, 2, 8, 9, 12 to 14 have also filed A.S.No.675 of 2016 challenging the judgment and decree of the trial court. The plaintiff Prema has filed the cross objection in A.S.No.675 of 2016.

15. The learned counsel for the appellants in A.S.No.675 of 2016, who are contesting defendants, have submitted that the trial court disbelieving the will and the other documents is not proper. The Will, release deed and settlement deed were all executed by Ayyammal on the same day. Ex.B.47 Will is registered one. When the signature is not disputed and defendants 4 to 6 have also admitted the execution of the Will in the written statement filed along with defendants 1 to 3, they have



A.S.Nos.638, 656 and 675 of 2016

taken different stand in the evidence denying the execution of the will.

The defendants 4 to 6 have already sold the property based on settlement executed in their favour. Having taken advantage of the same, now they cannot disown the Will. The very plaint pleadings also indicates that the mother has left the Will as well as the settlement. The trial court has rightly held that the registration of those documents was done properly. Having held that the registration of these documents was validly done, the trial court has disbelieved the Will merely based on some suspicious circumstances which is no way relevant. Further, item Nos.10 and 11 are partnership properties. Though the first plaintiff was the partner originally, later he resigned from the partnership and the dissolution deed was also filed. However, the trial court has disbelieved the dissolution. The dissolution documents Exs.B.36 and B.49 have been filed in this regard. The income tax returns of the firm and Income Tax department notice, namely Exs.B.39, 40 and 41 were filed to show that the firm is in existence. The trial court has wrongly disbelieved the contention of the defendants.

16.It is the further contention of the appellants in A.S.No.675 of 2016 that Ex.B.47 Will executed by Ayyammal and Ex.B.48 the Will executed by Periya Maruthachalam in favour of defendants 1 to 3 in



A.S.Nos.638, 656 and 675 of 2016

respect of item No.10 were filed. Similarly, Ex.B.62 release deed was also executed by the said Ayyammal and her 4 sons in respect of item No.11. These facts clearly show that all these three documents, namely Will Ex.B.47, Settlement deed Ex.B.55 and release deed Ex.B.62 were executed on the same day by the family members. As the first plaintiff was not having any issues and only considering his illhealth, monthly maintenance was provided under the Will. Therefore, merely because he was disinherited by the testatrix, the Will cannot be disbelieved. The trial court has wrongly appreciated the evidence and non suited the defendants and granted partition in respect of item nos.1 to 9 in favour of the second plaintiff. It is the further contention that the trial court having dismissed the suit for item nos.10 and 11 of the suit properties, ought not to have granted decree in respect of item nos.1 to 9. Hence, it is the contention of the learned counsel that if the evidence of witnesses, namely D.Ws.1 to 12 in entirety are carefully perused, the execution of the Will, settlement deed and release deed stand established. Therefore, the entire judgment of the trial court is not proper.

17.The learned counsel for the purchaser, 10th defendant, who has filed an appeal, namely A.S.No.638 of 2016 has submitted that he has purchased the property even prior to the suit. The learned counsel



submitted that he is a bona fide purchaser. Therefore, in the event of this court holding that the plaintiff is entitled to share, he may be allotted the property purchased by him on equity. According to him, the Will has been clearly established and only on the basis of the Will and the gift deed, he has purchased the property. The 11th defendant who has purchased the property based on the gift deed executed in favour of the defendants and therefore, his right is to be protected.

18.The learned senior counsel appearing for the appellant / plaintiff would submit that the properties are joint family properties. Though item nos.1 to 9 of the suit properties stood in the name of Ayyammal, the mother of the plaintiff and defendants 1 to 6, suit properties were purchased out of the joint family nucleus. That apart, the will propounded by the defendants, namely Exs.B.47 and 48 have not been established and the execution as well as attestation have not been proved. That apart, the trial court believed the release deed said to have been executed by the first plaintiff. It is the further contention that in the written statement, it is clearly averred that the first plaintiff was suffering from mental illness and has physical ailment and is permanently sick from the very beginning, such being the position, the execution of the documents in the absence of any proof cannot be presumed, particularly when the person



was all along suffering from mental illness. Further, Ayyammal, the testatrix of Ex.B.47 was also suffering from serious illness and was suffering from paralytic attack. She was admitted in the hospital and was discharged from the hospital just prior to the execution of documents, namely on 12.10.1996. She had suffered complete paralysis. This has been clearly proved by the evidence of the medical officer P.W.3. Therefore, the testatrix executing such documents, namely gift deed Ex.X-1, release deed Ex.B.62 and the will Ex.B.47 is highly doubtful. The evidence of P.W.3 clearly proved that all the documents were executed in a fraudulent manner and the documents were created by fraud. The recital in Ex.B.47 Will clearly shows that the testatrix has intended to bequeath only two properties, namely a small extent of properties. Whereas in the schedule, all other properties have been included. This is also one of the suspicious circumstances.

19.It is the further contention of the learned senior counsel that Ex.B.48 Will said to have been executed by the father of the first plaintiff and defendants 1 to 6 has also not been established. Therefore, the trial court having disbelieved the will Ex.B.48 ought to have granted partition in respect of item nos.10 and 11 also. When the defendants themselves have pleaded in the written statement that the first plaintiff was having



mental illness from the very beginning and was not in a position to take any decision and participate in the business, the question of plaintiff No.1 executing the release deed is also highly improbable and said release deed has not been established. Therefore, it is the contention of the learned senior counsel that the trial court dismissing the suit in respect of item nos.10 and 11 has to be reversed and the plaintiff is entitled 1/7th share in the said items also.

20.In the light of the above submissions, now the points that arise for consideration in these appeals, are as follows:

(i)Whether the suit properties are purchased out of the joint family nucleus in the name of Ayyammal, mother of the first plaintiff and defendants 1 to 6 or is the self acquired property of Ayyammal?

(ii)Whether the plaintiff is entitled to any share in the suit properties?

(iii)Whether the Will dated 31.10.1996, namely Ex.B.47 is true and valid and if it is proved, whether the propounder has dissipated the suspicious circumstances attached to the Will?

(iv)Whether the Ex.B.48, Will dated 03.06.1994 is



true and valid?

(v) Whether the settlement deed Ex.B.55 and Ex.X-1 dated 31.10.1996 is true and valid and is validly executed by Ayyammal?

(vi) Whether the release deed Ex.B.62, dated 31.10.1996 is true and valid and binding on the plaintiff?

(vii) Whether the partnership of 8th and 9th defendants still in existence or ceased?

(viii) To what other reliefs, the parties are entitled to?

21. The relationship between the parties are not in dispute. The first plaintiff one Masilamani was the eldest son of Periya Maruthachalam. Defendants 1 to 3 are brothers of plaintiff and sons of said Periya Maruthachalam. Defendants 4 to 6 are sisters of the plaintiff and defendants 1 to 3. 7th defendant is ceased to exist as per the pleadings of defendants. 8th and 9th defendants are said to be firms run by the family members. 10th defendant in the original suit is the purchaser of one of the properties from defendants 1 to 3 and the 11th defendant is the purchaser of certain items of properties from defendants 4 to 6. Defendants 13 and 14 are legal heirs of third defendant. Defendants 15 to 17 are legal heirs



of 11th defendant. This relationship is not in dispute.

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Point No.1 – Whether the properties are joint family properties or self acquired properties:

22. According to the plaintiff, suit items 1 to 11 were properties purchased out of joint family nucleus, whereas it is the contention of defendants that items 1 to 9 are self acquired properties of Ayyammal, the mother of the parties and item no.10 belonged to 8th defendant firm purchased under Ex.A.10; item no.11 has been purchased by Periya Maruthachalam. Exs.A.1 to A.9, sale deeds were filed to prove that item nos.1 to 9 stood in the name of Ayyammal. It is the contention of the plaintiff that the properties though stood in the name of Ayyammal, these properties were purchased out of the income of joint family nucleus and that the brothers, namely Periya Maruthachalam and Chinna Maruthachalam sold 2 acres of joint family properties in SF No.1112/1 and 2 at Kalapatti village along with other movable and immovable properties and purchased the property in the name of Ayyammal, wife of Periya Maruthachalam in and around the year 1957 for the welfare of the family. Thereafter, the factory building was constructed. It is relevant to note that Ex.A.1 is of the year 1952, Ex.A.2 is of the year 1952, Ex.A.3 is of the year 1955 and Exs.A.4, A.5 and A.6 are of the year 1957, Ex.A.7



A.S.Nos.638, 656 and 675 of 2016

was of the year 1967, Ex.A.8 was of the year 1978 and Ex.A.9 was of the year 1979. Therefore, the contention of the plaintiff is that only after the sale of the property in the year 1957, all item nos.1 to 9 were purchased in the name of Ayyammal is highly improbable. The joint family property was sold in the year 1957. Ex.A.1 and Ex.A.2 were dated 01.02.1952 and 16.07.1952. Therefore, the very contention of the plaintiff that the properties were purchased only out of joint family nucleus cannot be countenanced. Item no.10 was purchased on 10.09.1979 under Ex.A.10 for Maruthachalam Textile firm. A portion of item no.11 to an extent measuring 2 acres 4 cents were purchased in the name of Periya Maruthachalam, the father of the parties under Ex.B.21. Except stating that the properties were purchased in the name of mother out of joint family nucleus, no other evidence whatsoever available on the side of the plaintiff to show that the family had sufficient nucleus and out of which the properties were purchased in the name of Ayyammal. Admittedly, the properties stood in the name of Ayyammal. There should be definite and clinching proof to show that the family had sufficient nucleus and out of said nucleus, the properties have been purchased, but absolutely there is no evidence for the same. 2nd plaintiff was married to 1st plaintiff in the year 1977. It is admitted by P.W.2 that she is not aware as to the business



A.S.Nos.638, 656 and 675 of 2016

of Periya Maruthachalam or about Exs.A.1 to A.8 sale deeds in the name

of Ayyammal which pertained to the year 1952 to 1978. She is also not

aware of the transactions covered under Exs.A.9 and A.10 and as per her

evidence, the brother of Periya Maruthachalam was alive at the relevant

point of time but he has not been examined. He was the best person to

speak about the nature of the business done in the family. Therefore,

merely because brother was doing partnership business at the relevant

point of time, that cannot be considered as joint family business. The

partnership business is distinct from the joint family business. Therefore,

in the absence of any evidence to show that all items 1 to 9 were

purchased out of joint family nucleus, it cannot be held that all properties

are joint family properties, whereas the properties stood in the name of

female. Even assuming that the properties were in the name of female,

namely the wife of Periya Maruthachalam, it has to be held that they have

been purchased only for her benefit. In such case, it should be treated

only as self acquired properties and accordingly, this point is answered.

Point No.II – Whether the plaintiff is entitled to any share in suit

properties:

23.P.W.1 though examined in chief examination, he could not be

cross examined as he died during pendency of the lis. Therefore, his



evidence will not serve any purpose. P.W.2, who is the wife of P.W.1 was examined and they got married in the year 1977. P.W.2 showed ignorance about the family affairs. She has also admitted that during the period of their marriage, her father-in-law and mother-in-law are not well-off.

24.It is relevant to note that the Prohibition of Benami Property Transactions Act, 1988 prohibits benami transactions, it will not prohibit purchase of property in the name of the wife or unmarried daughter. It shall be presumed unless the contrary is proved that the suit property has been purchased for the benefit of the wife or unmarried daughter. Therefore, even assuming that the property has been purchased by Periya Maruthachalam in the name of his wife, as there is no contra evidence proved, it has to be held that the suit property has been purchased for the benefit of the wife and in such case, it should be treated only as a separate property of her. Be that as it may, absolutely there is no evidence or record to show that the family had sufficient nucleus to purchase the property in the name of Ayyammal. In such view of the matter, the court has to necessarily hold that item nos. 1 to 9 are separate properties of the mother Ayyammal. Item No.10 has been originally purchased by Periya Maruthachalam in the name of 8th defendant firm and absolutely there is no evidence to show that the firm is still in existence. Though certain



A.S.Nos.638, 656 and 675 of 2016

documents, namely Ex.B.37, profit and loss account and balance sheet of Maruthachalam Textiles for the year ending 31.03.1998 and Ex.B.38, profit and loss account and balance sheet of Maruthachalam textiles for the year ending 31.03.1999 and Income Tax returns, namely Exs.B.39 and B.40 for the year ending 31.03.2000 and 31.03.2011, respectively have been filed, absolutely there is no evidence to show as to whether partnership continued later. The suit was of the year 2003. Whether the partnership continued or not after Ex.B.40, absolutely there is no evidence. When the court has posed a question during the argument about whether the partnership business is still in existence, it is fairly submitted by the counsel that no evidence is available to show that the partnership business is still continuing. Admittedly, item no.10 was purchased by Periya Maruthachalam on behalf of 8th defendant, whereas the 11th item measuring about 2 acres and 4 cents was purchased by him. Be that as it may, even assuming the properties are joint family properties, the same will not make any difference since admittedly, there is no partition whatsoever effected prior to the filing of the suit. Therefore, even if it is a joint family property or the self acquired property, the plaintiff is certainly entitled her share and accordingly, this point is answered.



Point No.(iii) regarding Ex.B.47 Will dated 31.10.1996 :

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25. In the written statement filed by defendants 1,2,3,8 and 9, it is their specific stand that their mother Ayyammal had executed the Will dated 31.10.1996 in respect of items 4 to 9 in their favour and having taken the specific stand about the execution of the will by the mother, in the evidence D.W.1, 4th defendant, has resiled from the written statement and as per her deposition, her mother was not in a position to execute the will and she was not possessed mental faculties and therefore, the Will has been prepared fraudulently by defendants 1 to 3. According to D.W.1, her signature was also obtained fraudulently. Therefore, the execution of the Will by the mother has never been admitted by D.W.1.

26. 6th defendant was examined as D.W.2 and she has also resiled from the written statement. According to D.W.2, her signature was also obtained fraudulently by defendants 1 to 3. She has also disowned the execution of the document. Though written statement has been filed by D.Ws.1 to 3 and engaged the same lawyer, it is her evidence that they have not given any instructions, be that as it may. The will has been disowned by D.W.2. Though D.Ws.1 and 2 were also shown as the attesting witnesses in the Will, they have never spoken about either the execution or the attestation of the Will as required under Section 63(c) of



the Indian Succession Act, 1925. In fact, they disowned the Will.

Similarly, D.W.8, one Sulochana was also shown as one of the attesting witnesses in the Will and she has also disowned the will. She had never spoken about the attestation or execution of the will. Though P.W.1, Masilamani was also said to be one of the attesting witnesses and subsequently, he died, he has also disputed the Will. Apart from the family members, one Rathinasamy was also shown as attesting witness and as he died, his son was examined as D.W.7. One Murugesan D.W.4 was examined to show that certain properties were purchased by the temple. His evidence also does not show anything about the execution and attestation of the Will.

27.D.W.5 was examined to prove the sale of certain properties by defendants. His evidence is in no way useful to prove the Will. D.W.6 was also examined to speak about the sale in favour of the temple. His evidence also does not indicate anything about the execution of the will or the gift deed executed by Ayyammal. D.W.7 was examined to prove the signature of one of the attesting witnesses Rathinasamy in the will. According to him, he has identified the signature of the one of the attesting witnesses, namely Rathinasamy. D.W.9, the subsequent purchaser was examined to show the purchase made under various



documents and his evidence was also in no way useful to prove the will.

D.W.10 was examined to prove the will said to have been executed by Periya Maruthachalam, namely Ex.B.48. When his evidence is carefully looked into, his cross examination also does not show that Periya Maruthachalam executed the Will Ex.B.48 in his presence and he has seen the testator signed the Will and later Periya Maruthachalam also has seen the witnesses signing the document. His cross examination also does not prove the execution as well as the attestation of the Will Ex.B.48.

28.D.W.11 was examined to prove Ex.B.36 and Ex.B.49, dated 15.07.1989, the so-called dissolution of Maruthachalam and Company and Maruthachalam Textiles. On careful perusal of his evidence clearly shows that he has not signed Ex.B.49 and he does not know who has typed the documents and where the documents have been prepared. Therefore, his evidence also does not prove Exs.B.36 and B.49 dissolution deeds. D.W.12 is one of the purchasers. His evidence indicates that he has purchased after the notice and he is not aware as to whether the Will was executed by Ayyammal.

29.From the evidence adduced by defendants, it is clear that the execution as well as the attestation of the Will has not been established whereas D.W.7 alone was examined to prove the signature of one of the



A.S.Nos.638, 656 and 675 of 2016

attesting witnesses, namely Rathinasamy. It is relevant to note that the question of examination of the witness who has acquaintance with the signature of the one of the attesting witness arise only when no attesting witness has been found. Such requirement is contemplated under Section 69 of the Indian Evidence Act, 1872 and only when the attesting witness cannot be found or all the attesting witnesses died, the question of examining the signature of any of the attesting witnesses arise under section 69 of the Indian Evidence Act. In the given case, four of the attesting witnesses though they are beneficiaries of the Will, they resiled from their statements and disowned the will. They have clearly stated that the Will was never executed. Therefore, in such a case, when the attesting witnesses deny the execution of the Will, the mode of proving the Will will be as per Section 71 of the Indian Evidence Act. If the attesting witness denies or does not recollect the execution of the document, the execution of the document may be proved by other evidence. Therefore, even assuming that the attesting witnesses who are beneficiaries have totally resiled from their written statements and denied the execution during their examination, the execution of the Will ought to have been proved by the other evidence as per Section 71 of the Indian Evidence Act. Therefore, mere examination of the son of one of the attesting



witnesses will not dispense the proof of the Will by other evidence, particularly when the attesting witnesses are very much alive and all of them have denied the execution. In such a case, the Will ought to have been proved by any other means. Admittedly, there are two identification witnesses. The propounder of the will ought to have at least examined any of the identification witnesses or should have at least called for the Sub Registrar who registered the Will to prove the execution of the Will. Such exercise has not been done by the propounder. Therefore, in the absence of strict proof of the Will as per section 71 of the Indian Evidence Act, it cannot be said that executing the Will has not been proved.

30. Yet another aspect has been overlooked even by the trial court also. Admittedly, only photocopy of Ex.B.47, Will has been filed. No foundation whatsoever was made for filing secondary evidence. Unless foundation has been laid to file a secondary evidence, as a matter of fact, the photo copy cannot be admitted in evidence. Section 65 of the Indian Evidence Act, reads as follows:

‘65. Cases in which secondary evidence relating to document may be given. - Secondary evidence may be given of the existence, condition or contents of a document in the following cases :--

(a) When the original is shown or appears to be in the possession or power--



of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b)when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c)when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d)when the original is of such a nature as not to be easily movable;

(e)when the original is a public document within the meaning of section 74;

(f)when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g)When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of document, but no other kind of secondary evidence, is admissible.



In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents. ‘

31.A careful perusal of the aforesaid provision makes it very clear that only on satisfying the conditions set out in Section 65 of the Indian Evidence Act, the secondary evidence is admissible, whereas a careful perusal of evidence of D.W.3, Karthikeyan, shows that the propounder of the Will has not made any foundational facts for filing secondary evidence. Therefore, on failure to account the loss of original or failure to furnish the reasons for filing the secondary evidence, as a matter of fact, the photocopy of the Will cannot be admitted in evidence be that as it may. Even assuming that there is no serious objection for secondary evidence, now it has to be seen whether the Will was validly executed by the mother of the parties, namely Ayyammal on 31.10.1996. It is relevant to note that on the same day, i.e., on 31.10.1996, all the three documents have been registered, namely Ex.B.47, Will, Ex.B.62, release deed and Ex.B.55 and Ex.X-1, settlement deed. It is the specific case of the plaintiff that the Will has been obtained fraudulently and the mother was not well for more than six years prior to the execution of the Will and she was not possessed mental faculty to execute the Will. P.W.3, medical



A.S.Nos.638, 656 and 675 of 2016

officer attached to Sri Ramakrishna Hospital, Coimbatore has been examined and Exs.A.24 and 25 have been filed. His evidence clearly indicates that the testatrix was admitted in his hospital on 07.10.1996 and was discharged on 12.10.1996. She suffered paralytic attack and her right hand and leg were paralyzed and there was block in left side brain and she was totally immobilized. His evidence clearly indicates that 17 days after her discharge from the hospital, the documents came into existence, the testatrix was in the hospital and was suffering paralytic attack and there was block in the brain and she was immobilized. Ex.A.24, the medical discharge summary has also been filed. These facts clearly show that at the relevant point of time, though she was discharged on 12.10.1996, she was suffering from serious set back due to block in the left side brain and her right hand and leg were completely paralysed. His evidence also indicates that even prior to the admission, she suffered stroke and his evidence also clearly shows that in the neck, right carotene blood vessel, there was a block. There was no reason whatsoever for P.W.3 to speak against the defendants. In fact, Ex.A.24, medical records clearly show that she was not in a position to move and that she suffered paralytic attack and was discharged from the hospital after treatment. It is seen that within 17 days of her discharge from the hospital, all the three



documents, namely Ex.B.47, Ex.B.62 and Ex.X-1 were said to have been executed by her in favour of defendants 1 to 6.

32.It is relevant to note that admittedly, the testatrix was under the control of defendants. They were in dominant position to dominate the testatrix. When the mother has suffered severe paralytic attack and was admitted in the hospital and was discharged only on 12.10.1996 and even prior to admission, she was suffering paralytic attack, she voluntarily executing all the documents on 31.10.1996 excluding her elder son, i.e., first plaintiff creates serious doubt. When a person was in dominant position and the testatrix was under severe paralytic attack and there was block in brain, she voluntarily executing the will is highly doubtful. Though the beneficiaries were also attesting witnesses, they have also clearly stated that the mother was not well and she has not executed any will. This aspect also creates serious doubt about the execution of the Will. Therefore, merely because the signature of Ayyammal was not denied by the plaintiff in the plaint, it cannot be said that the will has been proved and the propounder has dispelled all the suspicious circumstances. Absolutely, there is no reference whatsoever in Ex.B.47 Will as to who has typed the Will and further the so-called scribe has not been examined. Further preamble in Ex.B.47 clearly shows that the testatrix actually



intended to bequeath only 12 cents of the land purchased by her in two documents. However, in the schedule of properties, the entire item nos.4 to 9 were included. This also creates serious doubt about the will.

33. According to the defendants, the first plaintiff was suffering from mental illness from the very beginning and was not in a position to take any rational decision but he was totally excluded in the will and he was disinherited by the testatrix and no property whatsoever was allotted except maintenance of Rs.1500/-. If really the first plaintiff was suffering from mental illness and physically weak as contended by the defendants, no mother will exclude such person even from residence and no provision whatsoever with regard to the residence of the person has been made in the Will. That itself is one of the circumstances which creates suspicion about the execution of documents. D.W.3 has also admitted that the instructions for drafting the Will was given only by defendants 1 to 6.

34. All the evidences also clearly shows that defendants 1 to 3 have played prominent role in preparing the Will. When Ayyammal was admittedly suffering from stroke and was under treatment from 07.10.1996 to 12.10.1996, she voluntarily going to the registering authority and executing the Will is highly doubtful. Therefore, in the absence of any evidence to show that Ayyammal was possessed mental



faculty at the relevant point of time and she was in a position to take

rationale decision, it cannot be said that the will was executed voluntarily by the said Ayyammal. It should be established that she was capable of understanding and capable of forming any rational decision in executing any document. Admittedly, no evidence whatsoever has been placed on record to show that she possessed sound mind while executing documents.

35.The execution as well as attestation are two distinct acts. The mandatory requirements under section 68 of the Indian Evidence Act, 1872 as well as section 63(c) of the Indian Succession Act, 1925 have not been established. These facts creates serious doubt about the genuineness of the Will. No doubt mere disinheriting one of the legal heirs itself cannot be the suspicious circumstances. However, it is the specific case of the defendants in their written statement in paragraphs 7 and 11 and also in additional written statement that the first plaintiff was mentally ill person from the very inception and he was not in a position to take any rational decision and in such a case, at least, some provisions should have been made for his residence and that has also not been made. This creates serious doubt. All the defendants 1 to 6 have played vital role in preparing the documents and that too immediately after the mother was discharged



from the hospital for serious ailment of paralytic attack and she has block in the brain. In such a situation, it cannot be said that the will was voluntarily executed by the mother. Therefore, this court is of the view that the Will Ex.B.47 is shrouded with serious doubt which has not been dispelled by the propounder. That apart, the execution as well as attestation have not been proved in the manner known to law. Mere examining the son of one of the attesting witnesses will not be sufficient to prove the Will, particularly when the propounder has failed to prove the will by any other mode, as contemplated under section 71 of the Indian Evidence Act as stated above. Therefore, the point in respect of Ex.B.47 Will is answered accordingly.

Point No.(iv) regarding Ex.B.48 Will dated 03.06.1994 :

36.The another point is if Ex.B.48 Will dated 03.06.1994 was executed by Periya Maruthachalam in respect of item no.10. Ex.B.48 is also a photocopy of the Will. The propounder has not made account for loss of original or has not made any foundational fact to produce the secondary evidence and D.W.10 was examined. Though D.W.10 was examined, in his evidence in the chief examination, he has stated that the will was executed by Periya Maruthachalam in his presence and other witnesses. If his cross examination is carefully perused, it is seen that he



A.S.Nos.638, 656 and 675 of 2016

does not know as to who has prepared the Will and he has stated that the

Will was prepared in Advocate's office. D.W.10 though has stated as if Periya Maruthachalam signed as testator but Ex.B.48 when perused would show that Periya Maruthachalam signed as managing partner.

37.It is relevant to note that the evidence of D.W.10 shows that the will has been prepared in Advocate's office. Further, if really the Will was prepared in the Advocate's office by the clerk of the Advocate, normally the same would have been typed, whereas the same has been written in a piece of paper. The will has been introduced for the first time during the trial though it has not been referred to in the reply notice issued in Exs.A.21 and 22 on 15.02.2003 or on 21.02.2003, respectively. Even the Will has not been referred to in the written statement filed by defendants 1 to 3 and in the additional written statement filed by first defendant. Whereas Ex.B.48 Will was introduced for the first time during trial. If there was really a Will and which deviates the normal succession and any right is vested on legatees, the normal conduct of the legatee is to plead about the Will at the first instance. Though the Will was said to have been executed on 03.06.1994, keeping silent without referring to the Will when the dispute arose in the family, not reflecting the Will Ex.B.48 in the earlier correspondence under Exs.A.21 and 22 and later in the written



statement filed in the suit, the only inference can be drawn that this unregistered Will has been created only for the purpose of the case and has been introduced later. Therefore, this court is of the view that the execution of Ex.B.48 Will itself is highly doubtful and cannot be given any importance. Further, the evidence of D.W.10 also does not show that the will was executed. As already stated, if really the Will was drafted by the Advocate in his office, the same should have been typed. From all these facts particularly the nature of writing and that the existence of the Will has not been referred to anywhere in the written statement and in the additional written statement and in the earlier reply notices Exs.A.21 and A.22, we are of the view that the Will is created only for the purpose of the case. The propounder of the will has not proved the Will and therefore, this point is answered accordingly.

Point No.(vii) regarding the existence of partnership firm :

38.Exs.B.49 and B.36, dissolution deeds have been filed to show that the partnership took place. Though D.W.11 was examined to prove the documents, his evidence clearly indicates that the signature of other witnesses was not found in Ex.B.36. In Ex.B.49, the signature of D.W.11 was not found, though these two documents were executed on the same day. Further, the original of Ex.B.49 was also not produced. It is to be



noted that to show that the partnership was continuing later, absolutely there is no evidence except filing some documents, like Exs.B.37, B.38, B.39 and B.40 upto the period 2011. As on date of the suit, whether the partnership is continued or not, absolutely there is no evidence and no document whatsoever was filed except Ex.B.42, partnership deed said to have been executed among defendants. Therefore, in the absence of any other evidence to show that the partnership was continued in the premises after that, no other documents were filed. D.W.3 in his evidence also has admitted that in respect of Maruthachalam Textiles and Maruthachalam and Company, the accounts have not been filed. Though his evidence indicates that there were some partnership businesses earlier, however, whether the partnership is still continuing or not, absolutely there is no evidence whatsoever filed. Therefore, in the absence of any evidence to show that the partnership still continues or not, it cannot be said that the partnership business is still continuing. Accordingly, this point is answered.

Point No.(v) regarding settlement deed Ex.B.55 dated 31.10.1996:

39.It is also to be noted that, though defendants 4 to 6 have relied on gift deed and also made some sale about 12 cents, the fact remains that the settlement deed has also been executed on the same day, i.e., on



31.10.1996. The evidence, as discussed above, clearly indicates that all defendants have played predominant role in preparing the settlement deed Ex.B.55, Will Ex.B.47 and the release deed Ex.B.62. When the executrix of the documents was suffering from paralytic attack and was under the control of beneficiaries and defendants are in dominant position to dominate the will of the executant, it is for them to establish the good faith of the transaction. There was no reason whatsoever to exclude the son who is suffering from mental illness from the very beginning and he was not in a position to take any rational decision. Therefore, when the executrix itself was suffering from paralytic problem and severe ailment and a block in the brain, she executing all documents simultaneously is highly improbable. Further the execution and attestation of those documents were not established. Merely because a document has been registered, though a presumption of official acts can be drawn due to registration of documents, that will not dispense with the proof of execution of document by free will and the testator had possessed mental faculties and of sound mind at the relevant point of time. Therefore, merely because beneficiaries of the settlement sold some properties, that cannot be a ground to hold that the settlement was voluntarily executed by the settlor out of her free will and that she possessed mental faculties.



The evidence of P.W.3 and Ex.A.24 medical discharge summary clearly show that the testator did not possess sufficient mental faculty to execute such documents in one day, particularly all the three documents. Hence, we are not in a position to accept the execution of settlement deed also. Accordingly, this point is answered.

Point No.(vi) Ex.B.62 -Release deed dated 31.10.1996:

40.Though the trial court has held that the signature of the plaintiff in the release deed is not denied and therefore, the property has been released in favour of defendants and the plaintiff is not entitled to any share, it is relevant to note that on a careful perusal of the evidence of P.W.2 would indicate that the execution of the release deed by Ayyammal is highly doubtful and as already held, she has not possessed mental faculties and therefore, the good faith of transactions has not been established. Though it is contended that the signature of the first plaintiff in the release deed was not denied by the plaintiff, it is relevant to note that it is the specific averment of the defendants 1 to 3, 8 and 9 in paragraph 7 of the written statement that the first plaintiff was suffering from mental illness from the very inception and though he was only having the status of the head of the family being the first son and except this, he was not involved in any position in the family and he had no



capacity to take rational decision. In paragraph 7 of the written statement,

it is clearly stated that the plaintiff was suffering from mental illness from the very beginning. In paragraph 11 of the written statement, it has been specifically pleaded by the defendants that the plaintiff was permanently sick and permanently suffering mental illness. That apart, defendants 4 to 6 have also averred in their written statement that the plaintiff was suffering from illness. In the additional written statement in paragraph 7, it has been clearly stated that the first plaintiff was always having physical problems and mental weakness right from the beginning and he could not concentrate on business. Therefore, when the first plaintiff himself suffered from mental illness from the very beginning, in the absence of any evidence to show that he had possessed sound mind, the execution of the document relinquishing his share is highly improbable. Therefore, Ex.B.62 is not binding on the plaintiff. Such document cannot give any absolute release as the defendants themselves have admitted that the plaintiff was suffering mental illness from the very beginning and he is permanently sick. Such being the position, the plaintiff taking rational decision and entering contract is highly improbable. Therefore, on the mere signature in the document and the document has been registered, a presumption cannot be drawn for a valid execution of the document by



A.S.Nos.638, 656 and 675 of 2016

the mentally ill person. Further, Ayyammal is also suffering from paralytic attack and she was also not in a position to execute the documents. The way in which all the three documents have been obtained on the same day also creates serious doubt. Therefore, the release deed Ex.B.62 is not binding on the plaintiff and that the plaintiff is certainly entitled to 1/7th share. However, as the defendants 1 to 3 have admitted that they relinquished their share in favour of defendants 4 to 6 in item no.11 of suit property, they will get the share derived from the share of Ayyammal alone.

41. With regard to the claim of the 10th defendant, who was said to have purchased the property, the fact remains that he has purchased the property from co-owners and therefore, he steps into the shoes of his vendor. His claim for equity cannot be considered at this stage and being the vendor of the suit property, he can work out his remedy only in the final decree proceedings. The other purchasers who had purchased the properties from defendants 4 to 6, also shall work out their remedy in the final decree proceedings as they all steps into the shoes of their vendors. Accordingly, this point is answered.



42.(a) In the result, the judgment and preliminary decree of the trial court that the second plaintiff is entitled to 1/7th share in item nos.1 to 9 of the suit schedule properties are confirmed. Defendants 1 to 6 are each entitled to 1/7th share in the above items and they may work out the same in final decree proceedings for allotment by paying appropriate court fees.

(b) In respect of item no.10, the Will of Periya Maruthachalam was not established and the partnership business was also not established and therefore, the plaintiff is certainly entitled to 1/7th share in item No.10 also and therefore, preliminary decree is granted in favour of the second plaintiff and the second plaintiff is entitled to 1/7th share in item no.10. Defendants 1 to 6 are also each entitled to 1/7th share in item no.10 subject to payment of court fees.

(c) As far as item no.11 is concerned, defendants 1 to 3 have relinquished their shares in favour of defendants 4 to 6 and they have not challenged the release deed. Though the said Ayyammal's execution is not accepted and proved, as long as defendants 1 to 3 have not challenged execution of release deed by them, they will get share derived from the share of Ayyammal alone and hence, the second plaintiff is entitled to 24/168th share including the share of Ayyammal and further, with respect



A.S.Nos.638, 656 and 675 of 2016

to defendants 4 to 6, they are each entitled to 45/168th share in the light of release deed executed by defendants 1 to 3 and including the share of Ayyammal. With respect to defendants 1 to 3, they are each entitled to 3/168th share, i.e., their share derived from Ayyammal alone. Accordingly, a preliminary decree is granted in respect of item no.11 of suit properties subject to payment of court fees.

43. Accordingly, appeal filed by defendant No.10 in A.S.No.638 of 2016 and A.S.No.675 of 2016 filed by defendant nos.1, 2, 8, 9, 12, 13 and 14 are dismissed. Similarly, cross objection filed by the plaintiff, namely Cross Objection No.21 of 2017 is also dismissed. However appeal filed by the plaintiff in A.S.No.656 of 2016 is allowed and the judgment and decree of the trial court dismissing the suit in respect of item nos.10 and 11 are set aside and preliminary decree is passed as follows:

(i) For dividing suit item nos.1 to 10 in 7 equal shares, since Ayyammal wife of Periya Maruthachalam died, and allot 1/7th share to the second plaintiff she being the wife of first plaintiff who died during pendency of the suit. Defendants 1 to 6 each are also entitled to 1/7th share in item nos.1 to 10.

(ii) In respect of item no.11, since the execution of the



A.S.Nos.638, 656 and 675 of 2016

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release deed by Ayyammal and first plaintiff has not been established, the second plaintiff is entitled to 24/168th share including the share of Ayyammal and further, Defendants 1 to 3 each are entitled to 3/168th share from the shares derived from Ayyammal as defendants 1 to 3 have not challenged the release deed executed by them and defendants 4 to 6 each are entitled to 45/168th share including the share of Ayyammal and in view of the release deed executed by defendants 1 to 3 in favour of defendants 4 to 6.

There shall be no order as to costs.

(N.S.K., J.) (R.S.V., J.)
6.02.2026

Index : Yes / No
Speaking Order /Non speaking order
Neutral Citation : Yes
vvk



A.S.Nos.638, 656 and 675 of 2016

To

1.III Additional District and Sessions Court,
Coimbatore.

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



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A.S.Nos.638, 656 and 675 of 2016

N.SATHISH KUMAR, J.
and
R.SAKTHIVEL, J.

vvk

judgment in
A.S.Nos.638, 656 and 675 of 2016
and
Cross Objection No.21 of 2017

6.02.2026



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A.S.Nos.638, 656 and 675 of 2016

A.S.Nos.638, 656 and 675 of 2016
and
Cross Objection No.21 of 2017

N.SATHISH KUMAR, J.

and

R.SAKTHIVEL, J.

(Order of the Court was made by N.Sathish Kumar J.)

The case is listed today under the caption "for being mentioned" at the instance of the learned counsel for the appellant.

2. It has been brought to the notice of this Court that in the judgment, it has been observed as though only Ex.B.47 and Ex.B.48, photocopies of the Wills have been filed. However, the factual position is that the signatures of the attesting witnesses in the original Wills have been duly marked as Ex.B.10, Ex.B.11, Ex.B.12 and Ex.B.14.

3. Since the entire Wills had not been marked as an exhibit, this Court had earlier taken the view that Ex.B.47 and Ex.B.48 could not be looked into. In view of the clarification now made that the original Wills are also available on record, necessary correction is required.



A.S.Nos.638, 656 and 675 of 2016

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4. Considering the submission made by the learned counsel appearing for the appellant, **Registry is directed :**

(i) to delete the entire paragraph No.30

(ii) to delete first ten lines of paragraph No.31,

i.e. from “31. A careful perusal.....”up to” Even assuming that there is no serious objection for secondary evidence.”.

(iii) to substitute paragraph No. 36 with the following paragraph:

“ 36.The another point is if Ex.B.48 Will dated 03.06.1994 was executed by Periya Maruthachalam in respect of item no.10. Ex.B.48 is also a photocopy of the Will. The signature of one the attesting witnesses in the original Will executed by Periya maruthachalam has been marked as Ex.B.14. Though D.W.10 was



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A.S.Nos.638, 656 and 675 of 2016

examined, in his evidence in the chief examination, he has stated that the Will was executed by Periya Maruthachalam in his presence and other witnesses. If his cross examination is carefully perused, it is seen that he does not know as to who has prepared the Will and he has stated that the Will was prepared in Advocate's office. D.W.10 though has stated as if Periya Maruthachalam signed as testator but Ex.B.48 when perused would show that Periya Maruthachalam signed as managing partner."

5. Registry is directed to carry out the necessary corrections in the order and re-arrange the paragraph numbers, and issue a fresh order copy after carrying out the above said corrections.

[N.S.K.,J.] [R.S.V.,J.]

11.02.2026

mrp



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A.S.Nos.638, 656 and 675 of 2016

N.SATHISH KUMAR, J.

and

R.SAKTHIVEL, J.

mrp

**A.S.Nos.638, 656 and 675 of 2016
and
Cross Objection No.21 of 2017**

11.02.2026