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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2026

PRONOUNCED ON : 25.11.2026

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

SA No.302 of 2008
and MP No.1 of 2008

Sivaperumal Udayar

..Appellant(s)

Vs

1. Sellammal
2. Periasami Udayar
3. Ramasamy Udayar
4. Dhandapani

..Respondent(s)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 17.01.2006 passed in A.S. No.61 of 2005, on the file of the Principal Subordinate Court, Vridhachalam, upholding the decree and judgment dated 29.11.2004 passed in O.S.No.211 of 1999, on the file of the II Additional District Munsif Court, Vridhachalam.

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For Appellant(s): M/s.Sarvabhauman Associates
Mr.J.Frangkelin

For Respondent(s): Mr.R.Agilesh
for R1 to R4

JUDGMENT

This second appeal has been preferred as against the judgment and decree dated 17.01.2006 passed by the Principal Subordinate Court, Vridhachalam in A.S.No.61/2005. The plaintiff is the appellant, who filed the suit in OS No.211/1999 before the II Additional District Munsif Court, Vridhachalam, for the relief of declaration and permanent injunction and alternative relief of declaration and recovery of possession and also for mesne profits. The said suit was dismissed by the trial court. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in AS No.61/2005 on the file of the Principal Subordinate Court, Vridhachalam. The first appellate court also dismissed the appeal by confirming the decree and judgment passed by the trial court. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the plaintiff.

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2. For the sake of convenience, the parties are referred to as per their rank in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff before the trial court is that originally the suit properties belonged to Ponnusamy Udayar, father of the first defendant ancestrally. While so, the said Ponnusamy Udayar and his brother Nataraja Udayar had partitioned their family properties in the year 1955 through oral partition. The first item of the suit property including an extent of 0.49 cents; third item shed was allotted to father of the first defendant / Ponnusamy Udayar. The said Ponnusamy Udayar purchased second item of the property through his own earnings. The said Ponnusamy Udayar had no male issues. Ponnusamy Udayar had two daughters, namely, first defendant and one deceased Muthulakshmi. Ponnusamy Udayar was taken care by his brother's sons, namely, plaintiff and Ramasamy. Therefore, the said Ponnusamy Udayar settled the suit properties along with other properties and maintenance of temples through a Will dated 02.04.1982. After the demise

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of Ponnusamy Udayar as per Will the plaintiff is entitled to the suit properties and he is enjoying the suit properties for more than 60 years. However, the first item of the suit properties and third item patta was issued jointly in the name of the plaintiff and daughters of Ponnusamy Udayar, namely, the first defendant and Muthulakshmi. The second item of the property (vacant site) also under the possession and enjoyment of the plaintiff. While so, the defendants attempted to interfere with the plaintiff possession and enjoyment of the property and thereby the plaintiff filed the suit.

4. The averments of the written statement filed by the defendants are as follows :

The suit is not maintainable. The averments made in the plaint are denied as false. The said Ponnusamy Udayar had not executed the Will. In fact, the suit properties and other properties belonged to the first defendant. The first defendant's father Ponnusamy Udayar and plaintiff's father, namely Nataraja Udayar partitioned their family properties in the year 1955 orally and as per the oral partition, the suit properties and other properties were

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allotted to the share of Ponnusamy Udayar and he has been in possession and enjoyment of the properties. The said Ponnusamy Udayar died intestate 17 years ago leaving behind the first defendant and her sister Muthulakshmi as his legal heirs. The said Muthulakshmi orally relinquished the suit properties to the first defendant. After the demise of Ponnusamy Udayar, the first defendant has been in possession and enjoyment of the properties. After came to know that joint patta was issued in the name of the plaintiff and the defendants on 29.04.1999, this defendant approached Tahsildar and thereafter, separate patta was granted in favour of the first defendant. Already suit in OS No.363/1998 has been filed by the first defendant and the same is pending. Therefore, now the plaintiff filed the suit with false averments and the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court has framed the following issues

"(i) Whether the plaintiff is entitled for the relief of Declaration, Permanent Injunction and other reliefs as sought for in the plaint?

(ii) The Will produced by the Plaintiff is a forged one?

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(iii) To what relief, the plaintiff is entitled to?"

6. In order to prove the case, before the Trial Court, on the side of plaintiff, PW1 to PW3 were examined and marked Ex.A1 to Ex.A7. On the side of the defendants, DW1 to DW3 were examined and marked Ex.B1 to Ex.B19. Ex.X1 and Ex.X2 were also marked.

7. After analysing the evidence on both sides, the Trial Court dismissed the suit vide its judgment and decree dated 29.11.2004. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in A.S.No.61 of 2005 on the file of the Principal Subordinate Court, Vridhachalam, on various grounds.

8. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination :

"*(i) Whether the judgment and decree passed by the Trial Court is liable to be set aside?*

(ii) Whether the appeal is maintainable?"

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9. After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal by confirming the decree and judgment of the Trial Court vide its judgment and decree dated 17.01.2006. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the plaintiff.

10. This Court at the time of admitting the appeal formulated the following substantial question of law :

i. "Whether the Courts below are correct in law in rejecting Ex.A1 especially when the same has been proved in accordance with Section 63 of the Evidence Act ?"

11. Heard M/s.Sarvabhauman Associates, learned counsel appearing for the appellant and Mr.R.Agilesh, learned counsel appearing for the respondents 1 to 4.

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12. The learned counsel appearing for the appellant would submit that the appellant is the plaintiff, who filed the suit for the relief of declaration and permanent injunction and alternative relief of declaration and recovery of possession and also for mesne profits. In fact, the suit properties originally belonged to Ponnusamy Udayar, through oral partition Ponnusamy Udayar and his brother Nataraja Udayar partitioned their family properties in the year 1955. The said Ponnusamy Udayar is none other than father of the first respondent / defendant and paternal uncle of the plaintiff. Since Ponnusamy Udayar had no male issues after the marriage of his daughters the first defendant and Muthulakshmi, the said Ponnusamy Udayar was under the care and custody of the plaintiff and his brother Ramasamy. Therefore, the said Ponnusamy Udayar executed the Will in favour of the plaintiff on 02.04.1982. After the demise of Ponnusamy Udayar, for the past 16 years, the plaintiff is in possession and enjoyment of the properties. While so, the defendants attempted to interfere with the plaintiff possession and enjoyment over the properties and also they are making false claim against the plaintiff. Therefore, the plaintiff filed the suit. In order to prove the case of the plaintiff, PW1 to PW3 were examined and

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marked Ex.A1 to Ex.A7. On the side of the defendants, DW1 to DW3 were examined and marked Ex.B1 to Ex.B19. Ex.X1 and Ex.X2 were also marked. Through those evidences, the plaintiff has established his case and the Will has been proved by examining the attesting witness, namely, PW2. Therefore, the plaintiff has proved the execution of the Will in favour of the plaintiff. However, the Courts below failed to consider the evidence in a proper perspective and erroneously dismissed the suit. Therefore, the judgment and decree passed by the Courts below are liable to be set aside.

13. The learned counsel for the respondents would submit that the first respondent is the daughter of Ponnusamy Udayar who is the original owner of the suit properties. The plaintiff also admitted that the first respondent is the daughter of Ponnusamy Udayar. However, the plaintiff claimed the properties through Will dated 02.04.1982 allegedly executed by Ponnusamy Udayar. In fact, the said Ponnusamy Udayar never executed the Will in favour of the plaintiff. The plaintiff failed to prove the execution of the Will in accordance with law and the evidence of PW2 is not sufficient to prove the execution and attestation of the Will. Therefore, the Courts below have correctly appreciated the facts and law and dismissed the suit. There is no

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any substantial questions of law involved in this case. Hence, the second appeal is liable to be dismissed.

14. This Court heard both sides and perused the records.

15. In this case, it is admitted fact that the suit properties belonged to one Ponnusamy Udayar and the said Ponnusamy Udayar had two daughters, namely, Sellammal, the first defendant and another daughter Muthulakshmi. According to the plaintiff, the said Muthulakshmi died without any issues. According to the first defendant, Muthulakshmi relinquished her right in favour of the plaintiff. Since the plaintiff admitted the relationship that the first defendant is the daughter of Ponnusamy Udayar, it is for the plaintiff to prove that the said Ponnusamy Udayar executed the Will dated 02.04.1982 in his favour. In order to prove the said Will, on the side of the plaintiff, he examined PW2 who is the attesting witness. Though he deposed about the execution of the Will in his cross examination he stated that he does know about the father of the plaintiff and his family background and he unable to say that Ponnusamy Udayar was in which hospital and he already admitted that he had experience in the court.

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16. It is well settled law that as far as Will is concerned, the propounder of the Will has to prove the execution and attestation and in sound disposing state of mind of the Testator. The evidence of PW2 is doubtful as to whether he was present at the time of execution of the Will and the evidence of PW2 is not sufficient to prove the execution and attestation of the Will. Moreover, the plaintiff himself admitted that the first defendant is the natural heir of the deceased Ponnusamy Udayar. While so, there is no reference about the first defendant in the Will and the same is one of the suspicious circumstances and the same has not been dispelled by the propounder of the Will i.e. Plaintiff herein. Further, the Will was allegedly executed just one week prior to the death of Ponnusamy Udayar and even after revenue authorities transferred the patta in the name of the first defendant, the plaintiff has not taken any steps and thereby the conduct of the parties and the evidences in respect of the Will creates serious doubt and thereby the Will has not been proved in accordance with law. Though commissioner report has been marked, the commissioner report no way helpful to decide the case as the suit has been filed for the relief of

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declaration and permanent injunction and the plaintiff has to prove the case through title deeds.

17. It is true that as per Section 68 of the Indian Evidence Act, any one of the attesting witness has to be examined and in this case, though one of the attesting witness has been examined as PW2, his evidence is not sufficient as it is not cogent and natural. Further, the plaintiff has not proved the Will in accordance with law. It is also well settled law that mere attestation itself is not sufficient to prove the Will and the propounder of the Will has to prove the Will dispelling the suspicious circumstances. Therefore, the Will has not been proved by the plaintiff in accordance with law. Whereas the defendants side evidence shows that patta stands in the name of the first defendant and the first defendant is the Class – I legal heir of the deceased Ponnusamy Udayar. Therefore, the plaintiff has failed to prove his case. The plaintiff has filed the suit for declaration and permanent injunction and alternative relief of declaration and recovery of possession and also for mesne profits. Once the plaintiff pleaded that he is in possession and enjoyment of the properties, he cannot seek recovery of possession and the relief of permanent injunction and recovery possession or destructive to

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each other and thereby the prayer sought for in the plaint itself are not proper. In this context, the Courts below have correctly analysed the evidence adduced on both sides and dismissed the suit based on the evidence, thereby rendered concurrent findings. Without any perversity or illegality this Court need not interfere with the concurrent findings of the Courts below. In this context, the Courts below have correctly appreciated the facts and after discussing the evidences adduced on both sides, came to a conclusion that Will has not been proved and thereby, the plaintiff is not entitled to relief. Therefore, the decree and judgment passed by the Courts below are in accordance with law and there is no illegality or perversity in the findings rendered by the Courts below. Therefore, the substantial questions of law is answered as against the appellant and the present second appeal has no merits and deserves to be dismissed.

18. In the result,

i. the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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ii. the decree and judgment dated 17.01.2006 passed in A.S. No.61 of 2005, on the file of the Principal Subordinate Court, Vridhachalam, and the decree and judgment dated 29.11.2004 passed in O.S.No.211 of 1999, on the file of the II Additional District Munsif Court, Vridhachalam, are upheld.

25.11.2026
(1/2)

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

To

1. The Principal Subordinate Court, Vridhachalam.

2. The II Additional District Munsif Court, Vridhachalam.

3. The Section Officer, VR Section, High Court, Madras.

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P.DHANABAL, J.

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Pre-delivery Judgment in
SA No. 302 of 2008
and MP No.1 of 2008

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