



S.A.Nos.107 & 610 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.11.2025
Pronounced on	13.02.2026

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.Nos.107 & 610 of 2019
and C.M.P.Nos.2353 of 2019

S.A.Nos.107 of 2019

Dr.Lakshmi Murali

...Appellant

Vs.

1.M.Rajan

2.V.Yuvakumar

...Respondents

Prayer Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 10.01.2018 passed in A.S. No.24 of 2014, on the file of the 1st Additional District Judge, Thiruvallur reversing the Judgment and decree dated 03.06.2013 passed in O.S. No. 126 of 2010, on the file of the Subordinate Judge, Thiruvallur.

For Appellant : Mr.Dhanaram Ramachandran
for M/s.D.R.Law Chambers



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For Respondents : Mr.A.R.Suresh for R1

Mr.K.M.D.Muhilan for R2

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S.A.Nos.610 of 2019

V.Yuvakumar

...Appellant

Vs.

1.M.Rajan

2.Dr.Lakshmi Murali

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 10.01.2018 passed in A.S. No.24 of 2014, on the file of the 1st Additional District Judge, Thiruvallur reversing the Judgment and decree dated 03.06.2013 passed in O.S. No. 126 of 2010, on the file of the Subordinate Judge, Thiruvallur.

For Appellant : Mr.K.M.D.Muhilan

For Respondents : Mr.A.R.Suresh for R1

Mr.Dhanaram Ramachandran

for M/s.D.R.Law Chambers for
R2



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COMMON JUDGMENT

The above second appeals arise out of the judgment and decree dated 10.01.2018 passed in A.S. No.24 of 2014 on the file of the learned 1st Additional District Judge, Thiruvallur, reversing the judgment and decree dated 03.06.2013 in O.S. No.126 of 2010 on the file of the learned Subordinate Judge, Thiruvallur.

2.The defendants 1 & 2 in O.S.No.126 of 2010 are the appellants in the above second appeals. The suit in O.S.No.126 of 2010 is filed by the respondent/plaintiff for declaration of title and for recovery of possession of the suit property from the 1st defendant and declare the sale deed in favour of the 2nd defendant by the plaintiff's father Manoharan and the sale deed in favour of the 1st defendant by the 2nd defendant as null and void and for permanent injunction restraining the 1st defendant from alienating or creating encumbrances over the suit property.



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3. According to the plaintiff in the above suit, the suit property originally belonged to one Neelammal, the grandmother of the plaintiff by virtue of a sale deed dated 12.06.1975. One Manoharan, father of the plaintiff is the only son of the said Neelammal. The suit property was in possession and enjoyment of Neelammal until her death. She executed a registered Will dated 01.09.1995 bequeathing the suit property in favour of the plaintiff. The said Neelammal died on 16.04.2000. The father of the plaintiff died on 03.03.2005 even during the life time of Neelammal, the suit property was let out for rent. After the death of Neelammal the plaintiff was collecting rents from the tenant in the suit property. While so, when the plaintiff visited the suit property in the first week of February 2006 for collecting rent, he was surprised to see that the tenants were evicted from the suit properties by the defendants. Immediately, the plaintiff applied for encumbrance certificate and came to know that the suit property was sold out by the plaintiff's father Manoharan to the 2nd defendant through a registered sale deed dated 14.02.2005 and thereafter, the 2nd defendant sold the suit property to the 1st defendant vide sale deed dated 05.12.2005. Hence, the plaintiff issued a legal notice on 10.01.2008 to the defendants for cancelling the sale deeds and to handover the



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possession of the suit property. On 20.01.2008 the defendants have sent a reply notice denying the rights of the plaintiff in the suit property. Hence, the plaintiff filed the above suit.

4.The claim of the plaintiff was resisted by the defendants by stating that the father of the plaintiff namely Manoharan derived title to the suit property after the death of his mother Neelammal. Thereafter, he executed a registered sale deed on 14.02.2005 in favour of the 2nd defendant for a valuable consideration. The 2nd defendant sold the suit property to the 1st defendant under registered sale deed dated 05.12.2005. the 1st defendant is a bonafide purchaser for valid consideration. The plaintiff was never in possession of the suit property and he never lived in the suit property with the original owner Neelammal. The said Neelammal never executed any Will in favour of the plaintiff. The alleged Will is a fabricated document. The 1st defendant is alone in possession of the suit property. The father of the plaintiff sold the property to the 2nd defendant to meet out the medical expenses and debt incurred by Neelammal. The original Will was not produced by the plaintiff. Hence, prayed for dismissal of the suit.



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5. On consideration of the oral and documentary evidences, the trial Court dismissed the suit in O.S.No.126 of 2010. Aggrieved by this, the plaintiff preferred the appeal suit in A.S.No.24/2004. The 1st Appellate Court reversed the findings of the trial Court stating that the Will has been proved in accordance with law and that the defendants are not bonafide purchasers. Assailing the said judgment and decree passed by the 1st Appellate Court, these Second Appeals are preferred by the defendants 1 and 2 in the above suit.

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6.This second appeal is admitted on the following substantial questions of law:

“1. Whether the lower appellate court was correct in law in decreeing the suit on the basis that the 1st defendant is not a bona fide purchaser for value as she had not perused the encumbrance certificate, where the Will Ex.A2 dated 01.09.1995



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would have been entered totally over looking the fact that the entry of Wills is made in Book III of Register maintained in the Sub Registrar's office which is never reflected in the encumbrance certificate?

2.Whether decree and judgment of the First Appellate Court is legally sustainable in as much as the Learned First Appellate Judge has erred in coming to a conclusion that, the Ex.A2 Certified Copy of Will 01.09.1995 can be looked into as secondary evidence by relying section 65(c) of Indian Evidence Act and ignoring that, non pleading and no explanation in the plaint and evidence regarding non production of original Will dated 01.09.1995?

7.The learned counsel appearing for the appellants/defendants submit that the judgement and decree of the 1st Appellate Court reversing the decree and judgement of the trial Court is legally unsustainable in as much as the 1st Appellate Court erred in coming to the conclusion that the defendants have neglected the encumbrance over the property by virtue of

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the Will dated 01.09.1995 and she had not perused the encumbrance certificate where Ex.A2 Will would have been entered. He would submit that the 1st Appellate Court failed to note that Will is not an encumbrance and the same would not be reflected in the encumbrance certificate. He would further submit that Ex.A2 Will is only a certified copy and the same cannot be looked into and without any explanation in the plaint and evidence for non-production of the original Will dated 01.09.1995, the 1st Appellate Court erred in accepting the alleged Will. By virtue of a sale deed dated 14.02.2005 the 1st defendant became the absolute owner of the suit property and that he is a bonafide purchaser of value without notice of Ex.A.2 Will. He further submits that, the 1st defendant has purchased the suit property on 05.12.2005 under a registered sale deed and the suit was filed only in the year 2010. On the averments of the plaint, the suit seems to be barred. It is for the plaintiff to make out the circumstances to prove that the suit is not barred by limitation. Mere assertion in the plaint that the plaintiff acquired knowledge on a particular date does not by itself establish the fact and from the averments made in the plaint it is found that the plaintiff had acquired knowledge beyond the period prescribed under Article 59 of the Limitation Act, then the suit will be



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barred. The limitation Act, 1963 restricts the right of a litigant by prescribing a time limit within which action must be initiated. Hence, it becomes the duty of the Court to analyze the evidence before it and render a decision on all disputed questions of fact or law, directly or indirectly in issue, so as to put an end to the lis. In the present case, the lower Appellate Court failed to analyze the question of limitation. To support his contention, he has relied upon the judgment in :

1.R.Nagaraj vs. Rajamani and Others reported in ***2025 INSC 478,***

2.V.M.Salgaocar Vs. Board of Trustees of Port of Mormugao and Another reported in ***(2005)4 SCC 613 and***

3.Mallavva and Another Vs. Kalsammanavara Kalamma (since dead) by legal heirs and others reported in ***2024 SCC Online 3846***

8.The learned counsel further submits that, a Will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed



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by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he/she understood the nature and effect of the disposition and put his/her signature to the document on his own free Will and the document shall not be used as evidence until one attesting witness atleast has been called for the purpose of proving his execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement. Moreover, the benefit of Section 90 of the Evidence Act of presumption as to documents thirty years old could not be given to the plaintiff in the present suit for the reason that, the plaintiff has traced his title through a Will and no presumption under Section 90 A(1) can be raised to benefit of the plaintiff, since the presumption in Section 90 A (1) will not be made if the said document forms the basis of the suit. He would further contend that a document upon which a title is based is required to be proved by primary evidence and secondary evidence may be given only under Section 65 (c) of the Evidence Act. He would submit that, it is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and the secondary evidence is only an exception to the rule for



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which foundational facts have to be established to account for the existence of the primary evidence. Therefore, when original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established, it is not permissible for the Court to allow a party to adduce secondary evidence. The learned counsel submits that the 1st appellate Court in the absence of any such evidence such as misplacement or lost or not otherwise available erred in accepting the Will produced by the plaintiff. In such view of the matter, the conclusion of the lower Appellate Court that the plaintiff has traced his title to the suit property based on the alleged Will is erroneous. To support his contention, he has relied upon the judgment of ***Rajeev Gupta and Ors Vs. Prasanth Garg and Ors*** reported in ***2025 INSC 552 and W.P.No.2301 of 2024 dated 17.02.2024 (High Court of Madhya Pradesh at Jabalpur)***. His further contention is that mere registration of a Will would not attach a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act, and Section 68 of the Indian Evidence Act. To support his contention, he has relied upon the judgment in ***Leela and others Vs. Muruganantham and Ors*** reported in ***2025 INSC 10***. He further submits



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that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of his own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. In the present case, the lower Appellate Court erred in coming to the conclusion that the defendants failed to establish their case, which is incorrect. To support his contention, he has relied upon the judgement in ***Union of India Vs. Vasavi Co-op. Housing Society Limited*** reported in ***AIR 2014 SC 937***. He would further contend that if the provisions of Section 43 of Transfer of property Act is applied, it is sufficient to non suit the plaintiff. It is immaterial whether the transferor acts bonafide or fraudulently in making their representation. To support his contention, he has relied upon the judgement in ***Ram Pyare Vs. Ram Narain and Others*** reported in ***(1985) 2 SCC 162***.

9.The learned counsel further submits that in the present case, the execution of the Will in favour of the plaintiff was disputed by the defendants and in the event where attesting witness failed to state that he had signed the Will as per the direction of the testator, the requirements stipulated under Section 63 of Succession Act, 1925, was not met. To



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support his contention, he has relied upon the judgment in the case of

Gopal Krishnan and Others Vs. Daulat Ram and Others reported in
(2025) 2 SCC 804.

Hence, prayed for setting aside the decree and judgment passed in A.S.No.24 of 2014 dated 10.01.2018 by the Additional District Court, Thiruvallur.

10.On the other hand, the learned counsel for the respondent/plaintiff submits that, in a Second Appeal filed under Section 100 CPC the Apex Court has laid down in catena of decisions, that unless the case fell within one of those categories of cases where the High Court may be justified in looking at the evidence afresh, this Court cannot interfere with findings of facts recorded by the lower Appellate Court which is the final Court of facts. He would further contend that, the truth and validity of the Will normally will be challenged only by those persons who are the legal heirs of the testator and who would have succeeded to the properties of the testator but for the Will. Only when such contentions are raised by persons who would have otherwise succeeded to the property, the Court will naturally go in detail whether the propounder has dispelled all the suspicious circumstances surrounding



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the execution of the Will. In other cases, when a third party /stranger like the present defendant makes a passing reference to his defence with regard to the truth and validity and the mental status of the testator at the time of the making of the Will, the Court must satisfy itself by examining the attestors, because as per the Hindu Succession Act and Indian Evidence Act, Will is a document by law required to be proved by, atleast by examining one of the two attestors. The plaintiff has fulfilled the requirements contemplated under the above statues by examining the attestor to the Will. The 1st Appellate Court has well considered the evidence and has come to the conclusion that the plaintiff has dispelled all suspicious circumstances surrounding the Will executed by Neelammal. He would further contend that the secondary evidence is admissible in proof of a last Will like any other document. Therefore, a certified copy of the Will is admissible and the certificate of a registering Officer on the Will is sufficient proof of execution of the Will and its content. Therefore, the learned counsel for the respondent/plaintiff submits that the well reasoned judgment of the lower Appellate Court warrants any interference by this Court.



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11.Heard on both sides and records perused.

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12.The defendants in O.S.No.126 of 2010 on the file of the Subordinate Court, Thiruvallur, who succeeded before the trial Court but lost before the 1st Appellate Court, has filed the above second appeals.

13.The suit in O.S.No.126 of 2010 was filed by the respondent/plaintiff for declaration of title and for recovery of possession of the suit property from the 1st defendant and to declare the sale deeds in favour of the defendants as null and void.

14.The case of the plaintiff is that his grandmother Neelavathi@Neelammal, the original owner of the suit property executed a registered Will on 01.09.1995 in favour of the plaintiff and that she died on 16.04.2000. During February 2006 when the plaintiff went to the schedule mentioned property for collecting rents from the tenants, came to know that his father had executed a sale deed on 14.02.2005 in favour of the 2nd defendant and thereafter the 2nd defendant executed a sale deed in favour of the 1st defendant and that the 1st defendant is in possession of



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the suit property after evicting the tenants. Thus, the claim of the plaintiff is that, in view of the Will executed by his grandmother in his favour, his father Manoharan has no right whatsoever in the suit property to execute a sale deed in favour of the 2nd defendant. Hence, prayed for declaring his right over the suit property and for recovery of possession from the 1st defendant.

15.The appellants/defendants resisted the claim of the plaintiff on the following grounds:

i. that, the plaintiff has produced only the certified copy of the Will without a plausible reason for laying secondary evidence and therefore, the Court cannot permit to allow the plaintiff to adduce secondary evidence.

ii. that, the plaintiff failed to prove the execution of Will in accordance with law

iii. that, the initial burden of proof was not discharged by the plaintiff.



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16. I am of the view that, in view of the limited scope for interference in a second appeal under Section 100, CPC., as laid down by the Hon'ble Apex Court in catena of decisions, unless the case fell within one of those categories of cases where this Court may be justified in looking at the evidence afresh, this Court cannot interfere with findings of facts recorded by the lower Appellate Court which is the final Court of facts, unless this Court comes to the conclusion that the findings recorded by the Courts below were perverse i.e., based on misreading of evidence or based on no evidence. The present case is to be considered in the light of the above said principles.

17. It is worth mentioning that the plaint in the suit lacked essential details regarding the Will dated 01.09.1995 said to have been executed in favour of the plaintiff by his grandmother Neelammal. The original Will was never filed before the trial Court. The plaint in the subject suit did not clarify the Will's current status- whether it was lost or not. The learned counsel for the appellant vehemently contended that the alleged Will cannot be looked into as secondary evidence by relying Section 65 (c) of

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Indian Evidence Act, 1872 without any averment and explanation in the

plaint with regard to non-production of original Will dated 01.09.1995. A document upon which a title is based is required to be proved by primary evidence, and the secondary evidence is only an exception. The plaintiff failed to account for the existence of the primary evidence. Therefore, when original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established, it is not permissible for the Court to allow a party to adduce secondary evidence. In the present case, in the absence of any such evidence such as misplacement or lost or not otherwise available, the first Appellate Court erred in accepting the Will produced by the plaintiff. In such view of the matter, the conclusion of the lower Appellate Court that the plaintiff has traced his title to the suit property based on the alleged Will is erroneous. Moreover, it may be true that Ex.A2 Will was a registered one and a certified copy of the Will is admissible and the certificate of a Registering Officer on the Will is sufficient proof of execution of the Will and its contents. But the same by itself would not mean that the statutory requirements by proving the Will need not be complied with. In terms of Section 63 (c) of Succession Act, 1925 and Section 68 , Indian Evidence



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Act, 1872, the propounder of Will must prove its execution by examining

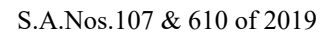
one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and she put her signature on the document on her own free will. In the present case, one Ganesan was examined as P.W.2, as attester of the Will. Examining atleast one attesting witness is generally mandatory and sufficient to prove a Will under Section 68 of the Evidence Act, provided the witness testifies that the testator signed in their presence and that they, along with another witness, witnessed the execution. However, this evidence must still satisfy the Court regarding the testator's sound disposing mind and the absence of suspicious circumstances. The witness must confirm the testator signed the Will, was in sound state of mind, and that the witness signed in the testator's presence. Simply calling a witness is not enough if the Will is surrounded by suspicious circumstances. The Court will subject the Will to close scrutiny regardless of the witness's testimony. In the present case, the contention of the plaintiff is that he came to know about the existence of the Will through a stranger after a long period, itself is a suspicious circumstances. If really, the grandmother had



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executed any Will in favour of the plaintiff, she would have informed the same at least to her close relatives. Moreover, the evidence of the attesting witness is also not satisfactory. He failed to demonstrate that he had signed the Will as per the direction of the testator, fulfilling the requirements contemplated under Section 63 of Succession Act, 1925. Hence, it cannot be construed that the Will was proved in accordance with law. Generally, a stranger to a family has no standing to challenge a Will. However, a purchaser who is not a member of the family can question the genuineness of the Will when they have a direct legal interest in the property or where the Will affects their rights over the property they purchased. The First Appellate Court erred in holding that the defendants are not bonafide purchasers for value as she has not verified the encumbrance certificate. The first Appellate Court overlooked the fact that the entry of Will is made only in Book III of Register maintained in the Sub Registrar's Office which would never be reflected in the encumbrance certificate.

18. Moreover, the case of the plaintiff is that he came to know about the encumbrance in the year 2006 itself when the tenants in the suit



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19.As rightly pointed out by the learned counsel for the appellants, mere assertion in the plaint that the plaintiff had acquired knowledge about the alleged Will on a particular date does not by itself establish the above fact. The averments in the plaint reveal that the plaintiff had acquired knowledge beyond the period prescribed under Article 59 of the Limitation Act, then the suit is hopelessly barred by limitation.

20.Further, the First Appellate Court erred in coming to the conclusion that the defendants failed to establish their case, which is incorrect. The plaintiff in a suit for declaration of title and possession could succeed only on the strength of his own title by adducing sufficient evidence to discharge his onus, irrespective of the question, whether the defendants have proved their case or not.

21.Hence, the judgment and decree passed by the first Appellate Court is liable to be set aside. The judgment and decree passed by the trial Court is restored.



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22.In the result,

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(i) the second appeals are allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) the judgment and decree dated 10.01.2018 passed in A.S. No.24 of 2014, on the file of the 1st Additional District Judge, Thiruvallur passed by the first Appellate Court is set aside and judgment and decree dated 03.06.2013 passed in O.S. No. 126 of 2010, on the file of the Subordinate Judge, Thiruvallur is restored.

13.02.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn

To

1. The 1st Additional District Judge, Thiruvallur
2. The Subordinate Judge, Thiruvallur.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
vsn

Pre- delivery judgment made in
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and C.M.P.No.2353 of 2019

13.02.2026