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S.A.No.108 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.11.2025
Pronounced on	13.02.2026

CORAM

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

S.A.No.108 of 2019
and C.M.P.Nos.2361 of 2019

R.Lakshmi

...Appellant

Vs.

1.R.Sellammal
2.R.Arunachalam
3.R.Krishnan
4.Joseph Anthoni Rajesh
5.S.Shanmugam
6.T.Santhanam
7.S.Chithra
8.M.Palani
9.K.Kamala
10.P.Muthu
11.P.Krishnan
12.A.Karthi

...Respondents



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Prayer : Second Appeal is filed under Section 100 CPC, 1908 against the decree and judgment dated 22.11.2018 passed in A.S. No.7 of 2018, on the file of the IV Additional District Judge, Erode District, at Bhavani Confirming the Judgment and decree dated 07.11.2017 passed in O.S. No.27 of 2013, on the file of the Sub Judge of Bhavani.

For Appellants : Mr.N.Manokaran
For Respondents : Mr. S.Doraisamy for R1 to R3

JUDGMENT

The present Second Appeal is preferred against the decree and judgment dated 22.11.2018 passed in A.S. No.7 of 2018, on the file of the IV Additional District Judge, Erode at Bhavani confirming the Judgment and decree dated 07.11.2017 passed in O.S. No. 27 of 2013, on the file of the Sub Judge, Bhavani.

2.The unsuccessful plaintiff preferred this second appeal.

3.The plaintiff has filed the above suit for partition seeking to divide the 1st item of the suit property into 8 equal shares and to divide the remaining items into 4 equal shares and to one allot such share to the plaintiff and also for permanent injunction against encumbrance.



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4.The case of the plaintiff is that she is the daughter of the 1st defendant and sister of the 2nd and 3rd defendants. The 1st item of the suit schedule property was jointly purchased by the plaintiff's husband and her father namely S.V.Ramasamy Gounder, under a registered sale deed dated 08.05.1981. Thereafter, her husband sold his undivided half share to the 4th defendant on 23.11.2006. The rest of the properties are joint family properties of the plaintiff and the defendants 1 to 3. The said S.V.Ramasamy Gounder died intestate on 20.05.2007, leaving behind the plaintiff and the defendants 1 to 3 as his legal heirs. The plaintiff is in joint possession of the suit properties along with the defendants. The 2nd and 3rd defendants are not entitled to the entire property. The 4th defendant is entitled to half share in the 1st item of the suit properties. The plaintiff and the defendants 1 to 3 are entitled to the remaining half share in the 1st item. It is further contended that the father had no right to execute the Will in respect of joint family properties. Likewise, the settlement deed executed by the 1st defendant is invalid. The above documents will not bind the plaintiff in any way. The defendants 2 & 3 have executed various sale deeds in favour of third parties which would not affect the right of the plaintiff in any manner. Since the defendants



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were not amenable for partition the present suit is filed for partition and permanent injunction.

5.The defendants together resisted the claim of the plaintiff. Their contention is that, the 1st item was admittedly purchased jointly by the husband and father of the plaintiff, defendants 2 & 3. The half share of the plaintiff's husband was sold in favour of the 4th defendant. The other half share in the 1st item and other properties except the 2nd item and a portion in 3rd item belong to the 1st defendant and the other suit properties are the self acquired properties of the father S.V.Ramasamy Gounder, who executed a Will bequeathing his properties in favour of the defendants 2 & 3 respectively. After his demise, the Will came into effect and the defendants 2 & 3 are in possession of the properties as absolute owner. The 2nd item of the suit property and a portion in 3rd item belongs to the 1st defendant. She executed a settlement deed in favour of the defendants 2 & 3 on 28.10.2009. Thus, the entire property belongs to the defendants 2 & 3. At the time of executing the settlement deed, the plaintiff has received Rs.5,00,000/- and a sum of Rs.10,00,000/- was given to the plaintiff for constructing a house and for her daughter. It is further submitted that the defendants 2 & 3 have sold some portion of the



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suit properties to various persons, prior to the suit. The above fact is known to the plaintiff. However, she had not arrayed them as necessary parties in the suit. Hence, the suit is liable to be dismissed for non-joinder of necessary parties. It is further submitted that the 5th and 11th defendants have constructed houses in the suit property, and the above properties are not shown in the schedule of properties. The suit properties are not joint family properties and therefore the plaintiff is not entitled for any share.

6.The trial Court upon considering the facts and circumstances of the case, dismissed the suit filed by the plaintiff, against which she preferred the appeal suit in A.S.No.7 of 2018. The first Appellate Court dismissed the appeal suit. Challenging the same, the present second appeal is preferred by the plaintiff.

7.This Second Appeal is admitted on the following substantial question of law:

“1. Whether the Courts below are correct in law in casting the onus upon the plaintiff to prove the Will which has been put forward by the defendants, more particularly when the lower appellate Court is also



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found minor discrepancies in the Will Ex.B.7?

2. Whether the judgment of the Courts below in accordance with the Section 68 of the Indian Evidence Act? ”

8.Mr.N.Manokaran, learned counsel for the appellant/plaintiff would submit that the suit properties are joint family properties of the plaintiff and the defendants 1 to 3 are in joint possession. The Will propounded by the defendants was not proved in the manner known to law. There are suspicious circumstances in the execution of the Will. It is further submitted that, since the suit properties are joint family properties, the father Ramasamy Gounder and the mother namely, the 1st defendant are not entitled to execute the alleged Will and settlement deed in favour of the 2nd and 3rd defendants. The Courts below failed to consider the materials on record in a proper prospective manner. When there is perversity in findings of the Court which are not based on any materials on record or when appreciation of evidence suffers from material irregularity, this Court is entitled to interfere with the question of fact as well. He would further contend that since the suspicious and unexplained



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circumstances in the present case remained unexplained, the Court below are not justified in accepting the alleged Will as genuine document. To support his contention, he has relied upon the judgment in :

1.*Shivakumar and Others Vs. Sharanabasappa and others* reported in *(2021)11 SCC 277*

2.*Balasubramanian and others Vs. M.Arockiasamy* reported in *(2021) 12 SCC 529*

3.*Malliga Vs. P.Kumaran* reported in *MANU /TN/2920/2022*

Hence, prayed for setting aside the judgement and decree passed by the Courts below.

9.On the other hand, Mr.S.Doraisamy, learned counsel for the respondents 1 to 3 would submit that the suit properties are the separate properties of their father S.V.Ramasamy Gounder and mother, the 1st defendant and they are not the joint family properties as claimed by the plaintiff. It is further submitted that, the Will executed by the father and the settlement deed executed by the mother were proved in accordance with law. The Courts below have rightly appreciated the oral and



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documentary evidence on record and rightly dismissed the suit filed by the plaintiff, warrants any interference by this Court.

10. Heard on both sides and records perused.

11. According to the plaintiff, the suit properties are Hindu Joint Family properties. It is settled law that, the person asserting that the property is a joint family property, bears the burden of proving it. The plaintiff must prove that the family was joint and that the property was acquired using a "nucleus" of ancestral funds or joint income. There is no automatic presumption of joint ownership. Thus, the plaintiff must prove the existence of a joint family and that the properties were bought with joint resources. If a property stands in the name of an individual, it is presumed to be self acquired unless it is proved that it was acquired with the help of joint family funds. Therefore, to prove a property is joined, one must show:

(i) Existence of a joint Hindu family



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(ii) The property was purchased using ancestral income or joint family resources and

(iii) The property was not acquired with independent, separate income.

12.At first, the plaintiff must establish that she is a member in the joint family. Admittedly, the plaintiff got married at the age of 14, i.e., around 1971 and was living with her husband. But still she remains a member and a coparcener of her father's Hindu undivided Family even after her marriage and moving out unless ousted and failed to prove the property is joint family property. She has to prove that she had participated in the avocation of the joint family, before or after her marriage. There is nothing on record to show that the family had joint business or joint family nucleus. Therefore, there is no reason to believe that the 1st item of the property as joint family property. Admittedly, the 1st item was jointly purchased by the father and husband of the plaintiff and that the husband of the plaintiff has sold his half share to the 4th defendant. The remaining half share for the reasons stated above, would



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remain as the separate property of the father. Further, the two house sites, part of the 3rd item have been purchased in the name of the father S.V.Ramasamy Gounder in 1970 and 1972 as per Ex.B.2 and B.6 respectively. The plaintiff failed to establish that the properties are joint family properties. With regard to the 2nd item of the property, as per Ex.B2 partition deed, the same has been allotted to the mother of the plaintiff, namely the 1st defendant. The house site, which is a part of the 3rd item of the suit property, through Ex.B1 settlement deed, makes the 1st defendant, mother of the plaintiff, the absolute owner of the said property. Therefore, the above properties cannot be construed as joint family properties of the plaintiff and the defendants. Since the plaintiff failed to prove that the above properties were acquired with joint family funds, the same cannot be presumed as joint family properties.

13. According to the defendants, the defendants 2 & 3 are the absolute owner of the suit properties by virtue of Ex.B7 Will and Ex.B3 & B.4 settlement deeds. The properties settled in favour of the 2nd and 3rd defendants by the 1st defendant cannot be questioned by the plaintiff, since the above properties are the separate properties of the 1st defendant. With regard to Ex.B7 Will, the defendants have examined the attestors



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and the scribe of the Will to prove it is genuine. There is no reason to discard their evidences. The plaintiff has not raised any valid suspicious circumstances to discard the Will. In fact, she had not raised any suspicious circumstances during her chief examination. Even, the suspicious circumstances raised by the plaintiff in this appeal is trivial in nature. The physical condition of the father at the time of executing the Will was not established. Admittedly, he was 90 years old. That alone would not lead to the presumption that he was not in sound state of mind. It is also not established that, the father used to subscribe his signature and not his thumb impression in the documents. Therefore, the contention of the plaintiff that the thumb impression in the Will is fabricated cannot be accepted. The Courts below have rightly held that the Will is genuine after appreciating the materials on record. No perversity or infirmity found in the said findings of the Courts below, rightly concluded that the plaintiff is not entitled for any share in the suit properties, warrants any interference by this Court.

14.In the result,

(I) this second appeal stands dismissed. No costs.

(ii) the judgment and decree dated 22.11.2018 passed in A.S. No.7



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of 2018, on the file of the IV Additional District Judge, Erode District, at Bhavani Confirming the Judgment and decree dated 07.11.2017 passed in O.S. No.27 of 2013, on the file of the Sub Judge of Bhavani is upheld. Consequently, connected miscellaneous petition is closed.

13.02.2026

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

To

1. The IV Additional District Judge, Erode District, Bhavani
2. The Sub Judge, Bhavani
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

Pre delivery judgment in
S.A.No.108 of 2019 and
and C.M.P.Nos.2361 of 2019

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