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*S.A.No. 1064 of 2013
and CRP.No.1223 of 2018*

1 IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A.No.1064 of 2013
and M.P.No.1 of 2013
& CRP.No.1223 of 2018
& CMP No.6248 of 2018

S.A.No.1064 of 2013

1. N.Rajamani @ Rajammal

2. N.Palanisamy (died)

3. M.Mallika

4. P.Karthick

...Appellants/Appellants
/Defendants

Appellants 3 and 4 brought on record as legal heirs of the deceased A2
viz Palanisamy Vide Court order dated 07.03.2022 made in
CMP.No.15549 of 2021 in S.A.No.1064 of 2013 (CVKJ)

Versus

1. Shanmugadevi

2. Palaniammal

3. Kamalam

... Respondents/Respondents
/Plaintiffs

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure
Code to set aside the judgment and decree passed in A.S.No.24 of 2008
dated 19.01.2012 on the file of the Principal Sub Court at Tiruppur in
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confirming the judgment and decree made in O.S.No.213 of 2005 dated 04.04.2008 on the file of the District Munsif cum Judicial Magistrate at Palladam, Coimbatore district.

APPEARANCE OF PARTIES:

For Appellants : Mr.V.Raghavachari, Senior Counsel
For Mr.Ma.P.Thangavel

For R1 to R3 :Mr.R.Sankarappan

CRP.No.1223 of 2018

1. N.Rajamani @ Rajammal

2. N.Palanisamy (died)

3. M.Mallika

4. P.Karthick ...Petitioners/Respondents
/Respondents/Defendants

Petitioners 3 and 4 brought on record as legal heirs of the deceased P2 viz Palanisamy Vide Court order dated 07.03.2022 made in CMP.No.17742 of 2021 in S.A.No.1223 of 2018 (CVKJ)

Versus

1. Shanmugadevi

2. Palaniammal

3. Kamalam

...Respondents/Petitioners
/Petitioners/Plaintiffs

PRAYER in CRP.:

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Civil Revision Petition filed under Section 115 of the Civil Procedure

Code to set aside the petition and order passed in E.A.No.02 of 2018 in E.P.No.17 of 2017 in O.S.No.213 of 2005 dated 06.03.2018 on the file of the District Munsif Court at Sular by allowing the above Civil Revision Petition.

APPEARANCE OF PARTIES:

For Petitioners : Mr.V.Raghavachari, Senior Counsel
For Mr.Ma.P.Thangavel

For Respondents : Mr.RSankarappan

COMMON JUDGMENT

Heard.

2. This Second Appeal is filed by the defendants against the judgment and decree dated 19.01.2012 passed in A.S.No.24 of 2008 by the Principal Sub Court at Tiruppur, confirming the judgment and decree dated 04.04.2008 passed in O.S.No.213 of 2005 by the District Munsif cum Judicial Magistrate Court, Palladam. The connected Civil Revision Petition arises from the order dated 06.03.2018 in E.A.No.02 of 2018 in E.P.No.17 of 2017 in the same suit.



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3. For the sake of convenience, the parties are referred to as they are arrayed before the trial Court.

4. The suit is for declaration of title and recovery of possession. The plaintiffs are three sisters. They say that the suit property (house and site) was their father Subbanna Gounder's self-acquired property, purchased under a registered sale deed dated 05.06.1981. They state that he died on 18.12.2003 and that they alone inherited the property as his legal heirs. They say that the defendants were permitted to stay only to look after their father, and later continued to stay only with the plaintiffs' permission. They allege that in 2004, when asked to vacate for partition/arrangement, the defendants vacated but later broke open the lock, re-entered and refused to hand over possession. After notice dated 08.01.2005, the defendants claimed rights under an alleged Will dated 09.06.1985, which the plaintiffs deny as false and fabricated. Hence, the suit.

5. The defendants admit that Subbanna Gounder purchased and owned the property under the sale deed dated 05.06.1981. They deny the plaintiffs' version on possession and re-entry. They say the plaintiffs were married long before the purchase, lived in their matrimonial homes,

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and did not maintain cordial relations with, or take care of, their father.

They refer to maintenance proceedings filed by the plaintiffs' mother in 1978 in M.C.No.20/1978 before the Sub Divisional Judicial Magistrate, Tirupur, and state that Subbanna Gounder paid maintenance till her death and was thereafter neglected by the plaintiffs. According to the defendants, Subbanna Gounder executed a registered Will dated 09.06.1985 bequeathing the suit property to the first defendant, and title vested in her on his death. They further say the first defendant executed a gift deed dated 31.01.2005 in favour of the second defendant, who claims possession as absolute owner. They therefore contend that the plaintiffs have no right, the suit lacks cause of action, and the valuation and court-fee are incorrect.

6. Before the Trial Court, the plaintiffs examined P.W.1 to P.W.4 and marked Exs.A1 to A12. The defendants examined D.W.1 to D.W.4 and marked Exs.B1 to B24. The defendants relied mainly on the registered Will dated 09.06.1985 (Ex.B20) and the settlement/gift deed dated 31.01.2005. The Trial Court noted an earlier Will dated 25.02.1980 relating to provident fund and gratuity in favour of the second defendant and his sister Indrani (Ex.A12/Ex.B19), and considered the plea that Ex.B19 stood cancelled by Ex.B20. On Ex.B20, the Trial Court noted



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that the scribe (D.W.4) was examined, but since he was not cross-examined, his evidence was not relied upon. The Trial Court held that Ex.B20 was not proved in accordance with law, as no attesting witness was examined and the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 were not satisfied. The suit was therefore decreed in favour of the plaintiffs, with a direction to deliver possession.

7. The defendants appealed. The First Appellate Court held that examining the scribe was not sufficient to prove the Will under Section 68 of the Evidence Act, since it was not shown that the attesting witnesses were dead or unavailable. It also noted that D.W.4 was not cross-examined and the plaintiffs had no opportunity to test the Will. It therefore confirmed the Trial Court decree and dismissed the appeal.

8. In this Second Appeal, the defendants contend that since Ex.B20 is a registered Will, the Courts below ought to have presumed it to be valid and that insisting on proof was illegal. They also contend that since the plaintiffs alleged fraud/forgery, they had to plead particulars under Order VI Rule 4 CPC and prove those allegations. On these grounds, they propose substantial questions of law on whether the Courts below were

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right in requiring proof of Ex.B20 and whether their approach was
contrary to Sections 101–102 and 114 of the Evidence Act.

9. While the Second Appeal remained pending at the admission stage, this Court dealt with C.M.P.No.13423 of 2023 and, by order dated 25.10.2024, directed the First Appellate Court to give the defendants an opportunity to prove the Will (Ex.B20) in accordance with the Indian Succession Act and the Indian Evidence Act, and to return findings. The First Appellate Court then recorded additional evidence (including D.W.5), marked Exs.B25 to B27, and returned a finding that Ex.B20 is still not proved, and that the earlier dismissal of the appeal stands.

10. Learned counsel for the defendants/appellants submits that the concurrent findings are perverse. It is argued that D.W.5, having identified his father's signature in one part of the document, could not deny it as an attesting signature, and therefore the Will should not have been held unproved. It is also submitted that no suspicious circumstances were brought out to discredit the Will; that the estrangement between Subbanna Gounder and his wife is established; and that the defendants cared for the deceased till his death. It is further argued that the Courts below went beyond the scope of this Court's directions and acted

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contrary to Section 69 of the Evidence Act, and that additional substantial

questions of law therefore arise and the registered Will should be accepted as the last wish of the deceased. Reliance is placed on 2026 SCC OnLine SC 106 [*Hemalatha(D) by Lrs Vs. Tukaram (D) by Lrs and others*] to contend that a registered Will carries assurance of validity

11. It is well settled that the person who relies on a Will must prove that it was properly executed and properly attested, as required by Section 63 of the Indian Succession Act, 1925 read with Sections 68 or 69 of the Indian Evidence Act, 1872. In this case, the defendants relied on Ex.B20 as the Will, but before the Trial Court they did not examine any attesting witness. They gave no reason for not doing so. They also did not examine any person who knew the handwriting of the attesting witnesses, so as to meet the requirement of Section 69 of the Evidence Act. Although the scribe of the Will was examined as D.W.4, he did not submit himself for cross-examination, and therefore his evidence cannot be relied upon. In these circumstances, both Courts were justified in holding that the Will was not proved in the manner required by law and in decreeing the suit.

12. The defendants filed this Second Appeal without any application for permission to produce additional evidence. Nearly ten years later, they

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filed a Civil Miscellaneous Petition seeking such permission. Even before

admitting the Second Appeal, this Court gave the appellants an opportunity to prove the Will. The Court directed the First Appellate Court to record additional evidence and send back its findings. In that process, the son of one of the attesting witnesses was examined as D.W.5, and Exs.B25 to B27 were marked. After considering this further evidence, the First Appellate Court again held that the Will was not proved. Therefore, there are two consistent findings of the First Appellate Court—one in the original appeal and the other after this Court's direction—that the Will has not been proved in the manner required by law.

13. When this Second Appeal was filed, the defendants/appellants admittedly had not complied with the mandatory requirements of Sections 68 and 69 of the Indian Evidence Act, 1872 for proving the Will relied upon by them. The substantial question of law framed at that stage proceeded on that admitted non-compliance. However, later events have materially changed the position. Pursuant to this Court's orders, the First Appellate Court recorded additional evidence. In view of the said development, the second appeal originally framed/filed no longer survives for consideration.

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14. The issue is whether the finding recorded after taking additional evidence suffers from any legal error. Section 69 of the Evidence Act applies where a document required by law to be attested has to be proved when no attesting witness can be found. In such a case, it must be proved that the attestation of atleast one attesting witness is in his handwriting and that the signature of the executant is also in his handwriting. Here, it is stated that one attesting witness, Murugaiyan, had died, and his son was examined as D.W.5. Even so, there is no material to show that the other attesting witness was dead or could not be found, and there is no acceptable explanation for not examining him.

15. D.W.5 stated in chief that he had no knowledge of the execution of the Will. He was then treated hostile and cross-examined by the defendants. Even then, he could only identify his father's signature in the registration endorsement relating to identification of the executant before the Sub-Registrar. He could not identify his father's signature in the attestation portion below the testator's signature. On the other hand, he identified the testator's signature as his father's. This evidence does not satisfy Section 69 of the Evidence Act.



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16. The argument that identifying the signature in the registration endorsement is, by itself, enough to satisfy Section 69 cannot be accepted.

17. There is a clear difference between an attesting witness and an identifying witness. An attesting witness is one who sees the executant/testator sign (or receives acknowledgment of the signature) and signs the document with the intention to attest (*animo attestandi*). Such attestation must satisfy Section 63(c) of the Indian Succession Act.

18. An identifying witness before the Sub-Registrar has a different role. He only identifies the executant who appears before the registering authority. He need not witness execution, and need not know the contents or circumstances of execution. Therefore, his signature in the registration endorsement cannot be treated as attestation unless it is independently proved that he signed as an attesting witness after witnessing execution or receiving acknowledgment.

19. Section 69 requires proof that the handwriting is that of an attesting witness. It does not speak of an identifying witness. Here, D.W.5's identification is only with reference to the signature in the identifying



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portion of the registration endorsement. Since he could not identify the signature in the attestation portion, the requirement of Section 69 remains unsatisfied.

20. The argument that registration of Ex.B20 raises a presumption of due execution is misconceived. Registration may lend some assurance as to genuineness, but in the case of a Will, registration does not dispense with proof of due execution and attestation as required by Section 63 of the Indian Succession Act read with Sections 68 and 69 of the Evidence Act. Registration by itself is not proof of a Will.

21. In view of the concurrent findings, and since those findings have been reaffirmed even after giving the appellants an opportunity to adduce additional evidence, and there is no material to show perversity or misapplication of settled law, no substantial question of law arises under Section 100 CPC. The Second Appeal is therefore liable to be dismissed at the admission stage.

22. Accordingly, S.A.No.1064 of 2013 is dismissed at the admission stage. No costs. Connected CMPs, if any, are closed.



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23. The Civil Revision Petition filed by the defendants challenges an order made in an execution application (police-aid/execution assistance) in execution of the decree in O.S.No.213 of 2005. With dismissal of the Second Appeal and the decree attaining finality, execution must follow. The revision does not disclose any jurisdictional error, material irregularity, or illegality warranting interference under Section 115 CPC. In any event, it does not survive independently after dismissal of the Second Appeal.

24. C.R.P.(NPD) No.1223 of 2018 is dismissed. Any interim order/stay stands vacated. Connected miscellaneous petitions, if any, are closed. There shall be no order as to costs.

25.02.2026

mfa

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No



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To

1. The Principal Sub Court
Tiruppur
2. The District Munsif cum
Judicial Magistrate at Palladam,
Coimbatore district.
3. The Section Officer,
V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

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