



WEB COPY

SA No. 577 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-01-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 577 of 2015

and M.P. No.1 of 2015

1. Indirani W/o P.Subramani,
2. S.Maragathamani W/o M.Subramani,
3. K.Thooyamani W/o M.Kumarasamy
4. G.Seran S/o P.Govindan,
5. K.Tamilselvi W/o V.Kandasamy,
6. G.Shanthi W/o D.Gunasekaran,
7. Vijayarani W/o Seeran,

..Appellant(s)

Vs

1. Chandra W/o M.Shanmugam,
2. J.Ramesh S/o Late N.M.Jayaraman
3. R.J.Ramesh

..Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure as against the judgment and decree dated 11.06.2014 in A.S. No.5 of 2011 on the file of the I Additional District Judge, Salem confirming the judgment and decree dated 01.04.2010 in O.S. No.60 of 2004 on the file of the II Additional Subordinate Judge, Salem.

For Appellant(s):

Mr. Avinash Wadhwani

For Respondent(s):

R1 – Served – No appearance.
M/s.D. Sathya for Zeenath Begum
[for R2 and R3]

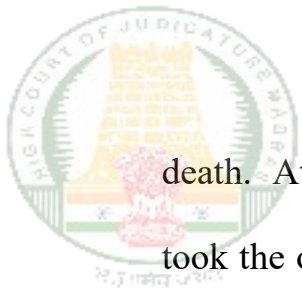


JUDGMENT

This Second Appeal has been preferred as against the decree and judgment passed by the First Additional District Court, Salem in A.S. No.5 of 2011 dated 11.06.2014, wherein the First respondent filed the Suit for declaration declaring that the Suit properties absolutely belong to the Plaintiff and for granting permanent injunction restraining the defendants from interfering in the possession of the Plaintiff over the Suit properties. The Suit was decreed. Aggrieved by the said decree and judgment, the legal heirs of the defendants have preferred an appeal in A.S. No.5 of 2011 on the file of First Additional District Judge, Salem on various grounds and the said appeal was also dismissed by confirming the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the present second appeal has been filed by the appeal.

2. The brief facts of case of the Plaintiff are as follows:

The Suit property originally belonged to one Subramanian, who is the brother of the Plaintiff. The defendant is the maternal uncle of the Plaintiff. The Plaintiff's mother Krishnammal and his brother Subramanian were residing in the residence of the defendant. The said Subramanian was working in the Electricity Board, Mettur Thermal Power Station. During 1996, the said Subramanian was attacked with paralysis and he died on 17.04.1997 as a bachelor. Thereafter, the Plaintiff maintained her mother Krishnammal till her



death. At the time of death of the said Subramanian, the defendant and his men took the original documents of the said property and refused to return the same to the Plaintiff and also promised to return the same, whenever it requires by the Plaintiff. Even after the death of the Plaintiff's mother, the defendant refused to handover the documents. In spite of repeated efforts taken by the Plaintiff to get the original documents, the defendant has not co-operated for the same. Now, the defendant is trying to sell the property. The Plaintiff is the only legal heir of the said deceased Subramanian and he is the original owner of the Suit property. While so, the defendant tried to sell the property, thereby the Plaintiff filed the Suit for declaration and permanent injunction.

3. **The brief averments of the Written statement filed by the defendant are as follows:-**

The relationship between the parties is admitted. The said Subramanian was taking treatment under various Doctors. After surgery, he got severe pain in the back and he went to Manipal for taking treatment and surgery was done and after returning from Manipal, he went to the Plaintiff's house at Thammampatty. The said Subramanian shifted to field house of the defendant and the son of the defendant namely Cheran, helped to the said Subramanian. While so, he died on 17.04.1997. The defendant is the brother of Krishnammal and the Plaintiff did not maintain his mother. The said Subramanian purchased the property and all the original documents were with him. Neither the Plaintiff



nor Krishnammal approached the defendant for original documents. The said Subramanian while in sound disposing state of mind, executed a registered Will dated 10.02.1997 bequeathing the property in favour of the defendant and another Subramani and others. The Plaintiff's mother Krishnammal also executed a registered Will in respect of the property, while she was in sound state of mind. After death of Krishnammal dated 24.06.1999, the Will came into effect and the defendant's son Cheran became the absolute owner of the property of the Krishnammal. The Plaintiff is not entitled to the Suit properties. Even as per the Will, the defendant has to comply the conditions of the Will, to sell all his properties along with other two executors and distribute the sale proceeds to all the legatees. The Plaintiff is not an absolute owner and she is not entitled to sell the properties. She was not in possession of any item of the properties. Therefore, the Suit is liable to be dismissed.

4. Based on the above said pleadings and after hearing both sides, the trial Court framed the following issues:

- 1. Whether the Plaintiff is entitled for the relief of declaration.***
- 2. Whether the Plaintiff is entitled for the relief of permanent injunction as prayed for.***
- 3. To what relief?***



5. On the said of the Plaintiff, before the trial Court, she was examined as PW1 and Ex.A.1 to Ex.A.8 were marked. On the side of the defendant, DW1 to DW3 were examined and Ex.B.1 to Ex.B.5 were marked. After hearing both sides and perusing the records, the trial Court decreed the Suit by declaring the Suit properties in favour of the Plaintiff and also granted permanent injunction restraining the defendant and his men from in any way interfering with the peaceful possession and enjoyment of the Suit properties. Challenging the said decree and judgment, the legal heirs of the defendant have preferred an appeal in A.S. No.5 of 2011 on the file of the First Additional District Court, Salem on various ground. During the pendency of the said appeal, an I.A. No.504 of 2014 has been filed to adduce additional evidence.

6. The First Appellate Court, after hearing both sides and perusing the records, framed the following *points for determination*:

- (i) *Whether the Subramanian had executed a Will dated 10.02.1997?*
- (ii) *Whether the Plaintiff is the only legal heir entitled to inherit the properties of Subramanian?*
- (iii) *Whether the Plaintiff is entitled for declaration as prayed for?*
- (iv) *Whether the Plaintiff is entitled for injunction as prayed for?*
- (v) *Whether the I.A. No.504 of 2014 is to be allowed or not?*
- (vi) *Whether the judgment and decree of the trial Court to be set aside?*



(vii) *To what other relief, the Plaintiff is entitled for?*

7. After hearing both sides and perusing the records, the First Appellate Court 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 legal heirs of the defendant.

8. At the time of admitting the second appeal, this Court formulated the following *substantial questions of law:-*

(a) Whether or not the findings of the Lower Courts regarding the validity of Will Ex.D.5 are based on presumptions and assumptions and not based on the well established principles of law and the said findings are perverse in law.

(b) Whether the Lower Court right in holding that the execution of Ex.D.5 Will was under suspicious circumstances based on mere surmises and conjectures and the said findings amount to perverse in law?

(c) Whether the Suit for declaration and permanent injunction in respect of the Suit property without impleading the beneficiaries under the Will Ex.D.5 is maintainable in law and bad for non-joinder of necessary parties to the Suit?

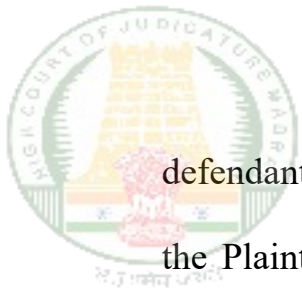


9. The learned counsel appearing for the appellants / defendants would submit that originally the property belonged to one Subramanian, who is the brother of the Plaintiff. The said Subramanian was taken care by the defendant, thereby he executed a registered Will in respect of his properties dated 10.02.1997. The said Will is a last Will of the said Subramanian and he died on 17.04.1997. After his demise, the Will came into effect and the legal heirs are entitled to the properties as bequeathed in the Will. While so, suppressing the same, the Plaintiff filed the Suit with false averments and the Plaintiff also one of the beneficiaries in the Will executed by the said Subramanian. Therefore, the Plaintiff is not entitled to any relief. In order to prove the case of the Plaintiff, PW1 was examined and Ex.A.1 to Ex.A.8 were marked and on the side of the defendant, DW1 to DW3 were marked and Ex.D1 to Ex.D.6 were marked. DW1 is the defendant and DW2 and DW3 are the attesting witnesses in the Will. The Will has been produced as Ex.D.6. The defendant side witnesses have categorically deposed about the Will and proved the execution and attestation of the Will. The Will is a registered Will. There are no suspicious circumstances surrounded in the Will. Therefore, the Will has been duly proved. However, the trial Court, failed to consider the evidence of the defendants in a proper perspective manner and erroneously decreed the Suit. The First Appellate Court also without appreciating the evidence in a proper perspective manner, dismissed the appeal. The Courts below have failed to consider that the Will, Ex.D5, was duly proved and only based on the



presumption and assumption, disbelieved the execution of the Will. The Plaintiff has not impleaded all the beneficiaries of the Will, thereby the Suit is bad for non-joinder of necessary parties and not maintainable. The Courts below have failed to consider that the deceased Subramanian was taken care by the defendants, thereby the deceased executed the Will. The Courts below failed to consider that even in the Will, some of the properties were allotted to the Plaintiff. DW1 to DW3 have categorically deposed about the execution of the Will by the Testator and the attestation of the Will by the witnesses. The trial Court also failed to consider the documents produced and the Courts below only based on mere surmises and conjectures rendered findings that the execution of Ex.D.5 Will was under suspicious circumstances. Therefore, the judgments and decrees of the Courts below are liable to be set aside by allowing this second appeal.

10. The learned counsel appearing for the respondents would submit that the Plaintiff is the sister of the deceased Subramanian. who died intestate. The said Subramanian had some properties. Originally the Suit property belonged to the said Subramanian and he was employed in Electricity Board, Mettur Thermal Power Station. During his course of employment, he fell in sick and died thereafter. The said Subramanian was taken care by the Plaintiff and the defendant is the maternal uncle of the Plaintiff and the said Subramanian. The said Subramanian was not in a position to execute the Will as alleged by the



defendant. The Will is surrounded by suspicious circumstances. On the side of the Plaintiff, they examined PW1 and marked Ex.A.1 to Ex.A8. Though the defendant side, examined attesting witnesses, they have not proved the execution of the Will and attestation of the Will. The defendants failed to expel the suspicious circumstances in respect of the execution of Will. Therefore, the Courts below have correctly appreciated the evidence and disbelieved the execution of the Will and the defendant failed to prove the Will in the manner known to law and rendered concurrent findings. Therefore, this Court need not interfere with the findings of the Courts below. There are no grounds to interfere with the judgments of the Courts below. Therefore, this second appeal is liable to be dismissed.

11. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the Trial Court.

12. This Court heard both sides and perused the entire materials available on record.

13. In this case, there is no dispute in respect of the relationship between the parties. The Plaintiff is the sister of the deceased Subramanian and the deceased is the maternal uncle of the deceased Subramanian as well as the Plaintiff. There is no dispute that the Suit property belonged to the said



Subramanian and the said Subramaian died as bachelor. According to the Plaintiff, she is the only legal heir of the deceased Subramanian. But according to the defendant, the said Subramanian had executed a registered Will dated 10.02.1997 bequeathing the properties to the defendant and others. Therefore, as per the Will, the Plaintiff is not entitled to entire property and she is entitled to some shares over the properties. The execution of the Will was denied by the Plaintiff. Therefore, the defendant has to prove the Will in the manner known to law. In order to prove the Will, the defendants examined DW2 and DW3, the attesting witnesses, they also deposed about the execution of the Will. According to the Plaintiff, there are suspicious circumstances over the Will and those suspicious circumstances have not been dispelled by the defendant and he failed to prove the Will.

14. Both the Courts below have rendered concurrent findings after analysing the evidences adduced on both sides. Particularly, the trial Court rendered findings that the deceased Subramanian was severely affected with health issues and he was unable to walk and he was bed-ridden and DW1 had also admitted that the deceased was bed-ridden and he was taking treatment at Manipal hospital and he could not do anything on his own. In the Will, there is no reference about the mother of the Subramanian and at the time of execution of Will, the defendant also accompanied with the said Subramanian and he actively participated in the execution of the Will. Therefore, there are



suspicious circumstances and those suspicious circumstances have not been dispelled by the defendant. Moreover, there are some interpolations in the Will without any attestation and there are no explanations by propounder of the Will as about those interpolations. Therefore, the Courts below have rendered concurrent findings that the Will has not been proved by expelling the suspicious circumstances. Both the Courts have rendered concurrent findings based on the evidences and there is no infirmity in the findings rendered by the Courts below. Therefore, there is no scope to interfere with the judgments passed by the Courts below by invoking Section 100 of Code of Civil Procedure.

15. As far as the *substantial question of law (a) Whether or not the findings of the Lower Courts regarding the validity of Will Ex.D.5 are based on presumptions and assumptions and not based on the well established principles of law and the said findings are perverse in law* is concerned, both the Courts below have rendered findings based on the evidences adduced on both sides. The trial Court, after discussing about the evidence of DW1 that surgery was done to the deceased Subramanian and he was not in a position to sit and he was bed-ridden and also he admitted that the deceased Subramanian was staying with his mother, where he was working and there is no reference in the Will about his mother and there are interpolations in the Will without any attestation. These are all suspicious circumstances. The First Appellate Court



also rendered findings after analysing the evidence of DW1 that there are suspicious circumstances and the Testator could not sit and walk and he always been placed in the bed and it is not believable that there is no explanation from the defendant how the testator was brought to the Attur Sub-Registrar Office and without proving the same, the Court cannot presume that the deceased Subramanian has executed the Will, Ex.B.6, voluntarily.... and further discussed about the evidence of DW2, who is one of the attestors of the Will and DW2 has stated that at the time, he had reached the Sub-Registrar Office, Subramanian was kept in an auto and similarly, the evidence of DW1 in his cross examination stated that he has not witnessed the testator Subramanian subscribing his signature in the Will. Therefore, the Will is surrounded by suspicious circumstances, but the propounder has to explain those suspicious circumstances. In this case, the defendant, who has been appointed as administrator of the Will has disputed the claim made by the Plaintiff and relied on the Will to disclaim the Plaintiff's right. Further the Appellate Court relied upon the judgment of Hon'ble Apex Court in *H. Venkatachala Iyyengar v. V.N. Thimmayamma reported in AIR 1959 SC 443, Baliram Atmaram Kelapure vs. Smt. Indarbai reported in J.T. (1996) 5 S.C. 187* and after referring those judgments, in respect of the suspicious circumstances, came to a conclusion that the Will is surrounded by suspicious circumstances and the same has not been dispelled by the defendant, who is the propounder of the Will. Therefore, the Courts below have not rendered findings based on the



presumptions and assumptions, but based on the well established principle of law. Therefore, the findings are not perverse. Thus, the ***substantial question of law(a) is answered.***

16. As far as the ***substantial question of law (b) Whether the Lower Court right in holding that the execution of Ex.D.5 Will was under suspicious circumstances based on mere surmises and conjectures and the said findings amount to perverse in law?, is concerned,*** as discussed in earlier paragraphs, the Courts below have rendered findings based on the evidences adduced on both sides and not under surmises and conjectures. Both the Courts below have independently examined the witnesses and analysed the evidences adduced on both sides and came to a fair conclusion. Therefore, the said findings do not amount to perverse in law. Thus, the ***substantial question of law (b) is answered.***

17. As far as the ***substantial question of law (c) Whether the Suit for declaration and permanent injunction in respect of the Suit property without impleading the beneficiaries under the Will Ex.D.5 is maintainable in law and bad for non-joinder of necessary parties to the Suit? is concerned,*** there is no dispute that originally the properties belonged to the deceased Subramanian and the said Subramanian died leaving behind the Plaintiff as his legal heir. The defendant relied upon the Will allegedly executed by the deceased Subramanian. This Court, in the previous paragraphs, has elaborately discussed



and came to a conclusion that the Will has not been proved by the defendants.

Therefore, the beneficiaries of the Will are no way relevant to the Suit and without impleading them, the Suit can be decided. If the Will is proved, then all the beneficiaries of the Will are the necessary parties to decide the Suit. Therefore, the Suit is not bad or non-joinder of the necessary parties, since both the parties admitted that the properties belonged to Subramanian and the Plaintiff is the only legal heir of the said Subramanian. Though the defendants relied upon the Will, the said Will has not been proved in accordance with law. The Plaintiff, being the legal heir of the deceased Subramanian, is entitled to the Suit property and she was in possession and enjoyment of the property. Therefore, the Courts below have correctly granted relief of declaration and permanent injunction. Thus, the ***substantial question of law (c) is answered.*** There are no any illegality and perversity found in the judgements passed by the Courts below. Therefore, there is no warrant to interfere with the judgments and decrees passed by the Courts below.

18. In view of the above discussions and answers to the substantial questions of law, this ***second appeal has no merits and deserves to be dismissed.***

19. Accordingly, ***the Second Appeal is dismissed. There shall be no order as to costs.*** Consequently, the connected miscellaneous petition is closed.

21-01-2026

Index: Yes/No



Speaking/Non-speaking order

Neutral Citation: Yes/No

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P.DHANABAL, J.

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SA No. 577 of 2015

21-01-2026

**SA No.577 of 2015****P.DHANABAL, J.**

This Second Appeal is posted today under the caption "for being mentioned" at the instance of the learned counsel for the respondents.

2. The learned counsel appearing for the respondents would submit that in the order dated 21.01.2026, in the cause title, the third respondent name was wrongly mentioned as R.J.Ramesh instead of ***R.Priya***.

3. Since this is a typographical error, the same is corrected and Registry is directed to carry out the above said correction and issue fresh order copy.

27.02.2026

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P.DHANABAL, J.

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and M.P. No.1 of 2015

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