



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 587 of 2015
and M.P. Nos.1 and 2 of 2015**

S.Murali
S/o Somasekaran, Medigiripally Vilalge, Mathigiri
Hcf Post, Hosur Tk, Krishangiri Dt.

..Appellant(s)

Vs

1.Thoppamma
W/o Ellappa Medigiripally Village, Mathigiri , Hcf
Post, Hosur Tk, Krishnagiri Dt.
2.Narayanasami
S/o Seenappan, Medigiripally Village, Mathigiri,
Hcf Post, Hosur Tk, Krishnagiri Dt.

..Respondent(s)

PRAYER: The Second Appeal has been filed under 100 of Code of Civil Procedure as against the judgment and decree dated 29.10.2014 made in A.S. No.12 of 2013 on the file of the Subordinate Judge, Hosur reversing the judgment and decree dated 29.06.2013 made in O.S. No.190 of 2004 on the file of the District Munsif, Hosur.

For Appellant(s): M/s.W.M.Abdul Majeed

For Respondent(s): M/s.P.Mani

JUDGMENT

The Second Appeal has been preferred as against the decree and judgment passed by the Subordinate Judge, Hosur in A.S. No.12 of 2013 dated 29.10.2014. The respondents herein, being the Plaintiffs, have filed the Suit in



O.S. No.190 of 2004 on the file of the District Munsif, Hosur for the relief of partition and the said Suit was dismissed. Aggrieved by the said decree and judgment, the Plaintiffs have preferred an appeal before the Subordinate Judge, Hosur in A.S. No.12 of 2013 and the First Appellate Court reversed the judgment of the trial Court and allowed the appeal and decreed the Suit. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the defendants.

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

3. The *case of the Plaintiffs* is that originally, the Suit property belonged to Seegalappa, who was the father of the 1st Plaintiff and grand father of the 2nd plaintiff and the defendant. The said Seegalappa had executed a Will dated 16.03.1993 in favour of his daughter and his grand sons namely the 2nd Plaintiff and the defendant. The said Seegalappa died on 03.08.2010. After the demise of the said Seegalappa, the Will came into effect and as per the Will, the Plaintiffs and the defendants are equally entitled to 1/3 share. After the death of Seegalappa, the Plaintiffs and the defendant have been in joint possession and enjoyment of the Suit property. The Plaintiffs demanded the defendant for amicable partition, but he refused for partition. Therefore, filed the Suit.



4. The *case of the defendant* is that the Suit is not maintainable and the Plaintiffs are put to strict proof of the averments made in the Plaint except those that are specifically admitted herein. Originally the land in S. No.787 of Mathigiri village to an extent of 2.46 acres belonged to one Venkatesulu, Ramaiah and Yellappa sons of Tirupalliappa. They have sold the entire extent of properties to one Sanjeevaiah, Venkata Ramanappa and Ramanujaiah. The 1/3rd extent of 88 cents was allotted to one Ramanujaiah S/o. Sanjeevaiah and he sold the said property to Seegalappa through a Sale Deed dated 24.08.1947. Therefore, the said Seegalappa is the original owner of the property in S. No.787/2 to an extent of 88 cents. The said Seegalappa had three sons and two daughters namely Muniyappa, Periya Thoppamma, Chinna Thoppamma, Somasekar, Seenappa @ Sreenivasan. The said Periya Thoppamma is the 1st Plaintiff and the said Muniyappa had one son and three daughters and Chinna Thoppamma is having one son and two daughters. Somasekar is having 3 daughters and two sons Murali @ Murali Mohan and Muniraj. Seenappa @ Sreenivas has two sons Narayanasamy and Anandh.

4.1. The original owner Seegalappa had executed a registered Will dated 24.10.1990 in favour of the defendant Murali and his brother Muniraj and bequeathed the entire property in S.F. No.787/2 to an extent of 88 cents. Subsequently, on 16.03.1993, the said Seegalappa was forced to cancel the said



Will dated 24.10.1990 under a Cancellation Deed and on the same day, the said Seegalappa was forced to execute another registered Will in favour of Thoppamma and the 2nd Plaintiff Narayanasamy and the defendant Murali. In the second Will dated 16.03.1993 a name has been mentioned as 'Thoppamma' and it leads to confusion as the said Seegalappa has two daughters namely Periya Thoppamma and Chinna Thoppamma. After execution of the above said Will, Seegalappa gifted an extent of 20 cents of land through a Settlement Deed dated 23.02.1996 and the said Will and gift deed are created by forgery of the family members i.e., the Plaintiffs. On the basis of the Gift deed, the said Chinna Thoppamma sold 20 cents of land to one Paul Ebinejure and Sivakumar on 03.04.1996. In turn, the said Paul Ebinajure and Sivakumar sold the said 20 cents land to one Chinnappa Reddy on 21.12.1996. Subsequently, the said Chinnappa Reddy and one Chandra had executed a Sale Agreement in favour of one Venkatesappa on 16.09.2005 for the said 20 cents land and the said Chinnappa Reddy sold the same to one N.R. Venu through a registered Sale Deed dated 14.09.2006. Despite all these transactions, no possession was handed over either to Chinna Thoppamma or to her subsequent purchasers. While so, the Plaintiffs 1 and 2, Seenappa, Anand, Muniraj and Nagaraj, all have jointly executed a Sale Agreement for 45 cents in favour of one H.S. Shama Krishna. Therefore, the above said persons are also proper and necessary parties, thereby the Suit is bad for non-joinder of necessary parties. The Will dated 16.09.1993 is not a genuine one. All the Plaintiffs have to



strictly prove the same. The Plaintiffs are not entitled to 2/3 share and all the family members are entitled to the Suit property as the Will and Gift Deed are not acted upon and the same are not valid documents. There is no cause of action for the Suit and the Suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following *issues and additional issues*:

Issues:

- a. *Whether the Suit property is an ancestral property?*
- b. *Whether the Plaintiffs are in joint possession in the property?*
- c. *Whether the Plaintiffs are entitled to 2/3 share over the Suit property?*
- d. *Whether the Suit is bad for non-joinder of necessary parties?*
- e. *Whether the Plaintiffs are entitled to mesne profits?*
- f. *To what other reliefs, the Plaintiffs are entitled to?*

Additional Issues:

- *Is it true that the Suit is not properly valued and Court fee paid is not correct?*
- *Whether the defendants are entitled for exemplary cost?*

6. Before the trial Court, on the side of the Plaintiff, PW1 to PW3 were examined and Ex.A.1 to Ex.A.6 were marked. On the side of the defendants, DW1 and DW2 were examined and Ex.B.1 to Ex.B.11 documents were marked .



The trial Court, after evaluating the oral and documentary evidences adduced on both sides, ***dismissed the Suit through a decree and judgment dated 28.06.2013.***

Aggrieved by the said decree and judgment, the Plaintiffs have preferred an appeal Suit in A.S. No.12 of 2013 on the file of the Subordinate Judge, Hosur on various grounds.

7. The First Appellate Court framed the following ***points for determination:***

(i) ***Whether the parties are entitled to share over the property through a Will dated 16.03.1993.***

(ii) ***Whether the decree and judgment passed by the trial Court in O.S. No.190 of 2004 dated 29.07.2013 are liable to be set aside or not.***

8. After hearing both sides and perusing the records including the judgment and decree passed by the trial Court, ***the First Appellate Court allowed the appeal and set aside the judgment and decree of the trial Court and decreed the Suit partly and moulded the decree and judgment that*** except 20 cents already settled to Chinna Thoppamma through a Settlement Deed and in the remaining 68 cents, the Plaintiffs are entitled to 2/3 share. Aggrieved by the said decree and judgment, the defendants have preferred this second appeal.

9. At the time admitting the second appeal, this Court has formulated the



following *substantial questions of law*:

- 1. Whether the Lower Appellate Court was right in holding that the Will in Ex.A.1 was still valid and not revoked for the rest of the portion of the land when subsequently the testator of the Will himself has executed Ex.B.5, settling part of the very same property to his another daughter?*
- 2. Whether the Lower Appellate Court was right in holding that the Plaintiffs have proved that name of Thoppamma, found in the beneficiary column of the Will in Ex.A.1 denotes only the 1st Plaintiff when no evidence has been produced to prove the same.*
- 3. Whether the Lower Appellate Court was right in taking Ex.A.3 alone as the basis to come to the conclusion that the 1st Plaintiff is only shown as the beneficiary in Ex.A.1 even when Ex.A.3 came into being only after filing the Suit.*
- 4. Whether the Lower Appellate Court was right in holding that the Will in Ex.A.1 had not been revoked by the subsequent settlement deed in Ex.B5 by placing reliance on Section 70 of the Hindu Succession Act.*

10. The learned counsel appearing for the appellant would submit that originally the Suit property belonged to one Seegalappa and he had three sons and two daughters. He purchased the property through a Sale Deed dated 24.08.1947. The 1st Plaintiff is the daughter of the said Seegalappa. The 2nd



Plaintiff is the grand son born through Seenappa @ Srinivasan and the defendant is the grand son born through Somasekar. The said Seegalappa executed a registered will dated 24.10.1990 in favour of the defendant and his brother Muniraj and bequeathed the entire property. Subsequently, the said Will was cancelled by coercion on 16.03.1993. On the same day, the said Seegalappa was forced to executed another registered Will in favour of Thoppamma, Narayanasamy and the defendant. Thereafter, the Seegalappa executed a Gift Deed in favour of Chinna Thoppamma on 23.02.1996 to an extent of 20 cents. The Will dated 16.03.1993 and another Will dated 23.02.1996 are not admitted and both the documents have not been acted upon. Therefore, all the legal heirs of Seegalappa are entitled to the Suit property. The said Chinna Thoppamma also sold the property to third parties and thereafter, so many Sale Deeds were executed in respect of 20 cents of land gifted to Chinna Thoppamma, but the purchasers of the above said 20 cents are not the parties to the Suit. Therefore, the Suit is bad for non-joinder of necessary parties, but the Courts below have failed to consider the above said aspects. Moreover, Will has not been proved in accordance with law. The Will is surrounded by suspicious circumstances and propounder of the Will has not expelled the suspicious circumstances, but the Courts below have failed to consider the same and decreed the Suit. Therefore, the Courts below erred in decreeing the Suit and therefore, the decree and judgments of the Courts below are liable to be dismissed by allowing this second appeal.



11. The learned counsel appearing for the respondents would submit that originally the suit property belonged to one Seegalappa by way of a Sale Deed and the said Seegalappa executed a Will dated 16.03.1993 in favour of the Plaintiffs and the defendant bequeathing the entire extent of 88 cents in S.F. No.787/2 and thereafter during his life time, the Testator Seegalappa, on 23.02.1996 gifted an extent of 20 cents in the said land to one Chinna Thoppamma through a Settlement Deed. Therefore, the Plaintiffs are entitled to 2/3 share over the remaining 68 cents. Though the Plaintiffs have filed the Suit for the entire extent of 88 cents, they restricted their claim only for the remaining extent of 68 cents and the Gift Deed was executed with separate four boundaries and thereby, there is no impediment to pass decree for partition of the remaining 68 cents. In order to prove the case, on the side of the Plaintiffs, PW1 to PW3 were examined and Ex.A.1 to Ex.A.6 were marked. On the side of the defendants, DW1 and DW2 were examined and Ex.B.1 to Ex.B.11 documents were marked. The trial Court failed to consider the case of the Plaintiffs in a proper perspective manner and erroneously dismissed the Suit. However, the First Appellate Court appreciated the facts in a proper perspective manner and decreed the Suit excluding 20 cents gifted to Chinna Thoppamma. Therefore, the First Appellate Court has passed a reasoned order and there is no illegality or infirmity in the judgment passed by the First Appellate Court. Therefore, there is no substantial question of law involved in this case and the second appeal is liable to be



WEB COPY

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 and it is an admitted fact that the suit property is self acquired property of Seegalappa. According to the Plaintiffs, the said Seegalappa executed a Will dated 16.03.1993 in favour of the Plaintiffs and the defendant. Thereafter, he executed a Gift Settlement Deed in favour of his daughter Chinna Thoppamma to an extent of 20 cents. According to the defendant, earlier Seegalappa executed a registered Will dated 24.10.1990 in favour of the defendant and his brother Muniraj and thereafter, he was forced to cancel the said Will dated 24.10.1990 through a Cancellation Deed dated 16.03.1993. On the same day, Seegalappa was forced to executed another Will in favour of the Plaintiffs and the defendant. Therefore, the execution of Will dated 16.03.1993 and the Gift Settlement Deed dated 23.02.1996 have been admitted by both the parties.

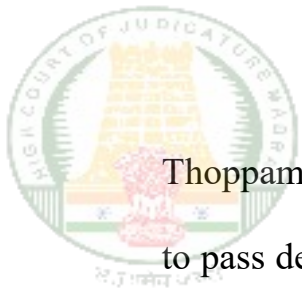


14. However, as far as the Will is concerned, it is the duty of the propounder to prove the Will in accordance with law. In order to prove the Will, the Plaintiffs have examined PW1 to PW3. PW1 and PW2 are the Plaintiffs 1 and 2. PW3 is the attesting witness to the Will and PW3 has categorically deposed about the execution and attestation of the Will. According to the defendant, Seegalappa was forced to execute the Will dated 16.10.1993, but the evidence of PW3 clearly shows that the Will was voluntarily executed by the attestator in a sound state of mind and there are no suspicious circumstances and thereby, the Will dated 16.03.1993 has been proved and the defendant is also one of the beneficiaries in the Will. Further the execution of said Will was admitted by the defendant in the pleadings through Ex.P.6 in O.S. No.257 of 2008, wherein while filing written statement, his father admitted the said Will dated 16.10.1993 and the said Written statement was adopted by the defendant. Therefore, the Plaintiffs have proved the Will in accordance with law. As per the Will, the Plaintiffs are entitled to 1/3 share over the property. After the execution of Will, the Seegalappa during his life time, had executed the Gift Settlement Deed dated 23.02.1996 to an extent of 20 cents with specific four boundaries in favour of Chinna Thoppamma. Therefore, the Plaintiffs have no rights over the said 20 cents of property.



15. At this juncture, the learned counsel appearing for the appellant would submit that the Plaintiffs have filed the Suit for the entire property of 88 cents, but the 20 cents property was already sold. Therefore, they are not entitled to the share without impleading the purchasers of the above said 20 cents. In this context, it is relevant to refer the said Gift deed executed in favour of Chinna Thoppamma by her father Seegalappa, which has been marked as Ex.A4 and Ex.B.5. On a careful perusal of the above said documents, they revealed that the Settlement Deed has been executed by mentioning the specific four boundaries to an extent of 20 cents of land. Therefore, the Court can pass decree by excluding the 20 cents. But the trial Court observed that in the description of the property the plaintiffs mentioned entire property of 88 cents but part of the property was settled and there is no evidence that the Plaintiffs and the defendant are in joint possession and enjoyment of the property and the Plaintiffs are not in a position to state about the Survey number and the other particulars of the property. Further, the purchasers of the 20 cents of land gifted to Chinna Thoppamma are not the parties to the Suit. Therefore, the Suit cannot be decided, without their presence.

16. It is true that the purchasers of 20 cents from Chinna Thoppamma are not the parties to the Suit and the Plaintiffs also filed the Suit for the entire extent of 88 cents. Once the property of 20 cents was gifted in favour of Chinna



Thoppamma and the same was later sold to third parties, there is no impediment to pass decree in respect of the remaining land, when the Will was categorically proved by the Plaintiffs. Therefore, the findings of the trial Court are unsustainable and the same are liable to be set aside. Whereas the First Appellate Court after elaborate discussions, came to a conclusion that the Will has been proved in accordance with law and the Seegalappa, during his life time, executed the Gift deed in favour of his daughter Chinna Thoppamma and the same are admitted by both the parties. Since 20 cents of land was already gifted to Chinna Thoppamma and the same was subjected for several alienation, it is not appropriate to grant decree in respect of the above said 20 cents. There is no dispute that the name of the 1st daughter is Thoppamma and the name of the 2nd daughter is Chinna Thoppamma, thereby the Will was executed in favour of elder daughter Thoppamma and therefore, decreed the Suit by setting aside the judgment of the trial Court. The said findings of the First Appellate court are well reasoned and warrants no interference.

17. As far as the *substantial questions of law that Whether the Lower Appellate Court was right in holding that the Will in Ex.A.1 was still valid and not revoked for the rest of the portion of the land when subsequently the testator of the Will himself has executed Ex.B.5, settling part of the very same property to his another daughter?* is concerned, the Plaintiffs have filed the Suit based on Ex.A.1 Will dated 16.03.1993 and the defendant has also not



disputed the above said execution of Will. According to the defendant, the said Will was executed on force. But the Plaintiffs proved the Will through sufficient evidence by examining the attesting witness. Thereafter, the Testator executed a Gift Settlement Deed in favour of his elder daughter Chinna Thoppamma to an extent of 20 cents. Merely because the Testator executed the Settlement Deed in respect of part of the property, the entire will cannot be said as invalid and to the extent of Settlement Deed, the Will is invalid and the remaining property of the Will, has to be given to the beneficiaries. Therefore, the Lower Appellate Court was right in holding that the Will in Ex.A.1 was still valid and not revoked for the rest of the portion of the land, when subsequently the Testator of the Will himself executed Ex.B.5 Gift Settlement Deed settling a part of very same property to his own daughter. Thus, the *1st substantial question of law is answered.*

18. As far as the *2nd and 3rd substantial questions of law that “Whether the Lower Appellate Court was right in holding that the Plaintiffs have proved that name of Thoppamma, found in the beneficiary column of the Will in Ex.A.1 denotes only the 1st Plaintiff when no evidence has been produced to prove the same and Whether the Lower Appellate Court was right in taking Ex.A.3 alone as the basis to come to the conclusion that the 1st Plaintiff is only shown as the beneficiary in Ex.A.1 even when Ex.A.3 came into being only after filing the Suit”* are concerned, the Will Ex.A.1 was executed in the



name of Thoppamma, Narayanasamy and Murali. The said Thoppamma and Narayanasamy are the Plaintiffs. The defendant's contention is that there are two Thoppammas. The elder daughter is Periya Thoppamma and the younger daughter is Chinna Thoppamma. But in the Will, the name is referred to as 'Thoppamma'. Therefore, there is a confusion about the identity of the daughters of the Testator. In this context, it is relevant to refer the document Ex.A.3, which is a Legal Heirship Certificate, wherein the name of the 1st daughter has been mentioned as Thoppamma. The name of the younger daughter is mentioned as 'Chinna Thoppamma'. The name Thoppamma denotes the elder daughter of the Testator. Even in the Settlement Deed dated 23.02.1996, the executor mentioned the name of the younger daughter as Chinna Thoppamma. Therefore, there is no dispute about the identity of the Plaintiff. Thereby, the Lower Appellate Court was right in holding that the Plaintiffs proved that the name Thoppamma is found in the beneficiaries column of the Will, which denotes only the 1st Plaintiff. The defendants have not seriously disputed the Legal Heirship Certificate issued by the revenue authorities containing the name of the 1st Plaintiff as Thoppamma, who is the elder daughter of the Testator, thereby it is sufficient to hold that the name mentioned in the beneficiaries column as Thoppamma, denotes the 1st Plaintiff. Thus, the **2nd and 3rd substantial questions of law are answered.**



19. As far as the 4th *substantial questions of law that “Whether the Lower Appellate Court was right in holding that the Will in Ex.A.1 had not been revoked by the subsequent settlement deed in Ex.B5 by placing reliance on Section 70 of the Hindu Succession Act”* is concerned, the original owner Seegalappa has executed Ex.A.1 dated 16.03.1993 and subsequently he executed a Settlement Deed in favour of his younger daughter Chinna Thoppamma in respect of one portion of the property to an extent of 20 cents. If the entire property settled, then the previous Will has to be revoked, when the only one portion of the property contained in the Will has been conveyed by way of subsequent deeds, it is not necessary to revoke the earlier Will in respect of that particular extent. As per Section 70 of the Indian Succession Act, “No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is herein before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same”. In this case, Ex.A.1 has been executed to an extent of 88 cents. Thereafter, the Testator during his life time, settled 20 cents in favour of Chinna Thoppamma through a Settlement Deed dated 23.02.1996, Ex.B.5. Since the entire extent has not been settled, revocation under Section 70 of Indian Succession Act will not



attract. The First Appellate Court was right by excluding the property covered under the Settlement Deed. Thereby, there is no warrant for interference by this court. Thus, the *4th substantial questions of law is answered.*

20. In view of the above said discussions and answers to the substantial questions of law, this Court is of the opinion that the second appeal has no merits and the same is liable to be dismissed.

21. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

20-02-2026

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

MJS



WEB COPY

SA No. 587 of 2



P.DHANABAL, J.

MJS

SA No. 587 of 2015

20-02-2026