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SA No. 270 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 270 of 2026

1. V.Easwari
2. Chandrakantha alias Baby
3. Ambika

..Appellants

Vs

V.Arumugam (Died)

1. 1. R.Pasupathy
2. The Sub-Registrar
Thondamuthur Sub-Registrar Office
Thondamuthur Post
Coimbatore
3. The Tahsildhar
Covai South Taluk
Coimbatore
4. The District Collector
Coimbatore
5. A.Arathal
6. M.Latha
7. A.Bagyalakshmi
8. A.Nagarajan

..Respondents

Prayer: Second Appeal filed under section 100 of CPC to allow this Second Appeal by setting aside the Judgement And Decree dated 20.01.2026 in A.S. No. 106/2024 passed by the Honble IV Additional Sub-Ordinate Judge, Coimbatore, by confirming the Judgement And Decree passed in OS No. 329 / 2011 dt. 18.07.2024 by the IV Additional District Munsif Court, Coimbatore.



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For Appellants:

Ms.V.S.Usharani

For R2 to R4:

Mr.B.Tamil Nidhi

Additional Government Pleader

JUDGMENT

The unsuccessful plaintiffs are the appellants. They filed a suit seeking declaration that Will dated 10-06-2009 executed by their father T.S.Velliangiri Gounder was his last Will and for consequential permanent injunction restraining the defendants 1 and 2 from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. They also sought for injunction restraining the defendants 1 and 2 from alienating or encumbering the suit property. The suit was dismissed by the trial court. The findings of the trial court were affirmed by the first appellate court. Challenging the concurrent findings, the plaintiffs have come before this court by way of second appeal.

2. The learned counsel for the appellants submitted that appellants are giving up their right in item 2 of the suit property. The present second appeal is confined only in respect of item 1 of the suit property. The learned counsel advanced arguments only in respect of item 1 of the suit property. The statement made by the learned counsel for the appellants confining the second appeal to item 1 of the suit property is recorded.

3. According to the appellants/plaintiffs, the suit item 1 is the ancestral property of their father T.S.Velliangiri Gounder and the same was allotted to him in a family partition. Therefore, the plaintiffs, as daughters of



T.S.Velliangiri Gounder, are entitled to 3/4 share in the suit property by birth.

The plaintiffs filed a suit for partition in OS.No.1242 of 2000 on the file of III Additional District Munsif Court, Coimbatore seeking partition of the suit property and the same was decreed in favour of plaintiffs. During pendency of the final decree proceedings, the plaintiffs' father died and hence, the proceedings got abated. It is the further case of the plaintiffs that T.S.Velliangiri Gounder sold suit item 1 to first defendant by way of sham and nominal document. The father of the plaintiffs had no right to sell the ancestral property in favour of first defendant. After some time, realizing the mistake, the said T.S.Velliangiri Gounder executed a Will on 10.06.2009 bequeathing suit item 1 in favour of plaintiffs. Based on the said document, the present suit has been filed seeking declaration that Will dated 10.06.2009 executed by T.S.Velliangiri Gounder was a last Will in respect of the suit property and for consequential injunction restraining the defendants from interfering with the plaintiffs' possession.

4. The 1st defendant filed a written statement and contended that he purchased undivided one-fourth share in suit item 1 from T.S.Velliangiri Gounder under sale deed dated 05.11.2007 for proper and valid consideration. According to the 1st defendant, that T.S.Velliangiri Gounder had a valid and marketable title to convey his share in suit item 1 in favour of first defendant. It was also contended by the 1st defendant that he filed petition for his impleadment in the final decree proceedings in the suit for partition filed by the



plaintiffs. After impleading petition filed by the first defendant, the plaintiffs allowed the final decree proceedings to go for default. The defendants also denied the Will relied on by the plaintiffs and sought for dismissal of the suit.

5. Before the trial court, the second plaintiff was examined as PW1 and attestors to the Will were examined as PW2 and PW3. On behalf of the plaintiffs, 29 documents were marked as Ex.A1 to Ex.A29. During pendency of the suit, the first defendant died and his legal representatives were brought on record as defendants 6 to 9. The 9th defendant was examined as DW1 and two documents were marked as Ex.B1 and Ex.B2.

6. The trial court on appreciation of evidence available on record came to the conclusion that first defendant was entitled to one-fourth share in the suit property and the plaintiffs could not maintain a suit for injunction against the co-owner and dismissed the suit. Aggrieved by the same, the plaintiffs preferred first appeal in AS.No.106 of 2024 on the file of IV Additional Sub-Ordinate Judge, Coimbatore and the first appellate court affirmed the findings of the trial court. Aggrieved by the concurrent findings, the plaintiffs have come before this court.

7. The learned counsel for the appellants submitted that the plaintiffs proved the Will executed by T.S.Velliangiri Gounder dated 10-06-2009 by examining the attestors to the said testamentary document. The courts below overlooked the same and dismissed the suit. The learned counsel also submitted that plaintiffs by leading oral and documentary evidence proved their possession



over the suit property and hence, the courts below ought not have negated the relief of injunction.

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8. It is seen from the pleadings that it is the case of the plaintiffs that the suit properties are ancestral properties of their father T.S.Velliangiri Gounder and thus, the plaintiffs are entitled to 3/4th share in suit item 1. The first defendant purchased the undivided one-fourth share in the suit property under Ex.A13 dated 05.11.2007. Therefore, it is clear that even during the lifetime of T.S.Velliangiri Gounder, he sold his undivided one-fourth share in favour of first defendant. Therefore, even assuming the Will relied on by the plaintiffs is upheld, it is of no use as T.S.Velliangiri Gounder sold his interest in first item of the suit property in favour of first defendant during his lifetime.

9. The plaintiffs claimed that the sale deed executed by T.S.Velliangiri Gounder in favour of first defendant is a sham and nominal document. However, in the suit, the plaintiffs have not sought for any declaration to set aside the sale deed or to declare it as a sham and nominal document. In the absence of any specific prayer challenging the sale deed in favour of first defendant, the present suit filed by the plaintiffs seeking declaration as to validity of testamentary document executed by T.S.Velliangiri Gounder and for consequential injunction is not at all maintainable. Even assuming the testamentary document executed by T.S.Velliangiri Gounder is valid, in view of the sale executed by him during his lifetime, the Will will not have any significance without the prayer for declaration that the sale deed in favour of



first defendant was a sham and nominal. A prayer for injunction against the first defendant, who is a co-owner is not at all maintainable.

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10. Under Exhibit A13, the first defendant has become a owner of the undivided one-fourth share in the suit property. It is settled law that a prayer for bare injunction is not maintainable against the co-owner. Even assuming the plaintiff proved his exclusive possession over the suit property, his possession shall be deemed to be for the benefit of other co-owner also. In these circumstances, both the courts below rightly came to the conclusion that the sale in favour of first defendant in respect of one-fourth share of T.S.Velliangiri Gounder was valid and the plaintiffs could not maintain a prayer for injunction against the co-owner and dismissed the suit. I do not find any perversity in the conclusion reached by the courts below. Accordingly, the second appeal stands dismissed by confirming the judgment and decree dated 20.01.2026 in AS.No.106 of 2024 on the file of IV Additional Sub-Ordinate Judge, Coimbatore confirming the judgment and decree dated 18.07.2024 in O.S.No.329 of 2011 on the file of IV Additional District Munsif Court, Coimbatore. No costs.

15-04-2026

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

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WEB COPY

SA No. 270 of 2



S.SOUNTHAR J.

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To:

1. The IV Additional Sub-Ordinate Judge, Coimbatore
2. The IV Additional District Munsif Court, Coimbatore

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