



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 301 of 2026

AND

CMP NO. 10496 OF 2026

T.K.Balakrishnan
S/o.T.P.Kandasamy,
New D.No.186,
II Agraharam,
Salem 634 001.

..Appellant(s)

Vs

T.K.Rajarathinam
S/o.T.P.Kandasamy,
No.24, A.P.Koil St,
Salem 636 001.

..Respondent(s)

PRAYER : Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 19.12.2025 passed in AS.No.84 of 2025 on the file of the Principal District Judge, Salem, which confirmed the Fair and Final Order dated 24.08.2024 passed in O.S.No.132 of 2018 on the file of the II Additional Subordinate Judge, Salem.

For Appellant(s):

Mr.S.S.Rajesh

Judgment

This Second Appeal has been filed to set aside the judgment and decree dated 19.12.2025 passed in AS.No.84 of 2025 on the file of the Principal District Judge, Salem, which confirmed the judgment and decree dated



24.08.2024 passed in O.S.No.132 of 2018 on the file of the II Additional Subordinate Judge, Salem.

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2. Heard the learned counsel for the appellant and perused the materials available on record.

3. The unsuccessful defendant is the appellant herein. The respondent herein filed a suit for partition of 1/2 share in the suit property. The suit was decreed by the Trial Court. Challenging the same, the defendant preferred a First Appeal in A.S.No.84 of 2024. The findings of the Trial Court were confirmed by the First Appellate Court. Aggrieved over the same, the defendant has filed this Second Appeal.

4. According to the respondent / plaintiff, the suit property was originally belonged to the father of the plaintiff and the defendant viz., T.P.Kandasamy. He executed a registered Will on 30.06.1997 bequeathing the suit properties to the plaintiff and the defendant. As per the terms of the Will, the plaintiff and the defendant were given 1/2 share in the ground floor of the building morefully described in Schedule I of the plaint. The defendant was given exclusively right over the first floor of the building described in the Will.



5. The defendant herein filed a suit is O.S.No.551 of 2003 on the file of the Principal Sub Court, Salem, seeking cancellation of the above said Will executed by his father and to declare the suit property along with the first floor, belonged absolutely to the defendant and also for a consequential injunction. The suit was decreed by the Trial Court. Aggrieved by the said judgment and decree, the plaintiff preferred a First Appeal in A.S.No..39 of 2008, on the file of the Principal District Court, Salem. The First Appellate Court allowed the First Appeal filed by the plaintiff and dismissed the suit filed by the defendant. Challenging the same, S.A.No.709 of 2009 was filed by the defendant and the same was dismissed by confirming the judgment and decree passed by the First Appellate Court. Thus, the truth and validity of the Will executed by the father of the parties were affirmed and both the plaintiff and the defendant were entitled to the property as per the terms of the Will.

6. The plaintiff requested the defendant to divide the suit property in terms of the Will. However, the defendant failed to do so. Hence, a legal notice was issued on 30.04.2017, calling upon the defendant to make arrangements to divide the property. Despite the same, the defendant has not come forward to divide the suit property. Hence, the present suit has been filed seeking partition.

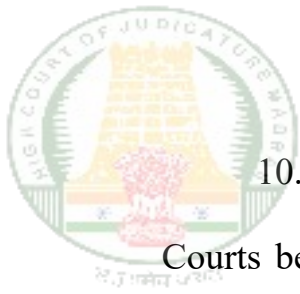
7. The appellant / defendant filed a written statement again denied the execution of the Will by his father. The defendant also claimed that the plaintiff



was not in joint possession of the suit property as alleged by him. It was further stated by the defendant that the description found in the Will has not been properly mentioned in the plaint schedule. It was also stated that the eastern portion of the suit property is a commercial one and the western portion is a residential one. Under the terms of the Will, the western side portion of the property in Door No.173A has been exclusively allotted to the defendant and the commercial area was allotted to the plaintiff and the defendant.

8. Before the Trial Court, the plaintiff was examined as P.W.1 and 11 documents were marked as Exs.A1 to A11. On behalf of the defendant, the defendant was examined as D.W.1 and no document was marked on his side.

9. The Trial Court, on appreciation of the oral and documentary evidence available on record, more particularly, the description of the suit property in Ex.A2 Will, came to the conclusion that both the plaintiff and the defendant are entitled to $\frac{1}{2}$ share in the suit property and decreed the suit. Aggrieved by the same, the defendant preferred an appeal in A.S.No.84 of 2024, on the file of the Principal District Judge, Salem. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings of the Courts below, the defendant has preferred this Second Appeal.



10. The learned counsel for the appellant / defendant submitted that the Courts below failed to appreciate the description of the property found in the Will executed by the father of the parties and the entire residential portion has been allotted to the share of the defendant and the commercial portion has been allotted equally to the plaintiff and the defendant. The learned counsel further submitted that the First Appellate Court committed a serious error in appreciating the description of the property allotted to the plaintiff and the defendant. He also submitted that the plaintiff failed to prove that he is in joint possession of the suit property and therefore, the Court Fee paid by him is not correct.

11. As far as the validity of the Will which has been marked as Ex.A2 is concerned, the same has been upheld by this Court in S.A.No.709 of 2009. Admittedly, the appellant / defendant has not challenged the same by filing any Special Leave Petition. In view of the findings arrived at by this Court in S.A.No.709 of 2009 which attained finality, I have no hesitation in coming to the conclusion that the Will executed by the father of the parties viz., T.P.Kandasamy dated 30.06.1997 is valid and binding on the parties.

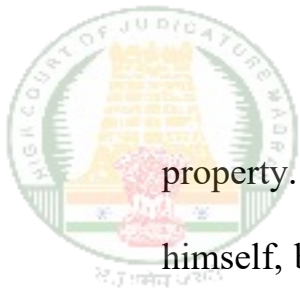
12. A close perusal of Ex.A2 Will would establish that the ground floor of the building with Door Nos.173 & 173A has been allotted to the plaintiff and the defendant equally. The first floor of the building has been exclusively



allotted to the defendant. The property allotted to the plaintiff and the defendant has been described in schedule I of the Will and the property allotted to the defendant has been described in schedule II of the Will. A close scrutiny of the description of the property found in both the schedules would indicate that apart from the allotment of the building portion to the plaintiff and the defendant as mentioned above, both were given equal right in the site of the building. Therefore, the contention raised by the learned counsel for the appellant as if the commercial property was given to the plaintiff and the defendant and the entire residential portion has been allotted to defendant is not acceptable to this Court.

13. The contention raised by the defendant in the written statement as if the entire residential portion has been exclusively allotted to him, is not based on proper appreciation of the description of the above property found in Ex.A2 Will. The present suit has been filed in respect of property described in Schedule I to the Will, which has been given to plaintiff T.K.Rajarathinam and defendant T.K.Balakrishnan. Both the Courts below on proper reading of the Will, came to the conclusion that the plaintiff is entitled to $\frac{1}{2}$ share in the suit property. Hence, I do not find any perversity in the said factual conclusion arrived at by the Courts below.

14. The learned counsel for the appellant also submitted that the respondent / plaintiff failed to prove that he is in joint possession of the suit



property. It is settled in law that possession of a co-owner is not only for himself, but it is also for the other co-owner. Even assuming that the defendant has established his physical possession over the suit property, unless he is able to plead and prove ouster of plaintiff, the same could be treated as only joint possession.

15. The Courts below have rightly appreciated the said position and gave a factual finding that the plaintiff is in possession of the suit property. Hence, I find no serious error in the conclusion arrived at by the Courts below. In the light of the discussion made earlier, the arguments of the learned counsel for the appellant is rejected. The appellant has not made out any substantial question of law for consideration.

16. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28-04-2026

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

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S.SOUNTHAR J.

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To

- 1.The Principal District Judge, Salem.
- 2.The II Additional Subordinate Judge, Salem.

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