



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 14.11.2025

Judgment pronounced on : 13.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. Nos.383 & 514 of 2023
and CMP. Nos. 13220, 17190 & 17730 of 2023

A.S. No.383 of 2023

M.R.Palanisamy

..Appellant

Vs.

1.Gnasoundari
2.Kavitha
3.Nandhini
Mayangathal (Died)
4.S.Natarajan
5.R.Samiappan
6.Ramathal
7.Sivakami
8.Rasammal
9.Kanakaraj

..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 21.02.2023 made in O.S. No.233 of 2015 on the file of the II Additional District and Sessions Judge, Tiruppur.



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For Appellant : Mr.S.R.Ragunathan,
for Mr.V.Anandhamoorthy

For Respondents : Mr.P.V.Balasubramaniam,
Senior Counsel for
Mr.Dharani Subramaniam for R1 to R3
No Appearance for R6 to R9
Mr.C.Prabakaran for R4 & R5

A.S. No.514 of 2023

1. S.Natarajan
2. R.Samiappan

..Appellants

Vs.

1.Gnasoundari
2.Kavitha
3.Nandhini
4.M.R.Palanisamy
Mayangathal (died)
5.Ramathal
6.Sivakami
7.Rasammal
8.Kanakaraj

..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 21.02.2023 made in O.S. No.233 of 2015 on the file of the II Additional District and Sessions Judge, Tiruppur.

For Appellants : Mr.C.Prabakaran

For Respondents : Mr.P.V.Balasubramaniam,
Senior Counsel for
Mr.Dharani Subramaniam for R1 to R3
No Appearance for R5 to R8
Mr.S.R.Ragunathan for
Mr.V.Anandhamoorthy for R4



COMMON JUDGMENT

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The first defendant in O.S. No.233 of 2015 on the file of the II Additional District and Sessions Judge, Thiruppur, is the appellant in A.S. No.383 of 2023. The defendants, 3 and 4 in O.S. No.233 of 2015 are the appellants in the same suit in O.S. No.233 of 2015 are the appellants in A.S. No.514 of 2023.

2. PLEADINGS:-

(a) Plaintiff in brief:-

The plaintiffs are the legal heirs of deceased M.R.Karuppusamy. The first defendant is the brother of M.R.Karuppusamy, the second defendant is mother and defendants 5 to 7 are sisters of the said M.R.Karuppusamy. The defendants 3, 4 and 8 are purchasers of suit properties. Item No.1 of the suit property was purchased by the husband of the second defendant, Rangasamy Gounder on 10.06.1970. Item 2 of the suit property was allotted to the said Rangasamy Gounder at a partition dated 01.07.1971. The said Rangasamy Gounder died intestate on 18.12.1996, leaving defendants 1, 2, 5 to 7 and M.R.Karuppusamy as his legal heirs. Deceased M.R.Karuppusamy, was entitled to 1/6th share in Items 1 and 2 and insofar as Items 3 to 7, the said properties were purchased by M.R.Karuppusamy and the first defendant under registered sale deeds for valid consideration. Item 8 was purchased by M.R.Karuppusamy and it is his absolute



property. M.R.Karuppusamy and the first defendant are entitled to half share in Items 3 to 7 of the suit properties.

(a)(i) During the lifetime of M.R.Karuppusamy, there was an oral partition between him and the first defendant. M.R.Karuppusamy constructed a house in Door.No.6/624 and Goddown in Door No.6/623 and was doing business under the name and style of M/s.Kannan Textiles as well as a sole Proprietor, installing 12 Power Looms and also by renting a godown from a third party. The said M.R.Karuppusamy died on 18.06.2015, leaving behind the plaintiffs and his mother, the second defendant as his legal heirs. The deceased M.R.Karuppusamy executed a Will on 17.09.2014, bequeathing his 1/6th share in Items 1 and 2 and half share in items 3 to 7 to the plaintiffs. After the death of M.R.Karuppusamy, first defendant got the original title deeds and copies of the Will from the plaintiffs and on 18.08.2015 entered into the house in a drunken stage and threatened the plaintiffs to vacate the house immediately to state that he is the owner. The plaintiffs thwarted the said unlawful attempts of the first defendant. Plaintiffs applied for an Encumbrance Certificate and it came to their notice that the defendants 1 to 3 had colluded amongst themselves and created forged sale deeds and the settlement deeds which was executed by the second defendant in favour of defendants 1, 3 and 4 in respect of 1/8th



share in Items 3 to 7. The plaintiffs have therefore sought for declaration, partition and permanent injunction.

(b) Written Statement filed by defendants 1, 3 to 7 briefly set out hereunder:-

Sale deeds and settlement deeds are valid and have been accepted and acted upon. Rangasamy Gounder, purchased the first item of the property and enjoyed it as a joint family property. The first defendant was part of the joint family with M.R.Karuppusamy, till his death. The factum of purchase of third item by M.R.Karuppusamy and the first defendant on 27.04.1988 is admitted. M.R.Karuppusamy and the first defendant jointly cultivated Items 1 to 3, by raising plantain, sugarcane, turmeric and other cash crops and from and out of the income, they had purchased properties in Item Nos.4 to 8. Even though sale deeds in respect of items No.7 and 8, stand in the name of M.R.Karuppusamy, the first defendant has also having equal half share in these items. The allegation of oral partition between the first defendant and Karuppusamy is denied. The claim of construction of a house and godown and factum of carrying on business in the name and style of M/s.Kannan Textiles is also denied. All the properties were treated and enjoyed as common properties. The first defendant and his brother had borrowed loans and repaid the same only from and out of the income accruing from the agricultural lands and power looms. The construction of the house and godown was also out of joint family income



and joint efforts of the first defendant and his brother. The first defendant used to work in the power loom. There was no partition between the first defendant and his brother at any point of time and the entire properties always held as joint family properties. The first defendant used to work in the power loom and godown and looked after the business. The Will dated 17.09.2014 is forged.

(b)(i) On 08.07.2014 and 24.11.2014, M.R.Karuppusamy sold a portion of the suit property to Murugan and M.Palanisamy respectively. Comparisons of signatures of Karuppusamy in the said registered sale deeds and the Will would reveal that the signature in the Will is not that of Karuppusamy. The Attestors of the alleged Will are the first plaintiff's father and his close associate. The alleged incident dated 18.08.2015 is denied. Even during the lifetime of Karuppusamy and after his death as well, the first defendant has been in possession and enjoyment of all the suit properties. After the death of Karuppusamy, the second defendant as his mother and Class I legal heir became entitled to 1/8th share and she has executed sale deeds on 22.08.2015 and settlement deed on 07.07.2015. The said deeds have been accepted and acted upon. The defendants 1, 3 and 4 are in joint possession and enjoyment of the suit properties. The defendants 5 to 7 are also entitled to 1/8th share consequent to demise of her father. Defendants are co-owners and are in joint possession and suit for injunction against co-owners is not maintainable.



The suit is also bad for non-joinder of necessary parties as well as partial partition. The properties have also not been described correctly. Hence, these defendants prayed for dismissal of the suit.

(c) Issues:-

The Trial Court based on the pleadings framed the following issues:-

(1) Whether the Suit Properties are the Properties belonging to the Hindu Joint Family of the Plaintiffs and the Defendants?

(2) Whether the Items 3 to 6 Suit Properties are the Self Acquired of M.R.Karuppusamy and the 1st Defendant?

(3) Whether the Items 7 and 8 Suit Properties are the Self Acquired of M.R.Karuppusamy, who is the Husband of the 1st Plaintiff and the Father of the Plaintiffs 2 and 3?

(4) Whether the Oral Partition claimed by the Plaintiffs is true and valid?

(5) Whether the Registered Will dated 17.09.2014 is true and valid?

(6) Whether the Suit is bad for Partial Partition, as all the Properties belonging to the Family was not included and the Suit is filed only for a part of the Properties?

(7) Whether the description of the Suit Properties are correct and complete?

(8) Whether the Court Fee paid is correct?

(9) To what other reliefs the Parties are entitled to?



(d) Trial:-

The third plaintiff examined herself as P.W.1 and one Arugmuga Gounder was examined as P.W.2 and one Kanagaraj, was examined as P.W.3. On the side of the plaintiffs, Ex.A1 to A26, were marked. The first defendant examined himself as D.W.1 and third defendant examined himself as D.W.2 and one Eswaramoorthi, was examined as D.W.3 and on the side of the defendants, Ex.B1 to B32 were marked.

(e) Decision of the Trial Court:-

The Trial Court granted a decree as prayed for by the plaintiffs, declaring that the plaintiffs are alone entitled to the properties of deceased Karuppusamy and consequently, the sale deeds executed by the second defendant in favour of defendants 3 and 4, on 18.06.2015 and settlement deed executed by second defendant in favour of defendants 1 and 3 on 07.07.2015 were also declared as null and void. Relief of partition in respect of 1/6th share in favour of the plaintiffs in respect of items 1 and 2 and half share in respect of items 3 to 7 and relief of permanent injunction as well against defendants 1, 3 and 4 restraining them from interfering with the plaintiffs possession and enjoyment of the house and Textile Business in M/s.Kannan Textiles in 4th item were also granted in favour of the plaintiffs.



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3. The two appeals have been preferred challenging the said judgment and decree of the Trial Court. A.S. No.383 of 2023 is at the instance of the first defendant and A.S. No.514 of 2025, is at the instance of the defendants 3 and 4. I have heard Mr.S.R.Ragunathan, learned counsel for Mr.V.Anandhamoorthy, learned counsel for the appellant in both the appeals and Mr.P.V.Balasubramaniam, learned Senior Counsel for Ms.Dharani Subramaniam, learned counsel for the respondents 1 to 3 in both appeals. There has been no appearance on the side of the respondents 4 to 9 in A.S. No.383 of 2023 and respondents 4 to 8 in A.S. No.514 of 2023. However, it is to be noted that it is only the respondents 1 to 3 as plaintiffs in O.S. No.233 of 2015, who are the contesting respondents.

4. Mr.S.R.Ragunathan, learned counsel would state that the Trial Court has committed a grave error with regard to even assessment of pleadings and evidence in a proper perspective, having framed an issue as to whether the suit properties are belonging to the Joint Hindu Family of plaintiffs and defendants, the Trial Court has not even rendered a finding as to whether Items 3 to 8 are joint family properties. He would state that the Trial Court having found that the Will executed by M.R.Karuppusamy, was true and genuine, has conveniently, sidestepped all the contentious issues by placing reliance on the said findings regarding the Will and non-suiting the defendants even under



registered sale deeds as well as settlement deeds, which had been validly executed by Class-I legal heir of M.R.Karuppusamy, the mother.

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5. With regard to the plaintiff's claim of oral partition, Mr.S.R.Ragunathan, learned counsel, relying on the depositions as well as Ex.B1, he would state that when the defendants had denied any oral partition, having taken place, the burden was heavily on the plaintiffs to establish the same and in this regard, he would contend that there is absolutely no evidence adduced by the plaintiffs to evidence any oral partition and merely because, two floors in the house were constructed in an identical fashion, it would not amount to a partition. He would also place reliance on Ex.B1, mortgage of deposit of title deeds, which again defeated the claim of oral partition. With regard to the Will dated 17.09.2014, Mr.S.R.Ragunathan, contends that the execution of the Will, also truth and genuineness of the same had been denied in the written statement. The attesting witnesses have given contradictory evidence and the signatures in the Will also vary with the admitted signatures in registered sale deed in Ex.B3 and Ex.B4. He would therefore states that the findings of the Trial Court, upholding the truth and genuineness of the Will are clearly improper and contrary to the evidence on record. He would further state that the Trial Court erroneously took up the issue of the genuineness of the said Will first and



without even rendering a finding regarding the joint family status of all character of the properties, the Trial Court has accepted the plaintiffs' version in total.

6. Learned counsel Mr.S.R.Ragunathan, has relied on the following decisions in support of his contentions:

(i) *Ponnuswamy Vs. Meenakshi Ammal and others*, reported in 1989 2 LW Page 227; and

(ii) *D.S.Lakshmaiah and Another Vs. L.Balasubramanyam and Another*, reported in (2003) 10 SCC 310.

7. Mr.C.Prabakaran, learned counsel, appellant in A.S. No.514 of 2023, would also reiterate the submissions advanced by Mr.S.R.Ragunathan. That apart, Mr.C.Prabakaran, learned counsel has also stated that when admittedly, the first appellant and his brother were doing joint business, a presumption should have been drawn by the Trial Court that the properties were acquired jointly and especially, in the absence of self acquisition or any proof in that regard, the Trial Court ought not to have found M.R.Karuppusamy, to be the absolute owner of the suit properties. He would therefore state that there has never been any oral partition and as late as 2015, the power looms were running and referring to the alleged Will, Mr.C.Prabakaran, learned counsel would further



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state that if really, there has been any oral partition between the brothers, then the Will would have certainly mentioned about the same which is conspicuously absent. He would also state that the font used in the Will as well as the plaint are one and the same and as contended by Mr.S.R.Ragunathan, learned counsel, he would also state that the witnesses have not given evidence that can inspire the Court to uphold the Will. Further, he would state that both the witnesses were clearly interested witnesses and even insofar as the health condition and medical records, the daughter of M.R.Karuppusamy, has admitted that she has burnt the medical records.

8.In support of his contentions, Mr.Prabaharan, learned counsel relies on the decision of this Court in *H.M.Kari Gowder (died) and others Vs. H.M.Halan and others*, reported in 2017 5 L.W 359.

9. Per contra, meeting the submissions of the learned counsel for the appellants in both the appeals, Mr.P.V.Balasubramaniam, learned Senior Counsel would firstly contend that the claim of the appellants that the suit properties were joint family properties at the hands of the Karuppusamy and his brother, he would state that the burden was heavily on the shoulders of the appellants to establish that the properties in Items 1 and 2 were joint



family properties and that from these properties, not only income was generated but also there was surplus income which was sufficient to meet the purchase of the other items.

10. Referring to the evidence, Mr.P.V.Balasubramaniam, learned Senior Counsel would state that the appellants have miserably failed to discharge the burden upon them and therefore, contends that the Trial Court has not committed any error in granting reliefs as prayed for by the respondents. Pointing out to the sale deeds that had been relied on by the appellants, Mr.P.V.Balasubramaniam, learned Senior Counsel would further state that none of the sale deeds even contain a recital that the properties were joint family properties or that they were purchased out of the surplus funds that were generated by the any joint family properties. He would therefore state that the Trial Court has rightly granted relief to the plaintiff.

11. Coming to the Will, Mr.P.V.Balasubramaniam, learned Senior Counsel would firstly state that the Will is a registered instrument and secondly, the Court should sit in the armchair of the testator and see if the testator who have made such bequests in favour of the legatees/beneficiaries. In this regard, he contends that the testator, Karuppusamy died only on 18.02.2015, leaving behind the Will dated 17.09.2014, leaving behind him, unmarried daughters, mother and wife. Therefore, there can be no



motives attributed for Karuppusamy having bequeathed his own property to his wife and unmarried daughters, excluding his aged mother.

12. With regard to the evidence of attesting witnesses, Mr.P.V.Balasubramaniam, learned counsel would state that both the attesting witnesses have proved due execution and attestation of the Will and merely because, there were some minor inconsistencies, it not going to the root of the matter, the Will has to be held as proved. He would further contend that the Court should be conscious of the fact that the parties are giving evidence after several years since the execution of the Will and therefore, they cannot be expected to depose with any mathematical accuracy.

13. Learned Senior Counsel would also take me through the exhibits filed on the side of the plaintiffs/respondents and contend that the properties have been mutated only in the name of Karuppusamy and the plaintiffs have also proved that he was doing business as a Proprietor insofar as twelve power looms. Mr.P.V.Balasubramaniam, learned Senior Counsel would also state that though the first defendant was married even in the year 1988, the fact that his name was not included either in the business would by itself demonstrate that the said Karuppusamy was the sole and absolute owner of the power looms and the claims of the defendants/appellants that the first defendant assisted



M.R.Karuppusamy and that they were doing joint business are all clearly invented for the purposes of defence in the suit.

14. As regards the argument of the learned counsel Mr.C.Prabaharan, regarding the daughter admitting that the medical records were destroyed, Mr.P.V.Balasubramaniam, learned Senior Counsel would state that Karuppusamy was diagnosed with cancer, only after he executed his Will on 17.09.2014 and merely, because medical records had been destroyed, it cannot lead to any inference that the plaintiffs had destroyed material evidence. The records according to learned counsel were destroyed only because the legal heirs of M.R.Karuppusamy, did not want any documents available in the house to haunt them with regard to the invaluable and irreparable loss of M.R.Karuppusamy himself. Even in respect of custody of the original Will, Mr.P.V.Balasubramaniam, learned Senior Counsel would state that the execution of the Will was known only to the witnesses and therefore, no significance can be attached to the custody of the Will and the same being produced before the Trial Court.

15. Lastly, Mr.P.V.Balasubramanian, learned Senior Counsel would state that the aged mother who but for the Will alone would be entitled to share in the estate of M.R.Karuppusamy, has executed a sale deed to her own grand children, which is highly



questionable and further while executing a settlement deed in respect of one item, there was no necessity to have executed a sale deed to her own grandchildren, in respect of other items. It is therefore contended by Mr.P.V.Balasubramaniam, learned Senior Counsel that all these documents have been created only in order to give a colour of genuineness to the transactions.

16. Upon hearing the submissions of the learned counsel for the parties, I proceed to frame the following points for consideration:

- (i) Whether the Will dated 17.09.2014 executed by M.R.Karuppusamy is true and genuine?
- (ii) Whether Items 1 and 2 are ancestral properties at the hands of M.R.Karuppusamy and the first defendant, M.R.Palanisamy and whether there has been any oral partition between M.R.Karuppusamy and his brother M.R.Palanisamy?
- (iii) Whether the appellants/defendants have established that items 4 to 8 were purchased out of the income accruing from items 1 to 3?

17. All these points are taken up for joint consideration. If the Will executed by M.R.Karuppusamy is found to be true and genuine, then atleast it seals the devolution of



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his estate. However, the decision on the Will alone would not suffice. Additionally, I have to examine whether Items 1 and 2 were joint family properties and whether M.R.Karuppusamy and his brother, the first defendant were doing joint business/cultivation and from and out of income accruing from the said items and also Item 3 which was admittedly jointly purchased in the names of both M.R.Karuppusamy and the first defendant and the remaining Items 4 to 8 have been purchased, which alone would entitle the defendants to resist the reliefs sought for by the plaintiffs. Equally, if the Will is found to be true and genuine, the alienation by way of sale and settlement by the second defendant, mother of M.R.Karuppusamy and the first defendant would stand nullified as the subject property has been bequeathed by way of a testamentary instrument.

18. The Will dated 17.09.2014, is admittedly an unregistered Will. It has been marked as Ex.A16 and it is attested by two witnesses viz., Arumuga Gounder and Kanagaraj, both of whom have been examined before the Trial Court as P.W.2 and P.W.3. In fact, in the Will, the testator has stated that his age is 61 years and that recently, he has been diagnosed with Cancer and in order to ensure that there was no dispute with regard to succession, after his demise, he has decided to execute the Will. He has stated that in Items 1 and 2, he is entitled to only $1/6^{\text{th}}$ share and insofar items 3 to 7, he is entitled to one half share. He has further stated that out of his own income, he has constructed the



house and godown and has been in enjoyment of the same. He has bequeathed the property to his wife Gnasoundari and two daughters, Kavitha and Nandini with full powers of alienation after his demise. He has clearly stated that his other legal heirs will not be entitled to any right in his properties. The testator has therefore clearly expressed his last wishes in the form of Ex.A16, Will. It is also noticed that he lived for closed to five months after the execution of the Will.

19. Examining the evidence of the attestors, P.W.2, one of the attesting witnesses by name Arumuga Gounder, has stated that he has attested the Will Ex.A16. Even in the proof affidavit, he has admitted that he is the first plaintiff's father, i.e., father in law of the testator Karuppasamy. He has further stated that the testator himself requested him to attest the Will as one of the attesting witnesses and that testator asked him to come to near Avinashi Taluka Office and along with other attesting witness, Kanagaraj, S/o.Chenniappa Gounder, who had also come there, all three of them went to the Advocate's Office opposite to the Taluka Office, in the first floor of the building. He has further stated that the Advocate read out the Will and thereafter, his son-in-law signed, he has also stated that his son-in-law's photograph was also affixed and the execution of the Will was witnessed by himself as well and the other attesting witness, Kanagaraj. He has further stated that he signed as the first attesting witness and both the testator as well as Kanagaraj were



present at that time and witnessed his attestation. He has also further deposed that when Kanagaraj attested the Will as a second attesting witness, both he and the testator were present. He has also stated that the Advocate has thereafter, signed the Will as the Scribe after affixing his seal. He has further stated that even in the Register maintained by the Advocate, the testator's photograph had been affixed and his son-in-law signed in the said register also, which was again signed by Kanagaraj first and thereafter, he signed as well in the said Register. He has further stated that the Advocate advised his son-in-law to register the Will. In his cross examination, P.W.2, has identified his signature of the testator, his son-in-law. He has stated that about two months prior to execution of Will, his son-in-law came to know that he was diagnosed with Cancer.

20. He has further stated that one week prior to the execution of the Will, his son-in-law had informed him about his intention to write the Will. He has admitted that he was not aware as to when the Will was prepared. He has denied a question posted to him, whether the daughter of the testator Nandhini was present at the time of execution of the Will. P.W.2 has stated that she was not present. He has also stated that he does not remember that how many signatures were subscribed by the testator. He has also stated that he did not inform his daughter or granddaughters about the execution of the Will, till the time he deposed in this case. He has denied the suggestion that the signature found in



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the Will is not that of his son-in-law. Though he was also separately cross examined by the learned counsel for the defendants 3 and 7, his evidence with regard to execution and attestation has not been denied by the defendants.

21. The other attesting witness, Kanagaraj was examined as P.W.3. In his proof affidavit, he has stated that the testator himself informed him about the requirement of P.W.3 to attest the Will and that the testator requested him to come to the Avinashi Taluka Office and that from there, the testator and the two attesting witnesses, all three of them went to the Advocate's office opposite to the Avinashi Taluk Office where the Will has been executed. P.W.3 has also spoken about the affixure of photograph and the signature being obtained in the Register by the Notary Public. In his cross examination, P.W.3 has stated that he is doing power loom business and he is acquainted with Karuppusamy for about 10 years and not before that. He has also stated that he is not aware of who prepared the Will, but however he has corroborated evidence of P.W.2 stating that the Will was read over by the Advocate in the presence of the testator and the two attesting witnesses. He has also stated that he does not remember as to how many signatures were obtained from the testator. He has also stated that he is aware of M.R.Karuppasamy, having been diagnosed with Cancer. He has denied the suggestion that the signature in the Will is not that of M.R.Karuppusamy and that the Will has been fabricated by wife and daughters of



Karuppusamy, colluding with the attesting witnesses. Though he was separately cross examined by the learned counsel for the other defendants as well, nothing much has been brought out in cross examination to doubt his evidence with regard to due attestation and execution of the Will.

22. Mr.S.R.Ragunathan, learned counsel would however states that there are contradictions with regard to who came first amongst between the two witnesses and also with regard to whether they knew each other earlier. It is also contended that the Notary who is claimed to have drafted the Will has not been examined and that no reasons has been set out in the Will for disinheriting the mother. A Will is a formal expression of the wish of the maker. There is no format in which a Will should be executed. There is also no particular language in which a Will is required to be written. All these are entirely up to the maker of the Will. Therefore, the circumstances of the case should be viewed in totality and the evidence of the attesting witnesses should be analysed in the backdrop of the circumstances that prevailed at the time of the execution of the Will. It has clearly come out in evidence that prior to the execution of the Will, M.R.Karuppusamy, had been diagnosed with Cancer. Therefore, it is not unnatural or even suspicious for Karuppusamy to have decided to write a Will. Karuppusamy, himself was aged 61 years at the time of execution of Ex.A16, Will. Therefore, his bequeathing the property to his wife and two



daughters, one of whom was admittedly unmarried cannot be viewed as a suspicious circumstances. No doubt, there is no mention about the aged mother in the Will.

However, that alone cannot be a reason to doubt the genuineness of the Ex.A16, Will.

23. Further, even with regard to the custody of the Will, the father in law of the testator, has clearly deposed that his daughter and grandchildren were not even aware of the execution of the Will and he had not informed them. Therefore, I do not see anything wrong with regard to the custody of the Will before it came to be marked before the Court during trial of the suit. Both the attesting witnesses have clearly spoken about due execution and attestation of the Will. Mere slip answers, with regard to who came first between them does not in any manner vitiate the factum of due execution and attestation of the Will. Their evidence with regard to due execution and attestation of the Will, is clearly amounting to proof of due execution of the Will in terms of Section 68 of the Evidence Act, 1872.

24. With regard to signatures in the Will and registered Sale Deeds being different and varying, admittedly, no attempt has been made by the defendants to send the Will for comparison by any forensic expert. In fact, the first defendant attempted to have the signatures compared and took out I.A. No.1152 of 2016. The said Application was



dismissed by the Trial Court finding that the burden is upon the plaintiff to prove the Will.

The revision filed by the first defendant in CRP. No.1039 of 2018, challenging the said

order was also dismissed, reiterating the fact that it is for the plaintiffs to prove the Will.

However, in the light of the evidence of P.W.2 and P.W.3 and also discussions herein

above, the plaintiffs have established the Will to be true and genuine. Even otherwise, the

Courts have consistently held that report of a handwriting expert is weak evidence and not

always safe to fall back on. Therefore, it does not call for interference. Even with regard

to non-production of medical records and admission of the daughter of the testator that

she has destroyed the medical records, I do not find anything turning on this for the simple

reason that the defendants have denied in totality, the very factum of execution of the Will.

Therefore, it really does not matter if the testator knew about his being diagnosed with

Cancer earlier or later, especially when the Will clearly indicates that he has been

diagnosed with Cancer and the evidence of P.W.2 and P.W.3 also in this regard affirms the

fact that on the date of execution of the Will, Ex.A16, the testator was aware of the fact

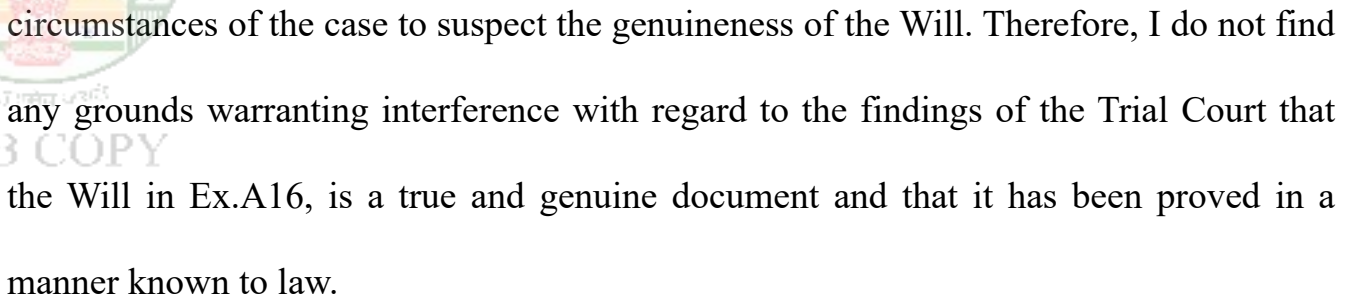
that he had been diagnosed with Cancer.

25. Though there is some inconsistency in this regard with P.W.1 stating that the Will was handed over by her father, after he was diagnosed with Cancer, in my considered opinion, this circumstance does not vitiate the execution, per se, of the Will, which alone



is required to be proved in order for the Court to render a finding that the Will is true and genuine. The suspicious circumstances should surround the execution and attestation of the Will and post execution events may not always, have any serious bearing with regard to proof of Will.

26. In the light of the available evidence, more specifically, when both the attesting witnesses have been examined, I do not find any lacuna in the evidence which warrants the Court to hold that the Will has not been proved in a manner known to law. The fact that both the witnesses have spoken about M.R.Karuppusamy, having executed the Will in their presence and more or less, corroborated their evidence with regard to how they were informed and where they were asked to come, it clearly establishes that the execution of the Will was a voluntary act of disposition by the testator M.R.Karuppusamy. It is also to be borne in mind that the Will was executed in the year 2014 and the parties gave evidence before the Court in 2021 and 2022 respectively. Therefore, the Court cannot expect the attesting witnesses to remember minute details with regard to how many signatures were affixed by the testator and which of them came first, with any mathematical precision. The evidence of the attesting witnesses appears to be quite natural and certainly inspires the Court, hold that the Will is true and genuine. The fact that the aged mother has been disinherited cannot be a ground in the



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28. Mr.S.R.Ragunathan, learned counsel would take me through the evidence of P.W.1, the daughter where she admits that her father and paternal uncle, were residing as a joint family and that her uncle was carrying on the agricultural operation and that there is also being a mortgage executed by both the brothers. She has also stated that the mortgage was discharged by the first defendant and the plaintiffs jointly, each expending 50% in respect of due equal share. She has also stated that it is only her father who spent for the construction of the house and the godown and it is the further evidence that both the ground floor and the first floor are constructed in an identical fashion. She has specifically denied any contribution from the first defendant. Mr.S.R.Ragunathan, learned counsel would also invite my attention to the admissions of P.W.1 that she and her uncle have jointly sold 120 quintals of turmeric. Similarly, he would take me through the other admissions, which indicate that the family has been doing joint business. In fact, P.W.1 evidence with regard to father's cancer and related health issues and the treatment which she took thereafter are clearly evidence that had come out naturally from P.W.1 and there is no hesitation in my mind that P.W.1's evidence is true and natural.

29. No doubt, the evidence of P.W.1 clearly indicates that the business was carried on jointly and the first defendant has been actively participating in the agricultural activity including sale of cash crops. However, in a claim for partition, where there is an



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assertion that the properties are joint family properties though standing in the name of individual coparceners, the requirement to establish and prove such contention is certainly on the person who alleges that the properties are joint family properties. It is settled law that mere existence of a joint family will not lead to a presumption or inference that the properties acquired in individual names of joint family members are also joint family properties. It has to be established at trial that there was income from such joint family or property and that not only income but there was also surplus available which has been utilized for purchasing the properties in the individual names of one of the joint family members. The burden was certainly on the defendants to establish the same. Merely because, P.W.1 admitted that there has been joint family, it is not sufficient to discharge the burden upon the defendants to establish that the properties standing in the name of M.R.Karuppusamy were coparcenary properties. The burden does not shift to the plaintiffs in the present case to prove that M.R.Karuppusamy, had independent income from and out of which, he had purchased the properties in his name.

30. In fact, as already discussed, insofar as Items 1, 2 and 3, it is admitted by the plaintiffs themselves that the first defendant has a share in the said property. In fact, the third item has been jointly purchased in the names of the deceased M.R.Karuppusamy and the first defendant. Therefore, much cannot be made out even from the fact that they had



jointly executed a mortgage of deposit of title deeds which was also subsequently redeemed by equal contributions from the first defendant and the plaintiffs. The defendants have not been able to discharge the burden upon them that the joint business which was carried on by first defendant and Karuppusamy was generating surplus income which was sufficient for acquiring Items 4 to 8. No documentary evidence in this regard has been produced by the defendants in an attempt to even discharge the heavy burden on them. In fact, even with regard to item 8 which is claimed to be again joint family property, it is seen from the evidence of P.W.2 that the property was in fact, purchased from none else than the wife of the first defendant who had inherited it from her mother's side. Therefore, to impute a character of joint family status to the said item can never be countenanced.

31. Insofar as the Hon'ble Division Bench Judgement of this Court in Ponnusamy's case (referred herein supra), which has been relied on by the learned counsel for the appellants, the Hon'ble Division Bench has clearly held that in a suit for partition, when a party claims that any particular item of property is joint family property, the burden of proving that it is so vests on the party asserting it and there can be no legal presumption in this regard. In fact, even in the decision in *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and others*, reported in *AIR 1954 SC 379*, which has been relied on by the



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Hon'ble Division Bench of this Court, the Hon'ble Supreme Court held that proof of existence of joint family does not lead to presumption that the property held by any member of the family is joint and that the burden would always vests upon the person asserting that the said property was joint, to establish the same. No doubt, it has been held by the Hon'ble Supreme Court that where it is established that the family possess some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, then the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.

32. In fact, the Hon'ble Division Bench's judgment relying on the decision of the Hon'ble Supreme Court clearly held that only where it has been established or admitted that the family possess joint property which from its nature and relative value may have formed the nucleus from the which the property in question may have been acquired, the presumption that it was joint property would arise, in order for the burden shifting to the other side. Such evidence is not available in the present case to dislodge the burden that rested on the defendants and to be shifted and placed on the plaintiffs. However, it is admitted case of the plaintiffs that items 1 and 2 of the suit property are liable to be partitioned and that they are entitled to only $\frac{1}{6}^{\text{th}}$ share in the said items and similarly,



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insofar as Items 3 to 7, it is their admitted case before the Court that the property had to be divided into two equal shares and the plaintiffs are entitled to the share of late M.R.Karuppusamy being 50%. Therefore, in the absence of the defendants being able to establish that the properties in Items 3 to 7 were purchased only out of surplus income that was accruing and available in respect of items 1 and 2, there can be no presumption that items 3 to 7 are also joint family properties. Admittedly, the properties have been purchased in the joint names of deceased M.R.Karuppusamy and the first defendant and therefore, in the facts of the present case, I do not see how the plaintiffs can be denied their claim for partition as prayed for. Consequent to the findings regarding the Will, the declaration with regard to the sale deed as well as the settlement deed executed by the second defendant, mother of deceased M.R.Karuppusamy, will have to naturally be sustained.

33. In the light of the above, I do not see any infirmity, in the ultimate findings that have been arrived by the Trial Court. No doubt, the discussion and the manner in which the Trial Court has approached the issues may not be proper or happy, but however, on re-appreciation of the entire pleadings and oral and documentary evidence available on record, I am unable to disturb the ultimate findings on the issues framed by the Trial Court warranting interference in appeal. Consequently, the Appeal Suits are **dismissed.**



However, considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also closed.

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13.02.2026

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

To

1. The II Additional District and Sessions Judge, Tiruppur.
2. The Section Officer, V.R. Section, High Court of Madras.



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P.B.BALAJI.J,

rkp

Pre-delivery judgment made in
A.S. Nos.383 & 514 of 2023
and CMP. Nos. 13220, 17190 & 17730 of 2023

13.02.2026

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