



S.A.No.211 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 19.11.2025
PRONOUNCED ON : 30.04.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 211 of 2014

and

M.P. No. 1 of 2014

J.Yeshoda

...Appellant/Respondent/Plaintiff

Vs.

1.L.Sathyamoorthy (Died)

2.Narayani

3.T.Thamayanathi

4.S.Gokila Vani

5.S.Dhanalakshmi

6.Kumaradevi

7.S.Naveen Kumar

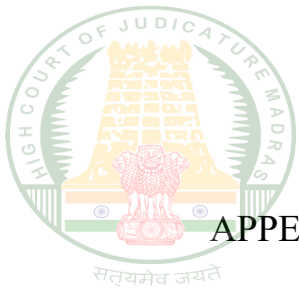
8.Hemalatha

(R1 died.R6 to R8 are brought on record as L.R.s of the deceased
R1 and R4 & R5 are declared as major and the mother and
natural guardian discharged from the guardianship vide court
order dated 01.04.2024 made in C.M.P.Nos.20597, 20590,
20594 of 2021 in S.A. No. 211 of 2014)

...Respondents/Appellants/plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure
Code against the Judgment and Decree in A.S. No. 12 of 2010 on the file
of the District Judge, Nilgiris at Udthagamandalam dated 17.12.2013 in
reversing the well considered Judgment and decree of the Subordinate
Judge, Nilgiris in O.S. No. 11 of 2006 dated 31.08.2010.

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APPEARANCE OF PARTIES:

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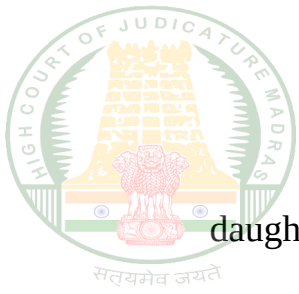
For Appellants : Ms.S,V.Srimathi.
For Respondent : Mr.C.A.Diwakar for R6 to R8.
R2 to R5 – No appearance.
R1 – Died.

J U D G M E N T

This Second Appeal arises out of the judgment and decree dated 17.12.2013 in A.S.No.12 of 2010 on the file of the District Judge, Nilgiris at Udthagamandalam, whereby the judgment and preliminary decree dated 31.08.2010 in O.S.No.11 of 2006 on the file of the Subordinate Judge, Nilgiris at Udthagamandalam, were reversed and the suit for partition was dismissed.

2. For convenience, the parties are referred to as they were arrayed before the trial Court.

3. The plaintiff's case, in substance, as follows. She is one of the daughters of late K. Lakshmanan. The 1st defendant/ L. Sathyamoorthy and the 3rd defendant/A. Thamayanthi are her siblings. One Subburaj, since deceased, was another son of Lakshmanan; the 2nd defendant/Narayani is Subburaj's widow and defendants 4 and 5 are his



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daughters. According to the plaintiff, the suit schedule properties originally belonged to Lakshmanan. Item No.2, namely 2.50 acres of tea garden, had been settled by Lakshmanan in favour of his wife Amirthavalli. Sl.No.6 of Item No.1 stood in the name of Subburaj, but the plaintiff treated it as part of the common pool left by Lakshmanan. She further alleged that cash, jewellery, ornaments and deposits left by Lakshmanan had been taken away by defendants 1 and 2 and Subburaj, while reserving liberty to pursue movables separately.

4. Her central case was that Lakshmanan died intestate , but that the alleged Will propounded by the defendants was the product of manipulation during his illness. She pleaded that Lakshmanan was suffering from diabetes, hypertension and renal complications; that he was treated at GEM Hospital, Coimbatore, and later admitted to S.M. Hospital, Udthagamandalam; and that during this period the 1st defendant and Subburaj, who were residing with him, took advantage of his condition, procured his signatures on papers and brought into existence a self-serving document. She also pleaded that Lakshmanan complained to her in hospital that his sons had taken his signatures on papers, wanted to make proper provision for his daughters, and asked her to bring a lawyer. According to her, Senior Counsel N. Krishnamoorthy met Lakshmanan in

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hospital on 11.11.2005, and Lakshmanan stated that he had not signed papers voluntarily and wanted to set matters right after discharge; however, he died on 30.11.2005 before any fresh document could be executed.

5. The plaintiff further pleaded that, after Lakshmanan's death and then Subburaj's death on 28.12.2005, she went to the family house on 22.01.2006 for discussion of partition, but was induced, while still in mourning, to sign papers under the pretext that they related to partition. Later, she discovered that those signatures were being used as though she had accepted a Will and a Panchayat Muchalika. She therefore treated Ex.B1 Will and Ex.B2 Muchalika as products of fraud, coercion, undue influence and deception, issued legal notice demanding partition, and instituted the suit claiming 1/4th share.

6. The 1st defendant, whose written statement was adopted by defendants 2, 4 and 5, admitted the relationship but denied all allegations of manipulation and misappropriation. Their case was that Lakshmanan executed his last Will and testament on 01.11.2005 in a sound and disposing state of mind; that the Will was duly attested by M. Kumar and K. Sagadevan; and that Lakshmanan made what the defendants described

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as an equitable distribution of his properties. The defendants also pleaded that, although Lakshmanan had earlier gifted Item No.2 to Amirthavalli, he had thereafter got back that property and was competent to bequeath it under Ex.B1. They further relied on a Panchayat Muchalika dated 22.01.2006 said to have been executed in the village in implementation of the Will, and asserted that the plaintiff and her husband had signed it and were bound by it. In addition, they specifically pleaded that Sl.No.6 of Item No.1 was the self-acquired property of Subburaj and not divisible among all heirs of Lakshmanan.

7. The 3rd defendant pleaded that Sl.No.1 of Item No.1 had originally belonged to the plaintiff's grandfather Krishnaswamy and, after his death, had devolved on Lakshmanan and his brother Rangaraj equally; according to her, therefore, the plaintiff could not claim on the footing that Lakshmanan alone owned that item absolutely and plaintiff and 3rd defendant entitled to 1/8th share. She also pleaded that Item No.2 stood transferred to Amirthavalli under the 1978 settlement deed and that Amirthavalli, in turn, had executed a Will dated 07.04.2002 in favour of the 3rd defendant, thereby making the 3rd defendant the absolute owner of Item No.2. As regards Sl.No.6 of Item No.1, she supported the plea that it was the self-acquired property of Subburaj. In effect, the 3rd

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defendant stated that, subject to those objections, she had no difficulty with partition of the other items.

8. Before trial court , on the plaintiff's side, the plaintiff examined herself as PW1, Kannan, Sub-Registrar, Coonoor, as PW2, and Senior Counsel N. Krishnamoorthy as PW3, and marked Exs.A1 to A5 and Exs.X1 to X3. On the defendants' side, the 1st defendant examined himself as DW1; the attestors to Ex.B1 were examined as DW2 and DW3; Advocate Y.M. Bhojan, said to have headed the Panchayat, was examined as DW4; the 3rd defendant was examined as DW5; and an attesting witness to Ex.B5 was examined as DW6. Exs.B1 to B6 were marked.

9. On appreciation of oral and documentary evidence, the trial Court held that the plaintiff was entitled to a preliminary decree for partition of 1/4th share in Sl.Nos.1 to 5 of Item No.1 and in Item No.2, dismissed the claim in respect of Sl.No.6 of Item No.1, and awarded costs to the plaintiff.

10. The lower appellate Court reversed the trial Court judgment and decree, holding that Ex.B1 Will was duly proved through DW2 and DW3,

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that the alleged discrepancies and unequal distribution did not constitute suspicious circumstances, and that absence of proof of coercion or undue influence supported its acceptance. It further held Ex.B2 Panchayat Muchalika proved, treating the xerox copy bearing admitted signatures as admissible and sufficient evidence, and rejected the plaintiff's plea of signing blank papers. Consequently, holding that Lakshmanan's properties had already been dealt with under Exs.B1 and B2, it allowed the appeal, set aside the trial Court's decree, dismissed the suit for partition, and made no order as to costs.

11. Aggrieved by the judgment and decree of the first appellate court , plaintiff preferred the present appeal . The second appeal was admitted on 11.03.2014 on the following substantial questions of law:

“1.Whether the lower Appellate Court is justified in concluding that the mere signature of Lakshmanan on Ex.B1 is sufficient to prove a Will?

2.Whether the lower Appellate Court is justified in neglecting the evidence of PW1 and PW3 which validate the fact that the Will was not prepared at the instance of Lakshmanan and that he had no knowledge of its contents and was coerced to sign?

3.Whether the lower Appellate Court is justified in overlooking



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the fact that an ancestral property cannot be settled without the consent of the coparceners and there could have been no possibility of Lakshmanan executing such a Will?

4. Whether non examination of the scribe is not fatal taking into consideration the circumstances under which the Will was generated and exhibited?”

12. The learned counsel for the appellant/plaintiff submitted that the suit was filed for partition and separate possession of the plaintiff's one-fourth share in two ancestral suit properties. It was contended that the plaintiff's father died intestate, without leaving any valid Will, and that the plaintiff, the third defendant and Sukuraj were his legal heirs; after Sukuraj's death, his legal heirs were impleaded as defendants. The learned counsel argued that the alleged Will relied on by the contesting defendants was concocted by the first defendant and Sukuraj to deprive the plaintiff, a daughter, of her legitimate share. It was further submitted that the father was seriously unwell, had been admitted in hospital, and was not in a sound disposing state of mind at the relevant time.

13. The learned counsel pointed out several suspicious circumstances surrounding the alleged Will. The scribe was not examined; there were

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contradictions as to who were present at the time of execution; the evidence of the attesting witnesses was inconsistent; the attesting witnesses did not clearly prove that the contents were read over and understood; one witness admitted that he did not know English though the proof affidavit was in English; and the Will appeared to have been prepared so as to fit the stamp paper, with unusual gaps and filled-up contents. It was also argued that the Will included property belonging to the mother, Amritavalli, which the father could not have disposed of, and that the unequal distribution of properties, including exclusion of one daughter without reason, made the Will unnatural and doubtful.

14. The learned counsel further submitted that the alleged Panchayat Muchalika was only an afterthought to support the fabricated Will. The trial Court had rightly held that the defendants failed to prove it. The advocate said to have presided over the Panchayat denied his presence and also stated that no Will was produced before the Panchayat. The original Muchalika was not produced and only a photocopy was relied on. There were also contradictions as to whether villagers were present, who produced the Will, and whether the Panchayat actually took place.



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15. It was therefore submitted that the trial Court rightly decreed the suit, whereas the first appellate Court wrongly reversed the decree without properly considering the suspicious circumstances, contradictions and lack of proof.

Substantial question of law No.1:

16. On perusal of records, it is seen that the appellate court did not hold that Lakshmanan's signature, by itself, proved the Will. It held that Ex.B1 was proved through the evidence of the attesting witnesses D.W.2 and D.W.3, and that the objections accepted by the trial court were not of such a nature as to discredit due execution. It expressly held that the discrepancies regarding the colour of ink and similar details were not material, observing that attesting witnesses examined years later could not be expected to picturize the event "as videograph."

17. The appellate court also relied on the surrounding evidence of P.W.1, P.W.2, P.W.3 and Ex.X1, not merely on signature. It read P.W.3's evidence as showing that Lakshmanan had already executed a Will and later wanted to write another Will; and it read P.W.2 with Ex.X1 as showing that Lakshmanan had taken steps to get Ex.B1 registered, which supported the defendants' case that Ex.B1 was his voluntary act.



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18. An attesting witness is required to speak to execution and attestation, namely that the testator signed and that the witness attested in the manner required by law. He need not prove the dispositive contents clause by clause. The appellate court found that requirement satisfied through D.W.2 and D.W.3. On the face of that reasoning, there is no legal error in the appellate court's conclusion. Accordingly, Substantial question of law No.1 is answered against the appellant/plaintiff.

Substantial question of law No.2 :

19. The appellate court specifically dealt with P.W.1 and P.W.3. It noted that P.W.1's own admissions in cross-examination weakened her case. It relied on her admissions relating to Ex.B2 and on the surrounding circumstances to reject the plea that she and others had merely signed blank papers.

20. As regards P.W.3 N. Krishnamoorthy, the appellate court expressly noticed his evidence and drew the inference that Lakshmanan had already executed a Will and later wished to execute another Will. The court



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reasoned that the fact that he wanted to make another Will did not mean the earlier one stood cancelled. That reasoning cannot be said to be perverse. If Lakshmanan had truly intended to cancel Ex.B1 in hospital, no cancellation was effected then and there, nor subsequently. P.W.3 did not say that he drafted or cancelled any Will. He only spoke of Lakshmanan expressing a wish to meet him after discharge. The appellate court was therefore justified in holding that P.W.3's evidence did not invalidate Ex.B1.

21. Similarly, P.W.2 and Ex.X1 do not assist the plaintiff. Ex.X1 showed that Lakshmanan called the Sub-Registrar for registration. The appellate court treated that as supporting the defendants' case that the Will had already been executed and that Lakshmanan wished to register it. The fact that registration could not be completed because of quarrel at the spot does not negate execution; if anything, it shows a step by Lakshmanan consistent with the existence of Ex.B1.

22. Therefore, the first appellate court cannot be said to have neglected P.W.1 and P.W.3. It considered their evidence and assigned reasons for



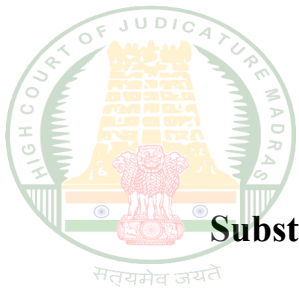
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not accepting the plaintiff's interpretation of it. Accordingly, Substantial question of law No.2 is answered against the appellant.

Substantial question of law No.3:

23. The plaintiff's own case in the plaint was that the suit properties belonged to her father Lakshmanan, and that she sought a share as one of his heirs. The plaint did not proceed on the footing that the suit properties were coparcenary or ancestral properties incapable of testamentary disposition without consent of coparceners. On the contrary, the plaint treated the properties as having belonged to Lakshmanan and, in the case of Item No.2, to Amirthavalli.

24. Further, the first appellate court itself recorded that the trial court's finding concerning Sl.No.6 of Item No.1 had not been challenged by the plaintiff, and that the 3rd defendant had not cross-appealed regarding Item No.2. It therefore rightly confined itself to the two real controversies before it: proof of Ex.B1 and Ex.B2. Accordingly, Substantial question of law No.3 is answered against the appellant.



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Substantial question of law No.4 :

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25. The first appellate court expressly held that Ex.B1 had been proved through D.W.2 and D.W.3, the attesting witnesses. Once due execution and attestation were accepted through attesting witnesses, the non-examination of the scribe was not, by itself, fatal. The appellate court treated the criticisms founded on absence of scribe's evidence as insufficient to dislodge the proof otherwise furnished.

26. That approach accords with principle. The law requires examination of an attesting witness to prove a Will; it does not require, in every case, examination of the scribe. The scribe becomes indispensable only where the attesting evidence is legally insufficient or where the suspicious circumstances are such that the origin of the document cannot otherwise be explained. The first appellate court found that situation did not arise here.

27. Indeed, the appellate court found further assurance from external circumstances: P.W.3's evidence that Lakshmanan had already written a



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Will and later wanted another; P.W.2's evidence and Ex.X1 showing an attempt at registration; and the plaintiff's own conduct and admissions in relation to Ex.B2.

28. In those circumstances, the non-examination of the scribe did not create any legal infirmity warranting interference in second appeal. Accordingly, Substantial question of law No.4 is answered against the appellant.

29. In the result , second appeal is dismissed confirming the judgment and decree dated 17.12.2013 in A.S.No.12 of 2010 on the file of the District Judge, Nilgiris at Udthagamandalam. There shall be no order as to cost. Consequently , the miscellaneous petition, if any is closed.

30.04.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

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DR. A.D. MARIA CLETE, J

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To

1. The District Judge, Nilgiris at Udhagamandalam
2. The Subordinate Judge, Nilgiris at Udhagamandalam
3. The Section Officer, V.R.Records, Madras High Court.

PRE DELIVERY JUDGMENT
S.A. No. 211 of 2014

30.04.2026