



S.A.No.577 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2025
PRONOUNCED ON : 08.04.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 577 of 2014
and
C.M.P. No. 16509 of 2025

1. K.Malathi
Wo K. Kailasamurthy
No. 76 Ellapalayam Periyasemur Post,
Erode
2. S.Poongodi
W/o Senthilkumar M. Unjappalayam
Modakurichi Village And Post,
Erode District.

...Appellant(s)

Vs

1. P.Chidambaram
S/o Late Palani Gounder,
Lohiya St,
Minnakattu Thottam M. Unjappalayam
Modakurichi Village And Post,
Erode District.
2. C.Murugavel
S/o P. Chidambaram,
Lohiya St, Minnakattu Thottam,
M.Unjappalayam Modakurichi
Village And Post,
Erode District.



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3. S.Suganthi
W/o Sundaramurthy, Nattkalar Veedu
Thoorapalayam Modakurichi
Village And Post, Erode District.

..Respondent(s)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code praying to set aside the Judgment and decree passed in A.S. No. 89 of 2013 on the file of the Principal District Judge, Erode, reversing the Judgment and Decree passed in O.S. No. 406 of 2010 on the file of II Additional Subordinate Court, Erode and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

APPEARANCE OF PARTIES:

For Appellants : Mr.K.Govi Ganesan, Advocate.

For Respondent : Mr.R.Karthikeyan for R1 & R2.
Mr. R.Bharanidharan for R3.

J U D G M E N T

This Second Appeal filed by the plaintiffs arises out of the judgment and decree dated 19.02.2014 in A.S. No. 89 of 2013 on the file of the Principal District Judge, Erode, reversing the judgment and decree dated 27.06.2013 in O.S. No. 406 of 2010 on the file of the II Additional Subordinate Court, Erode.



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

3. The plaintiffs, who are daughters of the first defendant and sisters of defendants 2 and 3, filed the suit for partition and separate possession of the suit properties. They pleaded that the suit properties were the self-acquired properties of Marappa Gounder, who is stated to be their great-grandfather. On his death, the properties are stated to have devolved upon his only son Palaniyappa Gounder, who is pleaded to be the grandfather of the plaintiffs and defendants 2 and 3.

4. It is further pleaded that thereafter the first defendant and his brother Samiyappan enjoyed the properties, and under a registered partition deed No.3239/1980 dated 29.08.1980, the B-schedule properties were allotted to the first defendant. The plaintiffs asserted that no partition had taken place among them and the defendants thereafter and that they remained in joint/constructive joint possession. They also pleaded that upon their demand for partition in September 2010, the defendants did not comply and attempted to alienate the suit properties, compelling issuance of a legal notice dated 23.10.2010 and the filing of



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the suitclaiming that each plaintiff is entitled to 1/5th share, they sought division by metes and bounds and delivery of separate possession.

5. The 1st defendant denied the plaint claim for partition and contended that the suit properties are not joint family/ancestral, but the separate properties of the 1st defendant derived through Marappa Gounder's registered Will dated 05.07.1960 in favour of the 1st defendant and his brother Samiyappan; thereafter they partitioned on 29.08.1980, and the 1st defendant executed a settlement deed dated 02.07.2008 in favour of the 2nd defendant, who became absolute owner. He alleged suppression of the Will by the plaintiffs, denied their joint possession and share, and objected to valuation/court fee, besides raising maintainability, jurisdiction and non-joinder objections, seeking dismissal.

6. On the side of the plaintiff, the second plaintiff was examined as P.W.1 and Exs.A1 to A10 were marked. On the side of the defendants D.W.1 to D.W.3 were examined, and Exs.B1 and B16 were marked.

7. The Trial Court, on appreciation of the pleadings and evidence, held that the defendants had not proved the registered Will dated 05.07.1960 (Ex.B4) in the accordance with law and, therefore, the Will



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could not be relied upon. Consequently, treating the suit properties as coparcenary/ancestral properties, it held that the plaintiffs, being daughters, are entitled to seek partition under Section 6 of the Hindu Succession Act (as amended), and that any alienation/settlement in favour of the 2nd defendant cannot defeat the plaintiffs' lawful share; accordingly, the suit was decreed.

8. The First Appellate Court, upon reappreciating the oral and documentary evidence, set aside the Trial Court's decree and dismissed the suit, holding that the Will (Ex.B4) stood proved in accordance with law and, consequently, the suit properties devolved as the separate property of the 1st defendant under the testamentary bequest; in any event, it further held that succession would fall under Section 8 of the Hindu Succession Act, and therefore the plaintiffs are not entitled to claim any share in the suit properties.

9. Aggrieved by the appellate judgment the plaintiffs preferred the second appeal.



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10. The Second Appeal is admitted on the following substantial questions of law:

(a) Whether the court below right in holding that the Ex.B4 Will is genuine and valid in absence of any evidence is required under Sec.63(c) of Indian Succession Act and Sec. 68 of the Evidence Act?

(b) Whether the court below right in holding that the Will has been proved as per Section 69 of the Evidence Act in absence of any evidence to prove that the attesting witness cannot be found?

(c) Whether court below right in holding that the appellants did not dispute Ex.B4 Will without considering the pleadings and hence evidence and the finding is perverse?

11. The learned counsel for the appellants/plaintiffs submitted that the defendants denied the plaintiffs' right solely on the basis of the alleged Will dated 05.07.1960 (Ex.B4) and the subsequent settlement deed (Ex.B6) and that such denial is unsustainable. It was contended that Ex.B4 has not been proved in accordance with law and that the defendants failed to satisfy the mandatory requirements of Section 63(c) of the Indian Succession Act (due attestation of a Will) read with Section



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68 of the Indian Evidence Act (proof of execution of document required by law to be attested), as no attesting witness was examined to prove due execution and attestation.

12. The learned counsel further submitted that the defendants are not entitled to take recourse to Section 69 of the Evidence Act, since the basic facts for invoking Section 69 were not properly established and there was no reliable, admissible evidence except the interested identification testimony of DW2, without any contemporaneous documents for comparison of signatures/handwriting or proof of attestation. It was also pointed out that even the partition deed dated 29.08.1980 (Ex.B5) contains no recital of any Will, thereby casting serious doubt on the genuineness of Ex.B4.

13. The learned counsel further submitted that after the 2005 amendment to Section 6 of the Hindu Succession Act, the plaintiffs, being daughters, became coparceners by birth and hence the unilateral settlement deed dated 02.07.2008 (Ex.B6) executed by the 1st defendant is not binding on them and cannot defeat their lawful shares. Lastly, it was submitted that the Lower Appellate Court overlooked material



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evidence and reversed the Trial Court decree on new factual presumptions not pleaded, thereby giving rise to substantial questions of law.

14. The learned counsel for the respondents submitted that the limited question arising in the Second Appeal is whether the plaintiffs are entitled to seek partition when the property had devolved upon the 1st defendant as a Class I legal heir. It was pointed out that even in the plaint the suit properties are described as the hard-earned/self-acquired properties of Marappa Gounder, and in the written statement also it is asserted that Marappa Gounder was the absolute owner under registered sale deeds, and therefore there is no dispute as to the self-acquired and separate character of the property.

15. The learned counsel further submitted that, in the present case, Marappa Gounder executed a registered Will dated 05.07.1960 bequeathing the estate to his grandsons Samiappan and Chidambaram (1st defendant), and since the attesting witnesses are no more, DW2 was examined to identify the signature of one of the attesting witnesses, which, according to the respondents, amounts to substantial compliance with law.



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16. The learned counsel would also contend that even otherwise, on intestate succession, Samiappan and Chidambaram would succeed as Class I legal heirs, and relying upon the decisions, the First Appellate Court rightly allowed the appeal and dismissed the suit; hence no interference is warranted in the Second Appeal.

17. During the pending of this second appeal the plaintiff have filed C.M.P. No. 16509 of 2025 under Order VI Rule 17 CPC seeking amendment of the plaint schedule in O.S. No.406 of 2010 , on the ground that two additional properties allegedly belonging to respondents 1 and 2 were omitted from the suit schedule and that they came to know of the same only recently after obtaining certified copies.

18. It is stated that one such property was purchased by the 1st defendant under Sale Deed dated 19.06.1980 (Doc. No.2391/1980) in S.F. Nos. 627/A and 627/A3, and another relates to an alienation under Sale Deed dated 23.09.2019 (Doc. No.5133/2019) in S.F. No.638 / R.S. No.15/3; the petitioners contend that these are connected to the joint



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family/ancestral properties and therefore should be included in the schedule to enable complete and effective adjudication, failing which they would suffer irreparable loss.

19. The learned counsel for the respondents opposed the petition contending that in Ex.A1 (legal notice), the plaintiffs themselves had stated that “still more properties are in joint possession which are not mentioned in the notice.” Therefore, having already taken such a stand in 2010, the present plea that additional properties are sought to be included only because the petitioners came to know of them recently is false and cannot be accepted in the light of the earlier admission in Ex.A1. The learned counsel submitted that the application is frivolous, and hence it deserves to be dismissed with exemplary costs.

20. Here and now, permitting amendment of the plaint schedule at the stage of Second Appeal would materially affect the findings already rendered by the Courts below, especially when it was the plaintiffs’ duty to include all suit properties at the time of institution of the suit. Further, as seen from the affidavit, the documents relied upon are sale deeds of the years 1980 and 2019, whereas the present CMP has been filed only in 10/18



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2025, after an inordinate delay. More importantly, a perusal of Ex.A1 legal notice dated 23.10.2010 shows that the plaintiffs had knowledge even in 2010 about the existence of other omitted properties, well before filing the suit. Allowing such an amendment at this stage would also amount to permitting a partial partition, in which event the partition suit itself would be liable to be dismissed as not maintainable. In view of the above, this CMP.No. 16509 of 2025 is dismissed.

21. The pivotal issue is the manner of proof of Ex.B4 – the registered Will dated 05.07.1960. As a general rule, a Will must be proved in accordance with Section 63(c) of the Indian Succession Act read with Section 68 of the Evidence Act, by examining at least one attesting witness to establish due execution and attestation. Section 69 of the Evidence Act, however, carves out an exception where no attesting witness can be found / the attesting witnesses are dead or otherwise unavailable, and in such a situation the Will may be proved by showing (i) that the signature/handwriting of the testator is his, and (ii) that the attestation of at least one attesting witness is in his handwriting/signature.



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22. In the case on hand, the First Appellate Court, upon reappreciation of the oral and documentary evidence, recorded a categorical finding that the testimony of DW1 regarding the death/non-availability of the attestors and the scribe was not denied by the plaintiffs. The Court noticed that in the cross-examination dated 08.03.2012, a suggestion was put to DW1 touching upon Saravanan being the grandson of Pongianna Gounder, one of the attesting witnesses, but no suggestion was put disputing DW1's statement as to the death/non-availability of the attesting witnesses. Treating such non-denial as an admission, the First Appellate Court held that, in the face of such admission, it is unnecessary to insist upon production of death certificates to establish the fundamental fact for invoking Section 69.

23. Having thus concluded that the attesting witnesses were unavailable, the First Appellate Court proceeded to apply Section 69 of the Evidence Act. It found that DW2 had clearly identified the signature of one attesting witness, Pongianna Gounder, in Ex.B4, and that DW1 had identified the signature of the testator, Marappa Gounder, on all pages of the Will. On that appreciation, it held that the twin requirements of Section 69 stood satisfied, namely proof of the testator's



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signature/handwriting and proof of the handwriting/signature of at least one attesting witness.

24. Once the executant's signature is proved and the handwriting/signature of one attesting witness is proved, the Court held that compliance with Section 69 is complete and the Will can be acted upon; accordingly, it treated Ex.B4 as duly proved under Section 69 and presumed due execution in the manner envisaged therein.

25. With regard to the application seeking reception of additional documents relating to death particulars of the attesting witness , the First Appellate Court rejected the same on the ground that sufficient evidence was already available on record to establish the death/non-availability of the attesting witnesses and that the proposed documents were not required for enabling the Court to pronounce judgment. In view of the above reasoning, the First Appellate Court held that Ex.B4 stood proved in accordance with law under Section 69 of the Evidence Act, and consequently rejected the plaintiffs' challenge to the Will.



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26. In **V. Kalyanaswamy (D) by L.Rs. & Ors. v L.**

Bakthavatsalam (D) by L.Rs. & Ors., reported in **2020 INSC 455**

considered the effect of Sections 68 and 69, and observed as follows:

“71. Reverting back to Section 69 of the Evidence Act, we are of the view that the requirement therein would be if the signature of the person executing the document is proved to be in his handwriting, then attestation of one attesting witness is to be proved to be in his handwriting. In other words, in a case covered Under Section 69 of the Evidence Act, the requirement pertinent to Section 68 of the Evidence Act that the attestation by both the witnesses is to be proved by examining at least one attesting witness, is dispensed with. It may be that the proof given by the attesting witness, within the meaning of Section 69 of the Evidence Act, may contain evidence relating to the attestation by the other attesting witness but that is not the same thing as stating it to be the legal requirement under the Section to be that attestation by both the witnesses is to be proved in a case covered by Section 69 of the Evidence Act. In short, in a case covered Under Section 69 of the Evidence Act, what is to be proved as far as the attesting witness is concerned, is, that the attestation of one of the attesting witness is in his handwriting. The language of the Section is clear and unambiguous. Section 68 of the Evidence Act, as interpreted by this Court, contemplates attestation of both attesting



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witnesses to be proved. But that is not the requirement in Section 69 of the Evidence Act.”

27. In view of the foregoing discussion, it is evident that the finding of the First Appellate Court that the defendants have proved Ex.B4 Will in accordance with Section 69 of the Indian Evidence Act warrants no interference. Accordingly, Substantial Questions of Law Nos. 1 to 3 are answered against the plaintiffs/appellants.

28. Moreover, the plaintiffs themselves admitted that the suit properties were the self-acquired properties of Marappa Gounder. Once the properties are held to be self-acquired, the plea of ancestral/joint family character cannot be accepted on mere assertion. Marappa Gounder having died after the commencement of the Hindu Succession Act, 1956, succession to his estate would be governed by Section 8 and not by survivorship. Since the father of the 1st defendant had predeceased, the 1st defendant and the other eligible heirs succeeded to the estate as Class I heirs, and the property so inherited under Section 8 continues to be their individual/separate property. Consequently, the plaintiffs, being only the daughters of the 1st defendant, were not heirs of Marappa Gounder at the



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time of his death and, even independent of the Will, they cannot claim any share in the individual property of Marappa Gounder.

29. Even if there was a dispute as to whether the father of the 1st defendant (Palaniyappa Gounder) had predeceased Marappa Gounder, once Ex.B4 Will is held to have been duly proved, the recital therein that Palaniyappa Gounder had already predeceased the testator is a relevant circumstance supporting the said fact. Insofar as the death certificate dated 25.02.1952 is concerned, though it was sought to be produced as additional evidence, the First Appellate Court declined to accept the same, holding that no satisfactory or genuine reason was shown for its non-production before the Trial Court and, therefore, it cannot be relied upon as additional evidence.

30. Once the suit properties are held to be the separate/self-acquired properties of the 1st defendant, he is fully entitled to deal with and alienate the same. Accordingly, the settlement deed dated 02.07.2008 executed by the 1st defendant in favour of the 2nd defendant is valid and



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binding, and the plaintiffs are not entitled to seek partition in respect of the suit properties.

31. In the result, the Second Appeal is dismissed with costs. The judgment and decree of the First Appellate Court in A.S. No. 89 of 2013 dated 19.02.2014 on the file of the Principal District Judge, Erode are hereby confirmed. Consequently, connected civil miscellaneous petition if any is closed.

08.04.2026

ay

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1. The Principal District Judge, Erode
2. The Additional Subordinate Court, Erode
3. The Section Officer, V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
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