



WEB COPY

SA No. 370 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 370 of 2026 and
CMP.No.12434 of 2026**

1. M.Maathan
2. R.Sankar
3. C.Murugan

..Appellant(s)

Vs

N.C.Saravanan

..Respondent(s)

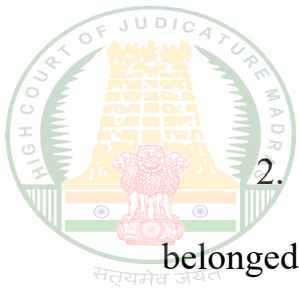
Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the judgment and decree passed in A.S.No.55/2017 dated 27.09.2019 by the Learned Principal Subordinate Judge, Krishnagiri, Krishnagiri District in reversing the judgment and decree in O.S.No.199/2013 dated 22.11.2016 by the Learned District Munsif Court, Krishnagiri, Krishnagiri District.

For Appellant(s):

C/V. Mr.P.Sesubalan Raja
for M/s.S.Velmurugan

JUDGMENT

The unsuccessful defendants 1 to 3 are the appellants. The respondent herein filed a suit for declaration of title to the suit property and for delivery of possession. The plaintiff also sought for permanent injunction restraining the defendants from creating any documents in respect of the suit property. The suit was dismissed by the trial court. On appeal filed by the respondent/ plaintiff, the same was allowed and the suit was decreed. Aggrieved by the same, the defendants have come before this court by way of second appeal.



2. According to the respondent/plaintiff, the suit property originally belonged to his grandfather namely Govinda Gounder, who purchased the same under sale deed dated 07-02-1973. It is also stated in the plaint that in the year 1980, Govinda Gounder has made family arrangement dividing the properties and allotted shares to his heirs. The said Govinda Gounder retained the suit property and two other properties in different survey numbers for his own use. Later, he executed a registered Will on 15.07.1985 bequeathing the suit properties to minor sons of his third son Chinnasamy namely plaintiff and his brother. In the said Will, the plaintiff and his brother were represented by their father Chinnasamy. The said Govinda Gounder died on 22.05.1994 and his wife predeceased him. Thereafter, the Will came into force. The plaintiff and his brother Mahendran had become absolute owners of the Willed properties. On 14.11.2012, there was a partition between plaintiff and his brother and the suit property was allotted exclusively to the share of the plaintiff. Thus, the plaintiff became the owner of the suit property. It is further claimed that there was a small tiled house in the western side of the suit property and Govinda Gounder had stayed in the said building till his lifetime. Thereafter, the eldest son of Govinda Gounder, namely the father of the first defendant Muniyappan and his second son M.Murugan were permitted to stay in the said building by the plaintiff. In these circumstances, the defendants, with a view to grab the portion of the suit property, committed a trespass into 45 cents of the land on the eastern portion of the suit property. In spite of request made by the plaintiff to vacate



the property, the defendants refused to vacate and encroached the portion. The illegal acts of defendants created a cloud over the title of the plaintiff and hence, the above mentioned suit was filed seeking declaration of title and recovery of possession.

3. The defendants filed a written statement and admitted that the suit property was originally belonged to Govinda Gounder. However, it was the specific case of the defendants that during family arrangement, 15 cents of the suit property was allotted to sons of Govinda Gounder namely Muniyappan and Kannupaiyan @ Chinnathambi each under whom the defendants 1 and 3 are claiming title. It was further stated that another 15 cents of the suit property was allotted to the share of Govinda Gounder's daughter namely Kaliyammal. It was also claimed that the said Kaliyammal put up a house in the portion allotted to her and she has been enjoying the same. The Will relied on by the plaintiff was specifically denied by the defendants and it was claimed that the portion allotted to sons and daughter of Govinda Gounder were enjoyed by them exclusively all alone. It was further stated that since the suit property was divided and allotted to above mentioned three children of Govinda Gounder, the partition between the plaintiff and his brother based on alleged Will was not valid and hence, they sought for dismissal of the suit.

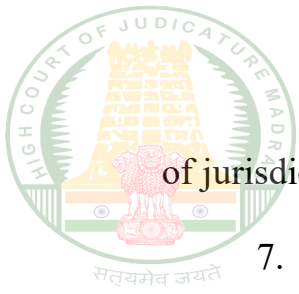
4. Before the trial court, the plaintiff was examined as PW1. The scribe of the Will relied on by the plaintiff, Exhibit A3 was examined as PW2. The brother of the first defendant and one of the local resident was examined as



PW3. The attesor to Exhibit A3, Will was examined as PW4. On behalf of the plaintiff, nine documents were marked as Ex.A1 to Ex.A9. The first defendant was examined as DW1. On behalf of defendants, four documents were marked as Ex.B1 to Ex.B4. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

5. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove the Will relied on by him and consequently dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.55/2017 on the file of Principal Subordinate Judge, Krishnagiri, Krishnagiri District. The first appellate court, on re-appreciation of the evidence available on record, came to the conclusion that the Will relied on by the plaintiff was proved and allowed the appeal. Consequently, the suit filed by the plaintiff was decreed as prayed for. Aggrieved by the same, the defendants have come before this court.

6. The learned counsel for the appellants submitted that the Will relied on by the plaintiff was not at all proved in terms of Section 63 of Indian Succession Act read with Section 68 of Indian Evidence Act. The Courts below committed a serious error in accepting the evidence of attesor to the Will. He also submitted that PW1 admitted that the value of the suit property was Rs. 2 lakhs and in such case, the District Munsif Court before which the suit was filed could not have entertained the suit. In view of the admission of PW1, according to the counsel, the judgment and decree passed by the courts below is vitiated by error



of jurisdiction.

7. In the pleadings, there is no dispute that the property originally belonged to Govinda Gounder. The plaintiff claimed that Govinda Gounder executed a Will on 15.07.1985 under Exhibit A3 bequeathing the suit property to plaintiff and his brother. Later, the suit property was partitioned between the plaintiff and his brother under Exhibit A5 dated 14.11.2012 and the suit property was allotted exclusively to the share of plaintiff. On the other hand, the defendants claimed that in the year 1980, there was a partition in the family and the suit property was divided into three shares of 15 cents each and allotted to Govinda Gounder's two sons and one daughter namely Muniyappan, Kannupaiyan @ Chinnathambi and Kaliyammal. It was also claimed by the defendants that all the persons allotted with the share in the suit property have been enjoying the same exclusively and hence, the suit filed by the plaintiff is not maintainable. The Will relied on by the plaintiff was specifically denied in the written statement.

8. In order to prove the Will, the plaintiff examined the scribe of the Will as PW2 and attesor of the Will as PW4. The trial court found that the attesor PW4 did not say that he saw Govinda Gounder signing the Will and Govinda Gounder saw his attestation of Will. Therefore, according to the trial court, the Will is not properly proved by evidence of PW4.

9. The first appellate court, on careful consideration of the evidence of PW4, said that PW4 in his evidence clearly stated that Govinda Gounder put his



signature in the Will and in the presence of Govinda Gounder, PW4 attested the Will. Therefore, according to the first appellate court, the legal provisions relating to attestation of the Will have been properly complied.

10. A perusal of PW4's evidence would indicate that in his evidence, he categorically stated that Govinda Gounder executed a Will in favour of his grandsons namely Saravanan/ plaintiff and Mahendran and he (P.W.4) and another person had attested the Will.

11. In the cross-examination, he deposed that Govinda Gounder put his signature first in the Will and he signed the Will as first attesting witness. He also deposed that at the time of execution of the Will, Govinda Gounder's wife was also present and he signed as first attesting witness. Therefore, it is clear that the provisions of Section 63 of Indian Succession Act and Section 68 of Indian Evidence Act are substantially complied. The first appellate court rightly appreciated the evidence of PW4 and gave a finding that Exhibit A3, Will was properly proved. I do not find any legal error in the said conclusion reached by the first appellate court.

12. PW1, in his cross-examination, had stated that the value of the suit property could be Rs.2 lakhs. Relying on this truncated answer of PW1, the learned counsel for the appellants submitted that the District Munsif Court should not have entertained the suit and hence, the judgment and decree passed by the courts below is vitiated by error of jurisdiction. The suit was filed on 29.08.2013. PW1 was cross-examined on 01.10.2015 well after 2 years. In his



cross-examination, PW1 deposed that the value of the property as on date was Rs.2 lakhs. Therefore, he only admitted the value of the suit property was Rs.2 lakhs on the date of examination but not on the date of presentation of the suit.

There is no evidence available on record to suggest the value of the suit property was more than Rs.1 lakh on the date of presentation of the suit in the year 2013. Therefore, the truncated statement of PW1 in a cross-examination cannot help the appellants to contend that the value of the suit property was not properly mentioned in the plaint and the same was undervalued. Further, the valuation adopted by the plaintiff was not seriously disputed before the courts below by the appellants by giving evidence. In such circumstances, the second submission made by the learned counsel for the appellants is also not appealable to this court. I do not find any substantial question of law arising for consideration. Accordingly, the second appeal stands dismissed by affirming the judgment and decree passed in A.S.No.55/2017 dated 27.09.2019 on the file of Principal Subordinate Judge, Krishnagiri, Krishnagiri District reversing the judgment and decree in O.S.No.199/2013 dated 22.11.2016 on the file of District Munsif Court, Krishnagiri, Krishnagiri District. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

10-06-2026

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

1. The Principal Subordinate Judge, Krishnagiri, Krishnagiri District.
2. The District Munsif Court, Krishnagiri, Krishnagiri District.



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S.SOUNTHAR, J.

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