

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
23.03.2026PRONOUNCED ON
05.06.2026

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CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 311 of 2017
and Cross Objection No.97 of 2023
and CMP.Nos.20638 of 2019 & 11950 of 2017

1. J.Prabavathi (Died)

A1 Died. LR's of the A1 are already on record.
Memo recorded vide court order dated
17.06.2025 (Memo dated 16.6.2025 and USR
Number – 21048)

2. J.Ragunath

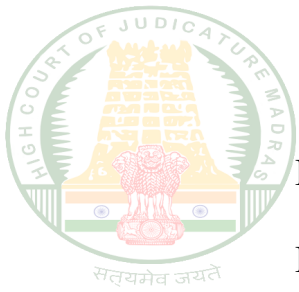
..Appellant(s)

Vs

1. Nirmala Rani
2. J.Balavenkatraman (Died)
3. Sri Valli
4. Bala Sanjana Lakshmi
5. Bala Lithish Kumar
(R2 Died, R3 to R5 are brought on record as
LR'S of the deceased R2 vide court order dated
17.06.2025 made in CMP.No's
10005,10011,10015 of 2025 in AS.311/2017)

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 Order XII Rule 1 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Additional District Judge -I, Coimbatore made in O.S.No.10 of 2011, dated 15.03.2017 in respect of the suit “A” scheduled property.



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AS No. 311 of 2



For Appellant(s):

Mr.B.Nedunchezhiyan

For Respondent(s):

M/s.P.Saravana Sowmiyan for R1
R2 - Died (steps Taken)
Mr.T.L.Thirumalaisamy for RR3 to 5

Cross Objection No.97 of 2023

J.Balavenkatraman (died)

2. Sri Valli

3. Bala Sanjana Lakshmi

4. Bala Lithish Kumar

... Cross appellant

(A1 Died, R2 to R4 are brought on record as LR'S of the deceased A1 vide court order dated 21.04.2025 made in CMP.No's 23920 of 2024 in Cross Obj.No.97 of 2023)

Vs

1.J.Prabavathi

2.J.Raghunath

3. NirmalaRani

... Respondents

PRAYER:- Cross Objection filed under Order XLI Rule 22 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Additional District Court -I, Coimbatore made in O.S.No.10 of 2011, dated 15.03.2017 in respect of the suit “A” scheduled property.

For Cross Appellant(s):

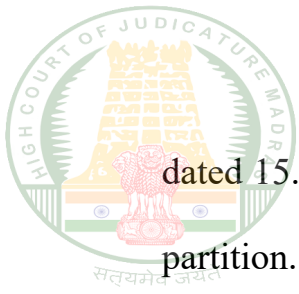
Mr.T.L.Thirumalaisamy

For Respondent(s):

Mr.B.Nedunchezhiyan for R2
M/s.P.Saravana Sowmiyan for R3
R1- Died

COMMON JUDGMENT

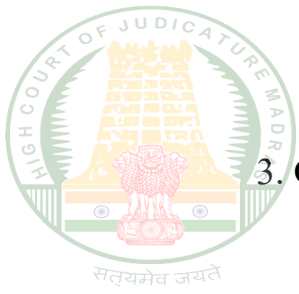
The present appeal had been filed challenging the decree and judgment



dated 15.03.2017 made in made in O.S.No.10 of 2011 with regard to the partial partition.

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2. A suit had been instituted by the first respondent herein seeking partition and separate portion of her 1/4th share in the suit scheduled properties on the premises that both Schedule A & B properties belonged to her father who had died intestate on 23.09.2009. The said suit was contested by the defendants claiming that schedule B property was never available for partition as it is imagination of the plaintiff that schedule B property belonging to the deceased Jayaram Chettiyar. The first defendant had initially filed a written statement contesting that the plaintiff was not entitled for shares in the suit property as she has been sufficiently compensated by the sridhana jewellerys and other gifts. The third defendant also supported the case of the mother. However, the second defendant had filed a written statement alleging that the deceased had not died intestate and had left behind the Will dated 06.11.2008. Apart from reiterating the claims made by the defendants 1 & 3 with regard to the benefits of sridhana given to the plaintiff. Thereafter, an additional written statement came to be filed by the first defendant claiming that the said Jayaram Chettirya had executed a Will on 23.03.2009 bequeathing the property absolutely in her favour and she had executed a settlement deed in favour of the third defendant by a registered settlement deed.



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3. On the aforesaid pleadings the following issues were framed:-

1. Whether the Will dated 06.11.2008 is genuine?

2. Whether the 'B' schedule property belongs to the plaintiff's father?

3. Whether the plaintiff is entitled to a share in the suit schedule properties?

4. To what other reliefs is the plaintiff entitled?

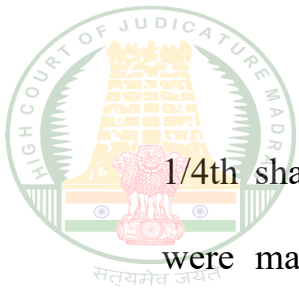
4. Additional Issues was framed on 04.06.2012

1. Whether the Will dated 20.03.2009 allegedly executed by Jayarama Chettiar is genuine?

2. Whether the settlement deed dated 18.03.2010 executed by the first defendant in favour of the third defendant is binding upon the plaintiff?

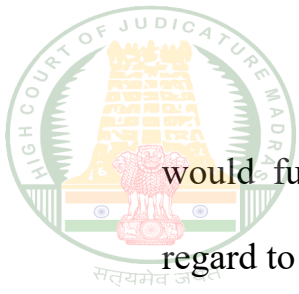
5. On the plaintiff's side, plaintiff has examined herself as PW1 and marked Ex. A1 to Ex. A8 on her side. On the Defendant side, DW1 to DW6 were examined and Ex.B.1 to Ex.B3 along with the Court Exhibits Ex.X1 and Ex.X2 were marked.

6. On consideration of the pleadings and the depositions recorded in the suit, the trial Court had come to a conclusion that the plaintiffs are entitled for a



1/4th share in the suit A-schedule property by disregarding the Wills which were marked as Exs.B2 & B3 as to have been executed in a suspicious circumstances and had not been in conformity with Section 63(c) of the Indian Succession Act respectively. As regards to the schedule B property, the Court has given a finding that the same has not been substantiated to be belonging to the deceased Jayaram Chettiyar. The defendants 1 & 3 have independently filed appeals assailing the findings with regards to Exs.B1 & B2 and the second defendant had filed a cross objection assailing the findings with regard to Ex.B3. The plaintiff who was denied the portion in schedule-B property had not filed any independent appeal.

7. The learned counsel for the appellants would submit that under Ex.B3, the deceased had executed a Will bequeathing the property entirely in favour of the first appellant. The attesor of the Will has been examined as DW2 and the notary Advocate who had also been examined as DW3. Both the DW 2 & 3 had categorically deposed that the Will had been executed in their presence by the attesor in his conscious state of mind and after knowing the contents of the Will. When that had been substantiated as provided under the Indian Succession Act as well as the Indian Evidence Act, the Court below ought to have accepted the said Will to have been executed validly and genuinely. On the other hand, the Court below without any substantial evidence had held that the Will had been executed in a suspicious circumstances on surmises and conjectures. He



would further submit that the reasonings attributed by the Trial Court with regard to the suspicious circumstances warrants interference by this Court.

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8. In this context, he had also relied upon the judgment of the Hon'ble Apex Court in the case of *Shivakumar & Ors., Vs Sharanabasappa & Ors.*, reported in *2021 (11) SCC 277* and in the case of *Kamala Menon Cochran Vs K.P.Ramachandra Menon & 6 Ors.*, reported in *2009 (4) LW 912*.

9. The learned counsel appearing for the Cross Objector would submit that have sustained the findings with regard to Exs.B1 & B2 and would assail the findings with regards to Ex.B3. He would submit that Ex.B3 which was a prior Will had been substantiated by the deposition of DW5 & DW6 who are the scribes and attestors respectively. The Trial Court had presumed that the Will had not been executed in the manner known to law. He would submit that when Ex.B2 the posterior Will came to be disproved under suspicious circumstances automatically Ex.B3 the earlier Will would have to be considered to be a genuine Will.

10. He would submit that it is not the case of either of the DW4, 5 & 6 that the Will had not been executed by the deceased testator. He would further submit that non-signing of the Will in all the pages cannot wipe away the solemn intention of the testator in bequeathing his properties. The Court by



application of law cannot draw to the intention of the testator which was his final decision to distribute his assets. Hence, he seeks indulgence of this Court granting a judgment and decree of partition.

11. Countering his arguments, learned counsel appearing on behalf of the first respondent in the Appeal suit and the third respondent in the Cross Objection sustaining the judgment and decree would submit that her father, Jayaram Chettiyar had died intestate and the defendants have attempted to create a sham and nominal document by making a claim that the deceased Jayaram Chettiyar had executed a Will. He would submit that according to the Cross Objector, a Will under Ex.B3 had been executed bequeathing the property absolutely in his favour with a life interest with the first appellant. On the contrary, the appellants have claimed that the deceased had executed a Will in the year 2009 which is three days before his death and that pursuant to the said Will, the first appellant has also executed a settlement deed in favor of the second appellant. He would submit that to put it in a nutshell, from the claims made by both the appellants and the Cross Objector, Jayaram Chettiyar had not died intestate but had executed a Will firstly under Ex.B3 and thereafter an another Will under Ex.B2.

12. He would submit that if Ex.B2 is a valid Will then Ex.B3 gets effaced. On the other hand, if Ex.B2 is found to be not a genuine Will then Ex



B3 would remain a valid Will. He would submit that the Trial Court had specifically given findings and reasonings that Ex.B2 had been executed under suspicious circumstances and that Ex.B3 had not been executed in the manner known to law. He would submit that the suspicious circumstances that had been found by the Trial Court had been made based upon various evidences particularly the depositions on the side of the defendants.

13. He would submit that both the appellants and the Cross Objectors have failed to substantiate the execution of the Will and therefore, they cannot be allowed to assail the judgement and decree. Hence, he seeks this Court to dismiss both the Appeal as well as the Cross objection.

14. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record and from the same, the following issues were raised for consideration:-

a) Whether the Court below was right in disregarding the Ex.B3 Will and the consequential settlement deed under Ex.B1?

b) Whether the Court below was right in disregarding the Ex.B3 Will?



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15. The first and third defendants have originally filed independent written statements where they have not even whispered about the testamentary succession either be it under Exs.B2 or B3. The second defendant had filed a written statement claiming a testamentary succession based upon Ex.B3 Will. Only thereafter, the first defendant had filed an additional written statement bringing out a fact that there was a testamentary succession under Ex.B2 bequeathing the property in favor of herself absolutely, upon which she has also executed Ex.B1, Settlement Deed in favor of the third defendant.

16. A reading of the additional written statement do not disclose any averment as to why such a pleading was not made in the written statement filed earlier. It is to be noted that the said fact was available within the knowledge of the first and the third defendants even at the time of filing their original written statement.

17. It is true that the execution of a Will could have been proved by examining the attestors/ scribe as provided under Section 68 of the Indian Evidence Act, but when suspicious circumstances had been brought about, it is the duty of the Court to look into the same. The Court below had considered the non-disclosure of the Will under the original written statement. Further, the Court below had also found out from the evidence of DW6, who was the



attesting witness under Ex.B3 that even after the death of the deceased, the first and second defendants had only spoken to him about Ex.B3 for filing the income tax returns.

18. Ex.X2 which had been marked through DW6 also discloses that the third defendant had filed his income tax returns for the assessment year 2009 only as per the bequeathal under Ex.B3 and not under Ex.B2. These circumstances would only drive this Court to come to a conclusion that the Will under Ex.B3 has not been genuinely executed, wherein the plaintiff, who is the daughter of the deceased Jayaram Chettiyar had been disinherited of her valuable right of succession.

19. In such a view, this Court do not find any infirmity or illegality in the Court discrediting Ex.B2 and consequently, Ex.B1.

ISSUE (2):-

20. The reasonings that has been attributed by the Court in disregarding Ex.B3 by a reason that the said Will is not in conformity with Section 63(c) of the Indian Succession Act. To substantiate Ex.B3, the second defendant had examined DW5, the scribe and DW6, an attesting witness to the Will. The Court had given a finding categorically finding that either DW5 nor DW6 had deposed that they have seen the executor signing the Will in their presence and that they



have signed the Will in the presence of the executor

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21. The Court had also recorded a specific finding that DW6 who was the attester had deposed that he had not seen the testator signing the Will as when he saw the Will it was already signed by the testator. Further, the Court below had also recorded a finding of fact that Ex.B3 was not a complete document by itself as the document was not signed properly by the executor in all pages in spite of it being prepared by DW5, who is an Advocate.

22. Section 63 of the Indian Succession Act reads thus under:-

“63. Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the



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direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

23. Clause (c) of Section 63 requires the Will to be attested by two or more witnesses and each of them ought to have witnessed the testator affixing his signature or a mark in the Will or such witnesses should have received from the testator a personal acknowledgement of such affixure of signature or mark and that each of the witnesses should have signed the Will in the presence of the testator.

24. This Court have also perused the deposition of DW5 & 6. DW5 had deposed that on the instruction of the testator, he had prepared the Will, but he is not a witness to the said Will and hence, his evidence could only corroborate the evidence of an attester. DW6 was the only attester who had been examined to substantiate the Will. But unfortunately, DW6 had specifically deposed that the Will was already signed when it was given to him for attestation and that the testator had informed him that he executed the Will. To substantiate the statement of DW6, no other witnesses were examined to prove that the testator had made such a statement to DW6 who was the attester of the Will.



25. Section 63 mandates that the Will to be executed by the attestor in the presence of the witnesses or each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person to be given by the executor to such witness. In the present case, the attestor who was examined as DW6 has not spoken about the execution of the Will in his presence. Even though he had spoken about the fact that the executor had informed that he had executed a Will, to substantiate such evidence no other independent evidence had been led in.

26. For the aforesaid reasons, this Court do not find any infirmity with the findings of the Trial Court in that regard and in fine both the Appeal Suit and the Cross Objection are dismissed. Consequently, connected miscellaneous petitions are also closed. However, there shall be no order as to costs.

05.06.2026

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

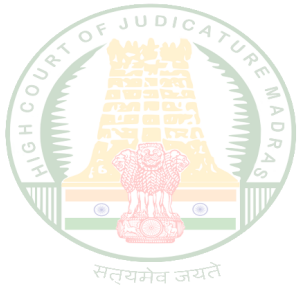


To

1. The Additional District Court -I, Coimbatore.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

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AS No. 311 of 2



K.KUMARESH BABU, J.

GBA

A Pre-delivery judgment made in
AS No. 311 of 2017
and Cross Objection No.97 of 2023
and CMP.Nos.20638 of 2019 & 11950 of 2017

05.06.2026