



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 07.04.2026**

**CORAM:**

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN  
AND  
THE HON'BLE MR.JUSTICE K.RAJASEKAR**

**A.S.No. 27 of 2019**

**And**

**A.S.No. 358 of 2014**

**A.S.No. 27 of 2019:**

1. Padmasini Sathi  
Wife of Late Semur P.Sathi
2. Ram P.Sathi  
son of Late Semur P.Sathi
3. Harini Sathi  
Daughter of Late Semur P.Sathi

(All represented by their power of Attorney Agent  
M.S.Sankameshwaran  
son of Late M.C.Somasundaram,  
997, T.V.S. Avenue,  
Anna Nagar Western Extension  
Chennai – 600 101.

... Appellants/Plaintiffs

**Vs**

1. Dr.S.P.Rajan  
Son of Late S.R.Perumal Gounder
2. S.P.Srinivasan (died)  
Son of Late S.R.Perumal Gounder



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3. S.Sivaprakasam  
son of S.P.Srinivasan
4. S.Dinesh Kumar  
son of S.P.Srinivasan
5. Gunavathi  
wife of S.P.Srinivasan
6. Shyamala Vijayanand  
Wife of Late S.Vijayanand
7. Minor Sachithan  
son of Late S.Vijayanand
8. Minor Kashvi  
Daughter of S.Vijayanand

[RR 3 to 8 already on records as LR's of the deceased 2<sup>nd</sup> respondent viz., (S.P.Srinivasan) vide Court order dated 30.08.2022 in A.S.No. 27 of 2019 (MDJ & SMJ)

(Respondent Nos. 7 & 8 represented by their mother and guardian Shyamala Vijayanand)

... Respondents/Defendants

**PRAYER:** This Appeal has been filed under Section 96 of the CPC against the Judgment and Decree dated 31.07.2013 made in O.S.No. 59 of 2007 on the file of II Additional District Court, Erode in so far as it went against the appellants.

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**A.S.No. 358 of 2014:**

1. S.P.Srinivasan (died)  
S/o. S.R.Perumal Gounder
2. S.Sivaprakasam



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S/o. S.P.Srinivasan

3. S.Dineshkumar  
S/o. S.P.Srinivasan

4. Gunavathi  
W/o. S.P.Srinivasan

5. Shyamala Vijayanand  
W/o. Vijayanand

6. Minor Sachidhan  
S/o. Vijayanand

7. Minor Kashvi  
D/o. Vijayanand

Appellants 6 and 7 represented by their  
mother Shyamala Vijayanand

... Defendants 2 to 8/Appellants

**Vs.**

1. Padmasini Sathi  
Wife of Late Semur P.Sathi

2. Ram P.Sathi  
son of Late Semur P.Sathi

3. Harini Sathi  
Daughter of Late Semur P.Sathi ... Plaintiffs/Respondents

4. S.P.Rajan ... 1<sup>st</sup> Defendant/4<sup>th</sup> Respondent

(Respondents 1 to 3 represented by their power of Attorney Agent  
M.S.Sankameshwaran  
son of Late M.C.Somasundaram,  
997, T.V.S. Avenue,  
Anna Nagar Western Extension  
Chennai – 600 101).



**PRAYER:** This Appeal has been filed under Section 96 of the CPC against the Judgment and Decree dated 31.07.2013 made in O.S.No. 59 of 2007 on the file of II Additional District Court, Erode whereby allowing the suit in O.S.No. 59 of 2007 on the terms that 1/4<sup>th</sup> of the A-schedule property and 1/3<sup>rd</sup> of B, C and D schedule properties were decreed in favour of the respondents herein.

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For Appellants in  
A.S.No. 27 of 2019 : Mr.G.Masilamani  
Senior Counsel  
and Mr.V.P.Senkuttuvel  
Senior Counsel  
for K.R.Nishanth &  
U.Bharanidharan

For RR 3 to 8 in  
A.S.No. 27 of 2019 : Mr.T.P.Manoharan  
Senior Advocate  
for Mr.M.Guruprasad

R-1 Notice in notice

R2-Died

For Appellants in  
A.S.No. 358 of 2014 : Mr.T.P.Manoharan  
Senior Advocate  
for Mr.M.Guruprasad

1<sup>st</sup> Appellant - Died

For RR 1 to 3 in  
A.S.No. 358 of 2014 : Mr.G.Masilamani  
Senior Counsel  
and Mr.V.P.Senkuttuvel  
Senior Counsel  
for K.R.Nishanth &  
U.Bharanidharan

R-4 Given up

### **COMMON JUDGEMENT**



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The plaintiffs in O.S.No. 59 of 2007 on the file of the II Additional District Court at Erode aggrieved by the Judgment and Decree dated 31.07.2013 are the appellants herein.

2. The suit in O.S.No. 59 of 2007 had been filed by the plaintiffs Padmasini Sathi and her two children Ram P.Sathi and Harini Sathi against Dr.S.P.Rajan, who is the elder brother of the late husband Semur P.Sathi of the first plaintiff and against S.P.Srinivasan, another brother and S.Sivaprakasam and S.Dinesh Kumar, who are both sons of S.P.Srinivasan and Gunavathi, the wife of S.P.Srinivasan and also against Shyamala Vijayanand, Sachithan and Kashvi, who are minors and children of Syamala Vijayanand, who are the legal heirs of another son of S.P.Srinivasan, Vijayanand who died pending the suit, seeking partition and separate possession of the properties described as A, B and C schedule to the plaint by dividing the said properties into three equal shares and to allot one such share to the plaintiffs and also to divide the cash, jewellery and other articles as described in the D schedule to the plaint again into three equal share and allot one such share to the plaintiffs and to direct the defendants to pay mense profits of Rs.4,50,000/- for three years prior to the filing of the suit



and future mesne profits at the rate of Rs.1,50,000/- per annum or any other sum till date of delivery of possession to the plaintiffs and for consequential reliefs of injunction and rendering of accounts relating to the administration of the properties and for costs of the suit.

3. Even before proceeding further with the averments in the plaint, it would only be appropriate to set out the relationship among the parties.

4. The first defendant S.P.Rajan, the second defendant S.P.Srinivasan and Semur P.Sathi, the late husband of the first plaintiff, were the three sons of S.Perumal Gounder and Pavayammal. It is the case that earlier the properties were actually owned by Ramasamy Gounder, the father of S.Perumal Gounder. It had been contended that Ramasamy Gounder had inherited the properties at Periyasemur Village in Erode Taluk and District. The properties as described in 'A' schedule to the plaint are primarily agricultural properties but with close proximity to Erode Town. There are 14 items of property measuring totally 26.96 acres. There are also two residential house and buildings in the said property. It had been contended by the plaintiffs that these lands are fertile lands, yielding substantial income



to the family. They are included in the Lower Bhavani Project Irrigation scheme. They also have great potential to develop housing and commercial sites.

5. It had been stated that from and out of the income derived from 'A' schedule properties, Perumal Gounder had purchased several properties described in 'B' schedule to the plaint. There are three items mentioned in 'B' schedule to the plaint. The first item is a residential plot measuring 2963 sq.ft., of land at Surampatti Village in Erode Taluk. The second item is land and building in Old S.No. 129/B, New Survey No.19/2 at Brahmana Peria Agraharam Village, Erode Taluk and District. The third item of property is agricultural land measuring about 60 cents in R.S.No. 60/4 and measuring 50 cents out of a larger area of 0.38 Hectares in R.S.No. 60/5 at Brahmana Peria Agraharam Village, Erode Taluk and District.

6. It had also been contended that quite apart from using the income to purchase the properties, Perumal Gounder had also started several business establishments described in 'C' schedule to the plaint. In 'C' schedule to the plaint, there are three items, namely, M/s. S.B.S. Hi-Tech Tex Mills at Door No.3, Chinnasemur, Ellapalayam Road, Erode and M/s. S.B.S.



Leather Industry, again in the same address and M/s. S.Leather Tanning Industry also in the same address.

7. It has been pointed out by the learned Senior Counsel for the second to eighth respondents that item Nos.1 and 2 in 'C' schedule property had been established by the second defendant and by the sixth, seventh and eighth defendants respectively. It had been further contended that item No.3 is a trading concern run by the third defendant. It is also to be pointed out that these business establishments are situated at item No.14 in 'A' schedule property.

8. It is also contended that Perumal Gounder left behind liquid cash and cash balance in bank and also jewellery which have been described in 'D' schedule to the plaint. It had also been contended that in 'A' schedule property, there are two houses which had been constructed by Perumal Gounder. These are the properties for which partition and separate possession had been sought by the plaintiffs in the suit.

9. It is the case of the plaintiffs that the late husband of the first plaintiff, S.P.Semur P.Sathi, died in an accident in USA on 07.01.1997. He was at that time survived by the first plaintiff and by the second and third



plaintiffs. It had been contended that soon thereafter, two Wills were said to have been executed by late Perumal Gounder on 02.05.1997.

**10.** It is the case of the plaintiffs that the said wills had not been executed when Perumal Gounder was in sound state of mind. It was contended that he had been deeply affected by the death of his son and it was therefore improbable that the Will should have been written in the terms in which they had been written disinheriting the family of his deceased son. It is the further case of the plaintiffs that the Wills should not be rejected by the Court, on the ground that the Wills had been procured particularly by the second defendant in the suit. It should also be noted that Perumal Gounder had also purchased item No.1 in 'B' schedule properties by sale deed dated 18.06.1977. He had executed a lease deed dated 16.05.1997 in favour of his three grand sons, 27 acres of cultivatable lands for 10 years on annual rent. He had also orally sold, Item No. 3 of 'B' schedule property to one Sundar @ Sundararaj on 09.08.2000 but no document is available on that particular transaction.

**11.** The immediate cause to filing the suit was the forwarding of a partition deed signed by the first and second defendants and forwarded to the plaintiffs herein dated 05.01.2004 as a proposed partition deed. The



plaintiffs did not agree to the terms thereof, since towards their share, a sum of Rs.1,00,000/- alone had been allotted. They had therefore not signed the deed. They also came to know that subsequent to the death of Perumal Gounder, on 09.08.2006, the second item of 'B' schedule property was settled in favour of Gunavathi, the fifth defendant in the suit / husband of S.P.Srinivasan, the second defendant. Contending that they were denied of their lawful share, the suit had been filed seeking partition and separate possession as stated above.

**12.** The first defendant did not participate in the judicial proceedings. He did not file any written statement.

**13.** The second defendant S.P.Srinivasan, the elder brother of the late husband of the first plaintiff filed written statement. It is to be noted that among the three sons of Perumal Gounder, the first son and the third son had both gone over to the United States of America for education and for further employment. It was only the second defendant/second son, who stayed back at Erode and could be considered to be in effective possession of all the suit schedule properties.

**14.** In his written statement, the second defendant denied and



disputed the contention that Perumal Gounder died intestate. He pointed out that Perumal Gounder had executed two separate Wills both on 02.05.1997. By the first Will, he had bequeathed his undivided 1/4<sup>th</sup> share in 'A' schedule property in favour of the grand sons of the second defendant. Under the second Will also dated 02.05.1997, he bequeathed the 'B' schedule property to the second defendant. It was also contended that both the Wills were registered documents. The second defendant further contended that the 'A' schedule properties were the self acquired properties of Ramasamy Gounder, the father of Perumal Gounder. It was stated that he had purchased the same under various sale deeds ranging from 1903 to 1934 and had purchased them out of his own hard earned money. It was further contended, there was no joint family nucleus prior to him.

**15.** It had been further contended that Ramasamy Gounder had executed a registered Will on 13.01.1965 bequeathing his properties in favour of his son Perumal Gounder and his three grand sons, namely, the late husband of the plaintiffs and also the first and second defendants. Ramasamy Gounder died in the year 1969. It had been therefore stated that on his death, his son Perumal Gounder and his three grand sons inherited 'A' schedule in equal undivided share of 1/4<sup>th</sup> each. It had been further stated



that the 1/4<sup>th</sup> share in 'A' schedule property which had fallen to the share of the late husband of the first plaintiff was always in his exclusive possession.

He enjoyed the same letting out to tenants. It was also contended that the Wills of Perumal Gounder executed on 02.05.1997 were both acted upon by the legatees under the Will.

**16.** It was further contended that the 'B' schedule properties were the self acquired and separate properties of Perumal Gounder. He had purchased the second item of 'B' schedule property under a registered sale deed dated 12.04.1956 much prior to the Will executed by Ramasamy Gounder on 13.01.1965. It was further contended that the first item of 'B' schedule property was purchased by Perumal Gounder by sale deed dated 18.06.1977 for valuable consideration. He had also similarly purchased the third item of 'B' schedule property in his name. It was contended that for this purchase, the mother of the late husband of the first plaintiff Pavayammal had also contributed by selling her properties.

**17.** It was contended that Perumal Gounder was a Village Munsif and was also running a ration shop and quite well versed with purchase and sale of properties and there was a continuous flow of income enabling him to



purchase the properties by his own efforts in his name.

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**18.** It was also contended that the second defendant had sold the first item of 'B' schedule property to one Kasi Viswanathan under a registered sale deed dated 09.03.2007 for valuable consideration and the purchaser had also taken possession of the property. It was also stated that by a registered settlement deed dated 09.08.2006, the second item of 'B' schedule property had been settled in favour of the fifth defendant Gunavathi, his wife. It had been stated that Perumal Gounder himself had sold the third item of 'B' schedule property by oral sale to one Sundar @ Sundararaj and had received the entire consideration, but the sale deed was not executed or registered.

**19.** With respect to the other items, namely, 'C' schedule properties, it had been contended that the factories and the trading concern in 'C' schedule had been started by the second defendant and by his sons and grand sons and they were in exclusive possession of the same. It had been contended that they had obtained loans to commence leather business and therefore, the said businesses are not available for partition and they are not liable to render accounts relating to the said businesses. With respect to the 'D' schedule property, it had been contended that special description had not been given



and fanciful figures had been given by the plaintiffs and the properties are not available for partition.

**20.** Stating as above, the second defendant contended that the suit should be dismissed.

**21.** With respect to the partition deed which had been forwarded to the plaintiffs, it had been stated that it had been forwarded in good faith and more particularly the plaintiffs had no intention to come back to settle in this country and therefore, to consolidate the properties of their father, the said partition deed had been prepared and signed by the first and second defendants and forwarded to the plaintiffs. The second defendant also denied that there were talks for settlement or settlement.

**22.** A Reply statement had been filed by the plaintiffs once again reiterating their contentions as stated in the plaint. They disputed the statement made that Perumal Gounder was in a sound state of mind when he executed the Wills. They put the two Wills to strict proof. They also denied that Ramasamy Gounder had executed a Will. It was stated that the



contention that Perumal Gounder had left behind cash of just Rs.18,07,524/- was not correct and it was stated that substantial amount of cash and jewels had been screened away from being available for partition. They disputed the encumbrances made over the three items of 'B' schedule property and stated that the said properties are also available for partition. In effect, they reiterated that they were entitled 1/3<sup>rd</sup> in the suit schedule properties.

**23.** On the basis of the pleadings, the learned Trial Judge had framed the following issues:-

*“1. Whether the plaintiffs are entitled for 1/3<sup>rd</sup> share in 'A' 'B' 'C' and 'D' schedule properties?;*

*2. Whether the two Wills executed by Perumal Gounder on 02.05.1997 are true and valid documents?;*

*3. Whether the plaintiffs are entitled for the relief against the defendants to submit accounts?;*

*4. Whether the plaintiffs are entitled for past and future mense profits?;*

*5. Whether the cause of action for filing the suit is true?; and*



6. *To what other reliefs the parties are entitled to?"*

**24.** During trial, the power of attorney agent of the plaintiffs was examined as PW-1 and another witness was examined as PW-2. The plaintiffs marked Exs. A-1 to A-3. The second defendant was examined as DW-1 and the defendants also examined five other witnesses as DW-2 to DW-6. The defendants marked Exs. B-1 to B-84.

**25.** On the basis of the evidence and the documents produced, the learned Trial Judge was of the opinion that the Will dated 13.01.1965 indicated that the properties were the self acquired properties of Ramasamy Gounder and that under the said Will, he had bequeathed 1/4<sup>th</sup> undivided share in 'A' schedule properties to his son Perumal Gounder and had bequeathed an equal 1/4<sup>th</sup> undivided share each to his three grandsons.

**26.** The learned Trial Judge was of the opinion that the two Wills which had been marked as Ex. B-26 and B-27 said to have been executed by Perumal Gounder had not been proved in manner known to law. This would indicate that the 'B' schedule properties were available for partition and



separate possession and had therefore granted 1/3<sup>rd</sup> undivided share in the 'B' 'C' and 'D' schedule properties and an undivided 1/4<sup>th</sup> share in 'A' schedule property. Challenging the limiting of the share to the extent of 1/4<sup>th</sup> share in 'A' schedule property, the plaintiffs have filed A.S.No. 27 of 2019 and challenging the rejection of the Wills, the second to eighth defendants have filed A.S.No. 358 of 2014.

**27.** Since both Appeals arise out of the same Judgment and Decree, a common Judgment is rendered.

**28.** Heard arguments advanced by Mr.T.P.Manoharan, learned Senior counsel for Mr.M.Guruprasad, learned counsel for the appellants in A.S.No. 358 of 2014 and advanced by Mr.G.Masilamani, learned Senior Counsel for the appellants and Mr. V.P.Senkuttuvel, learned Senior Counsel for the appellants in A.S.No. 27 of 2019.

**29.** It is the contention of Mr.T.P.Manoharan, learned Senior Counsel that the Wills dated 02.05.1997 under Exs. B-26 and B-27 had been tested during the course of trial and that the attesting witness had also been examined during the course of trial. The learned Senior Counsel contended



that the appellants had examined DW-3 Subramaniam, who was one of the attesting witness and DW-4 Velliayangiri to speak about the execution of the said Wills.

**30.** With respect to 'A' schedule property, the learned Senior Counsel pointed out that the said properties were the self acquired properties of Ramasamy Gounder and he had executed a Will dated 13.01.1965 which had been marked as Ex.B-14. Under the said Will, Ramasamy Gounder had bequeathed the shares to his son Perumal Gounder and to his three grand sons the first and second defendants and the late husband of the first plaintiff. It was contended that no dispute had been raised over the execution of the said Will. On the death of Ramasamy Gounder in the year 1969, the Will came into effect. The 'A' schedule was divisible into four equal shares with one share being allotted to Perumal Gounder and one share each to the three sons. The learned Senior Counsel contended that Perumal Gounder had executed a Will on 02.05.1997 bequeathing his 1/4<sup>th</sup> share to his grandsons / sons of the second defendant. The learned counsel contended that this Will also had been proved in manner known to law. The plaintiffs will therefore be entitled only to an undivided 1/4<sup>th</sup> share in the 'A' schedule property in accordance with the original bequeath under the Will



dated 13.01.1965 of Ramasamy Gounder in their capacity as legal heirs of Semur P.Sathi.

**31.** With respect to the 'B' schedule properties, the learned Senior Counsel pointed out that these properties had been dealt with by Perumal Gounder under the Will dated 02.05.1997 marked Ex.B-27 which was also a registered document. Under this Will, the 'B' schedule properties were bequeathed to the second defendant. The learned Senior Counsel then took the Court through the two Wills. He contended that S.Perumal Gounder had given reasons why property was bequeathed to the second defendant alone. He had very categorically stated that other two sons, namely, the first defendant and the late husband of the first plaintiff were settled in the United States of America and earning money. He had also stated that it was only the second defendant, who was residing in Erode and looking after him. The learned Senior Counsel contended that the Wills have been proved in manner known to law. He argued that the Trial Court had come to a wrong conclusion in rejecting the two Wills. The learned Senior Counsel contended that the Wills having been proved in manner known to law should have been taken into consideration and the plaintiffs should not have been granted any share in 'B' schedule properties and the plaintiffs should be



entitled only to an undivided 1/4<sup>th</sup> share in 'A' schedule properties.

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**32.** With respect to the 'C' schedule properties, the learned Senior Counsel contended that the first and second items were manufacturing units started by the second defendant and by his family members with loans obtained and being run on a day-to-day basis by them. He contended that there no input had been provided by the plaintiffs towards the running of the said businesses. With respect to the third item of 'C' schedule property, it was contended that it was a trading concern and it was being run only by the family members of the second defendant. The learned Senior Counsel contended that the plaintiffs were not entitled for any share in the 'C' schedule properties.

**33.** Similarly with respect to 'D' schedule properties, it had been contended that a very vague description had been given and the plaintiffs are not entitled to any share since the property had not been properly described in the schedule to the plaint.

**34.** The learned Senior Counsel therefore contended that the decree granting partition and separate possession of 'B' 'C' and 'D' schedule property



should be set aside by this Court and claimed that an undivided 1/4<sup>th</sup> share could be granted to the plaintiffs in the 'A' schedule property.

**35.** Mr.G.Masilamani, learned Senior Counsel for the appellants in A.S.No. 27 of 2019 very seriously disputed the said contentions. The learned Senior Counsel contended that 'A' schedule properties were specific properties and though they were termed as agricultural properties, they abetted Erode town. It was contended that the properties are extremely valuable and the plaintiffs had been denied even the right to be in possession of the said properties. The learned Senior Counsel pointed out that the first and second defendants had forwarded a proposed partition deed dated 05.01.2004 signed by them to the plaintiffs calling upon the first plaintiff to appended her signature. This document was marked as Ex. A-1. The learned Senior Counsel stated that in the said document, the plaintiffs had been allotted a paltry sum of Rs.1,00,000/- alone towards their share. He then pointed out that 'A' schedule properties were substantial in area nearly about 26 acres and expressed dismay on the paltry amount allotted to the plaintiffs.

**36.** The learned Senior Counsel further widened the scope of



arguments by stating that the properties at the hands of Ramasamy Gounder were ancestral properties. The learned Senior Counsel further pointed out that Ramasamy Gounder had executed a registered Will under Ex.B-14 bequeathing the properties in favour of his son Perumal Gounder and his three grandsons. He also contended that once such a Will had been executed, the properties became the self acquired properties in the hands of each one of the four legatees.

**37.** The learned Senior Counsel then questioned the Wills marked under Ex. P-26 and P-27. He pointed out that the late husband of the first plaintiff died in a road accident in United States of America on 07.01.1977 leaving behind the first plaintiff, a young widow and two minor children. The learned Senior Counsel argued that in those circumstances, it was highly improbable that Perumal Gounder would have execute the two Wills immediately thereafter, within less than four months, on 02.05.1997 disinheriting the plaintiffs from his share in the 'A' schedule properties and also from the 'B' schedule properties. The learned Senior Counsel argued that this Court should visualise the agony which Perumal Gounder would have suffered on the death of his son in an accident in the United States of America and wondered as to how a widow and her two minor children



would have been disinherited from any share in the 'B' schedule and from his share in the 'A' schedule properties.

**38.** The learned Senior Counsel contended that the entire 'A' schedule properties had been in exclusive possession of the second defendant and of his family members. They had been enjoying the income which had been received from the 'A' schedule properties. He contended that from that income, the businesses described in the 'C' schedule properties had been started. The learned Senior Counsel contended that the profits earned under the said businesses must also be shared and accounts should be rendered by the second to eighth defendants.

**39.** The learned Senior Counsel further contended that it is also improbable to hold that the mother, Pavayammal did not have any jewels at all. The family were in financially very good circumstances and there could a lady in the house would certainly be having jewels. The learned Senior Counsel contended that the 'D' schedule properties were very much available for partition. He pointed out that the trial Court had granted partition and separate possession of 'B' 'C' and 'D' schedule properties and had correctly rejected the Wills said to have been executed by Perumal



Gounder. The learned Senior Counsel stated that the plaintiffs should be put in possession immediately and in this connection urged that the Court should also pass a Judgment on admission under Order 12 Rule 6 of the Code of Civil Procedure particularly taking note of the admission on the part of the respondents in A.S.No. 27 of 2019 that the appellants therein were entitled to a share in the 'A' schedule properties.

**40.** Mr.V.P.Senkuttuvel, learned Senior Counsel supplemented the arguments and urged that the Court should set aside the Wills marked as Ex.P-26 and Ex.P-27 and should decree the suit as prayed.

**41.** We have carefully considered the arguments advanced and perused the materials available on record.

**42.** Both the Appeals arise from O.S.No. 59 of 2007 a suit for partition and separate possession on the file of the II Additional District Court at Erode.

**43.** The points which arise for consideration are:

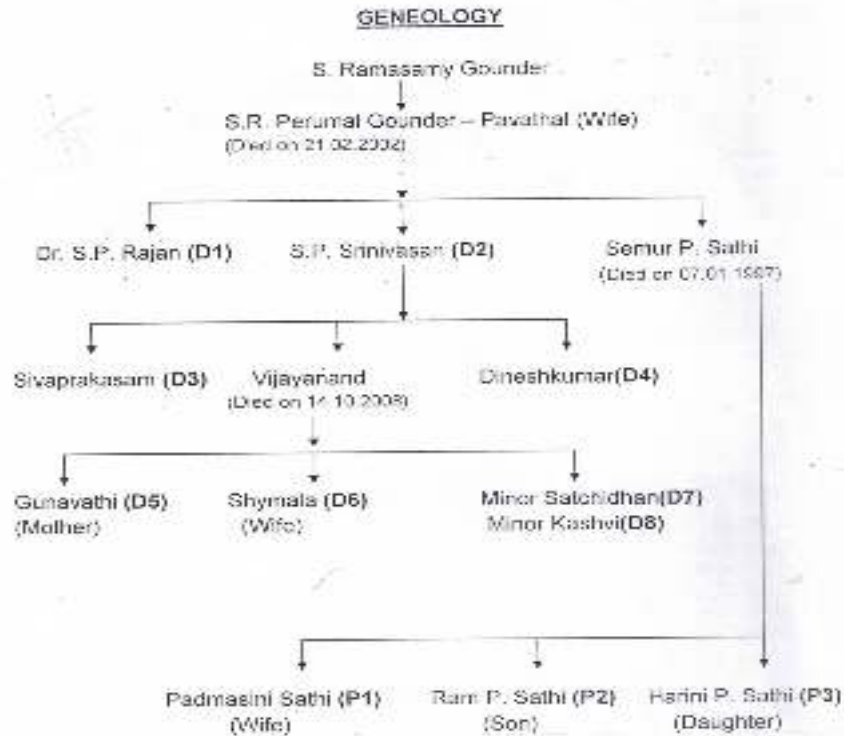
1) Whether the two Wills marked as Ex.P-26 and P-27 have been



proved in manner known to law? And, if so, what is the effect and if not, what is the effect?; and

2) Whether the plaintiffs are entitled to a share in 'C' and 'D' schedule properties?

**44.** The Geneology Table of the parties reflecting their relationships is as follows:-



45. There were four items described in the schedule to the suit as 'A' 'B' 'C' and 'D'.

46. 'A' schedule properties are agricultural lands measuring about 26



acres. 'B' schedule properties and three items of land and buildings, 'C' schedule properties were three business enterprises and 'D' schedule properties were liquid cash, gold and jewellery.

**47.** It is contended that the properties were ancestral properties purchased by S.Ramasamy Gounder. He had executed a registered Will on 13.01.1965. That Will is not in dispute. Under the said registered Will marked as Ex.B-14, he bequeathed an equal undivided 1/4<sup>th</sup> share in the 'A' schedule properties to his son Perumal Gounder and to his three grandsons, the first and second defendants and the late husband of the first plaintiff. There is no dispute about this bequeath. This would indicate that during the lifetime of Perumal Gounder, he and his three sons were each entitled to an undivided 1/4<sup>th</sup> share in the 'A' schedule property. It is also to be noted that the first defendant S.P.Rajan and the late husband of the first plaintiff, late Semur P.Sathi went over to United States of America for further education and settled there. The second defendant S.P.Srinivasan continued to reside in Erode with his father Perumal Gounder.

**48.** The third son, Semur P.Sathi unfortunately died in a road accident on 07.01.1997. Immediately thereafter on 02.05.1997 within about four



months Perumal Gounder is said to have executed a registered Will, marked as Ex.B-26 bequeathing his undivided 1/4<sup>th</sup> share in the 'A' schedule properties to his grandsons through the second defendant. This document has been strongly attacked by the learned Senior Counsel on behalf of the plaintiffs/appellants in A.S.No. 27 of 2019. It had been contended that it was improbable that Perumal Gounder would have disinherited the young widow of his son and the two grand children from his share in the 'A' schedule properties.

**49.** It is to be noted that Perumal Gounder during his lifetime had purchased item No.1 of 'B' schedule property on 18.06.1977 which sale deed had been marked as Ex.B-22 and had earlier purchased item No. 2 of 'B' schedule property by a sale deed dated 12.04.1956 which document was marked as Ex.B-21.

**50.** It is to be noted that on the same day on 02.05.1997 when Ex.B-26 Will had been executed and Perumal Gounder also executed another Will which had been marked as Ex.B-27 and which had also been registered, bequeathing the 'B' schedule properties to his second son /the second defendant/ S.P.Srinivasan. This Will also had been questioned and



attacked by the learned Senior Counsel for the plaintiffs/appellants in A.S.No. 27 of 2019 by again pointing out the improbability of disinheriting the young widow and her two minor children of his third son.

**51.** The learned Senior Counsel argued that one of the attesting witness was said to have been a driver and therefore he would be only a compliant witness to the Wills. The other witness was an employee of the document writer. The learned Senior Counsel contended that the evidence of the said two witness very clearly revealed that they had been tutored and therefore urged that this Court should reject the evidence and should hold that the two Wills had not been executed when Perumal Gounder was in a sound state of mind and should also declare that the said Wills had been executed at the instance of the second defendant.

**52.** Placing strong reliance on the covenants in the Will, Mr.T.P.Manoharan, learned Senior Counsel argued that sufficient reasons had been given regarding the manner in which the properties had been bequeathed and why his undivided /14<sup>th</sup> share in the 'A' schedule properties had not been bequeathed to the late husband of the first plaintiff. The testator had very clearly stated that it was only the second defendant, who



was taking care of him and that his other two sons had shifted to America. It was also noted that the second defendant had grandsons who were all looking after him. Since they were permanently in India and in Erode, he was desirous to settling the properties in their favour for their future. Similarly in the other Will marked as Ex.P-27 and also executed on the same date on 02.05.1997, which had been executed with respect to the 'B' schedule properties Perumal Gounder had also given the very same reasons. The two Wills had been attested by DW-3 and DW-4. The learned Senior Counsel therefore contended that the Wills cannot be rejected merely because the late husband of the first plaintiff had been disinherited.

**53.** We had examined the evidence tendered by DW-3 and DW-4.

**54.** Section 63(c) of the Indian Succession Act 1925 is as follows:-

***“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) .....

(b) .....

(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 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. ”*

**55. Section 68 of Indian Evidence Act / Section 69 of BNSS 2023**

is as follows:-

***“68. Proof of execution of document required by law to be attested.***

*If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the*



*purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence : [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.] ”*

**56.** It is requisite that any Will should be attested by two persons and they should have seen the testator signing the Will and they should also sign the Will in the presence of the testator and under his authority. Out of the two attesting witnesses, it is sufficient if one was present at the time when the testator signed. Further to prove the Will, out of the two attesting witnesses, atleast one attesting witness must be examined.

**57.** The attesting witness in the instant case, deposed about the execution of the Will and stated that the testator signed the Will in his presence. It should be noted that both Ex. B-26 and B-27 are registered documents. The registration might give a presumption regarding genuinity,



but still a Will must be proved in manner known to law.

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**58.** In this case, DW-3 and DW-4 the two attesting witnesses have both examined and also cross examined. It is not required that the attesting witness should have any special designation. It should also be understood that in a Will, individuals would be called upon to sign as attesting witnesses with confidence that they would later depose in Court when called upon to tender evidence in a Court of law regarding the circumstances surrounding the execution of the Will.

**59.** In the instant case, the two attesting witness are a driver and an employee of the document writer. The driver was called upon to tender evidence as DW-3. The other attesting witness had also deposed as DW-4. They had both spoken about the execution of the Will. It is also to be noted that even if there are minor contradictions, unless they go to the root, touching upon the mental capacity of the testator, the evidence cannot be rejected. The witnesses spoke about the testator voluntarily signing the Will. Additionally, in the instant case, the Wills had also been presented before the Sub Registrar Office. A presumption arises that the Sub Registrar also discharged his official duty by asking the testator about his knowledge of the contents of the Wills. The fact is that the Wills had been executed within four months from the date of death of the late husband of the first plaintiff. It



however emanated during the arguments that the plaintiffs had not brought back the dead body of the late husband of the first plaintiff back to India.

This is a relevant fact for Perumal Gounder to believe hold that there would not be any possibility of them ever coming back to this Country and therefore bequeathing the properties to his son in India.

**60.** We also note that DW-3 and DW-4 had both spoken extensively about the mental capacity of the testator to the Will. They also spoke about his voluntariness in executing the Will. This voluntariness had not been taken into consideration by the Trial Court. They also spoke about the manner in which the Wills had been signed and executed by the testator and also about their individual attestations. These are relevant factors which should be considered while examining the proof of a Will.

**61.** The observations of the learned Trial Judge that it is not known whether the signatures had been obtained in the office of the Sub Registrar or outside the office are irrelevant. The fact that the testator signed alone is a relevant fact. The fact that the signature of the testator was witnessed by the attesting witness alone is a relevant fact. It could be argued that the testator was in an agitated state of mind owing to death of a son in an accident but that is not reflected in the Wills. He had given necessary and



adequate reasons as to why he was bequeathing the properties as he so desired. He had mentioned the reasons in the Will. We find that there are no suspicious circumstances surrounding the execution of the Will. The finding of the Trial Court necessarily have to be set aside and is interfered with by us.

**62.** We uphold the validity of the execution of the Wills and affirm that Perumal Gounder had executed the Wills in a sound state of mind. We hold that the plaintiffs would be entitled to 1/4<sup>th</sup> share in 'A' schedule property.

**63.** With respect to 'B' schedule properties, though it is contended that Perumal Gounder did not have the sources to purchase the properties, the documents stand in his name. Item No.2 of 'B' schedule property had been purchased on 12.04.1956 much prior to the death of his father Ramasamy Gounder. This fact is very relevant. If it had been purchased from and out of the ancestral nucleus, then Ramasamy Gounder would also have inherited a share over the said property but had consciously not included that property in his Will under Ex.B-14 dated 13.01.1965.

**64.** It is also to be noted that Perumal Gounder had purchased the first



item of 'B' schedule property under Ex.B-22 dated 18.06.1977. It is on evidence that he was a Village Munsif and was also running a ration shop.

The property had been purchased for a sum of Rs.7,000/-. The fact that he was running a ration shop was disputed but the fact that he was a Village Munisf is admitted by the appellants in A.S.No. 27 of 2019. We would therefore uphold Ex. B-26 and B-27 Wills executed by Perumal Gounder. This would indicate that the plaintiffs are not entitled to any share in the 'B' schedule properties.

**65.** With respect to 'C' schedule items, it is evident that they had been commenced and are run only by the family members of the second defendant. They had also obtained loan for the commencement of the said businesses. There is no document produced to show that the plaintiffs had contributed any share towards the purchase of any machinery or any other item of the said industries. It is also to be noted that Perumal Gounder had also not contributed for the commencement or running of the said businesses. We therefore hold that the 'C' schedule properties are businesses of the second to eighth defendants. However, the said businesses are now situated in item No.14 of 'A' schedule property. Since we have held that the plaintiffs are entitled to as undivided 1/4<sup>th</sup> share in the 'A' schedule properties



at the time of passing of the final decree, the equity of the shares must be worked out.

**66.** With respect to 'D' schedule property, it is on evidence that a sum of Rs.18,07,524/- is available and admitted to be available in the bank account of Perumal gounder.

**67.** Mr.G.Masilamani, learned Senior Counsel argued that the plaintiffs are entitled to an undivided 1/3<sup>rd</sup> share in the said amount. He further argued that even with knowledge that the plaintiffs are entitled to an undivided 1/3<sup>rd</sup> share in the said amount, the defendants in the suit have not come forward to voluntarily hand over the said amount to the plaintiffs and had denied the plaintiffs a share in that particular amount right from the death of Perumal Gounder. He therefore very strongly insisted that interest should be granted on the said amount payable by the defendants to the plaintiffs. We agree with the said contention.

**68.** We hold that in the sum of Rs.18,07,524/-, the plaintiffs are entitled to 1/3<sup>rd</sup> share and are further entitled to interest at the rate of 12% p.a., from the date of institution of the suit till date of payment.



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**69.** Accordingly, the Judgment and Decree of the Trial Court is modified as follows:-

(i) 'A' schedule property: The plaintiffs are entitled to an undivided 1/4<sup>th</sup> share;

(ii) 'B' and 'C' schedule property: the plaintiffs are not entitled to any share;

(iii) 'D' schedule property: the plaintiffs are entitled to 1/3<sup>rd</sup> share out of a sum of Rs.18,07,524/- together with interest at 12% p.a., from the date of the plaint till date of payment.

**70.** Both the Appeals are disposed of accordingly.

**71.** We direct the Registry to prepare the decree in the aforesaid terms within a period of 8 weeks from this date. No order as to costs.

(C.V.K.,J.) (K.R.S.,J.)  
07-04-2026



Index: Yes / No  
Speaking / Non-Speaking order  
vsg

To

II Additional District Court, Erode

**C.V.KARTHIKEYAN, J.**  
**And**  
**K.RAJASEKAR, J.**

vsg

**A.S.No. 27 of 2019**  
**And**  
**A.S.No. 358 of 2014**



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07.04.2026