



A.S(MD)No.154 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.10.2025

Pronounced on : 06.01.2026

CORAM

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

**A.S(MD)No.154 of 2013  
and  
M.P(MD)Nos.2 to 4 of 2013**

Karthikeyan  
S/o.Late.Gurusamy Nadar

... Appellant/Plaintiff

Vs.

Gurusamy (Died)

Santhakumari,  
W/o.Ramasamy

...Respondent/Defendant

**PRAYER :-** This Appeal Suit is filed under Section 96 of CPC., to allow the appeal suit with costs by setting aside the judgment and decree in O.S.No.203 of 2012 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur, dated 12.12.2012.

For Appellant : Mr.P.Saravanan  
for Mr.A.Sivaji

For Respondent : Mr.M.Ashok Kumar



A.S(MD)No.154 of 2013

## JUDGMENT

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This Appeal is directed against the judgment and decree, dated 12.12.2012 passed in O.S.No.203 of 2012 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur.

2. The appellant is the plaintiff and the respondent is the 2<sup>nd</sup> defendant in O.S.No.203 of 2012 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur. The appellant/plaintiff filed the suit for partition of allotment of  $\frac{1}{2}$  share in the suit properties.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

### **4. The brief facts are as below:**

(a) **The case of the plaintiff:-** The plaintiff and the 2<sup>nd</sup> defendant are the son and daughter of the 1<sup>st</sup> defendant/Gurusamy Nadar (since died). The suit properties are ancestral properties of the plaintiff and the defendants. They were under joint possession and no partition took place between them. The plaintiff went to his father, 1<sup>st</sup> defendant and demanded partition of the suit



A.S(MD)No.154 of 2013

properties. The 1<sup>st</sup> defendant was not willing for partition and gave out that he had executed two registered Wills, dated 13.02.2004, in favour of the plaintiff and the 2<sup>nd</sup> defendant. As per Will, the 1<sup>st</sup> defendant bequeathed the suit 1<sup>st</sup> and 2<sup>nd</sup> schedule properties in favour of the plaintiff and the suit 3<sup>rd</sup> and 4<sup>th</sup> schedule properties in favour of the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant specifically mentioned in the Will that the suit properties are ancestral properties. Hence, he was estopped from executing any Will as he had only a limited share over the properties. Hence, the plaintiff filed a suit seeking for ½ share. After filing of the suit, the 1<sup>st</sup> defendant died on 22.12.2010.

**(b) The case of the defendants:-** It is true that the suit properties are ancestral properties of the plaintiff and the 2<sup>nd</sup> defendant, who is the sister of the plaintiff. Their father executed two registered Wills on 13.02.2004 in respect of suit properties, thereby, the plaintiff is entitled to items 1 and 2 of the suit properties and the 2<sup>nd</sup> defendant is entitled to items 3 and 4 of the suit properties. The plaintiff had knowledge of Will on the date of execution since the plaintiff and the 2<sup>nd</sup> defendant are attestors to the Will and they have signed the Will. Their father died on 22.12.2010 and he had not cancelled the Will or executed any subsequent Will. Hence, the Will came into force. After that, the



A.S(MD)No.154 of 2013

plaintiff has been in possession of suit items 1 and 2 and the 2<sup>nd</sup> defendant has been in possession of suit items 3 and 4. Only to harass the 2<sup>nd</sup> defendant, the plaintiff has filed the suit, hence, the suit may be dismissed.

5. The trial Court framed the following issues upon the pleadings of both parties.

*(1) Whether the plaintiff is entitled to 1/2 share in the suit properties, as the suit properties are ancestral properties?*

*(2) Whether the parties have to enjoy the properties as per Will, dated 13.02.2004, as contended by the 2nd defendant and the plaintiff is not entitled 1/2 share in the suit properties?*

*(3) Whether the Will, dated 13.02.2004, is proved as per law?*

*(4) To what other relief the plaintiff is entitled to?*

6. Before the trial Court, during trial, the plaintiff was examined himself as P.W.1 and marked the Will as Ex.A.1. On the defendants' side, the 2<sup>nd</sup> defendant was examined as D.W.1 and no document was marked.



A.S(MD)No.154 of 2013

WEB COPY

7. On appreciation of oral and documentary evidences adduced on either side and also considering the argument of both side, the trial Court has passed judgment on 12.12.2012 decreeing that the plaintiff is entitled items 1 and 2 and the 2<sup>nd</sup> defendant is entitled to item 3 and 4 of suit properties and thereby preliminary decree passed for allotment of the same on appointment of advocate/commissioner.

8. Challenging the judgment and decree of the trial Court, dated 12.12.2012, the plaintiff has moved this Court by way of this appeal.

9. The counsel for both the appellant and the respondent have argued by relying on respective citations.

10. From the pleadings of both parties and also from the arguments of both sides, the following points arise for consideration in this appeal.

*(1) Whether the deceased 1<sup>st</sup> defendant could execute Will in respect of suit properties as they were not claimed to be his exclusive properties?*

*(2) Whether the Ex.A.1 Will, dated 13.02.2004 is proved in the eye of law?*



A.S(MD)No.154 of 2013

*(3) Whether the appellant/plaintiff is entitled ½*

*share in the suit properties?*

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11. The learned counsel for the appellant/plaintiff has argued that the suit properties consist of four items and they are ancestral properties of his father, the 1<sup>st</sup> defendant herein. The 2<sup>nd</sup> defendant is the sister of the plaintiff. When the plaintiff demanded for partition from the 1<sup>st</sup> defendant, he stated that he executed two Wills, dated 13.02.2004, allotting 1<sup>st</sup> and 2<sup>nd</sup> items to the plaintiff and allotting 3<sup>rd</sup> and 4<sup>th</sup> items to the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant had no right to execute the Will, dated 13.02.2004, as he had a limited share over the suit properties, which are ancestral properties. Now the 1<sup>st</sup> defendant died. In the Will itself, it is mentioned that the suit properties are ancestral properties. Though the plaintiff marked a Will as Ex.A.1, the defendant has not marked her Will. Simply because Will is registered one it cannot be presumed to be valid one. The Will has to be proved as per law. The Wills have not been proved as required by Section 68 of the Indian Evidence Act since none of the attesting witnesses was examined. The scribe as well as other independent witnesses, was not examined to prove the same. But, the trial Court held that the Will was proved and as per the Will, the plaintiff is entitled to suit 1<sup>st</sup> and 2<sup>nd</sup> items of the suit properties and the suit 3<sup>rd</sup> and 4<sup>th</sup> items of the suit



A.S(MD)No.154 of 2013

properties to the 2<sup>nd</sup> defendant and passed a final decree for partition.

The trial Court erred in giving such findings and the judgment of the trial Court has to be set aside. The plaintiff and the defendant are entitled to equal 1/2 share in the suit properties and hence, the appeal suit may be allowed.

12. In support of his argument, the learned counsel for the plaintiff has relied on the following rulings:

**(1) Judgment of the Hon'ble Supreme Court in Ramesh Verma /v/ Lajesh Sexena case in Civil Appeal No.8665-8668/2010, dated 24.11.2016 (2017 (1) SCC 257), it is observed in paragraph No.13 as follows:**

*"13. A Will like any other document is to be proved in terms of the provisions of Section 68 of the Indian Succession Act and the Evidence Act. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the*



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A.S(MD)No.154 of 2013

*same even in a case where the opposite party does not specifically deny the execution of the document in the written statement."*

**(2) 2023 Live Law (SC) 862 Judgement of the Hon'ble Supreme Court in Dhani Ram (died) /v/ Shiv Singh case in Civil Appeal No.8172 of 2009, dated 06.10.2023, wherein it is held in paragraph No. 21 as follows:**

*21. It is well settled that mere registration would not sanctify a document by attaching to it an irrebuttable presumption of genuineness. The observations of this Court in **Rani Purnima Debi and another vs. Kumar Khagendra Narayan Deb and another**, which were referred to by the Himachal Pradesh High Court, are of guidance in this regard and are worthy of extraction. These observations read as under:*

*"There is no doubt that if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was*



A.S(MD)No.154 of 2013

*brought home to the testator that the document of which he was admitting execution was a Will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the fact that the Will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered Wills have not been acted upon ..... Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will; though the fact that there has been registration would be an important circumstance in favour of the Will being genuine if the evidence as to registration establishes that the testator admitted the execution of the Will after knowing that it was a Will the execution of which he was admitting.”*



A.S(MD)No.154 of 2013

WEB COPY

**(3) Judgment of the High Court of Madras in M.Gagan Bothra & Ors. /v/ Balamanian case in C.R.P(MD)No.2294 of 2025, dated 10.10.2025**  
wherein it is held in paragraph No.23 as,

*“23. It is well-settled that the mere production of a document without its admission and marking as an exhibit, does not make it part of evidentiary record. An unmarked document has no evidentiary value and cannot be relied upon. Courts cannot look into documents that are neither proved nor exhibited, reliance thereon would amount to adjudication without legal evidence.”*

13. Per contra, the learned counsel for the respondent/defendant has argued that the plaintiff has marked Will as EX.A.1. There is no coercion or undue influence in the execution of Will. The plaintiff and the defendant signed vice versa in the Wills. So, the plaintiff has knowledge about the Will and admitted the Will, hence, the Will is valid in the eye of law. So, admitted facts need not be proved and relied on the ruling reported in **CDJ 2014 MHC 2668 in Thangamani vs. Ganesan case in S.A(MD)No.136 of 2010, dated 23.01.2014.**



A.S(MD)No.154 of 2013

WEB COPY

14. The learned counsel for the respondent/defendant further argued that the Wills were executed on 13.12.2004, thereafter, the plaintiff kept mum for six years, and the plaintiff has not challenged the Wills. The 1<sup>st</sup> defendant had executed the entire properties to his son and daughter as the 1<sup>st</sup> defendant was empowered as per Section 30 of the Hindu Succession Act, though he had 1/3 share. The plaintiff, being the son, has not looked after his father, but his father was looked after by his daughter, 2<sup>nd</sup> defendant herein. Now, the plaintiff has filed the suit in order to harass his sister, the 2<sup>nd</sup> defendant, considering that the value of the properties of the 2<sup>nd</sup> defendant has increased. Moreover, the plaintiff filed the suit against the father when he was alive and also when succession was not opened. Further, the plaintiff has not specifically pleaded any suspicious circumstances surrounding the Will and so, Section 68 of the Act would not attract to the facts of this case. Therefore, the findings of the trial Court are reasoned and they do not require to be interfered by way of this appeal. The appeal may be dismissed.

15. In reply, the plaintiff's counsel vehemently replied that the



A.S(MD)No.154 of 2013

1<sup>st</sup> defendant has no right to execute the Will regarding ancestral properties when the plaintiff and the 2<sup>nd</sup> defendant were born to them.

**16. Points 1 and 2:**

I have carefully considered the arguments of both sides and the rulings relied on either side along with the material records of the case. It is not disputed that the suit properties are ancestral properties of the 1<sup>st</sup> defendant. It is also not in dispute that the plaintiff is the son of the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant is the daughter of the 1<sup>st</sup> defendant. There are no other children to him except the plaintiff and the 2<sup>nd</sup> defendant. As per the Hindu Succession Act 2005, the daughter is also a coparcener to the ancestral property. When the son and the daughter are born, the father has no right to execute any Will in respect of the entire ancestral property, since the son and daughter acquire equal interest in the ancestral property by birth. This legal aspect has been confirmed by the Hon'ble Supreme Court in **Vineeta Sharma /vs/ Rakesh Sharma case** reported in **2020**. Therefore, there is an embargo to the father, 1<sup>st</sup> defendant herein, to execute the Will as he had no exclusive right over ancestral property in its entirety.



A.S(MD)No.154 of 2013

WEB COPY

17. The next contention is in respect of Ex.A.1 – Will. It is admitted by both parties, the 1<sup>st</sup> defendant executed two registered Wills, dated 13.02.2004. It is settled law that the registered document in respect of immovable property can be taken as authenticate, at the same time, any Will in respect of immovable property the said Will cannot be presumed to be valid until it is proved as per Sections 63 of the Succession Act and 68 of the Indian Evidence Act.

18. The Hon'ble Supreme Court in its judgment delivered in **Leela & Others /vs/ Murugananthan & Others** case in **Civil Appeal No.7578 of 2023** reported in **2023 INSC 1004** held as follows:

*"20. There can be no doubt with respect to the manner in which execution of a Will is to be proved. In the light of plethora of decisions including the decisions in **Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, through Lrs.)** 2 and in **Derek AC Lobo's case (supra)** this position is well settled that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act and Section 68 of the*



A.S(MD)No.154 of 2013

*Evidence Act. It is not the case of the appellant that the Will dated 06.04.1990 is a registered one.*

*21. Now, Section 63 of the Succession Act reads thus:-*

*“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 direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of 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.”*



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A.S(MD)No.154 of 2013

*22. Section 68 of the Evidence Act makes it clear that at least one attesting witness has to be examined to prove execution of a Will. It is true that in the case at hand DW2 was the attesting witness who was examined in Court. Therefore, the question is whether they had deposed to the effect that the Will in question was executed in accordance with sub-rules (a) to (c) thereunder.*

*23. The Trial Court rightly held that the propounder of the Will has to establish by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound disposing state of mind and that he understood the nature and effect of the dispositions and put his signature out of his own free Will.”*

19. In this case, no attestors to the Will have been examined by either side. In a suit for partition, both parties are deemed to be plaintiffs. Admittedly, except the plaintiff and the 2<sup>nd</sup> defendant, there are other attestors to the Will. Even though the Wills are registered one, they have to be proved either by the plaintiff or by 2<sup>nd</sup> defendant. But, the Will has not been proved since none of the attestors to the Will has been examined as contemplated



A.S(MD)No.154 of 2013

U/s. 68 of the Indian Evidence Act. Hence, the Will has not been proved as required by the provisions of Sections 63 of the Indian Succession Act and 68 of the Indian Evidence Act.

20. The argument of the 2<sup>nd</sup> defendant is that the plaintiff has not pleaded any suspicious circumstances of the Wills. This argument has no force, because the father executed the Will in respect of ancestral property in entirety. It is a settled proposition of law that mere registration of a Will does not automatically validate it. To validate the Will, the Will must be proved in accordance with the provisions of the Indian Succession Act and the Indian Evidence Act. The Hon'ble Supreme Court has repeatedly held that the Will has to be proved at least an examination of one of the attestors to the Will. In this case, no attestors to the Will examined. So, mere knowledge of the Will by the plaintiff would not establish that the Will is proved in eye of law, as contended by the defendant's side. In this case, the Will was not proved as required by Law. Therefore, in the absence of such proof, the trial Court erred in concluding that the Will is genuine and proved, thereby passed decree which is not valid in the eye of law. In the above facts and circumstances, therefore, this Court holds that the father/1<sup>st</sup> defendant had no right to execute the Wills



A.S(MD)No.154 of 2013

in respect of ancestral properties when he had son and daughter and also the Wills have not been proved and the Wills are not valid in the eye of law. Accordingly, points 1 and 2 are answered in favour of the appellant/plaintiff.

### **21. Point No.3**

The plaintiff claim  $\frac{1}{2}$  share in the suit properties. The suit properties are ancestral properties. The father of the plaintiff, the 1<sup>st</sup> defendant died. Hence, the plaintiff and the 2<sup>nd</sup> defendant are entitled to  $\frac{1}{2}$  share each in the suit properties. The allotment of the suit schedule properties by the trial Court on the basis of the Will is not correct.

22. As discussed in points 1 to 3, the trial Court has not properly appreciated the evidences and has not correctly passed the judgment and decree. For all these reasons, the judgment and decree of the trial Court is not sustainable in law and the same needs to be interfered by way of this appeal. Thus, the appeal succeeds.

23. In the result, this Appeal Suit is allowed. The judgment and decree, dated 12.12.2012 passed in O.S.No.203 of 2012 on the file of the learned



A.S(MD)No.154 of 2013

Principal District Judge, Virudhunagar District at Srivilliputtur are set aside.

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The plaintiff in O.S.No.203 of 2012 is entitled  $\frac{1}{2}$  share in the suit properties and accordingly preliminary decree for partition is passed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

**06.01.2026**

NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No  
VSD

To

- 1.The Principal District Judge,  
Virudhunagar District at Srivilliputtur
- 2.The Record Keeper,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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A.S(MD)No.154 of 2013

**P.VADAMALAI, J.**

VSD

**Pre-Delivery Judgment made in  
A.S(MD)No.154 of 2013  
and  
M.P(MD)Nos.2 to 4 of 2013**

**06.01.2026**