



A.S.(MD)No.35 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**A.S.(MD)No.35 of 2022
and
C.M.P.(MD)No.1517 of 2022**

1.Athayee

2.Manimaran

... Appellants

Vs.

1.Palaniyammal

2.Chandrasekar

3.Baskaran

4.Rajendran

5.Minor.Priya

... Respondents

(R5 is represented by her father and natural guardian / Rajendran)

(R5 later represented by Court guardian / J.Mahalakshmi).

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 22.09.2021 passed in O.S.No. 81 of 2017 on the file of the learned II Additional District Court, Tiruchirappalli.



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For Appellants : Mr.J.Barathan

For Respondents : Mr.Raguvaran Gopalan for R1 & R3

No appearance for R2

JUDGMENT

(By G.R.Swaminathan, J.)

The plaintiffs in O.S No.81 of 2017 on the file of the II Additional District Court, Tiruchirappallai are the appellants herein. They filed the said suit for partition of half share in suit “A” and “B” schedule properties, for separate possession and mesne profit.

2.The case of the appellants as set out in the plaint was as follows:-

(i)One Kondichettipatti Kali Gounder died leaving behind his son Natchimuthu. Natchimuthu married Kaliyammal and through the said wedlock, begot two sons namely, Natchimuthu (junior) and Muthusamy. The plaintiffs are the wife and son of Natchimuthu (junior). The defendants 1 to 3 are the wife and sons of Muthusamy. Both



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Natchimuthu (jr) and Muthusamy had passed away prior to the institution of the suit. The suit B schedule properties had been sold in favour of one Sasikala, wife of the fourth defendant on 17.09.2007 by Muthusamy and his sons (defendants 2 and 3). The said Sasikala had passed away and hence, her legal heirs namely the defendants 4 and 5 had been impleaded.

(ii) Natchimuthu (senior), Natchimuthu (junior) and Muthusamy entered into a partition on 29.12.1962 and divided the ancestral properties among them. The properties were divided into A, B and C schedules. A schedule was allotted to Natchimuthu (senior), B schedule was allotted to Natchimuthu (junior) and C schedule was allotted to Muthsamy. Natchimuthu (senior) had sold some of the items allotted to him in favour of one Arumugam vide sale deed dated 17.02.1988. Subsequently, he passed away intestate. The remaining unsold items of A schedule to the partition deed dated 29.12.1962 devolved in equal measure on his sons, Natchimuthu (junior) and Muthusamy. Natchimuthu (junior) and his brother / Muthusamy jointly purchased certain items of property vide sale deed dated 04.07.1976 along with three others. The said lands were plotted out. Subsequently, the items set out in suit B schedule were purchased by Natchimuthu (junior) and



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Muthusamy vide sale deed dated 15.03.1984 (Ex.A4). Natchimuthu (junior) died intestate on 02.11.1998. In April 2016, the plaintiffs approached Muthusamy for partitioning the suit A and B schedule properties. Muthusamy informed them that Natchimuthu (junior) had bequeathed the suit schedule properties in his favour vide registered Will dated 02.08.1994 and that based on the same, the suit B schedule properties were sold in favour of the wife of the fourth defendant vide sale deed dated 17.09.2007 and that the second plaintiff / Manimaran had attested the said sale deed after going through its contents. Thereafter, the plaintiffs applied for a certified copy of the Will dated 02.08.1994 and the sale deed dated 17.09.2007. The plaintiffs question the genuineness of the Will dated 02.08.1994. According to them, the said Will was not executed by Natchimuthu (junior). The signature and thumb impression attributed to Natchimuthu (junior) are not that of the alleged executant. The alleged execution of the Will is also surrounded by suspicious circumstances. Muthusamy, who was working as a teacher, had exercised undue influence on Natchimuthu (junior) and had engineered the execution of the Will. The second plaintiff had attested the sale deed dated 17.09.2007 without being aware of the contents of the said document. Muthusamy passed away on 24.02.2017 leaving behind the defendants 1 to 3 as his legal heirs. Since the defendants 1



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to 3 had already declined to partition the properties, the partition suit had to be instituted.

3.The third defendant filed a written statement and it was adopted by the defendants 1 and 2. The defendants admitted that partition took place among Natchimuthu (senior) and his sons on 29.12.1962. The character of the properties as coparcenary was denied. Natchimuthu (senior) sold some items of the properties allotted to him on 17.02.1988 in favour of one Arumugam. Natchimuthu (senior) passed away on 27.07.1991. His wife / Kaliyammal had predeceased him. The properties belonging to Natchimuthu (senior) devolved on his sons, namely, Natchimuthu (junior) and Muthusamy. Suit B schedule properties were purchased by Natchimuthu (junior) and Muthusamy vide sale deed dated 15.03.1984. It was not a joint family property. Natchimuthu (junior) had executed a registered Will dated 02.08.1994 bequeathing the suit schedule properties in favour of Muthusamy. The Will was duly executed, attested and registered in accordance with law. Following the demise of Natchimuthu (junior) on 02.11.1998, the Will had come into force. The suit B schedule properties were sold by Muthusamy and his sons / defendants 2 and 3 in favour of one Sasikala. The plaintiffs fully knew about the execution of the Will dated 02.08.1994. In the sale deed



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dated 17.09.2007, Manimaran, son of Natchimuthu (junior) had attested.

In the said sale deed, the title has been traced and there is a clear reference to the registered Will dated 02.08.1994 executed by Natchimuthu (junior). The plaintiffs are therefore estopped from challenging the sale deed. The defendants denied all the other plaint allegations.

4. Based on the rival pleadings, the Court below framed the following issues:-

“(a) Whether the Will dated 02.08.1994 is proved as genuine and valid and whether it will bind the plaintiffs?”

“(b) Whether the plaintiffs are bound by the sale deed dated 17.09.2007?”

“(c) Whether the suit schedule properties are in the possession and enjoyment of the plaintiffs?”

“(d) Whether the plaintiffs are entitled to the relief of partition as prayed for?”

(di)



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5.On the side of the plaintiffs, the second plaintiff examined himself as P.W.2 and marked Exs.A1 to A10. On the side of the defendants, the third defendant examined himself as DW.1. DW.2 and DW.3 were examined to prove the Will and Exs.B1 to B11 were marked. During the cross-examination of D.W.1, Exs.A9 and A10 were marked. Through D.W.3, three documents were marked. After a detailed consideration of the evidence on record, the trial Court dismissed the suit vide judgment and decree dated 22.09.2021. Challenging the same, this appeal has been filed.

6.The learned counsel for the appellants reiterated all the contentions set out in the grounds of appeal. He vehemently argued that Ex.A7 / Ex.B3 (Will) was not proved as per law. He pointed out that the certified copy marked by the plaintiffs and the original Will marked by the defendants do not go together. There are interlineations in the original. Both the attestors of the Will, namely, Rajamanickam and Kalyanasundram, had not been examined. There is nothing on record to show that Rajamanickam, one of the attestors of the Will, had passed away. His death certificate was not marked. The evidence adduced by the defendants did not meet the requirements of Section 69 of the Indian Evidence Act. The second plaintiff no doubt had attested Ex.B1 dated



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upon this Court to set aside the impugned judgment and grant relief as prayed for.

7.Per contra, the learned counsel for the respondents submitted that the impugned judgment is well-reasoned and that it does not call for interference.

8.The following points arise for determination:-

(1) Whether the suit Will / Ex.B3 was proved in accordance with law?

(2) Whether the sale deed dated 17.09.2007 / Ex.B1 executed by Muthusamy and the defendants 2 and 3 in favour of Sasikala (wife of the fourth defendant) and attested by the second plaintiff binds the plaintiffs?

(3) Whether the plaintiffs are entitled to the relief of partition as prayed for?

9.The suit Will (Ex.B3) was propounded by defendants 1 to 3. The burden to prove that it was duly executed lay on them. As per



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Section 63 of the Indian Succession Act, 1925, a Will has to be attested by two or more witnesses. As per Section 68 of the Indian Evidence Act, 1872, such a document which requires to be attested can be proved only by examining at least one attesting witness. Of course, the attesting witnesses must be alive and they should be subject to the process of the court and capable of giving evidence. If the attesting witnesses have passed away or could not be found, the propounder need not feel helpless. Section 69 of the Act provides a way out ***(Moturu Nalini Kanth Vs. Gainedi Kaliprasad (Dead, Through Lrs.) (2023 INSC 1004)***. It must be proved that the attestation of one attesting witness at least is in his handwriting and that the signature of the executant is in his handwriting. The suit Will was attested by two persons, namely, Rajamanickam and Kalyanasundaram. The counsel for the respondents submitted that witness summons were taken to the addresses of both these persons and that they were returned with the endorsement “died”. We verified the trial court records and found that this submission of the contesting respondents was right. The trial judge in his own handwriting had made an endorsement that the summons sent to the attestors were returned with the endorsement that they had died. We, are, therefore, satisfied that Section 69 of the Indian Evidence Act came into play.



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10.DW.2 is the son of Kalyanasundaram who was one of the attestors. Through DW.2, witness Ex.X2, Kalyanasundaram's pension payment order was marked. Ex.X3 was the death certificate of Kalyanasundaram. He had died on 27.09.2019. DW.2 confirmed and identified that the signature attributed to Kalyanasundaram in Ex.B3 Will was that of Thiru.Kalyanasundaram that is his father. Thus, one of the requirements of proving that the signature of the attestor was in his handwriting had been fulfilled by adducing the evidence of DW.2. The other requirement of proving that the signature of the testator was in his handwriting was met by examining DW.3 M.Eswaramoorthy. Eswaramoorthy testified that his father K.S.Muthusamy was jointly running a finance firm with K.N.Nachimuthu. He affirmed that he was acquainted with the handwriting and the signature of the testator. He specifically deposed that the signature found in all the pages in Ex.B3 Will dated 02.08.1994 was that of Thiru.K.N.Nachimuthu. His testimony could not be shaken during the cross examination. We hold that the suit Will had been duly proved by the propounders.

11.The plaintiffs have sought the relief of partition in respect of the "A" Schedule and "B" Schedule properties. "B" Schedule property had already been alienated by Muthusamy and his sons D2 and D3 vide sale



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deed dated 17.09.2007 (Ex.B1). It is not in dispute that the second plaintiff Manimaran had attested the said document. The learned counsel for the respondents contended that in view of the decisions rendered in ***Kandasamy Pillai v. Rangasamy Nainar (died) and ors [(1912) 23 MLJ 301]*** and ***Ramaswamy Gounder, Chinnasami Gounder alias Chinna Gounder Vs. Anantapadmanabha Iyer 1971 I MLJ 392 = 84-LW-176***, the said sale deed binds the plaintiffs. The learned counsel for the appellants thereupon pointed out that these decisions have been held to be not good law by the Division Bench of this Court in ***K.A.Selvanachi v. S.R.Sekar, (2003) 1 CTC 745***.

12.It has therefore become necessary for us to undertake a survey of the authorities and cull out the correct proposition of law. We may straightaway indicate that decisions relied on by counsel on either do not represent the exact position and that the correct position is somewhat nuanced.

13.In ***Kandasamy Pillai v. Rangasamy Nainar (died) and ors [(1912) 23 MLJ 301]***, it was opined as follows :

“6.I am also of opinion that having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a person who has



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or claims any interest in the property covered by the document must be treated prima facie as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him as against the obligee under the document. I therefore concur in the conclusion that the second appeal must be dismissed with costs.”

In **Narayana Aiyer v. Rama Aiyer (1915) 38 ILR Mad 396**, it was held as follows :

“...I see no sufficient reason to recede from the opinion I expressed in *Kandasami Pillai v. Rangasami Nainar* (1912) 23 M.L.J., 901, that a presumption is raised, when an adult man of full mental capacity attests a deed and when such a man has admittedly a tangible interest in the property affected by the deed, that his attestation has been taken as a proof of his consent to and knowledge of the correctness of the recitals in the deed and it lies upon the person, who contends that such an attestor did not know all the recitals in the deed and did not consent to the alienation made by the deed, to prove the contrary. I do not intend to lay down that the attestation of a casual witness who had then no interest in the property affected by the deed must estop him for all time and when he



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afterwards acquires an interest in the property affected by the deed.”

In ***Nayakkammal v. Munusamy Mudaliyar (1924) 20 L.W 222***, it was observed as follows :

“It is the commonest thing in this country for attestations to be obtained from persons having a possible interest in the property, with the object of binding them later on and I have rarely come across a case where a person having an interest present or contingent in the property has attested the deed without enquiring into its contents.”

14.In **Ramaswamy Gounder, Chinnasami Gounder v. Ananthapadmanabha Iyer, 1967 SCC OnLine Mad 269**, it was held as follows :

“The earliest of them is a decision of the Privy Council in *Vadrevu Ranganayakamma v. Vadrevu Bulli Ramaiya*(1), an appeal from a decision of the High Court of Madras. In that case, the Privy Council pointed out:



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“It is not always that a witness to a document knows what the contents of the document are, or how the parties have been described, but it frequently occurs in native documents that a man signs as a witness to show that he is acknowledging the instrument to be correct.”

In *Kandasami v. Nagalinga*(2) Sadasiva Ayyar, J. observed:

“I am also of opinion that having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a person who has, or claims, any interest in the property, covered by the document must be treated *prima facie* as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him as against the obligee under the document.”

In a subsequent decision, namely, *Narayana v. Rama*(3), the same learned Judge, after referring to the observation of the Privy Council already quoted, stated:

“I may respectfully add that, in my pretty long experience as a Judicial Officer, if the attester of the document has an existing interest in the property dealt with in the document, it has been always the case that this “attestation has been



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taken in order to bind him as to the correctness of the recitals therein”

The learned Judge Further pointed out:

“On the whole, I see no sufficient reason to recede from the opinion I expressed in *Kandasami Pillai v. Rangasami Nainar*(1) that a presumption is raised, when an adult man of full mental capacity attests a deed and when such a man has admittedly a tangible interest in the property affected by the deed, that his attestation has been taken as a proof of his consent to and knowledge of the correctness of the recitals in the deed and it lies upon the person, who contends that such an attester did not know all the recitals in the deed and did not consent to the allegation made by the deed, to prove the contrary.”

This observation of Sadasiva Ayyar, J. was followed in *Gurdyaldas v. Nathu*(2) In *Nayakammai v. Munnaswamy Mudaliar*(3). Kumaraswami Sastri, J. stated as follows:

“I have little doubt that both the defendant and his father were fully aware of the nature and contents of the documents, which they attested. It has no doubt been held that attestation does not *prima facie* import knowledge. In *Lakhpati v. Rambodh Singh*(4) it has been



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held that the question whether attestation should be held to imply assent is a question of fact and must be determined with reference to the circumstances of each case. As pointed out in *Gurudayaldas v. Nathu*(2), where a person, having a tangible interest in the property affected by a deed, attests that deed, his attestation should be taken as proof of his consent to and knowledge of the correctness of the recitals in the deed. Having regard to the circumstances that the reversioners in this case contested the right of Gnanasundarammal when she applied for letters of administration and subsequently executed a release in her favour, there can be little doubt that they must have enquired into and known the contents and seen the deeds, which they attested. It is the commonest thing in this country for attestations to be obtained from persons having a possible interest, in the property, with the object of binding them later on and I have rarely come across a case, where a person having an interest present or contingent in the property has attested the deed, without enquiring into its contents.”

Relying upon these Judgments, Mr. M.S. Venkatrama Ayyar argues that the fact that the plaintiff herein contends that Arunachala and Ramakrishna had a vested



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remainder in the property allotted to Muruga Pillai under the partition deed, and attested Ex. B.3, is significant as explained in these judgments and consequently acted as estoppel against them.

As against this, Mr. Rajagopala Ayyar, the learned council for the respondent contends that the attestation is only for the purpose of authenticating the signature of the executant, it does not go beyond, and consequently from mere attestation, no inference of estoppel with regard to the contents of the document can ever be drawn. For this purpose, the learned counsel relied on the decision of the Privy Council in *Nanda Lal Dhur Biswan v. Jagat Kishore Achayya Chowdhuri*(5) and invited my attention to the following panage:

“But attestation proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed nor affect him with notice of its provisions. It could, at the best, be used for the purpose of cross-examination, in order to extract from the witness evidence to show that he was, in fact aware of the character of the transaction effected by the document to which his attestation was affixed. If it had



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been quite impossible for either of the widows lawfully to dispose of any interest in the property, and it was shown that the witness knew the nature of the deed, more value might be given to his attestation, but by itself it would neither create estoppel nor imply consent.”

No doubt this decision lays down a general principle. But it does not take note of the practice said to be prevailing in this Presidency as disclosed by the Madras decisions referred to already. Mr. Rajagopala Ayyar then relied on a decision of the Privy Council in *Pandurang Krishnaji v. Markandeya Tukaram*(6), where the Privy Council stated as follows:

“Before their Lordships consider the circumstances in which that attestation took place, they think it is desirable to emphasize once more that attestation of a deed by itself estops a man from denying nothing whatever excepting that he has witnessed the execution by implantation, any knowledge of the contents of the document, and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course, “possible, as was pointed out by their Lordships in the case of *Banga Chandra Dhur Biawsa v. Jagat Kishore*



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Chowdhuri(1) that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document, but no such knowledge ought to be inferred from the mere fact of the attestation.”

The Privy Council further observed:

“If In fact there be a practice, as is suggested from the evidence, that when the consent of parties to transactions is required, it can be obtained by inducing them by one means or another, to attest a signature of the executing parties, the sooner that practice is discontinued the better it will be for the straightforward dealing essential in all business matters.”

The latter passage, no doubt, emphasizes the necessity to discourage any such practice. But certainly that does not negative the inference sought to be drawn by the Madras decisions, when, in fact, the practice is actually in existence.”

15.This decision of Justice Ismail was approved by the Hon’ble Division Bench in ***Jegannatham Pillai Vs. Kunjithapatham Pillai (AIR 1972 Mad 390)***. The Hon’ble Division Bench held as follows :



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“The principles governing estoppel by attestation and consent are clearly stated in page 1064 of Sirkar's Law of Evidence. 11th Edn. Volume 2. The entire case law on the subject has been reviewed by Ismail, J. in **Ramaswami Gounder v. Ananthapadmanabha Iyer, 84 MLW 176**. As pointed out by Kumaraswami Sastri, J. in **Nayakammal v. Munuswami Mudaliar, AIR 1924 Mad 819** it is commonest thing in this country for attestations to be obtained from persons having a possible interest in the property with the object of binding them later on. He has observed that he has rarely come across a case where a person having an interest or contingent in the property has attested the deed, without enquiring into its contents...”

16. There is yet another Division Bench decision in **Kanagavalli Ammal v. Ulaganatha Pillai (1977 TLNJ 174)** in which also estoppel by attestation was dealt with in the following terms :

“It is an accepted principle of law that mere attestation of a document would not by itself impute knowledge of the contents or the recitals therein. But this principle cannot be taken to be axiomatically true, for there are attestations and attestations and they vary in



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accordance with the circumstances and facts of each case. If in a given case the attestation by a person interested in the property which is dealt with under the challenged document attests it under circumstances and events which would impute knowledge of the recitals therein, then the said attestor having approbated the document and the transaction by such an active participation and involvement, cannot reprobate later to suit her or his convenience. This is one branch of the rule of estoppel. The decisions cited in 28 M.L.J. 565 P.C. and 43 I.A: 249 P.C. lay down the well known principle already referred to namely attestations to a deed is not by itself evidence that the attesting witness consented to the transaction effected by it. Ismail J (84 L.W. 176) had occasion to deal with the various decisions on this subject and held the view that attestation simpliciter would not operate as proof of his consent to and knowledge of the correctness of the recitals in the deed and if a person having a tangible interest in the property attests it and the surrounding circumstances are such as to raise a reasonable belief that his participation is not a formal affair but an involvement in the deal itself, then, he, after referring to



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the decisions of our Court as also the Privy Council decision cited above, held that the attesor would be bound by his earlier act and he cannot question the resultant transaction. Though we have expressed on another occasion that such attestations should not only be not taken as prima facie representation by the person signing the deed that he was accepting the deed as such and the recitals therein, yet we have also made it clear that in a given situation such participation by the attesor may be equable to his knowing the transaction and participating in it and hence signing it.”

It is relevant to note that ***Jegannatham Pillai Vs. Kunjithapatham Pillai (AIR 1972 Mad 390)*** was not referred to in ***Kanagavalli Ammal***. There are various subsequent single Bench judgements including one by His Lordship Mr.Justice M.Srinivasan (as His Lordship then was) in ***K.Nagarathinam v. Rajammal (1987) 100 L.W. 363*** in which the approach of Justice Ismail was not followed. But the moot question is whether the Division Bench in ***K.A.Selvanachi v. Dr.S.R.Sekar 2003 (1) CTC 745*** was right in holding that ***Kandasamy v. Nagalinga, Narayana v. Rama, Nayakkammal v. Munnaswamy Mudaliar*** and ***Ramnasamy Gounder v. Anantapadmanabha Iyer*** did not lay down



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the correct law. With utmost respect and great humility, we hold that the Division Bench in **K.A.Selvanachi** could not have done so. This is for more than one reason. The Division Bench in **K.A.Selvanachi** was under the impression that the decision in **Kandasamy v. Nagalinga, 1912 I.L.R. 36 Mad.564** and **Narayana v. Rama** were Single Bench decisions (by *Sathasiva Aiyar, J.*). It is not so. Both were Division Bench decisions. The first was rendered by a Division Bench comprising Justice Sundara Aiyar and Justice Sathasiva Aiyar. The second one was again by a Division Bench comprising Justices Sankaran Nair and Sathasiva Aiyar. All the antecedent decisions were considered at length by Justice Ismail in **Ramaswamy Gounder, Chinnasami Gounder v. Ananthapadmanabha Iyer, 1967 SCC OnLine Mad 269**. The Hon'ble Division Bench in **Jegannatham Pillai Vs. Kunjithapatham Pillai (AIR 1972 Mad 390)** after noting that the entire case-law on the subject had been reviewed by Ismail J endorsed the opinion of Kumaraswamy Sastri, J. in **Nayakkammal**. Thus, when a Division Bench had consciously approved the Single Bench decisions of Justice Ismail and Justice Kumaraswamy Sastri, a contra view could not have been taken in **K.A.Selvanachi**. This is all the more so because Ismail, J had specifically referred to a Full Bench decision and observed that the practice prevailing in Madras Presidency was not taken note of by the



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Privy Council. When the Division Bench had approved this, a subsequent Division Bench could have only referred the matter to a larger Bench. It could not have on its own held that the previous decisions have not laid down the correct law.

17.We did a bit of research on our own. Question arises whether Judges can do independent research. If they come across a case law not cited on either side, the matter may have to be re-posted for further arguments or clarification. But if the situation did not admit of any doubt, there is no need to list the matter for fresh hearing.

18.We came across a ruling of the Hon'ble Supreme Court in ***Badri Narayanan v. Rajabagyathammal, (1996) 7 SCC 101***. It is a short judgment and it is extracted as under :

“1.The only question raised in this special leave is that since the predecessor-in-interest of the respondents attested the sale deed, Ex. A-2 in favour of the petitioners' predecessor-in-interest it must be held that he did so with the knowledge of the contents of Ex. A-2. Ex. A-2 undoubtedly recites that purchasers thereunder shall have a right of way through the respondents' land. Reliance for



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the above proposition is placed on (Kandasami Pillai v. Nagalinga Pillai [ILR (1912) 36 Mad 564 : 16 IC 30]) where the learned Judge stated the principle thus:

“I am also of opinion that having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a person who has, or claims, any interest in the property, covered by the document must be treated prima facie as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him as against the obligee under the document.”

2.It is also brought to our notice that in a subsequent case, the same learned Judge made the following further observations:

“I may respectfully say that, in my pretty long experience as a Judicial Officer, if the attesor of the document has an existing interest in the property dealt with in the document, it has been always the case that this ‘attestation’ has been taken in order to bind him as to the correctness of the recitals therein.”

The learned Judge further pointed out:

“On the whole, I see no sufficient reason to recede from the opinion I expressed in Kandasami Pillai v. Rangaswami



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Nainar, that a presumption is raised, when an adult man of full mental capacity attests a deed and when such a man has admittedly a tangible interest in the property affected by the deed, that this attestation has been taken as a proof of his consent to and knowledge of the correctness of the recitals in the deed and it lies upon the person, who contends that such an attester did not know all the recitals in the deed and did not consent to the alienation made by the deed, to prove the contrary.”

3.It is stated by Mr Balakrishnan, the learned counsel for the petitioner that the said view has since been followed consistently in several decisions of the Madras High Court.

4.The observations of Sadasiva Ayyar, J. in Kandasami [ILR (1912) 36 Mad 564 : 16 IC 30] only say that in case of attestation by a person having interest in the subject-matter of the document of transfer must be deemed to have affirmed the contents of document, prima facie. In other words, the rule stated is not a presumption of law nor an irrebuttable presumption. It is more in the nature of presumption of fact, whose efficacy and evidentiary value depends upon the facts of the given case.

5.In the judgment under appeal, the learned Judge refers to another decision in Parasuram Mudaliar v. Devaki Bai



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[1979 TLNJ 326] which seems to accord with the view expressed by us herein.

6.Coming to the facts of this case, the predecessor-in-interest of the respondents was an illiterate person. He put his thumb impression as an attesor on Ex. A-2. In the circumstances, the learned Single Judge held that unless it is established that the recitals in the documents were read out and explained to the said person, he cannot be deemed to have assented to them. We cannot say that the learned Judge was not right in taking the said view in the circumstances of this case. We see no reasons to interfere in the matter. Dismissed.”

The decision of Justice Sathia Dev in ***Parasurama Mudaliar v. Devaki Bai (1979 TNLJ 326)*** referred to in the above decision holds as follows :

“The Learned Counsel for the appellant relies upon a decision of this Court in 1971 (1) MLJ 392 wherein the aspect of attestation has been considered. The extent to which attestation of a document will result in transfer of interest will depend upon the facts and circumstances of each case, and to what extent the practice has been applied in given circumstances of the matter. The contention of the counsel for the appellant that once the existence of the



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practice is made out in every case whenever person having tangible interest in immovable property attests, it must be construed that the attesor had given up his or her rights in the property is an extreme proposition, which would lead to dangerous consequences. As pointed out by the earlier decisions of this Court, the practice might have been in vogue. But it should now be realised that the documents are prepared not in the stereo typed forms by the document writer in the villages. Nowadays parties are interested in safeguarding their interests by introducing necessary clauses in documents. In this case, in Ex. A. 2 in the body of the document, a recital had been incorporated to the effect that three daughters of K. have rights in the property. If they have come forward to sign the documents as attestors, their signature could have been taken as parties to the document by adding another clause to the effect that they have joined in the deed for the purpose of giving up their rights in the property. If they can sign as attestors, equally they can sign as parties to the document to the limited extent based on inclusion of a necessary recital in the document. The decision of this Court have expressed anxiety in allowing this practice to continue and they have gone to the extent of saying that such a practice deserves to be abrogated and



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sooner it is decided, the better it will be for straight forward dealings. In this case the added factor is that one B one of the attestors had been examined as D.W. 2 and she has stated that she signed the document without being made aware of the contents of the documents and her claim had not not been satisfactorily dislodged in cross examination. When an attester had come to Court and had satisfied the Court that she had attested without knowing the contents of the document, I fail to see how the decision referred to by the Learned Counsel for the appellants can compel the Court to go by the inference, rather than by what has been established in this case...”

The facts obtaining in **Badri Narayanan** may be taken note. The attestor was an illiterate and he had merely affixed his thumb impression. There was nothing to show that the contents of the document were read over and explained to him. Since in **Badri Narayanan**, the early Madras view was held as not laying down a presumption of law nor an irrebuttable presumption. It is more in the nature of presumption of fact, whose efficacy and evidentiary value depends upon the facts of the given case. We, therefore, hold that courts are obliged to raise a presumption that when a person having tangible interest in a document attests the same, he knew its contents.



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But the weight of this presumption will depend upon the facts and circumstances of each case. But a presumption has to be raised nevertheless. It is for the attesor concerned or any person claiming under him to rebut the presumption. If as in Badri Narayanan, the attesor is an illiterate, the presumption would stand very easily rebutted.

19.The evidence on record clearly points to the fact that Manimaran must have had knowledge of the contents of Ex.B1 sale deed. In his testimony before the trial court, Manimaran had admitted that he was being called upon to sign as a witness only on account of the insistence of the buyer. Manimaran would claim that Muthusamy had represented to him that he was selling only his share in the property. If that be so, there was no need for the buyer to insist that Manimaran also should witness the document. We perused the original document. It is not a lengthy one. It is not in manuscript (handwritten). But it has been neatly typed and is in Tamil. In Page 2 and Page 3, while tracing the title, it has been mentioned that K.N.Nachimuthu Gounder had bequeathed his half share in favour of K.Muthusamy through a Will dated 02.08.1994 and that it was registered as Document No.52 of 1994. This could not have escaped the attention of



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Manimaran. Manimaran signed not only as the first attestor but also signed in the reverse of the second page to prove the identity of the vendors. Manimaran signed in English. We, therefore, have no hesitation to conclude that Manimaran had full knowledge of the contents of the documents and thus estoppel by attestation would operate against him. The plaintiffs thus had no claim on Schedule B property that was sold to Sasikala by Muthusamy and his sons on the strength of the suit Will. Manimaran could not overcome or rebut the presumption raised against him.

20.Nachimuthu Jr executed the suit Will on 02.08.1994. He passed away only on 02.11.1998. It was a registered document. Section 60 of the Registration Act, 1908 is as follows :

“60. Certificate of registration.—(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

(2)Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the



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purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in section 59 have occurred as therein mentioned.”

The Hon'ble Supreme Court in ***Santosh Devi v. Sundar (2025 INSC 627)*** citing an earlier decision held that there is a presumption that a registered document is validly executed. As already mentioned, Nachimuthu Jr did not revoke his Will even though he died only four years later. The partition suit itself was filed by the legal heirs of Nachimuthu Jr only in 2017. The learned counsel for the appellant strongly contended that in the Will, there is no reference to the testator's wife and that this would be a suspicious circumstance vitiating the execution of Will. In this regard, he placed reliance on the decision reported in ***2025 SCC OnLine SC 1466 (Gurdial Singh (dead) through Lr v. Jagir Kaur (dead) and anr.*** In ***Gurdial Singh***, it was held that a circumstance would be suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. The learned counsel for the appellant argued that disinheriting the plaintiffs would definitely be a suspicious circumstance. We are not impressed with this contention. Under Ex.A2 partition deed,



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Nachimuthu Jr was allotted certain properties. This had devolved as such on the plaintiffs. If K.N.Muthusamy wanted to grab the entire estate of his brother, all the items would have been included. That has not been the case. That in the Will, the properties allotted to the testator under Ex.A2 had not been included indicates that the executant of the Will made the bequest on his own volition and that there was no undue influence on him. The Hon'ble Supreme Court in more than one case **(2020) 16 SCC 209 Dhanpat v. Sheo Ram** had observed that the whole idea behind execution of Will is to interfere with the normal line of succession. In some cases, the natural heirs would be either fully debarred or partially. In the case on hand, there has been a partial debarment. This cannot be taken as a suspicious circumstance. In **Gurdial Singh**, it was specifically observed that the non-mention of the testator's wife ought not to be examined in isolation but in the light of all attending circumstances of the case. In other words, a cumulative assessment of the attending circumstance is called for. What was bequeathed in favour of Muthusamy was only the unsold items in suit "A" schedule of the partition deed and some properties that were jointly purchased. It is seen that Nachimuthu Jr and brother Muthusamy were engaged in real estate transactions. We hold that the respondents have succeeded in proving the suit Will.



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21.Manimaran conceded that patta in respect of the B Schedule property had already been mutated in favour of Sasikala. It was earlier in the name of Muthusamy. The court below had given a definite finding that the suit properties including the B Schedule properties were never in the enjoyment and possession of the plaintiffs. Therefore, the plaintiffs should have been directed to pay the balance court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

22.The court below rightly dismissed the suit. We fully concur with the reasons assigned by the court below in answering the issues against the plaintiffs/appellants. There is no merit in this appeal. It stands dismissed. No costs. Connected miscellaneous petition is closed.

(G.R.S. J.,) & (R.P. J.,)

27.03.2026

NCC : Yes/No
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To:

The II Additional District Court,
Tiruchirappalli.

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The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
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G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

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