



A.S.(MD)Nos.251 of 2023 & 101 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.04.2026

CORAM

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

**A.S.(MD)No.251 of 2023
and
A.S.(MD)No.101 of 2026
and
C.M.P.(MD)No.13935 of 2023
and
C.M.P.(MD)No.2617 of 2026**

A.S.(MD)No.251 of 2023:-

M.Veeramani

... Appellant

Vs.

- 1.Bala Subramanian
Murugesan (Deceased)
- 2.K.Rajendiran (Died)
- 3.K.Nirmala
- 4.K.Saroja
- 5.M.Mallika
- 6.M.Raja
- 7.M.Ananthi
- 8.N.Nishanthi



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9.M.Manimekalai

10.M.Kamachi

11.M.Vasuki

12.Ganeshan,
Prop. Ganesh Cut Piece,
No.97, Periya Kadai Veethi,
Pattukottai Taluk,
Thanjavur District.

13.Sathiyamoorthy,
Prop. New Sunmathi Readymade,
No.96, Periya Kadai Veethi,
Pattukottai Taluk,
Thanjavur District.

14.Rajenthiran
Prop. Iron Shop,
No.96, Periya Kadai Veethi,
Pattukottai Taluk,
Thanjavur District.

15.M.Malathi

16.M.Mallika

17.Sulochana

18.Vignesh

19.Santhosh

... Respondents

(Respondents 17 to 19 are brought on record as LR's of the deceased 2nd respondent vide common order dated 10.03.2026 made in C.M.P.(MD) Nos.2993 and 2994 of 2026 in A.S.(MD)Nos.101 and 251 of 2023 respectively by GRSJ and RPJ).



A.S.(MD)Nos.251 of 2023 & 101 of 2026

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to allow this appeal by setting aside the judgment and decree dated 18.03.2019 made in O.S.No.38 of 2015 on the file of the III Additional District Court, Pattukottai, Tanjavur District.

For Appellant : Mr.A.N.Ramanathan

For Respondents : Mr.M.Suresh for R1
Ms.V.T.Vinitha for R3, R4, R17 to R19
Mr.P.Raguvaran Gopalan,
For Mr.D.R.Murugesan for R5 to R8
Mr.Arun Jayatram
For Mr.K.Mahendran for R9
Ms.C.Veenashree for R15 & R16
No appearance for R10, R11, R12 & R13

A.S.(MD)No.101 of 2026:-

1.M.Mallika

2.M.Raja

3.M.Ananthi

4.N.Nishanthi

... Appellant

Vs.

1.Bala Subramanian

Murugesan (Deceased)

2.K.Rajendiran (Died)

3.K.Nirmala

4.K.Saroja

5.M.Veeramani



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Thanjavur District.

12.M.Malathi

13.M.Mallika

14.Sulochana

15.Vignesh

16.Santhosh

... Respondents

(Respondents 14 to 16 are brought on record as LR's of the deceased 2nd respondent vide common order dated 10.03.2026 made in C.M.P.(MD) Nos.2993 and 2994 of 2026 in A.S.(MD)Nos.101 and 251 of 2023 respectively by GRSJ and RPJ).



A.S.(MD)Nos.251 of 2023 & 101 of 2026

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For Appellant : Mr.P.Raguvaran Gopalan,
For Mr.D.R.Murugesan

For Respondents : Mr.M.Suresh for R1
Ms.V.T.Vinitha for R3, R4, R14 to R16
Mr.A.N.Ramanathan for R5, R12 & R13
Mr.Arun Jayatram
For Mr.K.Mahendran for R6
Ms.S.Shanmuga Rajeswari for R9 & R10
No appearance for R7 & R8

COMMON JUDGMENT

(Judgment of the Court was delivered by G.R.Swaminathan, J.)

Both these appeals are directed against the judgment and decree dated 18.03.2019 made in O.S.No.38 of 2015 on the file of III Additional District Court, Thanjavur at Pattukkottai.

2.The suit was filed by one M.Balasubramanian claiming 1/3rd share in the suit schedule property. The suit schedule property comprises two items; one residential house and one shop. They belonged



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to one Mahalingam Pillai. Mahalingam Pillai got married to Yogambal and through the wedlock, four sons (Kandasamy, Murugesan, Kumaresan and Balasubramanian) and three daughters (Manimegalai, Kamachi and Vasuki) were born. Mahalingam Pillai passed away on 26.11.1979. During his lifetime, he had executed Will dated 07.11.1975 bequeathing the suit schedule items in favour of his wife and four sons. It was a registered document (Document No.2 of 1975) on the file of Sub Registrar Office, Pattukottai.

3.One of the daughters, namely Vasuki, filed a partition suit in O.S.No.133 of 1980 on the file of Sub Court, Pattukkottai. All her siblings including the mother were shown as defendants in the suit. The contesting defendants pleaded that since Mahalingam Pillai had executed a registered Will in their favour, the plaintiff will not get any share in the suit property. Since the contesting defendants had propounded the Will, burden lay on them to prove the same. In fact, an issue was also framed to that effect in the suit. The attestors of the Will were examined and the trial Court vide judgment and decree dated 28.11.1981 held that the Will executed by Mahalingam Pillai was true and genuine and dismissed the

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suit. Aggrieved by the same, Vasuki filed A.S.No.114 of 1982 before District Court, Thanjavur. The appellate Court confirmed the decision of the trial Court and dismissed the appeal on 03.02.1984.

4.Yogambal died intestate on 25.05.1998. One of the sons, namely Kumaresan had pre-deceased her on 08.04.1980 itself. Kumaresan was a bachelor when he died and his share devolved in full on his mother / Yogambal. Thus, Yogambal had 2/5th share in the suit property. Since Yogambal died intestate, her 2/5th share in the suit property devolved in equal measure on the three sons and three daughters. Since the property had not been divided, one of the sons, namely M.Balasubramanian filed O.S.No.38 of 2015.

5.The plaintiff examined himself as P.W.1 and marked Exs.A1 to A12. The second defendant examined himself as D.W1, the tenth defendant / Manimegalai was examined as D.W.2 and the ninth defendant /Veeramani was examined as D.W.3. On the side of the defendants, Ex.B1 to B4 were marked. Manimegalai, one of the daughters, did not



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file any written statement. She only filed her proof affidavit. She claimed 1/5th share in the suit property.

6.The Court below came to the conclusion that the Will dated 07.11.1975 executed by Mahalingam Pillai was not proved. It proceeded to hold that both Mahalingam Pillai and Yogaambal had died intestate and therefore, the surviving sons and daughters will have equal share in the suit items. Thus, each of the sons and each of the daughters were entitled to 1/6th share in the suit items. Aggrieved by the same, this appeal has been filed.

7.Heard the learned counsel on either side. During the pendency of the suit, the two sons of Mahalingam Pillai, namely Murugesan and Kandasamy had passed away and their legal heirs were brought on record. During the pendency of this appeal, the plaintiff / Balasubramanian had released his share in favour of Veeramani, S/o.Murugesan and to Raja and Vignesh, descendants of Kandasamy. An affidavit has been filed and it has also been taken on record.



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8. After hearing the learned counsel on either side and perusing the evidence on record, the point that arises for determination is “whether the Court below was justified in holding that the Will dated 07.11.1975 executed by Mahalingam Pillai was not proved.”

9. The Court below ought to have noticed that this was not the first round of litigation among the legal heirs of Mahalingam Pillai. One of the daughters, namely Vasuki had already filed a partition suit in O.S.No.135 of 1980 on the file of Sub Court, Pattukkottai. In the said suit, the Will dated 07.11.1975 was propounded. The Sub-Court, Pattukkottai had rendered a specific finding that the said Will had been proved in the manner known to law and on the basis of such a finding, the partition suit filed was also dismissed. This finding of the Court below was also duly confirmed by the appellate Court, ie., District Court, Thanjavur in A.S No.114 of 1982, dated 03.02.1984. In a contest among a set of parties, a Will needs to be proved only once. It need not be proved every time it comes up for consideration among them. All that the person relying on the Will needs to do in the subsequent round of litigation is to prove that the Will was already proved. This obligation



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cannot be stretched to mean that the Will has to be proved once again.

Proof that it was already proved is one thing, proving it again is another thing. We hasten to add that this is only on account of the application of the principle of res judicata. Even though the civil court had earlier decided the question as to the proof of the Will, it would not operate as a judgment in rem. But then, it would operate as res judicata among the parties to the present suit. The defendants in the present suit had marked the judgment and decree passed the trial Court as well as the appellate Court as Exs.B1 to B4. The Court below had completely omitted to take note of the same. The impugned judgment had totally ignored the execution of Will by Mahalingam Pillai and proceeded as if both Mahalingam Pillai and Yogambal died intestate. This was erroneous and we have no hesitation to set aside the impugned judgment and decree. Since Yogambal died intestate, her $\frac{2}{5}$ th will devolve in equal measure on the surviving three sons and three daughters. Since the sons had already $\frac{1}{5}$ th share each, each son would have got $\frac{4}{15}$ th share and each of the daughters would have got $\frac{1}{15}$ th share in the suit schedule properties. Balasubramaniam will get $\frac{4}{15}$ th share in the suit schedule items.



10. These appeals are allowed in the following terms:-

(i) M.Mallika, W/o.Late.Manoharan, M.Raja, M.Ananthi, N.Nishanthi, K.Nirmala, K.Saroja, R.Sulochana, R.Vignesh and R.Santhosh are entitled to each one share in $\frac{4}{15}$ th share of the suit schedule property.

(ii) M.Raja is entitled to an additional $\frac{1}{15}$ th share in the suit schedule properties on the basis of the share released by M.Balasubramanian / first respondent.

(iii) R.Vignesh is entitled to an additional $\frac{1}{15}$ th share in the suit schedule properties on the basis of the share released by M.Balasubramanian / first respondent.

(iv) M.Veeramani, M.Malathi and M.Mallika are entitled to each one share in $\frac{4}{15}$ th share of the suit schedule property.

(iv) M.Veeramani is entitled to an additional $\frac{2}{15}$ th share in the suit schedule properties on the basis of the share released by M.Balasubramanian / first respondent.

(v) The daughters of Mahalingam Pillai namely, M.Manimekalai, M.Kamachi and M.Vasuki are entitled to $\frac{1}{15}$ share each in the suit schedule property.



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No costs. Consequently, connected miscellaneous petitions are closed.

**(G.R.S. J.) & (R.P. J.)
08.04.2026**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

The III Additional District Court,
Pattukottai, Tanjavur District.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

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