



S.A.(MD)No.243 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	16.09.2025
Pronounced On	:	21.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD)No.243 of 2018
and
C.M.P.(MD).No.6612 of 2018

1.V.Thangaraj

2.Thanakkayi Ammal

... Appellants

Vs.

D.Arumugam

... Respondent

PRAYER:- Second Appeal has been filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 07.11.2017 made in A.S.No.1 of 2017 on the file of the learned Additional Sessions Judge, Karur confirming the judgment and decree dated 20.06.2006 made in O.S.No.703 of 2005 on the file of the Principal District Munsif Court, Karur.

For Appellant :Mr.R.Devaraj

For Respondents :Mr.A.N.Ramanathan



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JUDGMENT

The defendant Nos.2 and 3 in O.S.No.703 of 2005 on the file of the Principal District Munsif Court, Karur have filed this Second Appeal, challenging the judgment and decree passed in A.S.No.1 of 2017 on the file of the learned Additional District and Sessions Judge, Karur, confirming the judgment and decree passed in O.S.No.703 of 2005 on the file of the Principal District Munsif Court, Karur.

2.For the sake of convenience and for better appreciation of the case, the rank of the parties are referred as per the litigative status of the trial Court in O.S.No.703 of 2005.

2.1The respondent is the plaintiff in the said suit. He had filed the suit in O.S.No.703 of 2005 against three defendants including the appellants who had been arrayed as D2 and D3 for the relief of permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the suit scheduled property. He stated that the first defendant's brother is Ramasamy @ Ramu Udaiyar. He executed registered Will dated 28.01.1991 in his favour and he had been in



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possession and enjoyment of the property as per the said Will. That being the situation without any right over the suit scheduled property, on 24.03.2000 the defendants were trying to interfere with the possession and he filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit scheduled properties.

3. During the pendency of the suit first defendant died and his wife third defendant had filed the written statement stating that the suit scheduled property belonged to Ramasamy Udaiyar. The said Ramasamy Udaiyar had three sons, namely, Meikappuudaiyar, Rengasamy Udaiyar and Govindhan Udaiyar. The said Meikappuudaiyar's son is Ramasamy @ Ramu Udaiyar and the Rengasamy Udaiyar's son is Karuppu Udaiyar. Govindhan Udaiyar was unmarried and died. The said Ramasamy @ Ramu Udaiyar also was unmarried and he died intestate. Therefore, Karuppu Udaiyar as a sole legal heir of the Ramasamy Udaiyar became the owner of the suit scheduled property and he sold a portion of the said property to the second defendant on 02.02.2000 and he was in enjoyment of the said properties. The execution of the Will in favour of the plaintiff



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is specifically denied and the same was forged one and the plaintiff had never been in possession of the property as per the said alleged forged Will. Therefore, she sought to dismiss the suit.

4.The second defendant also filed separate written statement reiterating the said averment of the third defendant.

5.Based on the rival pleadings, the learned trial Judge framed the necessary issues. On the side of the plaintiff, P.W.1 to P.W.3 were examined, and Exs.P1 to P19 were marked. On the side of the defendants, D.W.1 to D.W.5 were examined and Exs.D1 to D8 were marked. One of the attesting witness, namely, Mariappan was examined as Court Witness C.W.1. Upon consideration of the evidence, the learned trial Judge decreed the suit holding that the plaintiff had established his possession over the suit scheduled property without deciding the genuineness of the Will dated 28.01.1991 by judgment dated 20.06.2006. Aggrieved over the same, the appellants, namely, the defendant Nos.2 and 3 had preferred A.S.No.43 of 2007. The first appellate Court allowed the appeal and remanded the matter to the trial Court for reconsideration



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on the limited question regarding the genuineness of the alleged Will.

Challenging the remand order, the plaintiff filed C.M.A.(MD).No.7 of 2008 before this Court. This Court allowed the Civil Miscellaneous Appeal, set aside the remand, and directed the first appellate Court to decide the appeal on merits. The learned Appellate Judge on remand dismissed the appeal suit in A.S.(MD)No.1 of 2017 by impugned judgment dated 07.11.2017 by confirming the trial Court judgment and also rendered a finding that the Will was duly proved by the plaintiff. Aggrieved by the same, the present Second Appeal has been filed.

6.At the time of admission of the Second Appeal, this Court framed the following substantial questions of law:

6.1.Whether the lower appellate Court is correct in coming to the conclusion the 1st appellant has not questioned the will at the earliest point of time.

6.2.Whether the Will dated 28.01.1991 in favour of the respondent can be relied on to prove his title when the respondent is a total stranger to the executor of the Will.



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6.3. Whether the Lower Appellate Court is correct in accepting the will in the absence of proof of pleadings of the respondent that the executor was under his care and custody and he only looked after him.

6.4. Whether the Court below are correct in granting the decree of injunction when the respondent has not proved the identity of the property.

7. Submission of the learned counsel appearing for the appellants:

The learned appellate judge has not considered the evidence relating to the attestation of the Will in proper legal perspective and has not considered that the Will was surrounded by several suspicious circumstances. The plaintiff is in no manner connected with the family of the testator and is a total stranger, though he was functioning as the President of the Village. Taking advantage of the isolated living of the testator, the plaintiff clandestinely obtained the Will in favour of him. Admittedly, the testator was not in sound disposing state of mind at the



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time of execution of the Will, and he died within 30 days thereafter, which by itself raises a strong presumption of suspicion. The witnesses examined on the side of the plaintiff also did not satisfy the requirements of Section 63(c) of the Indian Succession Act and Section 68 of the Evidence Act. Hence, the appellant submits that the Will has not been proved in the manner known to law. Both the Courts failed to consider that the evidence adduced on the side of the defendant to prove their possession over the suit scheduled property. Therefore, they sought to set aside the impugned judgments and decrees of both the Courts below.

7.1.The appellant further contends that the finding of the learned appellate Judge that the plaintiff was a relative of Ramasamy is factually incorrect. There is no legal evidence to support such a finding. There is also complete perversity in the appreciation of evidence relating to the testator's state of mind and the alleged execution of the Will.

8.Submission of the learned counsel appearing for the respondent:

On the contrary, the learned counsel for the respondent would



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submit that both the Courts below, on proper appreciation of the evidence, have concurrently held that the plaintiff had proved his possession over the suit scheduled property on the basis of the documents marked on his side in addition to his oral evidence. The learned first appellate Judge on appreciation of the evidence of P.W.2 and P.W.3 and C.W.1 has correctly held that the Will has been duly proved. Minor discrepancies in the evidence of the attesting witnesses, according to him, do not demonstrate suspicious circumstances. The mere fact that the Will was executed in favour of a non-relative is not, by itself, a ground to discard the Will.

8.1.It was further argued that Karuppu udaiyar, the first defendant, was not residing with the testator and did not take care of him, whereas the plaintiff was looking after the testator during his last days. Nothing was elicited in cross-examination to discredit the evidence of the attesting witnesses. There was also no material to show that the testator lacked testamentary capacity or that he was taken forcibly to the Registration Office. Though mere registration of the Will does not, create any presumption in favour of its genuineness, but it is nevertheless one



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strong circumstance supporting the execution.

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8.2.It was also argued by the appellant that the plaintiff had no title to the suit property and hence, without seeking a declaratory relief, the suit for injunction was not maintainable. The respondent, however, contends that when title is claimed on the basis of a registered Will and when ample evidence is produced to prove the Will, a separate suit for declaration is not mandatory, and therefore the principle that an injunction suit without declaration is not maintainable is not correct.

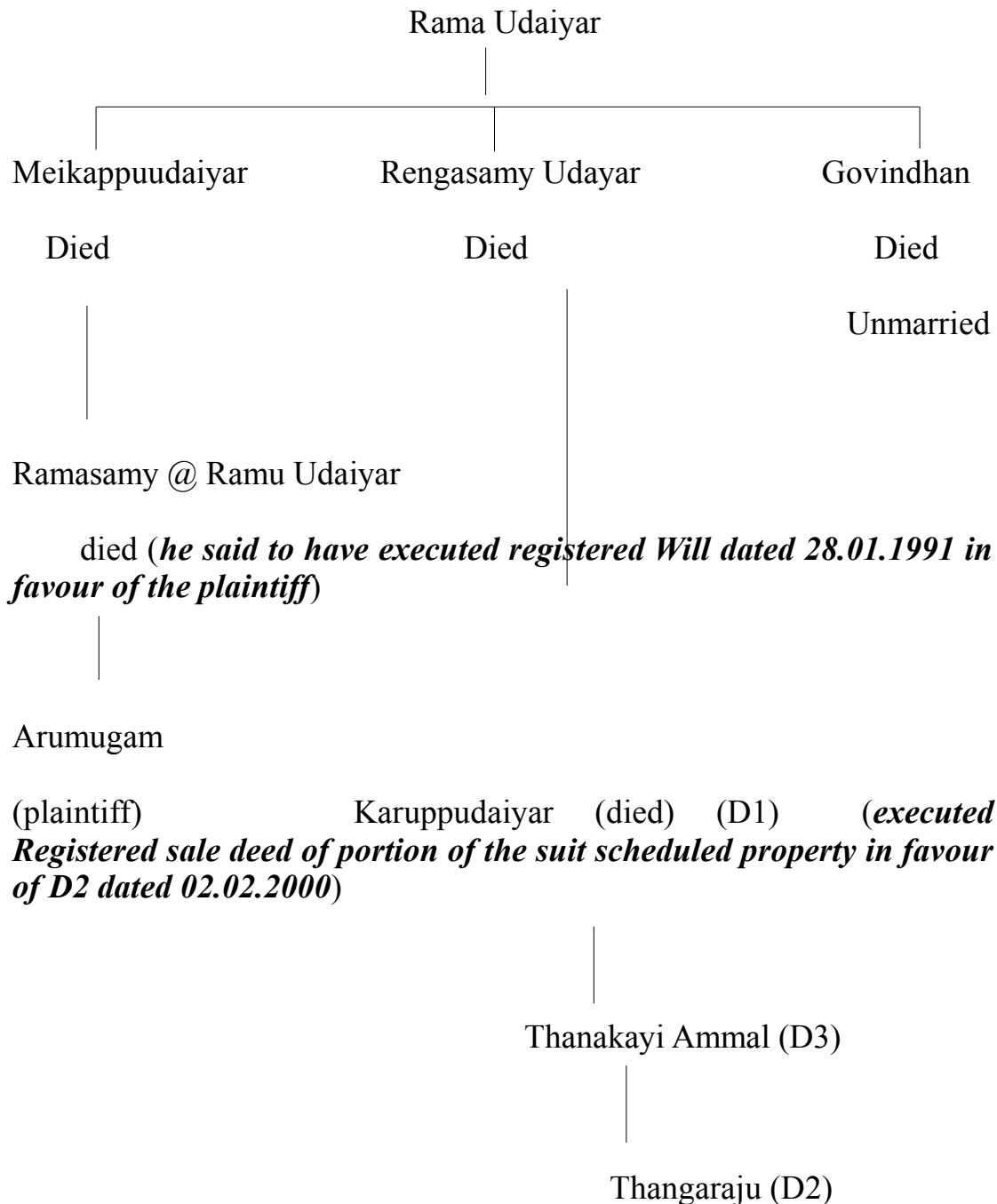
9.With these rival submissions, the Court considered the matter in detail and examined the legal principles laid down in various precedents relied upon by both parties.



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10. Before going into the case, it is relevant to extract the following genealogy and the transaction to decide the present case on merits:



11. Discussion on the proof of Will

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The learned trial Judge in the judgment in paragraph No.7 had not discussed about the issue that Will in issue is not genuine one on the ground that the suit is only for bare injunction. After the order of this Court in C.M.A.No.7 of 2008, the learned first appellate Judge, as a final Court of finding of fact and law delved into the evidence in respect of the proof of Will. Hence, there is no concurrent finding relating to the execution of the Will and therefore, the learned counsel for the appellant relied the judgment of the Hon'ble Supreme Court reported in **2021 10 Scale 416** in the case of ***K.N.Nagarajappa and others vs. H.Narasimha Reddy*** and requested this Court to enter see correctness of the finding of the learned appellate Judge about the execution of the Will under Section 103 of C.P.C. The learned counsel for the respondent has not disputed the said proposition. This Court perused the paragraph Nos.14 to 18 of the said judgment. As per the law laid down by the Hon'ble Supreme Court, this Court makes an endeavour to decide about the finding of the learned appellate judge in respect of the execution of the Will.

11.1.The core question that arises in this Second Appeal pertains to



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the genuineness of the Will dated 28.01.1991, allegedly executed by Ramu Udaiyar in favour of the plaintiff. To prove the Will, P.W.2 was examined as attester to the said Will. P.W.3 was scribe and examined to prove the preparation of the Will. C.W.1, another attester to the Will was examined at the request of the defendants.

11.2.P.W.1 claimed that he was the relative of the testator. But, in his evidence he admitted that he was not related to the family of the testator. No evidence was adduced to prove his relationship with testator. He was the president of the village and he had been in possession of the suit scheduled property as a tenant for sometime. In the said circumstances, he is a total stranger and there was no evidence available to prove that he had been looking after the testator during his lifetime and execution of the Will in favour of the total stranger by unjustly excluding the natural legal heirs is undoubtedly a strong circumstance. Exclusion of one of the natural legal heirs is not a circumstances in all cases to doubt the execution of the Will in favour of the other legal heirs provided that circumstances warranted to execute the same in favour of one of the legal heirs excluding others. In the case of execution in favour



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of total stranger excluding all the natural legal heirs, it is the duty of the beneficiary to prove before the Court with believable circumstances that the executor was taken great care of by the said stranger and the executant voluntarily executed the Will in favour of the stranger out of love. This Court finds no such circumstances to uphold the Will in favour of the plaintiff.

11.3.The Will was executed on 28.01.1991. the testator died shortly on 18.02.1991. Therefore, the mental condition of the executant ought to have been proved by the plaintiff. P.W.2 and P.W.3 never deposed about the mental condition of the executant. P.W.2 deposed that he was called by the plaintiff to depose before this Court. He stated that he was present in the registration Office by chance to see the document writer Rajasekar. He also deposed that he never read the contents of the Will and he did not know the contents of the Will. He also deposed that Rajasekar never typed the Will. He also deposed that he never enquired about the health condition of the executant. Further, the executant signed the document before his arrival. From the above evidence, it is clear that his presence at the time of execution of the Will is questionable. He



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specifically stated that he was present at the Registration Office only by chance. It is a well-settled principle that the testimony of a chance witness can be relied upon only if his presence at the scene is satisfactorily explained and his evidence inspires confidence. Further, section 63(c) of the Indian Evidence Act, requires that, in order to prove a Will, an attesting witness must depose before the Court that the testator signed the Will in his presence, that he saw the testator signing the Will, and that the attesting witnesses signed in the presence of the testator but his evidence did not satisfy the requirement of Section 63(c) of the Indian Succession Act.

11.4. Another attesting witness, namely, Mariyappan, was examined as Court Witness (C.W.1). C.W.1 denied the execution and attestation of the Will and nothing was elicited in cross-examination to discredit his testimony. He categorically stated that his signature appears on the back side of the first page, and that he never appeared before the Sub-Registrar's Office. He further deposed that he signed only at the instance of one Arumungam, and he did not depose anything to show that he attested the Will in the manner contemplated under Section 63(c) of



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the Indian Succession Act.

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11.5.P.W.3 was the scribe and P.W.2 specifically deposed that P.W. 3 did not type the Will. From the evidence of C.W.1, it is seen that the testator was taken to the Registration Office under the guise of being taken to the hospital. Such circumstances strengthen the suspicion, and therefore the Will appears to have been brought into existence under highly questionable circumstances. Hence, this Court is not inclined to accept the alleged execution of the Will. It is the duty of the propounder to prove the Will by examining the attesting witnesses and to satisfactorily explain all suspicious circumstances surrounding the Will. The core requirements for proving a Will are that the testator was in a sound disposing state of mind, executed the Will on his own free volition, and that the Will is not an unnatural or improbable disposition. Hence, from the above appreciation of the entire evidence, this Court finds that the plaintiff failed to prove the execution of the Will as per the requirement of Law. The trial Court placed reliance on the evidence of D.W.2 and observed that D.W.2 did not take steps to challenge the Will despite knowing about its execution. Such a finding is contrary to the law



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laid down by the Hon'ble Supreme Court and contrary to Sections 63(c) of the Indian Succession Act and 68 of the Indian Evidence Act. It is the duty of the plaintiff, who relies on the Will, to prove its execution. The Court cannot fill up the lacunae in the plaintiff's case or shift the burden on the defendants.

12.Regarding possession, the plaintiff produced certain revenue records. According to the plaintiff, he had mutated the revenue records in his name after the execution of the Will in question and he had been enjoying the property from the date of the death of the executant of the Will. The party who want to get a decree for permanent injunction must establish his legal possession on the basis of the legal title against the true owner. Once the Will was found to be forged one and his alleged possession on the basis of the revenue document is illegal. Apart from that, both the Courts below failed to discuss the defendant's document and the oral evidence to prove their possession. In this case, the oral evidence adduced on the side of the defendants are trust worthy and they cogently deposed about the possession by them. The plaintiff had not produced any corroborative evidence to prove his possession. Therefore,



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the finding on the possession by the plaintiff by both the Courts also is perverse and hence, this Court is inclined to set aside the same. The defendants have established their lawful title and possession over the suit scheduled property. D.W.1 clearly deposed about her possession over the portion of the suit scheduled property and D.W.2 also cogently deposed about the possession of the suit scheduled property. D.W.3, D.W.4 and D.W.5 also cogently deposed about the possession of D.W.2 and D.W.3 over the suit scheduled properties. Apart from that, P.W.1 also admitted the execution of the sale deed in favour of D.W.2. Even in his chief examination it is stated that there were shrubs and bushes and trees in the suit scheduled property. Therefore, the adangal to show the cultivation by the plaintiff is not true and nobody is examined relating to the adangal extract to prove his cultivation. Therefore, in all aspects, the defendants case of their possession has to be accepted.

13.In view of the above discussion, this Court finds that the learned trial Judge committed a grave error in failing to decide the issue of genuineness of the Will and in failing to appreciate the defendants' evidence properly on possession. The first appellate Court also erred in



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considering the Will for the first time without applying the principles laid down by the Hon'ble Supreme Court and without adhering to Sections 63(c) of the Indian Succession Act and 68 of the Indian Evidence Act.

14. Thus, both the Courts below committed error in appreciating the evidence, failed to consider the material portions of the witnesses' testimonies, and overlooked the evidence supporting the defendants' case that they are in possession of the property and that the execution of the Will has not been proved which warranted interference under Section 100 of C.P.C., as per the law laid down by the Hon'ble Supreme Court reported in **2021 10 Scale 416** in the case of **K.N.Nagarajappa and others vs. H.Narasimha Reddy** which reads as follows:

14. Undoubtedly, the jurisdiction which a High Court derives under Section 100 is based upon its framing of a substantial question of law. As a matter of law, it is axiomatic that the findings of the first appellate court are final. However, the rule that sans a substantial question of law, the High Courts cannot interfere with findings of the lower Court or concurrent findings of fact, is subject to two important caveats. The first is that, if the findings of fact are palpably perverse or outrage the conscience of the court; in other words, it flies on the face of logic that given the facts on the record, interference would be



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justified. The other is where the findings of fact may call for examination and be upset, in the limited circumstances spelt out in Section 103 CPC.

14.2.In the case of ***Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board*** reported in ***(2010) 13 SCC 216*** the Hon'ble Supreme Court has held as follows:

27. There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts.

Therefore, this Court is inclined to set aside the judgments of the Courts below.

15. Accordingly, this Second Appeal is allowed in the following terms:

(i) The judgment and decree passed in O.S.No.703 of 2005 dated



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20.06.2006 on the file of the Principal District Munsif Court, Karur, and the judgment passed in A.S.No.1 of 2017 on the file of the learned Additional Sessions Judge, Karur, dated 07.11.2017, are hereby set aside.

Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
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K.K.RAMAKRISHNAN, J.

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