



A.S(MD)No.75 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.11.2025

Pronounced on : 04.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.75 of 2017

and

C.M.P(MD)Nos.5000 and 5001 of 2017

1.M.Pitchaimani (Died)
S/o.Late. Muthaiah Achari,
Na.Mu.Illam, No.52,
Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

2.M.Mohan,
S/o.Late. Muthaiah Achari,
D.No.45, Round Road,
Naga Theater Back Side,
Ramnagar, Dindiugl,
Dindigul District.

3.M.Baskaran,
S/o.Late.Muthaiah Achari,
No.5, New Bus Stand Back Side,
Karaikudi Town Uzhavar Santhai,
Sivagangai District.

...Appellants 1 to 3/Defendants 1 to 3

4.Savithiri,
W/o.Late.Sugumaran,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.



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5.Vijayalakshmi,
D/o.Late.Sugumaran,
W/o.S.Palanivelu, Plot No.4119,
Housing Board, Villapuram,
Madurai - 625 011.

6.Anusuya,
D/o.Late.Sugumaran,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

7.Abirami,
D/o.Late.Sugumaran,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

...Appellants 4 to 7/Defendants
12 to 15

8. Kalaiselvi,
W/o. Late Pitchaimani,
Na.Mu.Illam,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

9.Thilaga,
D/o. Late Pitchaimani,
Na.Mu.Illam,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

10.Muthumeenal,
D/o. Late Pitchaimani,
Na.Mu.Illam,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.



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11. Sasireka,
D/o. Late Pitchaimani,
Na.Mu.Illam,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

12.Nitheesh Mugundan,
S/o. Late Pitchaimani,
Na.Mu.Illam,
No.52, Church 2nd Street,
D.D.Nagar, Karaikudi Town,
Sivagangai District.

... Appellant Nos.8 to 12

Vs.

1.Padmavathi,
D/o.N.Muthiah Achari -Muthammal
and W/o.S.Gururajappa,
Door No.6/2, Muthuramalingam 2nd Cross Street,
Meenakshi Nagar, Villapuram,
Madurai.

...1st Respondent/Plaintiff

Sugumaran (Died)

2.UmaiyaI,
D/o.Late.MuthaiahAchari,
W/o.Rajavelu,
No.30,Krishnabhavanam,
AgraharamRoad,
Ramanathapuram,
Ramanathapuram District.

3.Soundarrajan,
S/o.Kathiresan,
No.42,SenaithalaivarColony,
RajamillRoad,
Madurai-1.



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4.Malathi,
W/o.Nagendran,
C/o.Baskaran,
No.5, New Bus Stand Back Side,
Karaikudi Town Uzhavar Santhai,
Sivagangai District.

5.Boopathi,
S/o.Kathiresan,
No.16, Senaithalaivar Colony,
Rajamill Road, Madurai-1.

6.Muthulakshmi,
D/o.Kathiresan,
W/o.Radhakrishnan,
D.No.30,SenaithalaivarColony,
Rajamill Road, Madurai-1.

7.Arunadevi,
D/o.Kathiresan,
W/o.Rameshbabu,
Teacher,
O.C.P.M.Girls Higher Secondary School,
Narimedu, Madurai Town.

8.Chitra,
D/o.Kathiresan,
W/o.Moorthy,
D.No.42, Senaithalaivar Colony,
Rajamill Road, Madurai-1.

...Respondents 2 to 8/
Defendants 5 to 11



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PRAYER:-This Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC., to set aside the judgment and decree of the District Judge, Sivaganga in O.S.No.38 of 2011, dated 23.12.2016.

For Appellants : Mr.R.Sundar Srinivasan

For R1 : Mr.P.T.S.Narendravasan

R2 to R8 : No Appearance

JUDGMENT

This Appeal is directed against the judgment and decree, dated 23.12.2016 rendered in O.S.No.38 of 2011 on the file of the learned District Judge, Sivagangai.

2.The appellants are the defendants 1 to 3 and 12 to 15 in O.S.No.38 of 2011 on the file of the learned District Judge, Sivagangai. The respondents are the plaintiff and other defendants in that suit. The 1st respondent filed the suit for partition.

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



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4. The brief facts are as below:

(a) The case of the plaintiff (1st respondent herein):-

The plaintiff and the defendants 1 to 5 are children of late. Muthaiah Asari and Muthammal. The defendants 6 to 11 are children of the eldest daughter Ramathilagam of late.Muthaiah Asari and Muthammal. The said Muthaiah Asari was a goldsmith and ran a jewellery shop. He purchased the suit properties in the name of Muthammal on 16.04.1966 from one Ramasamy Chettiar and one Karuppayee. Later, he constructed a building in 1971 and they have been residing there as a joint family property. The mother Muthammal was affected by paralysis in 1982 and died in the year 1992. The father Muthaiah Asari died in the year 1986. Thereafter, the plaintiff demanded for partition. The defendants 1 to 5 evaded partition. In the meanwhile, the defendants 1 and 4 uttered that they would alienate the suit properties. So, the plaintiff issued a legal notice on 02.12.2012 to the defendants, but the defendants did not send any reply. Hence, the plaintiff filed the suit for partition of her 1/7 share in the suit properties.



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(b) The case of the defendants 1 to 3 and 12 to 15:-

The plaintiff suppressed the prior legal notice, dated 08.08.2011 sent by the plaintiff and the reply notice 03.09.2011 sent by the defendants. The suit property and house absolutely belonged to the mother Muthammal. The father, Muthaiah Asari as the joint family manager, admitted the absolute title of Muthammal. She executed a registered Will, dated 04.01.1983, in favour of her sons, namely the defendants 1 to 4. The mother Muthammal died on 15.11.1992 and her last Will came into force. So, the plaintiff has no *locus standi* to file the suit. Moreover, the defendants 1 to 3 had already filed a suit for partition in O.S.No.121 of 2000 before the Sub Court, Devakottai, in which a final decree for partition was passed on 07.01.2002. In the earlier reply notice, dated 03.09.2011 sent by these defendants were clearly stated about these facts. The defendants are enjoying their respective portions as per the final decree passed in O.S.No.121 of 2000. The Court fee paid U/s.37(2) is not correct. The suit is liable to be dismissed.

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



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(1) Whether the Will dated 04.01.1983 is true?

(2) Whether the partition as per decree in O.S.No.121 of 2000 will bind the plaintiff?

(3) Whether the plaintiff is entitled to 1/7th share in the schedule mentioned properties?

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

6.During the trial, the plaintiff examined herself as P.W.1 and marked four documents as Ex.A.1 to Ex.A.4. On the defendants' side, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.14 were marked.

7.On appreciation of evidence and the submissions made on behalf of the parties, the trial Court held that the defendants have produced only a copy of the Will and that the female members were not parties to the earlier suit, thereby, it passed a preliminary decree in favour of the plaintiff in respect of 1/7th share in the suit properties by its judgment and decree, dated 23.12.2016.

8.Aggrieved by the judgment and decree of the trial Court, dated 23.12.2016, the defendants 1 to 3 and 12 to 15 have preferred this appeal.



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9.Along with the appeal, the appellants/defendants 1 to 3 and 12 to 15 have filed the petition in C.M.P(MD)No.5000 of 2017 under Order 41 Rule 27 of CPC., to receive the document, namely the original registered Will, dated 04.01.1983 as additional evidence in the above appeal.

10.The appellants/petitioners in C.M.P(MD)No.5000 of 2017 have averred that the suit properties are the absolute properties of Muthammal. During her lifetime, she executed a registered Will, dated 04.01.1983, in a sound disposing state of mind and the Will was duly attested by witnesses. The 1st respondent/plaintiff is well aware of the said Will. Before the trial Court, a registration copy of the Will was marked as Ex.B.7. However, the trial Court found that the original Will was not produced and decreed the suit for partition. Hence, the appellants/petitioners have produced the original Will and the same may be received in the interest of justice.

11.On the respondents' side, the petition was objected since the trial Court has correctly appreciated the evidences and the appellants/petitioners have not assigned a valid reason as to why they did not mark the original Will.



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12.Both parties have argued their respective cases. On hearing both sides and on perusing the material records along with the grounds of appeal, both sides admitted that there is no dispute that the suit properties belonged to Muthammal. It is alleged that the said Muthammal executed her last Will, dated 04.01.1983, in favour of her sons, namely defendants 1 to 4. After her demise, there was a suit in O.S.No.121 of 2000 on the file of the Sub Court, Devakottai, in which a final decree for partition was passed among her sons. This was objected by the plaintiff. Moreover, the plaintiff was not a party to the said suit and the said final decree will not bind on her.

13.The points for consideration in this appeal are;

1)Whether the original Will, dated 04.01.1983 has to be received as prayed by the appellants in C.M.P(MD)No.5000 of 2017?

2) Whether the judgment and decree of the trial Court passed in O.S.No.38 of 2011 are liable to be set aside and the appeal is to be allowed?

14. Point Nos.1 and 2:

The learned counsel for the appellants submitted that the suit properties were purchased by Muthammal wife of Muthaiah Asari and she was the



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absolute owner of the same. She executed her last Will, dated 04.01.1983, bequeathing the suit properties to her sons, the defendants 1 to 4, in which their father Muthaiah Asari was an attesor. There was an earlier suit in O.S.No.121 of 2000 among the four sons and the original Will was marked as Ex.A.5 in that suit. The plaintiff is fully aware of these facts. The appellants have marked a certified copy of the Will as Ex.B.7 in the present suit. But, the trial Court has not considered the Will since the original was not filed, resulting in a decree came to be passed. The Will is a 30 years old document. So, the appellants/defendants may be given the opportunity to prove the Will and the suit may be remanded back.

15.The learned counsel for the 1st respondent/plaintiff specifically contended that in the earlier suit, the plaintiff was not a party and also in the said earlier suit, the defendants therein remained exparte, and no witness was examined. The appellants have not taken any steps to file the original Will in the present suit and have not chosen to examine any of the witnesses. Hence, the plaintiff is entitled to a share in the suit properties.



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16.On perusal of appeal records, trial Court records, and on consideration of the arguments advanced by both sides, it is clear that the suit properties were purchased by Muthammal and she was the absolute title holder of the suit properties. The plaintiff and the defendants 1 to 5 and mother of D6 to D11 Ramathilagam are born to Muthammal out of wedlock with Muthaiah Asari. The plaintiff, the 5th defendant and deceased Ramathilagam are daughters and the defendants 1 to 4 are sons. There is no dispute about these facts. It is the specific case of the appellants that the said Muthammal executed her last Will, dated 04.01.1983, bequeathing the suit properties in favour of her sons, namely defendants 1 to 4 herein. The 1st respondent/plaintiff vehemently objected on the ground that the Will was not proved before the Court of law. It is further argued that in the alleged earlier suit in O.S.No.121 of 2000, the plaintiff was not a party. The appellants/defendants have marked the certified copy of the Will as Ex.B.7 in this case and argued that the plaintiff was well aware of the Will. However, the trial Court has not considered the Will since it was a certified copy. Now, the appellants/defendants have filed the original Will in this appeal and have sought an opportunity to prove their case.



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17.On perusal of the trial Court judgment, even though the Will was produced in the earlier suit in O.S.No.121 of 2000, no witness was examined to prove the Will and that suit was decreed exparte. So, the trial Court observed that the defendants failed to prove the Will and its execution in a manner known to law. On the defendants' side, the defendants 1 and 2 were examined as D.W.1 and D.W.2 and one M.S.Sureshkumar, said to be counsel for the plaintiff, who sent a legal notice was examined as D.W.3. Therefore, it is clear that the attestors or scribe to the Will were not examined in order to prove the Will in the eye of law. Though the original Will was produced in the earlier suit, the suit was decreed exparte and no witness to the Will was examined in that earlier suit.

18.It is a settled position of law that every litigant has to be given sufficient opportunity to prove his/her case and also it is settled law that the first civil appeal is a continuation of the suit. Therefore, in the interest of justice and in order to give an opportunity to the appellants/defendants to prove the Will, the original Will produced by the appellants/defendants is accepted. Hence, this Court is inclined to allow the petition in C.M.P(MD)No.5000 of



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2017 and the original Will, dated 04.01.1983, produced along with the petition, is received.

19.In these circumstances, this Court is of the considered opinion that it is a fit case to remand back the suit for fresh disposal, giving all opportunities to the parties to prove their respective cases. Considering the above facts and circumstances, the judgment and decree of the trial Court are liable to be set aside and the appeal is to be allowed, remanding back the case for fresh disposal. The original Will, dated 04.01.1983 filed along with C.M.P(MD)No.5000 of 2017 is ordered to be sent to the trial Court along with the Lower Court records. The points are answered accordingly.

20.In the result, this Appeal Suit is allowed. No costs.

(i) The judgment and decree, dated 23.12.2016, rendered in O.S.No.38 of 2011 on the file of the learned District Judge, Sivagangai, are set aside.

(ii) The C.M.P(MD)No.5000 of 2017 in A.S(MD)No.75 of 2017 is allowed and the original Will, dated 04.01.1983, is received.

(iii) The subject suit matter is remanded back to the District Court, Sivagangai for fresh disposal.



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(iv) The Registry is directed to send the original Will, dated 04.01.1983 along with the lower Court records in O.S.No.38 of 2011 to the District Court, Sivagangai for marking the same as exhibit as per law.

(v) The learned District Judge, Sivagangai, is directed to give all sufficient opportunities to both parties to let in additional evidences, oral and documentary to substantiate their respective cases, inclusive of the original Will as observed in the judgment in this appeal and to dispose of the suit in O.S.No.38 of 2011 on merits within a period of six months from the date of receipt of a copy of this order by issuing suitable notice to both parties. Consequently, the connected C.M.P(MD)No.5001 of 2017 is closed

04.02.2026

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

To

- 1.The District Judge,
Sivagangai.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.75 of 2017
and
C.M.P(MD)Nos.5000 and 5001 of 2017**

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