

SA(MD).No.1



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on 22.04.2026 | Judgment pronounced on 05.06.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.1 of 2017 and CMP(MD).No. 6 and 2017

S. Meenakshi

... Appellant / 1st defendant

Vs.

1.N.Padmavathy
2.M.Andal
3.Dr.Siva
4.Dr.Sakthi

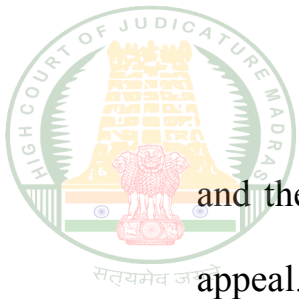
.. Respondents 2 to 4 /
defendants 2 to 4

Prayer : Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 26.10.2015 made in A.S.No.20 of 2013 on the file of the Principal District Judge, Tiruchirappalli confirming Judgment and Decree dated 27.07.2012 made in O.S.No.588 of 2007 on the file of the II Additional Subordinate Judge, Thiruchirappalli.

For Appellant : Mr.N. Marimuthu
For respondents 1 and 2 : Mr.R.S.Sivaram
for Mr.C. Padmaraj

JUDGMENT

The first defendant, aggrieved by the concurrent findings of the trial Court



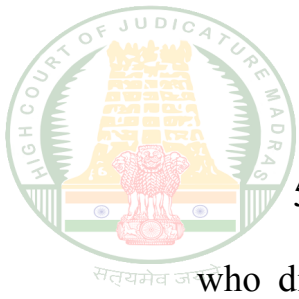
and the first appellate Court, is before this Court by way of the above second appeal.

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2. The appeal has not yet been admitted and initially, notice of motion was ordered in the year 2017. Subsequently, the contesting respondents have entered appearance and the Second Appeal has been taken up for final disposal.

3. I have heard Mr. N. Marimuthu, learned counsel appearing for the appellant/first defendant on behalf of Mr. M. Sathiyamoorthy, and Mr. R. S. Sivaram, learned counsel appearing for respondents 1 and 2 on behalf of Mr. C. Padmaraj.

4. The appellant is the first defendant in the suit filed in O.S. No. 588 of 2007 for partition and separate possession of the plaintiff's one-fourth share. The case of the plaintiff is that the plaintiff and defendants 1 and 2 are sister and daughters of the late Kannaiyan and Kanakavalli. The 3rd and 4th defendants are grandsons of Kannaiyan and sons of Shenbagam, who had predeceased her parents, and her husband had also remarried after the death of Shenbagam.



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5. According to the plaintiff, the suit property belonged to Kannaiyan, who died on 17.02.2006. Within a span of two months thereafter, his wife, Kanakavalli, also died. Claiming intestate succession and one-fourth share, the suit for partition was filed. Even in the plaint, the Will alleged to have been executed by the plaintiff's father on 28.11.2003 has been specifically denied, contending that it has been created by the first defendant. The suit was resisted by the first defendant stating that the Will dated 28.11.2003 was executed by the father, Kannaiyan, while he was in a sound and disposing state of mind, without any undue influence or coercion from any person. It is also stated that, during his lifetime, the father had expressed his desire to construct a first floor over the existing building and wanted the first defendant and her husband to reside with him in the said property. The first defendant's husband had also financially helped Kannaiyan, his father-in-law. After the death of Kannaiyan, the movable assets were partitioned and the Will has come into effect and therefore, the plaintiff is not entitled to any share.

6. Before the Trial Court, as many as ten issues were framed and, after elaborate trial, the Trial Court found that the plaintiff was entitled to relief. The Trial Court disbelieved the Will and proceeded to pass a decree for partition. The same was challenged by the first defendant by way of a first appeal, but,



however, the challenge was unsuccessful. Aggrieved by the concurrent findings of the courts below, the present Second Appeal has been filed.

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7. The learned counsel appearing for the appellant/first defendant would firstly contend that, though Ex.B1–Will is an unregistered document, one of the attesting witnesses has been examined and the due execution of the Will has been proved in accordance with Section 63(c) of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872.

8. The learned counsel would also invite my attention to Ex.B4, which clearly brings out the intention of the testator even in the year 1997, and the said intention has been carried forward by way of Ex.B1- Will executed in the year 2003. He would further state that though the first defendant was only a daughter, the father, out of love and affection and also acknowledging the financial assistance rendered by the appellant's husband, permitted the first defendant and her family to reside in the very same property, which clearly goes to show that there was nothing wrong in the father disinheriting the other legal heirs and preferring the first defendant alone.

9. The learned counsel would also invite my attention to the evidence of



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PW1 and contend that the execution of the Will has been admitted by the plaintiff. In such circumstances, according to the learned counsel, the question of non-proof of the Will or the existence of suspicious circumstances surrounding its execution does not arise in the facts of the present case. He would further take me through the evidence of DW2, who was examined to prove the due execution and attestation of the Will, and contend that the courts below have erroneously granted a decree for partition. The learned counsel has also suggested the framing of as many as fourteen substantial questions of law, all of which relate to the alleged suspicious circumstances surrounding the execution of the Will and the interpretation of Ex.B1.

10. Per contra, Mr. R. S. Sivaram, learned counsel appearing for respondents 1 and 2, would contend that both the Courts below have appreciated the evidence adduced by the parties and have concurrently held that the Will has not been proved in the manner known to law. He would further contend that the Will was executed under suspicious circumstances. He therefore submitted that, under Section 100 of the Code of Civil Procedure, such concurrent findings of fact cannot be interfered with. He further stated that the father was aged more than 90 years and was bedridden at the time of execution of the Will. He also stated that the defendants did not enter the



witness box and that only the husband of the first defendant was examined, and therefore the Courts below have rightly drawn adverse inference against the first defendant.

11. The learned counsel also contends that both the Courts below have considered the material on record, including the admissions of PW1. Referring to the Will, the learned counsel for the respondents submits that the execution of the Will has not been admitted, but only the signature in Ex.B1 Will alone has been admitted. He would further state that a mere admission of signature would not be sufficient to discharge the burden of proof of due execution and attestation of the Will in the manner required under Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act.

12. In support of his submissions, the learned counsel relied on the following decisions.

1. The Judgment of the Hon'ble Supreme court reported in **1958 SCC Online 31**, in the case of **H. Venktachala Iyengar Vs. B.N.Thimmajamma and others**.

2. The Judgment of the Hon'ble Supreme court reported in **2024 (16)**



SCC 78, in the case of **Moturu Nalini Kanthi Vs. Gainedi Kaliprasad (dead through legal representatives)**

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3. The Judgment of this Court **dated 20.01.2022** made in **S.A.Nos.1245 and 1246 of 2013**, in the case of **Santhamani Vs. P.Karthikeyan and others**.

4. The Judgment of the Hon'ble Supreme court reported in **2025 Live law SC 718**, in the case of **Gurdial Singh (dead) through LR Vs. Jagir Kaur (dead) and another etc.,**

13. I have carefully considered the submissions made by the learned counsel for the parties.

14. The relationship between the parties is not in dispute. The only bone of contention to deny the relief of partition was that the father, Kannaiyan, had executed his last Will and testament. The Courts below have disbelieved the said Will and have consequently granted the relief of partition to the plaintiff. It is contended by the appellant / first defendant that PW1 has admitted the execution of the Will. In this regard, I have gone through the evidence of PW1 and I do not find any such admission regarding the execution of the Will. As rightly pointed out by the learned counsel for the respondents, what was admitted was only the signature of the father, Kannaiyan. Admittedly, the

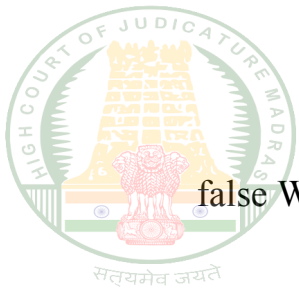


testator Kannaiyan was aged over 90 years at the time the Will was executed.

The Courts below have discussed various suspicious circumstances surrounding the execution of the Will and have arrived at concurrent findings of fact that the suspicious circumstances have not been dispelled by the first defendant, and therefore the Will cannot be accepted.

15. The Courts below also found that the husband of the appellant, who examined himself as DW1, has adduced evidence even contrary to the stand taken by his wife, the first defendant, in the written statement. This contradiction is material, as it pertains to the knowledge of the first defendant regarding Exs.B1–Will. Even assuming that Ex.B4 can be looked into and admitted in evidence, even then the said document was executed in the year 1997, whereas the Will is claimed to have been executed in 2003. It is, therefore, not a matter of inference that the testator should have persisted with his intention and thereby executed the Will in 2003.

16. There is also force in the submissions of Mr. R. S. Sivaram, learned counsel for the respondents, that the sole beneficiary under the alleged Will, Ex. B1, is the first defendant. The first defendant has deliberately avoided entering the witness box for fear of being exposed with regard to the alleged



false Will being set up in her favour.

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17. In any event, the evidence of the attesting witness, DW.2, is also to be looked into. The Will admittedly contains insertions and corrections which have gone unexplained during the trial. It was the bounden duty of the propounder, the first defendant, and also the attesting witness, DW2, to speak about the said insertions and corrections, especially as to who carried them out and at what point of time. Further, DW2 claims to be a friend of the testator, who was aged more than 90 years. The said version appears doubtful, since DW2, at the time of giving evidence, was not even 56 years of age. The attesting witness also states that DW1 has deposed that he had never seen the attesting witness, DW2. This again creates suspicion, since, if DW2 was really a close friend of the testator, it is highly unlikely that their son-in-law, who was residing in the same house, would have had no occasion to know DW2. Yet another suspicious circumstance is the fact that the defendants claimed that a draft Will was given to the testator through DW2. The said draft has not been produced before the trial Court. DW1, the husband of the first defendant, admits that he was physically present at the time of execution of the Will. However, his wife, in the written statement, has stated that she never knew about the execution of the Will by her father, and that it came to light long after the death of her father.

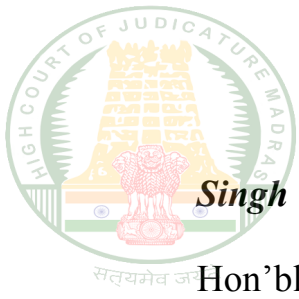


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Though a version was also projected that the plaintiff and the first defendant had negotiations and that the plaintiff agreed to take money in lieu of property, such arrangements or negotiations have also not been proved by satisfactory evidence. When the first defendant did not even enter the witness box, such a theory is wholly unacceptable.

18. Both the Courts have rendered concurrent findings based on the evidence available on record. In a Second Appeal under Section 100 CPC, re-appreciation of evidence is not permissible, especially when the appreciation of evidence is judicious and neither perverse nor illegal. The Courts below have discussed various suspicious circumstances. The case projected that DW2 was a close associate of the testator has not been satisfactorily established. It has been held that the Will was not proved in terms of Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act. The Courts below have further held that, leaving aside several suspicious circumstances remaining unexplained, the Will cannot be accepted in law. In view of the above, I am unable to interfere with the concurrent findings of the Courts below in this second appeal.

19. Coming to the decisions relied on by the first respondent in *Gurdial*



Singh Singh (dead) through LRs Vs. Jagir Kaur's case, delivered by the

Hon'ble Supreme Court, it was held that even mere proof of signature on the Will and registration do not dispel suspicious circumstances, and it would depend on the facts of each case. Applying the ratio laid down by the Hon'ble Supreme Court, in the facts of this case, merely because PW1 has admitted the signature of the father in Ex. B1 - Will, it cannot be presumed that the Will need not be proved or that it stands proved.

20. In ***Moturu Nalini Kanth's case***, the Hon'ble Supreme Court held that when the testator was in an advanced age and there were unnatural circumstances surrounding the bequest, such conduct would be contrary to normal human behaviour and would certainly add to the suspicion.

21. In ***Santhamani's case***, this Court held that even if the execution of the Will is proved in the manner known under Section 63 of the Indian Succession Act, when suspicious circumstances are shown to exist, unless such suspicious circumstances are dispelled, the Court cannot accept the Will as valid.

22. In ***H. Venkatachala Iyengar's case***, the Hon'ble Supreme Court held



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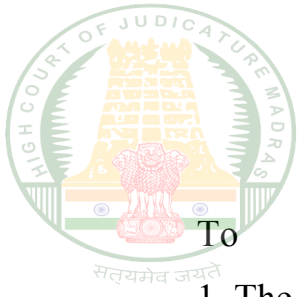
that mere proof of the signature of the testatrix on the Will would not raise a presumption that the Will was duly executed by the testatrix, and any such presumption is liable to be rebutted by proof of suspicious circumstances. When such circumstances are shown to exist, it is for the propounder of the Will to dispel them to the satisfaction of the Court before seeking a finding that the Will is genuine and valid.

23. Even applying the ratio laid down in the above decisions of the Hon'ble Supreme Court as well as this Court, I do not find any perversity in the concurrent findings of the Courts below warranting interference in this Second Appeal. I also do not find any substantial question of law arising for consideration.

24. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.06.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

1. The Principal District Judge, Tiruchirappalli.
2. The II Additional Subordinate Judge, Thiruchirapalli.



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P.B.BALAJI.J.

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Pre-delivery Judgment made in
SA(MD) No.1 of 2017 and
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