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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28-10-2026

CORAM

THE HON'BLE MRS. JUSTICE S.SRIMATHY

SA(MD) No. 738 of 2022
and CMP(MD).No.11058 of 2022
and CMP(MD).Nos.11164 & 11165 of 2026

CNR:{HCMD011111882022}

1. V.Gajendran
   S/o.Vilianathevar,
   No.12, Nadar South Street,
   Avaniyapuram, Madurai-625 012.

2. R.Muthunagammal
   W/o.G.Rathinam,
   No.28B, Maninagaram Street,
   Avaniyapuram, Madurai-625 012.

..Appellant(s)

Vs

Palani Ambalam (Died)

1. P.Murugaeswari
   D/o.Late.Palani Ambalam,
   No. 16/1,1st Ward,
   Paanaikudi Village,Acchampatti Post,
   Alanganallur, Vaadipatti Taluk,
   Madurai District.

2. P.Kannan
   S/o.Late.Palani Ambalam,
   No. 16/1,1st Ward,
   Paanaikudi Village,Acchampatti Post,
   Alanganallur, Vaadipatti Taluk,
   Madurai District.

3. P.Jayalakshmi
   D/o.Late.Palani Ambalam,
   No. 16/1,1st Ward,
   Paanaikudi Village,

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Acchampatti Post,
Alanganallur, Vaadipatti Taluk,
Madurai District.

..Defendant(s)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, to prefer this Memorandum of grounds of Second Appeal against the judgment and decree dated 17-06-2022 made in A.S.No. 85 of 2015 on the file of the Principal Subordinate Judge, Madura confirming the judgment and decree dated 29-07-2015 made in O.S.No. 360 of 2007 on the file of the District Munsif, Madurai Taluk.

PRAYER in CMP(MD).No.11164 of 2026 : This petition has been filed to receive the sale deed dated 02.03.1990 executed by Plaintiff's mother Meenakshi Ammal in favour of 2nd appellant as additional evidence in the above SA(MD).No.738 of 2022.

PRAYER in CMP(MD).No.11165 of 2026: This petition has been filed to send the documents to Forensic Department for comparing the disputed thumb impression of respondents/plaintiffs mother Meenakshiammal and signature of the attestors found in the sale receipt (Ex.B2) with the admitted thumb impression of respondents/plaintiffs mother Meenakshiammal and signature of the attestors found in the sale deed dated 02.03.1990, the document which has been filed as additional evidence in the above second appeal.

For Appellant(s) :M/s J.Lakshmiprasanna

For Defendant(s) : Mr.R.Nandakumar

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JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 17-06-2022 made in A.S.No. 85 of 2015 on the file of the Principal Subordinate Judge, Madura confirming the judgment and decree dated 29-07-2015 made in O.S.No. 360 of 2007 on the file of the District Munsif, Madurai Taluk.

2. The present Second Appeal is preferred by the defendants in the suit, who are the appellants herein. The respondents herein are the plaintiffs.

3. The brief facts of the case is that One Angammal was the original owner of the suit property. She sold an extent of 60 cents to one Meenakshiammal. Subsequently, Meenakshiammal purchased the adjacent land, measuring 61 cents, from one Rajammal. Thus, Meenakshiammal acquired and held the properties measuring an extent of 1 acre and 21 cents. During her lifetime, Meenakshiammal executed a Power of Attorney dated 14.12.1992 in favour of the first defendant, namely, Gajendran, the first appellant herein. Prior thereto, she had also executed a sale receipt, which was marked as Ex.B2. Subsequently, Meenakshiammal died on 11.12.1994. Consequently, the plaintiffs

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contended that the Power of Attorney executed in favour of the first defendant ceased to be operative upon her death and that the first defendant had no authority to deal with or alienate the suit property thereafter. The second defendant, being the owner of the adjacent property, allegedly intended to acquire the suit property belonging to the plaintiffs. Taking advantage of the Power of Attorney, the first defendant executed a sale deed in favour of the second defendant. Thereafter, the second defendant allegedly trespassed into the suit property and took possession of the same.

4. The contention of the defendants/appellants is that the plaintiffs' mother, Meenakshiammal, had executed a Power of Attorney in favour of the first defendant and had also executed a sale receipt in his favour. On the strength of the said documents, the first defendant executed a sale deed in favour of the second defendant. However, the plaintiffs disputed the genuineness and validity of the sale receipt as well as the authority conferred under the Power of Attorney and contended that the Power of Attorney ceased to operate upon the death of Meenakshiammal. The further contention of the defendants/appellants is that, in order to establish and compare the signatures of Meenakshiammal found in Exs.B2 and B5, they had filed I.A.No.523 of 2017 in O.S.No.85 of 2015.

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However, the said application was dismissed on the ground that no thumb impression of Meenakshiammal was available in Ex.A4.

5. On perusal of the documents, it is seen that the trial Court had recorded a finding that the thumb impression of Meenakshiammal was available in Ex.A4. Therefore, the order passed by the first appellate Court dated 10.07.2018 requires reconsideration.

6. It is further pertinent to note that, in the judgment under challenge, the first appellate Court has observed that the defendants had not taken any steps to establish the genuineness of the signature of Meenakshiammal. However, the records would reveal that the defendants had made an earnest attempt to establish the same by filing I.A.No.523 of 2017. Therefore, the observation of the first appellate Court that the defendants had not taken any steps in this regard is contrary to the records. The appellants had also filed C.R.P.No.1883 of 2019, which was closed on 14.11.2022, observing that the first appeal had already been disposed of. In such circumstances, the appellants were left without any effective opportunity to establish the genuineness of the disputed signatures. Hence, this Court is of the view that an opportunity should be afforded to the appellants to establish the same.

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7. In view of the foregoing reasons, the Second Appeal is allowed and the matter is remitted to the first appellate Court for fresh consideration.

8. The first appellate Court is directed to entertain the application filed by the appellants for comparison of the signatures of Meenakshiammal found in Exs.B2 and B5, after affording an opportunity to the legal heirs of the deceased Meenakshiammal to participate in the proceedings. Thereafter, the first appellate Court shall consider the genuineness of the disputed signatures and, based on the outcome of such comparison and the other relevant materials available on record, decide the issues relating to the Power of Attorney and the other documents in accordance with law.

9. It is made clear that the scope of consideration by the first appellate Court shall be confined to the issue of comparison of the disputed signatures and the consequential submissions arising therefrom. Both parties are at liberty to advance their respective arguments on the said issue.

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10. It is further clarified that the plea of res judicata shall not, by itself, operate as a bar to consideration of the present application, particularly when the original of Ex.B5 is now available in the document bundle. Though Ex.B5 has already been marked in the proceedings as a certified copy, the original document is stated to be available with the defendants. Therefore, the first appellate Court shall consider the original of Ex.B5, along with Ex.B2, for the purpose of comparison of the disputed signatures, subject to the applicable rules of evidence and procedure.

11. All the documents filed along with the CMP shall also be transmitted to the first appellate Court for the purpose of carrying out the above exercise.

12. The first appellate Court is directed to complete the above exercise within a period of five months from the date of receipt of a copy of this order.

13. It is further noted that the original documents were filed before this Court along with C.M.P.(MD) Nos.11164 and 11165 of 2026. Since

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the said petitions have been allowed, the Registry is directed to return the original documents to the appellants, in accordance with the orders passed therein. Consequently, the connected miscellaneous petition is closed.

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

To
1. The Section Officer
   VR Section
   Madurai Bench of Madras High Court
   Madurai

2. The Principal Sub Court, Madurai.

3. The District Munsif Court, Madurai.

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S.SRIMATHY, J.

MSRM

SA(MD) No. 738 of 2022

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