

IN THE COURT OF THE DISTRICT MUNSIF, KUMARAPALAYAM

Present: Selvi. T. Naveena, B.Com. LL.B. (Hons.),

**District Munsif,
Kumarapalayam.**

Friday, the 31st day of July 2026

O.S. No: 52/2020

(O.S.No.312/2015, PDM Tiruchengode)

CNR.NO.TNNM150001562020

1. Pappathi (@) Valliyammal

2. Vijaya

3. Sumathi

4. Keerthiraj

5. Minor Jayaprakash

*(Minor Jayaprakash

by next friend guardian,

mother 3rd Plaintiff Sumathi)

...

Plaintiffs

/VS/

1. Natrayan @ Nachimuthu

2. Kandasamy

3. Kolandayee

4. Sakunthala

...

Defendants

This suit had been taken on file on 13.10.2015 before the District Munsif Court, Tiruchengode as O.S No: 312/2015 and later transferred to this court on 18.07.2020 and taken on file as O.S. No:52/2020. This suit came up for final hearing on 30.07.2026 before this court in the presence of Advocate Thiru. V. S. Sivasubramanian, Counsel for the plaintiffs and Advocate Thiru. A.

Kailassanathan, Counsel for the defendants and upon perusal records and hearing both side arguments, this court doth delivers the following:

JUDGMENT

The suit has been filed seeking passing of preliminary decree for Partition and allotment of 1/3 share in the suit properties along with pathway and for costs.

1. THE GIST OF THE PLAINT FILED BY THE PLAINTIFF IS AS FOLLOWS:

1.1. The suit properties is the ancestral joint family property of the plaintiffs and the defendants. The husband of the 1st plaintiff named Arjunan and the husband of the 3rd defendant Kumarasamy and the 1st defendant are the sons of the Late.Subbanna Gounder, who had died intestate in 1990. The said Kumarasamy had died prior. The 1st plaintiff is the wife, the 2nd plaintiff is the daughter, the 3rd plaintiff is the daughter-in-law and the 4th and 5th plaintiffs are the grandsons of the said Arjunan. The son of the 1st plaintiff and the father of the plaintiffs 4 and 5 named Rajendran had died on 05.03.2006. According to the Hindu Succession Act, the plaintiff is entitled to 1/3 shares, the defendants 1 and 2 are entitled to 1/3 shares and the defendants 3 and 4 are entitled to 1/3 shares in the suit properties and the same is in joint possession without any partition.

1.2. The defendants 2 to 4 had filed a suit in O.S.No:294/2007 against the plaintiffs 1 to 3 and another third party to the suit for declaration that the suit

properties belongs to them and for consequential permanent injunction. The defendants have falsely pleaded in the said suit in O.S.No:294/2007 that the said Subbanna Gounder, the father-in-law of the 1st plaintiff herein, had executed a registered Will dated 10.07.1989 regarding the suit properties in favour of the 1st defendant and his brother Late.Kumarasamy and that based on the same, the 1st defendant had executed a Settlement deed dated 18.05.2007 in favour of the 2nd defendant in respect of a part of the suit properties and that the said Late.Kumarasamy had executed settled half of the suit properties in favour of the 4th defendant on 18.05.2007.

1.3. The plaintiffs 1 to 3 had defended the suit by filing their written statement. After the 2nd defendant, who had deposed as PW1 in the said suit, was cross examined, the defendants had filed a petition to examine the son of the attesting witness to the said forged Will, since he had died and since he had not appeared before the court upon receiving summons and since the counsel of the defendants herein had reported to have received no instructions in O.S.No:294/2007, the said suit has been dismissed for default. After the dismissal of the said suit, on 01.07.2015, the 1st plaintiff had approached the defendants and requested them for partition of the suit properties but the defendants herein had denied the same. The joint possession of the 1/3 share of the plaintiffs along with

the defendant is not possible and thus, the plaintiffs have filed the present suit seeking partition and separate possession.

2. THE GIST OF THE WRITTEN STATEMENT FILED BY DEFENDANTS IS AS FOLLOWS:

2.1. The defendants denied all the allegations made by the plaintiffs except those specifically admitted as true. This suit, without a relief of Declaration that the plaintiffs are entitled to equal moiety 1/3 share in the suit properties, is not maintainable in view of the admission made by the plaintiffs by way of concrete pleadings in earlier suit in between the parties to this suit and third parties. The defendants have been openly deliberately denying and discrediting the title and right of the plaintiffs for these 15 years and have been claiming absolute right and title of the defendants to the suit properties and hence, this suit seeking for partition is not maintainable and liable to be dismissed.

2.2. This suit is barred by the law of limitation. The defendant have not only denied the right, title and possession of the plaintiffs over the suit properties but also their right for a partition in the suit properties in O.S.No:294/2007. The above suit in O.S.No:294/2007 was dismissed for default. The defendants have not proceed with the trial, in view of the admission made by the plaintiffs in their written statement. The suit is barred under Res Judicata. The dismissal of the suit O.S.No:294/2007 will not in any way enure a right to the plaintiffs to file this suit. The plaintiffs' claim over the suit properties in earlier suit before this court

will falsify the suit of the plaintiffs and instantly attract the principle of Res Judicata. The description of property is wrong.

2.3. The Patta filed by the plaintiffs had been procured recently and the same will not entitle the plaintiffs to claim a right of Partition and separate possession since Patta is not a document of title. The inclusion of plaintiffs' name in the Patta neither gives right to the plaintiffs in the suit properties nor extinguish the absolute right of the defendants over the suit properties. The suit claim is bad for partial partition. The plaintiffs ought to have included the other properties of Subbanna @ Subbanna Goundar, which the plaintiffs are well aware. The claim of the plaintiffs for partition of the suit properties is contra to the written statement filed by the them in O.S.No:294/2007. The suit is filed suppressing the earlier suit in between the parties and third parties.

2.4. The suit properties are the self-acquired properties of one Subbanna @ Subbanna Goundar as per the Sale deed in his favour for true and valid consideration. The said Subbanna @ Subbanna Goundar died testate leaving behind him a registered Will dated 10.07.1989. It is the last Will and was acted upon. The 1st plaintiff husband Arjunan had not died but was murdered by the 1st plaintiff and her paramor, namely the 2nd defendant in O.S.No:294/2007 and others. The plaintiffs are not entitled to any share in the suit properties. The defendants 2 and 4 are the absolute owners in possession and enjoyment of the

same. The plaintiffs are never been in possession and enjoyment of the suit properties. No such demand for partition was made by the plaintiffs on 01.07.2015. The suit is hit under the principle of Estoppel. The plaintiffs have filed O.S.No:468/2006 for declaration and injunction against one Muthusamy and obtained a decree on the back of the defendants, wherein the plaintiffs have made a pleadings admitting the Will dated 10.07.1989. The defendants have sold S.No:316/2 and the plaintiffs are estopped from contending that the plaintiffs are entitled to a share in the suit properties. Hence, the suit fails and is liable to be dismissed.

3. ISSUES:

Upon considering the above pleadings and documents, this court has framed the following issues:

1. Whether the suit properties are the ancestral joint family properties of the plaintiffs and defendants?
2. Whether the plaintiffs are in joint possession and enjoyment of the suit properties?
3. Whether the suit is barred under Res Judicata?
4. Whether the Subbanna Gounder died intestate in 1990?
5. Whether the plaintiffs are entitled to equal moiety $\frac{1}{3}$ share in the suit properties?

6. Whether the plaintiffs are entitled to get relief of preliminary decree as prayed for?

7. To what other relief?

As per the power contemplated under Order XIV Rule 5 of CPC, the above issues are re-framed and re-casted as follows:

1. Whether the suit properties are the ancestral joint family properties of the plaintiffs and defendants?

2. Whether the Subbanna Gounder had died intestate?

3. Whether the suit is barred under Res Judicata?

4. Whether the plaintiffs are entitled to a preliminary decree for partition and separate possession of 1/3 share in the suit properties?

5. To what other relief?

From the perusal of the materials on record, this court considers the evidence put forth by both the parties are sufficient to address all the issues framed in the suit and that no additional evidence is required and hence, proceeds to decide the issues framed.

4. WITNESSES EXAMINED AND EXHIBITS MARKED:

On the side of plaintiff, PW1, PW2 were examined and Ex.A1 to Ex.A2, were marked. The Decree and Judgment dated 12.02.2015 in O.S.No:294/2007 was marked as Ex.A1, the Patta No:292 was marked as Ex.A2.

On the side of defendants, DW1, DW2 and DW3 were examined and Ex.B1 and Ex.B23 were marked. The Written statement filed in OS.No:294/2007 was marked as Ex.B1, the Sale deed dated 25.10.1952 in favour of Subbu (@) Subanna goundar was marked as Ex.B2, the Will dated 10.07.1989 executed by the grandfather of the 4th defendant was marked as Ex.B3, the Gift settlement deed dated 18.05.2007 in favour of the 4th defendant was marked as Ex.B4, the Gift settlement deed dated 18.05.2007 in favour of the 2nd defendant was marked as Ex.B5, the Patta dated 25.12.1984 in favour of Subu @ Subannagoundar was marked as Ex.B6, the Sale deed dated 23.07.2007 executed by the plaintiffs for S.No:316/2 of Kumarapalayam Amani Village was marked as Ex.B7, the Kist receipt 2'Nos was marked as Ex.B8, the Decree passed dated 07.11.2012 in O.S.No:372/2007 of District Munsif court Tiruchengode was marked as Ex.B9, the Judgement dated 07.11.2012 passed in O.S.No:372/2007 of District Munsif court Tiruchengode was marked as Ex.B10, the Memo filed dated 07.11.2012 in O.S.No:372/2007 of District Munsif court Tiruchengode was marked as Ex.B11, the Plaint filed in O.S.No:294/2007 of District Munsif court Tiruchengode was marked as Ex.B12, the Decree and Judgement dated 03.01.2007 passed in O.S.No:468/2006 of District Munsif court Tiruchengode was marked as Ex.B13, the Kist Receipt for suit properties Nos'8 was marked as Ex.B14, the House Tax receipts in D.No:4/1057-1 3'Nos was marked as Ex.B15, the EB Bill receipt

dated 17.11.2021 in Sc.No:648 was marked as Ex.B16, the Kist receipt dated 16.11.2021 was marked as Ex.B17, the EB Bill receipt dated 16.11.2021 in SC.No:585 was marked as Ex.B18, the Kist receipt 2 Nos' was marked as Ex.B19, the Death certificate of Palanisamy was marked as Ex.B20, the Legal heir certificate of Palanisamy was marked as Ex.B21, the Kist receipt was marked as Ex.B22, and the Will dated 10.07.1989 was marked as Ex.B23.

5. PLAINTIFF SIDE ARGUMENT:

The learned counsel for plaintiffs argued that the suit properties are Joint Family properties and that the plaintiffs have produced the patta to prove such joint possession. Ex.B4 and B5 have been executed based on Will. The 2nd and 4th defendants have filed suit in O.S.No:294/2007 against plaintiffs for declaration and consequential injunction regarding the same property. The said suit had been dismissed for default on 25.06.2004 and the defendants had taken no steps to and the defendants had taken no steps to restore the suit. Since the claim based on Will is not proved, the plaintiffs have filed the present suit for partition. The burden of proof to prove the execution of Will lies on the defendants.

The suspicious circumstances prevailing regarding the Will is that Subbu Gounder has affixed thumb impression in only in the last page of the Will and that the term பலவீனமாக உள்ளேன் specified in para 3 of the Will shows that the testator had not been in sound state of mind at the time of execution of Will. The

defendants have not mentioned the parent deed to show that the suit properties are self-acquire properties. DW3 has deposed in his cross examination that he, as a scribe, had created the said will without verifying the documents pertaining to the property bequeathed in the said Will. The plaintiffs disputed the seen affixed in the said Will and stated that the burden of proof regarding the Will lies upon the defendants. DW2 had not been examined by showing the Will and hence, his evidence cannot be considered.

The scribe of the said Will had no intent to attest the same. Merely because the Will is a registered document, the defendants cannot bypass the mandatory provisions regarding the proof of Will. The defendants have not examine the beneficiary of the Will, but only the 4th defendant, who had been minor at the time of execution of Will. The Will only gives life interest to the defendants and the defendants are not authorized to execute Settlement deeds based on the same. The suit is not barred by Res Judicata or affected by partial partition. Therefore, the plaintiffs prayed to decree the suit and partition the suit properties and allot their shares as prayed.

6. DEFENDANTS 1 TO 4 SIDE ARGUMENT:

The learned counsel for the defendants argued that the suit properties are self acquired properties and that the plaintiffs had admitted the same and have sold the shares allotted to them. The plaintiffs have admitted the Will in the

Written statement filed by them in the previous suit. The plaintiffs must have sought for declaration regarding the shares claimed in the suit property. The property in S.No:316/2 has not been included in the present suit. The plaintiffs cannot title based on the production of Patta in Ex.A2. The plaintiffs have not produced any documents to show joint possession. The plaintiffs have admitted the suit properties to be self acquire properties in para 6 of Ex.B1. When the plaintiffs claims right over S.No:316/2, which is an unregistered Will, the title of the defendants to the suit properties based on registered Will cannot be denied.

The defendants relied upon Ex.B7, B9, B10 and B11 and stated that the plaintiffs have obtained compensatory property in Ex.B11. The defendants have examined the Document Writer cum attested of the Will in proof of the same and stated that the two testators of the Will had died. DW2 has deposed identifying his father's sign and deposed regarding the same stating that the sign found in Ex.B22 and B23 are the same. The defendants have produced various receipts to prove their enjoyment and argued that the suit is barred by law. Therefore, the defendants prayed the court to dismiss the present suit.

7. DISCUSSION:

7.1. The submissions made on behalf of both parties have been considered. The records have been perused.

7.2. The case of the plaintiffs is that the suit properties is the ancestral joint family property of the plaintiffs and the defendants and that the husband of the 1st plaintiff named Arjunan and the husband of the 3rd defendant Kumarasamy and the 1st defendant are the sons of the Late.Subbanna Gounder, who had died intestate in 1990. The plaintiffs have alleged that the plaintiffs are entitled to 1/3 shares, the defendants 1 and 2 are entitled to 1/3 shares and the defendants 3 and 4 are entitled to 1/3 shares in the suit properties and that the same is in joint possession without any partition and also that the defendants have falsely pleaded in the suit filed by the defendants in O.S.No:294/2007 that the said Subbanna Gounder had executed a registered Will dated 10.07.1989 regarding the suit properties in favour of the 1st defendant and his brother Late.Kumarasamy and that based on the same, on 18.05.2007, the 1st defendant had settled a part of the suit properties in favour of the 2nd defendant and the said Late.Kumarasamy had settled half of the suit properties in favour of the 4th defendant. The plaintiffs have pleaded that after the dismissal of the said suit in O.S.No:294/2007, when the 1st plaintiff had approached the plaintiffs requesting partition of the suit properties on 01.07.2015, the defendants had denied the same. Hence, this suit.

7.3. On the contrary, the defendants have denied the title and right of the plaintiffs in the suit properties and have asserted that the plaintiffs herein had admitted the execution of Will dated 10.07.1989 in the suit in O.S.No:294/2007

and that the plaintiffs cannot claim right over the suit properties based on the Patta that had been procured recently, merely because the name of the plaintiff is included in it. The plaintiffs have contended that the plaintiffs ought to have included the other properties of Subbanna @ Subbanna Goundar and also that the suit properties are the self-acquired properties of one Subbanna @ Subbanna Goundar as per the Sale deed in his favour.

7.4. The suit properties is the extent of 0.02.00 hectares in S.No:317/2 and 1.67.50 hectares in S.No:317/3 of Kumarapalayam Amani Village. The statutory mandate under Section 101 of the Indian Evidence Act 1872, unequivocally places the burden of proof upon the party who affirms the existence of a fact in support of his claim. In the present case, since the plaintiff has alleged that the suit properties is an ancestral joint family property of the Late.Subbanna Gounder and that upon the intestate death of the said Late.Subbanna Gounder, the plaintiffs had become entitled to 1/3 share in the suit properties, the plaintiffs bear the initial burden of proving the same. The plaintiffs have examined the 1st plaintiff as PW1, one Sundharambal as PW2 and have produced Ex.A1, A2 in support of their claim. The defendants have examined the 4th defendant as DW1, one Nandhakumar as DW2 and one Mathialagan as DW3 in their support.

8. **ON ISSUE NO:1** *Whether the suit properties are the ancestral joint family properties of the plaintiffs and defendants?* In order to decide the present issue, it must be ascertained whether the suit properties are ancestral joint family property or self-acquired properties of the Late.Subbanna Gounder. From the perusal of the pleadings set out by the plaintiffs and the defendants, it is observed that when the plaintiffs allege the suit properties to be ancestral joint family properties, the defendants allege that the suit properties are the self-acquired property of the Late.Subbanna Gounder. In order to prove their case, the plaintiffs have produced the Patta extract dated 10.08.2015 of Patta No:292 as Ex.A2. It is observed from Ex.A2 that the Patta No:292 pertains to S.No:317/2 and 317/3 and that Patta to the said lands have been issued jointly in the names of the plaintiffs 1 to 5 and the defendants 1 to 4. However, it is well settled that a Patta is only a Revenue record and not a Document of Title. Therefore, the plaintiffs cannot claim entitlement to the suit properties are that the suit properties are in joint possession as alleged, solely on the basis of Ex.A2.

8.1. The plaintiffs have produced the Judgment copy dated 12.02.2015 passed by the Additional District Munsif Court of Tiruchengode in O.S.No:294/2007 as Ex.A1. The perusal of Ex.A1 shows that the defendants 2 and 4 have filed a suit against the plaintiffs 1 to 4 seeking to declare title to the half share in the properties in S.No:317/3 and for permanent injunction and that

the said suit had been dismissed for default. The defendants have produced the copy of the plaint in O.S.No:294/2007 as Ex.B12 and the copy of the Written statement filed by the 1st plaintiff and adopted by the plaintiffs 3 and 4 herein in the suit in O.S.No:294/2007 as Ex.B1. The extract of the pleading set out in Ex.B1 is as follows:

“3. வாதிகளின் பெற்றோர்கள் இப்பிரதிவாதி மற்றும் பலரது பெயரில் சமூகம் நீதிமன்றத்தில் குமாரபாளையம் அமானி கிராமம் ச.நெ.316/2 நிலம் பொருத்து பாகப்பிரிவினை கோரி அ.வ.எண்.372/2007 என்ற வழக்கு தாக்கல் செய்து நிலுவையில் உள்ளது.

4. அ.வ.எண்.372/2007 வழக்கு சொத்து ஆதியில் சுப்புக் கவுண்டர் (எ) சுப்பண்ணகவுண்டருக்கு தனிப்பட்ட முறையில் பாத்தியப்பட்டது ஆகும்.”

Hence, it is pertinent to note that the plaintiffs had filed the written statement in Ex.B1 admitting that the property in S.No:316/2 is the self-acquired property of Subbanna Gounder @ Subbanna Gounder.

8.2. The Sale deed dated 25.10.1952 has been produced as Ex.B2. From the perusal of Ex.B2, this Court observes that one Subbanna @ Suburathinam had purchased an extent of 4.14 acres i.e., 1.67.54 hectares in S.No:317/3 from one Sengodan and his sons Shamugam and Thangavel. Thus, it is observed that the suit property i.e., S.No:317/3 had been purchased by the said Late.Subbanna Gounder and thus, the same is the self-acquired property of the said Subbanna-Gounder. Therefore, from the perusal of the documents produced by the plaintiffs

and the defendants, this Court observes that the plaintiffs have not produced any title documents pertaining to the suit property but have produced only the Patta No:292 in Ex.A2 to prove that the suit properties are ancestral in nature. Per contra, the defendants have produced Ex.B2 i.e., the Sale deed dated 25.10.1952, thereby establishing the property in S.No:317/3 to be the self-acquired property of Late.Subbanna Gounder. This court also observes that the plaintiffs have themselves admitted in the written statement filed in O.S.No:294/2007 in Ex.B1 that the property in S.No:316/2 was the self-acquired property of Late.Subbanna Gounder.

8.3. In the absence of any documentary evidence to show that the suit properties had been descended from the ancestors of the Late.Subbanna Gounder, the allegation of the plaintiffs that the suit properties are ancestral stands uncorroborated. While the plaintiffs are seen to admit some of properties of the late. Subbu Gounder has self-acquired, the allegation that the suit property alone this ancestral, in the absence of any cogent and convencing evidence, is not worthy of relief. Therefore, this court is of the opinion that the suit properties to be the self-acquired properties of the said Subbanna Gounder. **Hence, issue No:1 is decided accordingly.**

9. **ON ISSUE NO:2** *Whether the Subbanna Gounder died intestate?* In order to answer this issue, it must be ascertained whether one Subbanna Gounder

had died without executing any testamentary documents. When the plaintiffs allege that the said Subbanna Gounder had died intestate, the defendants, on the contrary, allege that the said Subbanna Gounder had executed a Will dated 10.07.1989. From the discussions made to issue No:1, this court had observed that the suit properties are self-acquired properties of the Late.Subbanna Gounder. The burden lies upon the defendants, who allege the existence of the Will dated 10.07.1989, to establish its due execution and attestation in accordance with law. The defendants have produced the certified copy of the Will dated 10.07.1989 as Ex.B3 and the original Will as Ex.B23. On perusal of Ex.B3 and B23, it is observed that one Subbanna Gounder had executed a Will bequeathing his self-acquired properties, namely the entire extent of suit properties in S.No:317/2 and 317/3, in favour of the 1st defendant and one Kumarasamy.

9.1. Though the defendants have produced the original Will before this court, the burden subsists upon the defendants to prove the validity of the said Will in accordance with law. It is a settled principle of law that the mere production of a Will is not sufficient to prove its genuineness. The execution and the validity of the Will shall be proved as per the terms of Section 63(c) of the Indian Succession Act 1925, read with Section 68 of the Indian Evidence Act, 1872. From the perusal of Ex.B23, it is noted by this court that the testator of the Will had affixed his thumb impression to the third and final page of the said Will and

that Ex.B23 has been attested by two attesting witnesses and also that the Document Writer has affixed signature that he had typed and attested the said Will. Further, the execution of a Will is required to be proved by examining atleast one attesting witness.

9.2. In the present case, the defendants have alleged that both the attesting witnesses have died and in order to prove the Will in Ex.B23, the defendants have examined the son of the 2nd attesting witness to Ex.A23 as DW2 and the scribe of Ex.A23 as DW3. DW2 has deposed in his chief examination as follows:

“கருப்புண்ணன் மகன் பழனிசாமி எனது தந்தை. எனது தந்தை பழனிசாமி கடந்த 17.02.2000 தேதியில் இறந்து விட்டார். அவரது இறப்பு சான்றிதழ் அசலுடன் ஒப்பீடு செய்யப்பட்டு நகல் பி.வா.சா.ஆ.20 ஆக குறியீடு செய்யப்படுகிறது எனது தந்தை விவசாயம் செய்து வந்தார் என்றும், அவர் எங்களது நிலங்களுக்கு நிலவரி செலுத்தி வந்தார் என்றும், அவ்விதம் செலுத்தியதில் பசலி 1404க்கு வழங்கப்பட்ட நிலவரி கந்தாய ரசீது தாக்கல் செய்கிறேன். அதில் எனது தந்தை பழனிசாமியின் கையெழுத்து இடம் பெற்றுள்ளது. 1404 பசலிக்கு வழங்கப்பட்ட நிலவரி கந்தாய ரசீது அசலுடன் ஒப்பீடு செய்யப்பட்டு நகல் பி.வா.சா.ஆ.22 ஆக குறியீடு செய்யப்படுகிறது.

Further, DW2 has deposed in his cross examination that “அசல் உயில் பத்திரத்தை காண்பித்தால் எனது தந்தையின் கையெழுத்து குறித்து என்னால் உறுதிப்பட கூற முடியும் என்று சொன்னால் சரிதான்”. From the perusal of Ex.A23 and the oral testimony of DW2, it is observed by this court that though the son of

the 2nd attesting witness to Ex.A23 has been examined and documents pertaining to the death of the said attesting witness, his legal heirship certificate and the Kist Receipt containing the signature of the attestor has been produced through him as Ex.B20 to B22, it is observed that DW2 has not identified the signature of his father in the disputed Will in Ex.A23. In the absence of such identification, this court considers that the defendants have failed to prove the handwriting or signature of the deceased 2nd attesting witness named Palanisamy, and thus, the Will in Ex.A23 remains unproved in accordance with Section 69 of the Indian Evidence Act, 1872.

9.3. The Scribe of the disputed Will in Ex.A23 has been examined as DW3 by the defendants, who had deposed in his chief examination that Ex.B23 had been typed by DW3 upon instructions received from the said Late.Subbanna Gounder and that he had affixed his thumb impression after the contents were read out to him and that DW3 had obtained the thumb impression of the said Late.Subbanna Gounder in the presence of the 2 attesting witnesses and that DW3 had affixed his signature that he had typed and attested the same. Hence, the Scribe, who has attested the Will in Ex.A23, has deposed confirming the execution of the Will by the testator Late.Subbanna Gounder and that the testator has affixed his thumb impression in the presence of the attesting witnesses. Further, in his cross examination, DW3 has deposed as:

“பி.வா.சா.ஆ.23 ன் 1,2ல் கீறல் சுப்பு கவுண்டர் என்று மட்டுமே தட்டச்சு செய்யப்பட்டுள்ளது என்றாலும் மேற்படி சுப்பு கவுண்டரின் கைரேகை இல்லை என்றாலும், பி.வா.சா.ஆ.23 தயார் செய்யப்பட்ட காலகட்டத்தில் ஆவணத்தில் கைரேகை கடைசி பக்கத்தில் மட்டுமே வழங்கப்படும்... பி.வா.சா.ஆ.23ன் பத்தி 4ல் சுப்பு கவுண்டருக்கு உயில் சொத்து எந்த ஆவணத்தின் அடிப்படையில் சுயார் வீதமாக பாத்தியப்பட்டது என்று குறிப்பிடவில்லை என்றால் சரிதான். மேற்படி சுப்பு கவுண்டர் அவ்வாறு ஆவணங்கள் எதையும் சமர்ப்பிக்கவில்லை. பி.வா.சா.ஆ.23 உயில் ஆவணத்தினை மூல ஆவணங்களை சரி பார்க்காமல் எழுத எனக்கு அதிகாரம் இல்லை என்றால் சரியல்ல. ஆவணங்களை சரிபார்த்துதான் உயிரிழுந்த வேண்டுமென்றால் சரிதான். ஆவணங்களை சரி பார்க்காமல் அவ்வாறு உயில் எழுதுவது தவறு என்றால் சரிதான். உயில் சொத்து விவரத்தில் அதன் அடிப்படையில் சொத்து விவரத்தினை குறிப்பிட்டுள்ளேன் என்றால் பட்டா அல்லது கிராம நிர்வாக அலுவலரின் குறிப்பினை கொடுத்திருப்பார்கள் அதன் அடிப்படையில் நான் சொத்து விவரத்தை குறிப்பிட்டுள்ளேன்.”

Hence, it is observed from the cross examination of DW3 that the plaintiffs dispute the validity of Will in Ex.A23 alleging that the thumb impression of the testator Late.Subbanna Gounder is not found in every page of the Will. However, this Court is of the considered view that there exists no statutory provision mandating the testator to sign or affix his thumb impression on every page of a Will. The mere absence of the testator's thumb impression on every page cannot be treated as a circumstance rendering the Will itself invalid.

9.4. It is also observed from the cross examination of DW3 that, the plaintiffs dispute the validity of the Will on the ground that DW3 had prepared Ex.A23 without verifying the parent document. However, there is no legal requirement that the Scribe of a Will shall verify the parent title deeds of the properties proposed to be bequeathed through the Will and hence, the said allegation of the plaintiffs is devoid of merits. The validity of a Will depends upon its due execution and attestation in accordance with Section 63 of the Indian Succession Act, 1925. Therefore, from the perusal of Ex.A23 coupled with the oral testimony of DW3, this court is of the opinion that no material circumstances have been brought before this court to create any reasonable suspicion regarding the genuineness or validity of the Will. Thus, the defendants have sufficiently proved the due execution of the Will in Ex.A23 in accordance with the provisions of law. Therefore, from the foregoing discussions, this court has observed that the suit properties are the self-acquired properties of the Late.Subbanna Gounder and that the defendants have proved the due execution and attestation of the Will in Ex.A23, that had been executed by the said Late.Subbanna Gounder. Thus, this court is of the opinion that the said Subbanna Gounder had not died intestate and has made testamentary dispossession regarding his self-acquired properties. **Hence, issue No:2 is decided accordingly.**

10. ON ISSUE NO:3 *Whether the suit is barred under Res Judicata?* In order to decide the present issue, it must be ascertained whether the suit filed by the plaintiffs, after the Judgement and Decree passed in O.S.No:294/2007, is barred by the principle of Res Judicata. The defendants have pleaded that the present suit filed by the plaintiffs is barred by principle of Res Judicata upon the dismissal of the suit in O.S.No:294/2007. From the perusal of Ex.B12, Ex.B1, and Ex.A1, this court observes that the defendants 2 and 4 herein have filed the said suit for declaration of title and for permanent injunction and after the plaintiffs herein had filed their Written statement in Ex.B1, the said suit had been dismissed for default. This court considers that when a suit had not been heard and finally disposed of on merits, but had merely been dismissed for default, such dismissal is not a decision based on the merits of the case. Therefore, since the suit in O.S.No:294/2007 had not been dismissed on merits, as evident from Ex.A1, the principle of Res Judicata does not bar the trial or adjudication of the present suit on merits. **Hence, Issue No:3 is decided accordingly.**

11. ON ISSUE NO:4 *Whether the plaintiffs are entitled to a preliminary decree for partition and separate possession of 1/3 share in the suit properties?* In order to decide the present issue, it must be ascertained whether the suit properties are the ancestral joint family properties of the plaintiffs and defendants, whether the plaintiffs are entitled to claim partition in the suit

properties through intestate succession and whether the plaintiffs are entitled to claim 1/3 share in the same. From the discussions made to Issue No:1 and 2, this court has observed that the suit properties are the self-acquired properties of the Late.Subbanna Gounder and that the said Late.Subbanna Gounder had executed a Will in respect of the suit properties. From the perusal of Ex.A23, it is observed that the extract of the recitals found in Ex.A23 is as follows:

“எனக்கு சுயார்ஜிதமாய் பார்த்தியப்பட்ட இதனடியில் கண்டுள்ள எனது சொந்த சுவாதீன அனுபவத்தில் இருந்து வரும் சொத்துக்களுக்கு மேற்படி கொலை செய்யப்பட்ட எனது மகன் அர்ஜுனனின் மனைவி பாப்பாத்தி மற்றும் அவள் பெற்றெடுத்த ஆண், பெண் வாரிசுகளால் எவ்வித இடங்களும் விவகாரம் வரக்கூடாது என்ற நல்லெண்ணத்தினாலும் எனது சுயார்ஜித சொத்துக்களை பாதுகாத்து அவைகளுக்கு ஓர் நல்ல ஏற்பாடு செய்ய வேண்டும் என்ன நல்ல எண்ணத்தின் அடிப்படையிலும், எனது உண்மையான வாரிசுகளான உங்கள் இரண்டு பேருக்கும் அடிக் கண்ட எனது சுயார்ஜித சொத்துக்களை இந்த பத்திரம் மூலம் உயில் எழுதி வைத்துள்ளேன்.”

Hence, it is observed from the recitals specified in Ex.B23 that the testator Late.Subbanna Gounder had executed the said Will with intent to safeguard the suit properties from the 1st plaintiff and her sons and daughters and to prevent them from claiming any right over the suit properties.

11.1. It is observed from the perusal of Ex.B23 that the suit properties have been bequeathed in favour of the 1st defendant and one Kumarasamy, namely the sons of the testator Late.Subbanna Gounder. The defendants have further produced Ex.B4 to B19 to establish their right over the suit properties. The defendants have produced the Settlement deed dated 18.05.2007 in Doc.No:1917/2007 as Ex.B5 and Doc.No:1918/2007 as Ex.B4. From the recitals of Ex.B4 and Ex.B5, it is observed that one Kumarasamy had settled half share in the suit property in favour of the 4th defendant and that the 1st defendant had settled half share in the suit property in favour of the 2nd defendant, based on the right devolved through the Will in Ex.B23. The extract of the Revenue records dated 25.12.1984 pertaining to the suit properties has been produced as Ex.B6. The Kist receipts dated 21.04.2007 and 18.09.1999 have been produced as Ex.B8. It is noted from Ex.B8 that the Kist receipts have been issued to the 1st defendant regarding the Patta No:292, 1673 and 1965. The Kist receipts dated 06.04.2010, 19.02.2008, 26.04.2011, 02.06.2012, 16.04.2015, 13.04.2016, 24.01.2009 and 11.02.2020 pertaining to Patta Nos.292, 568 and 1915, which had been issued to one Kumarasamy had been marked as Ex.B14. The Kist receipts dated 28.04.2011 and 06.05.2015 pertaining to Patta Nos.1965, 292, 2307, 1492 and 1493, which had been issued to the defendants 1 and 2, had been marked as Ex.B14.

11.2. The House Tax receipts dated 18.08.2015, 24.05.2018 and 16.11.2021 pertaining to D.No:4-1057/1, which had been issued in the name of the 4th defendant, has been produced as Ex.B15. The House Tax receipt dated 16.11.2021 pertaining to D.No:4-1057, which had been issued in the name of the 2nd defendant, has been produced as Ex.B17. The EB receipt dated 17.11.2021 pertaining to connection No:648 issued in the name of one Kumarasamy has been produced as Ex.B16. The EB receipt dated 16.11.2021 pertaining to connection No:585 issued in the name of 1st defendant has been produced as Ex.B18. Therefore, from the perusal of Ex.B3 to B19, this court observes that the Will in Ex.A23 dated 10.07.1989 had been acted upon and that subsequent Settlement deeds have been created based on the rights conferred in it and that the defendants are in possession of their respective shares.

11.3. The defendants have alleged that the present suit is bad for partial partition, since the plaintiffs have not included the property in S.No:316/2 and have alleged that the suit is hit by the principle of estoppel as the plaintiffs have sold her share in the properties i.e., in S.No:316/2. The defendants have produced the Sale deed dated 23.07.2007 as Ex.B7. On perusal of Ex.B7, this observed that one Mohanasundaram had, as the power agents of the plaintiffs authorized through Doc.No:468/2006, had executed a Sale deed conveying an extent of 1.81.0 hectares in S.No:316/2 and 1.82.0 hectares in S.No:318/1 in favour of one

A.S.Angammal. The Decree and Judgment dated 07.11.2012 and the memo filed on 07.11.2012 in the said suit in O.S.No:372/2007 have been produced as Ex.B9, B10 and B11 respectively. From the perusal of the same, it is observed that the suit in O.S.No:372/2007 had been filed by the 1st defendant and one Kumarasamy against the plaintiffs 1 to 3, one Muthusamy, Mohanasundaram and M/s.Sri.S.P.K. Real Estate seeking the relief of partition and allotment of 2/3 shares, regarding the property to the extent of 1.60 acres situated in S.No:316/2 and that based on the memo filed by the 1st defendant and one Kumarasamy, the said suit had been dismissed as not pressed. However, in addition to the document regarding the prior suit filed by the defendants in respect of the property in S.No:316/2 for partition against the plaintiffs, the defendants ought to have established through any other valid documentary evidences to prove that the plaintiffs have failed to include all the properties of the said Late. Subbu Gounder. Hence, the defence putforth regarding the partial partition and the principal of estoppel does not hold good. The Decree passed in suit in O.S.No:468/2006 have been produced as Ex.B13 and it is observed that the said suit in O.S.No:468/2006 had been filed by the plaintiffs 1, 2, 4 and 5 against one Muthusamy.

11.4. It is pertinent to note that the defendants herein have denied the right of the plaintiffs towards the suit property and thus, the plaintiffs ought to have sought for the relief of Declaration that the plaintiffs are entitled to claim right

over the suit properties. From the foregoing discussions, this court had observed that the suit properties are the self-acquired properties of one Subbanna Gounder and that he had executed a testamentary document namely a Will bequeathing the suit properties in favour of his sons, namely the 1st defendant and one Kandasamy. Thus, this court is of the considerate opinion that no intestate succession can be claimed by the plaintiffs over the suit properties. Thus, the plaintiffs, as the alleged legal heirs of one Arjunan, namely another son of the said Subbanna Gounder, are not entitled to claim any share over the suit properties through intestate succession. Therefore, the plaintiffs are not entitled to obtain a preliminary decree for partition and separate possession of 1/3 share in the suit properties. **Hence, Issue No:4 is decided against the plaintiffs.**

12. ON ISSUE NO:5 *To what other relief?* From the foregoing discussions, this Court has observed that the plaintiffs are not entitled to obtain the relief of partition and separate possession and neither the plaintiff nor the defendants are entitled to any other reliefs in the present suit. **Hence, this issue is decided accordingly.** Considering the facts and circumstances of the case, the parties are directed to bear their own costs

13. RESULT:

In the result, the suit is DISMISSED. No costs.

Dictated to the Steno-Typist directly, computerized by him, corrected and

pronounced by me in the open court on the 31st day of July 2026.

District Munsif,
Kumarapalayam.

PLAINTIFFS SIDE WITNESS

P.W.1 - Pappathi @ Valliyammal (Plaintiff)

P.W.2 - Sundarammal (Witness)

PLAINTIFF SIDE DOCUMENTS

Ex.A1	12.02.2015	Decree and Judgement in O.S.No:294/2007	Certified Copy
Ex.A2	--	Patta No:292	Online Copy

DEFENDANT SIDE WITNESS

DW1 – Sagunthala (4th defendant)

DW2 - Nandhakumar (Witness)

DW3 - Mathiyalagan (Witness)

DEFENDANT SIDE DOCUMENTS

Ex.B1	--	Written statement filed in OS.No:294/2007	Certified Copy
Ex.B2	25.10.1952	Sale deed in favour of Subu (@) Subanna goundar	Certified Copy
Ex.B3	10.07.1989	Will executed by the grandfather of the 4 th defendant	Certified Copy
Ex.B4	18.05.2007	Gift settlement deed in favour of the 4 th defendant	Certified Copy

Ex.B5	18.05. 2007	Gift settlement deed in favour of the 2 nd defendant	Certified Copy
Ex.B6	25.12.1984	Patta in favour of Subu @ Subannagoundar	Certified Copy
Ex.B7	23.07.2007	Sale deed executed by the plaintiffs for S.No:316/2 of Kumarapalayam Amani Village	Certified Copy
Ex.B8	--	Kist receipt 2'Nos	Certified Copy
Ex.B9	07.11.2012	Decree passed in O.S.No:372/2007 of District Munsif court Tiruchengode	Certified copy
Ex.B10	07.11.2012	Judgement passed in O.S.No:372/2007 of District Munsif court Tiruchengode	Certified copy
Ex.B11	07.11.2012	Memo filed in O.S.No:372/2007 of District Munsif court Tiruchengode	Certified copy
Ex.B12	--	Plaint filed in O.S.No:294/2007 of District Munsif court Tiruchengode	Certified copy
Ex.B13	03.01.2007	Decree and Judgement passed in O.S.No:468/2006 of District Munsif court Tiruchengode	Certified copy

Ex.B14	2008 to 2020	Kist Receipt for suit properties Nos'8	Original
Ex.B15	18.08.2015 24.05.2018 16.11.2021	House Tax receipts in D.No:4/1057-1 3'Nos	Original
Ex.B16	17.11.2021	EB Bill receipt in Sc.No:648	Original
Ex.B17	16.11.2021	Kist receipt	Original
Ex.B18	16.11.2021	EB Bill receipt in SC.No:585	Original
Ex.B19	28.04.2011 06.05.2015	Kist receipt 2 Nos'	Original
Ex.B20	--	Death certificate of Palanisamy	Photo copy
Ex.B21	--	Legal heir certificate of Palanisamy	Photo copy
Ex.B22	--	Kist receipt	Photo copy
Ex.B23	10.07.1989	Will	Original

District Munsif,
Kumarapalayam.

Fair/Draft
OS.No.52/2020
DATED :31.07.2026