

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, POLLACHI.

PRESENT: Thiru.R. SUJATHA, B.SC., L.L.M.,

Principal District Munsif, Pollachi

Monday 30th day of March 2026

O.S. No.117/2008

1) Mrs. Manickam alias Manickathai (died)

(by Lrs plaintiff 2 to 5)

2) Nataraj Kalingarayar

3) A.S. Meera

4) K.Kumar Vishwalinga Kalingarayar @

Viswakumar Kalingarayar

5) P. Kalaivani

... Plaintiffs

/VS/

1) M.C. Rathinam (died)

2) M.R.Chinnaswaamy

3) R.Santhakumar

4) R. Sampathkumar (died)

5) Mrs. Rukmani

6) Vijayan @ Viji

7) Dr. V. Anand

8) Dr. S. Suchi Ravi

9) V.K. Rangarajagounder (died)

10) V.R. Senapthi (died)

11) V.R. Sakthivel (died)

12) Radhabai

13) Smt. Leelavathi (died)

- 14) Sri.Udayakumar
 - 15) Sri. Suriyakumar
 - 16) Smt. Chitraleka Sampathkumar
 - 17) Smt. Sumangala Hari
 - 18) Sri. S. Ganesh Rathinam
 - 19) Smt. Neelambal
 - 20) Sri S. Baba Ramesh
 - 21) Smt. Dr. A. Priya Anand
 - 22) Smt. B. Sakila
 - 23) Rajalakshmi
 - 24) Devi
 - 25) Arjun Rathinam
 - 26) M.C.R.S. Shankar
 - 27) K.M. Akila
 - 28) Mrs. Kavitha Shankar
- ... Defendants
- (IA. 1074/2017 Dated 11.04.2019
 IA. 587/2015 Dated 11.05.2015
 IA. 1045/2014 Dated 09.02.2015
 IA. 11/2026 Dated 05.01.2026)

The suit was originally instituted on 24.01.1986 before the Subordinate Court, Udumalpet. Subsequently, by order dated 22.10.2002, the said suit was transferred to the Subordinate Court, Pollachi, where it was received and taken on file. Thereafter, the suit was once again transferred to this Court on 14.02.2008 and was taken on file as O.S. No.117 of 2008 on the file of this Court. The matter was taken up for final hearing on 17.03.2026. On behalf of the 1 to 3 plaintiffs, learned counsel Mr. M.A. Kanagaraj and for 4th plaintiff learned counsel Mr. J.Benjamin Jacob appeared. On behalf of the D16 and D18 defendants, learned counsel Mr. A. Senguttuvan appeared and Mr. S.P. Kamatchi Kumar appeared for D26 to D28. After hearing the submissions made on either side, this Court proceeds to pass the following:

Judgment

Declaring that the plaintiff proposed plaintiff who are the class I legal heir of Manickam @ Manickathai as the sole and absolute owner of the properties set out in Schedule here under entitled to possession thereof from of 07.12.1985 as per the will of Ponnammal dated 23.02.1983. Directing the defendants 1 to 28 to deliver vacant possession of the property set out in the schedule A hereunder to the plaintiff. For Partition of B schedule properties set out hereunder into 16 shares and order delivery of one such share to plaintiff. Granting such and other relief in the circumstances of the case filed by the plaintiff under order 7 Rule 1 of CPC.

2) The brief Averments of the plaint is as follows:

Late M.R. Chinnaswami Gounder, a wealthy landlord of Zamin Muthur, died in the year 1960 leaving behind his wife Ponnammal, three sons and one daughter. During his lifetime, he effected a partition in the year 1954 and subsequently executed a Will dated 08.06.1959 bequeathing his properties absolutely in favour of his wife Ponnammal. After his death, Ponnammal succeeded to and enjoyed the properties. Ponnammal executed a registered Will dated 23.02.1983 in a sound and disposing state of mind, out of her own free will. Under the said Will, she made various bequests in favour of several family members including the plaintiff and defendants. The properties comprised in Schedule 'E' of the said Will (morefully described as Suit Schedule 'A') were bequeathed absolutely in favour of the plaintiff. Copies of the Will were furnished to all beneficiaries.

(2.2) Ponnammal died on 07.12.1985. Upon her death, the suit properties vested with the plaintiff as absolute owner, with right to immediate possession. While so, defendants 1 to 4 set up a document dated 14.09.1985, alleged to be a codicil modifying the Will dated 23.02.1983 insofar as Schedule 'E' properties are concerned. The plaintiff contends that the said document is a forged and fabricated one, created by defendants 1 to 4 for wrongful gain. It is specifically pleaded that the said document is not genuine, the signatures of Ponnammal are forged, and the circumstances surrounding the document render it suspicious. Ponnammal had no reason or intention to alter the Will dated 23.02.1983 and continued to have cordial relationship with the plaintiff.

(2.3) The plaintiff further states that the Will dated 23.02.1983 is the last valid Will and testament of Ponnammal and the alleged document dated 14.09.1985 is not binding on her. As the defendants denied the plaintiff's title and interfered with her possession by setting up the said fabricated document, the plaintiff has been constrained to file the present suit seeking declaration of her title, recovery of possession and mesne profits. With regard to Schedule 'B' and 'C' properties, the same are stated to have not been covered under the Will dated 23.02.1983 and hence they devolve by intestate succession. The plaintiff claims 1/16th share therein and seeks partition and separate possession. During pendency of the suit, certain parties died and their legal heirs have been brought on record. It is further pleaded that some of the defendants have executed settlement deeds in respect of portions of the suit properties in favour of third parties, which are not binding on the plaintiff and are intended to defeat her lawful rights. Hence, the suit.

3) 1st Defendant written statement Averments

The petition is not maintainable both in law and on the facts of the case. The petitioner is not entitled to the relief prayed for or for any other relief. The 13th respondent in this application viz. S. Leelavathy died about years back. The petitioner has not taken any steps so far to amend the above petition suitably and to bring the legal representatives, if any, on record. Only after completion of the same this petition can be proceeded with. The allegations in the affidavit, excepting those which are admitted herein, are all hereby denied as incorrect and false. The petitioner has filed the above suit for declaration and possession of the suit property that had been bequeathed to her as per the Will dated 23.2.1983. These respondents have taken up the stand that the bequest in favour of the petitioner had been altered by a codicil. The averments in the affidavit regarding the possession of the original will are contrary to the contention in the plaint wherein in paragraph-6 the petitioner had categorically said that she had deposited the will with the Sub Registrar, Pollachi.

(3.2) But when the trial commenced the petitioner started pretending she did not know what happened to the original will dated 23.2.1983 and she proceeded to summon the original kept by the Registrar and marked the same. In fact These respondents did not raise any objections when the original kept by the Registrar was marked. nowhere either in the pleadings or in evidence these respondents had questioned the truth and validity of the

said will. In both their pleadings and the evidence these respondents have admitted the said Will. The only contention of these respondents was only that the properties bequeathed to petitioner had been subsequently altered and these respondents have propounded the said codicil dated 14.9.1985 But the petitioner is questioning the truth and validity of the codicil. It is only on the basis of these pleadings the first two issues have been framed in the suit to the effect whether the 23.2.83 will was the last and final testament of Ponnammal and whether the codicil propounded by these respondents is true and valid.

(3.3) Therefore there is not even any issue in the suit regarding the truth and validity of the Will and as such the absence of the original Will before the court is not of much consequence. Therefore the allegations in paragraph-6 of the affidavit that the presiding officer questioned whether the Will had been proved and that the otherside counsel also pointed out issue No.1 are all false. The bequest under the Will dated 23.2.83 is not only in favour of the petitioner but to all the respondents, and it was never in question. fact both D.W.1 and D.W.2 have referred to the Will and have said it had been executed by the testator, But inspite of all these the petitioner filed the amendment petition after the arguments of the petitioner was over and just before the arguments of these respondents were heard. The only object was to protract and delay the proceedings. When in view of the belated filing of the application it was rejected by this Hon'ble Court on 10.4.92 and proceeded to hear the arguments of the counsel for these respondents in the after lunch session, Advocate Mr. Rajagopal, a junior to Mr. Panchapakesan, counsel appearing for the petitioner was also present and taking notes.

(3.4) At the same time Advocate Mr. Vijay Ragnath, Son of Mr. Panchapakesan filed a transfer petition before the District Judge, Coimbatore, in Tr.O.P.No.111 of 1992 making allegations that the presiding officer of this Hon'ble Court, had been taken to Palghat and Valparai and had been influenced and was over and therefore the petitioner could not get justice in his hands. Allegations have also been made against the counsel appearing for the respondents. The learned District Judge had stayed further proceedings in the suit. Thereafter these respondents appeared in the Tr.O.P.No.111 of 1992 and filed counter statement contesting the same. When the enquiry in the petition was taken up another counsel Mr. C. Ramachandran was engaged. But after arguments were advanced by

the counsel for these respondents, the petitioner realised that her false and defamatory allegations could not even be supported leave alone established and had meekly net pressed the Tr.O.P on 19.8.1994.

(3.5) In the meantime the petitioner had filed the revision before the Hon'ble High Court, Chennai, against the rejection of the and nux amendment petition and had obtained a stay of the suit. The petitioner did not exhibit any interest in the early disposal of the revision petition since the trial of the suit had been stayed and only, after 7 years the revision petition had been disposed off. Therefore the intention' of the petitioner to delay the disposal of the suit has been achieved. The present ass amendment petition to include an alternative prayer for partition is not at all called for under the circumstances and is also not permissible Originally the suit property was only one item of property but now about 15 items of properties are sought to be brought in. The proposed amendment goes to the very root of the case and changes the very basis of the suit. What was a suit for declaration and possession on the basis of a Will is sought to be converted into a suit for general partition.

(3.6) The properties allotted to various parties as per the Will have already been taken possession of by respective parties and the properties have been developed by investing huge amounts. All the beneficiaries have taken possession of the respective properties and are enjoying the same as absolute owners for the past 15 years. Some properties have also been disposed off. The non availability of the original will had come to the knowledge of the petitioner even when P.W.1 was examined on x 5.4.90 The evidence of the respondents was then let in and the rebuttal evidence was also let in by the petitioner. Thereafter after closing her arguments in the first week of Apxekxis Appril 1992 this petition has been filed alleging the non availability of the original will as the ground as if it came to her knowledge only after submitting arguments. The petition for amendment is highly belated. It will call for impleading of new parties and reopening and letting in additional evidence. It will cause irreparable hardship and difficulties to all the other sharers. Maving filed the suit only regarding one property not the petitioner is trying to bring in the new items of properties. The petitioner cannot be permitted to play with the process of court in this manner. These respondents therefore pray that this Hon'ble Court may be pleased to dismiss the petition with costs and render justice.

4) 1 0th Defendant written statement Averments

This defendant states that many of the allegations made in the plaint are untrue and incorrect. The allegation in paragraph VIII of the plaint that Ponnammal's death was most unexpected is not correct. Ponnammal had heart trouble and for this reason she was twice admitted in Sankunni Memorial Hospital, Pollachi and given treatment. The plaintiff never cared to visit Ponnammal either when she was in Muthur, or in Hospital. When this defendant visited Ponnammal in Hospital, he found her under the care of the first defeniant, his wife and the mother of the defendants 3 and 4. That Ponnammal Jesented this kind of attitude on the part of the plain--tiff was no secret. Ponnammal was also not happy with the husband of the plaintiff who is well known for his extraragant expenses and whose sarcastic comments had irritated Ponnammal many times.

(4.2) Ponnammal used to keep all her important papers in an iron safe in the Muthur house where she was living and the key was only with her till her death. Two days after the 16th day Ceremony, the safe was opened in the presence of family members and close relatives. As a matter of fact the safe was opened by plaintiff herself and the contents were taken out. Among other papers inside the safe there was a copy of the will to which the original codicil dated 14-9-1985 was attached. The codicil was read out openly and every one present learned of the contents. When it revealed that the bequest in favour of the plaintiffs had been changed by Ponnammal, there was not much of a surprise among those present since it was not unexpected. The plaintiff who was also present had no alternative but to accept it without any protest as she knew it was the result of her own conduct. The original codicil and the copy of the will, by common consent, were entrusted with Sri. Arumuga gounder of Thathur.

(4.3) There was never any doubt for anyone present about the genuineness of the codicil. Now it appears that the plaintiff, unable to accept the fact that the bequest in her favour had been changed has come forward with this suit. The failure on the part of the plaintiff to respect Ponnammal during her life time continues even after her death by refusing to honour her last wish. The allegations that plaintiff was frequently visiting Ponnammal and Ponnammal also used to visit plaintiff and stay with her guite often and that Ponnammal'si affection for plaintiff continued unabated till her death are all faſse. As

mentioned above the fact that the plaintiff ignored to take care of Ponnammal even when she was 111 would have hardly allowed any unabated affection for this non earing grand daughter. On the other hand the dissatisfaction felt by Ponnammal towards the plaintiff continued unabated till her death was known to every one. Under these circumstances the decision of Ponnammal to change the bequest in favour of plaintiff is quiet understandable. The present suit is therefore nothing but the result of the plaintiff's desire to obtain by war of intimidatory tactics what she was not given by Ponnammal. This suit deserves only to be dismissed.

5) The concise of written statement filed by the 13, 14 and 15 Defendants

These defendants are now impleaded as a legal representative of the 10th defendant, who died pending suit. The plaintiff is the eldest sister of Senapathy gounder. Their grand mother Ponnammal executed a Will on 23.2.1983 and duly registered the same. There is no dispute over the Will. All the relations including the plaintiff were given properties. The defendants-1 to 4 raised a controversy by producing an alleged codicil dated 7.12.1985. It is not a true document. V.R. Senapathy gounder was an innocent and open hearted gentleman. The defendants-1 to 4 exploited his gullibility and took his signature in a written statement prepared by them, alleging that it would help them to settle the matt later. V.R. Senapathy gounder was reluctant but the defendants-1 to 4 pressuried him to sign the same, stating that such a statement would help them to bring pressure on the plaintiff to settle the matter out of the court to their advantage. V.R. Senapathy gounder was troubled when the matter was not subsequently compromised.

(5.2) He refused to give his evidence supporting the statement in which his signature was taken by defendants-1 to 4. V.R. Senapathy gounder was openly and repeatedly mentioning his mistake in signing the statement brought by the defendants-1 to 4. He wanted to make amends to the matter. Sensing the same the defendants-1 to 4 created dissensions between the brothers (V.R. Senapathi and V.R. Sakthivel) and started a series of litigations and trouble to V.R. Senapathi gounder. V.R. Senapathi gounder was troubled. He died of heart attack on 26.12.1990. These defendants are not affirming the contents of the statement filed by the 10th defendant. On the other hand, these defendants are personally aware that great grand mother Ponnammal was attached and affectionate towards the

plaintiff and the plaintiff was also well disposed, attached and affectionate towards her grand mother, and she was attending to the grand mother and also during her ailment and visiting her. V.R. Senapathy ghunder was also given a share in the estate of la te Ponnammal as per Will dated 23.2.83. A decree may be passed for the same in this suit itself. A court fee of 5.100/- is paid under Section-37(3) of the Court Fees Act.

6) The concise of written statement filed by the 26th Defendants

The suit of the plaintiffs is false, fraudulent and not maintainable in law. Except the facts expressly admitted by this defendant in this written statement, all other averments contained in the plaint are hereby denied. The plaintiffs are put to strict proof of the same. It is submitted that the wife of M.R. Chinnasamy Gounder, namely Ponnammal, had executed a Will dated 23.02.1983. Thereafter, she had executed a codicil to the said Will on 14.09.1985. At the time of execution of both the Will and the codicil, the said Ponnammal was in a sound and disposing state of mind and was fully aware of her actions. The said codicil is true, valid and legally enforceable. The said codicil binds the late 1st plaintiff, and consequently, the legal heirs of the late 1st plaintiff are also bound by the same. In such circumstances, the late 1st defendant had already filed a detailed written statement clearly setting out the above facts. The present defendant respectfully adopts the written statement filed by the late 1st defendant as well as the additional written statement filed by the 2nd defendant, and prays that the same may be read as part and parcel of this written statement.

(6.2) It is further submitted that the Will dated 23.02.1983 and the codicil dated 14.09.1985 executed by Ponnammal came into force upon her death on 07.12.1985. Upon her demise, the dispositions made under the codicil took effect, and in terms thereof, the properties described in the 'E' Schedule of the Will and forming part of the 'A' Schedule of the suit properties were allotted—one portion to the late 1st defendant and the remaining portion jointly to defendants 3 and 4, with absolute rights, and they have been in possession and enjoyment of the same. Subsequently, in respect of the 'A' Schedule suit properties so allotted to defendants 1, 3 and 4, they jointly executed a partition deed dated 20.01.1986, which was registered as Document No.98/1986 in the office of the Sub-Registrar, Pollachi.

(6.3) Under the said partition, the properties were divided into two shares, whereby

the 'A' Schedule properties therein were allotted to the late 1st defendant absolutely, and the 'B' Schedule properties were allotted jointly to defendants 3 and 4. Thereafter, the respective parties have been in exclusive possession and enjoyment of their respective shares, having obtained patta and other revenue records, and have effected several improvements. Further, the properties which had been originally allotted to the father of defendants 3 and 4, namely M.C. Rasamy Gounder, under sale deeds dated 12.05.1957 and 02.03.1956 (Doc. No.257/1956 and 499/1957), together with the properties allotted under the Will dated 23.02.1983 and the partition deed dated 20.01.1986, were again partitioned under a registered partition deed dated 25.04.2016, bearing Document No.1854/2016, registered in the office of the Sub-Registrar, Anaimalai. The said partition was executed between the 3rd defendant, the 26th defendant, the younger son of the 3rd defendant, and the legal heirs of the deceased 4th defendant, namely defendants 16, 17 and 18.

(6.4) Under the said partition deed dated 25.04.2016, certain properties were allotted to the share of the 3rd defendant M.R. Santhakumar, and certain other properties were allotted to the 18th defendant Ganesh Rathinam. Pursuant to the same, the respective parties have been in exclusive possession and enjoyment of their respective shares with absolute rights. Thereafter, the 3rd defendant, in respect of the properties allotted to his share, executed a settlement deed dated 20.07.2018 in favour of the 26th defendant, and delivered possession. The 26th defendant has since been in possession and enjoyment of the same, having obtained patta and other revenue records. Subsequently, the 26th defendant settled a portion of the said properties in favour of his wife, the 28th defendant, under a registered settlement deed dated 28.04.2025 (Doc. No.2391/2025), as referred to in paragraph XIV(f) of the plaint. The 28th defendant has been in possession and enjoyment of the said properties with absolute rights.

(6.5) Similarly, the 18th defendant, in respect of the properties allotted to his share under the partition dated 25.04.2016, executed a settlement deed dated 16.07.2018 (Doc. No.3511/2018) in favour of his wife, the 27th defendant, and delivered possession. The 27th defendant has since been in possession and enjoyment of the said properties. It is further submitted that the properties allotted to the late 1st defendant under the partition deed dated 20.01.1986 had been dealt with by him by executing various documents in favour of third

parties, and he had been in absolute enjoyment of the same.

(6.6) The allegations in the plaint that the settlement deeds dated 16.07.2018 and 20.07.2018 are invalid or without authority are false and untenable. The said documents have been executed only in respect of properties lawfully allotted to the respective defendants under the valid partition deeds and hence are binding on the plaintiffs. The documents referred to in paragraph XIV(f) of the plaint are all subsequent transactions arising out of the valid allotments made under the codicil dated 14.09.1985 and the partition deed dated 20.01.1986. The very reference to these documents in the plaint would show that the plaintiffs are well aware of the partition dated 20.01.1986 and the subsequent transactions. However, the plaintiffs have deliberately suppressed material particulars relating to the said partition.

(6.7) It is pertinent to note that more than 40 years have elapsed since the execution of the partition deed dated 20.01.1986, and no steps have been taken by the plaintiffs to challenge the same. Therefore, the said partition deed is binding on the late 1st plaintiff and the present plaintiffs. The contention of the plaintiffs that the documents mentioned in paragraph XIV(f) came to their knowledge only recently is false. The defendants 3, 18 and 26 had every right to execute the said documents in respect of the properties lawfully vested in them, and such documents are valid and binding.

(6.8) Thus, all the documents referred to in paragraph XIV(f) of the plaint and the other documents mentioned herein are valid, legal and binding on the plaintiffs. The codicil dated 14.09.1985 is true and valid, and the subsequent partition deed dated 20.01.1986 and all derivative documents are lawful. In view of the above, the plaintiffs have no manner of right, title or interest in the 'A' Schedule suit properties. The suit is not maintainable in law and is liable to be dismissed. The cause of action alleged in the plaint is false and non-existent, and the averments made therein are incorrect.

4) Based on the pleadings of the plaintiff and the written statement of the defendants the following issues have been framed.

5) Issues:

1) Whether the Will dated 23.02.1983 executed by the deceased

Ponnammal is her last Will and testament and whether the same is true, genuine and valid?
2) Whether the codicil dated 14.09.1985 to the said Will is true, valid and legally enforceable?
3) Whether the plaintiff is entitled to the 'A' schedule property as claimed in the plaint?
4) Whether the plaintiff is entitled to the relief of declaration of title and recovery of possession as prayed for?
5) Whether the plaintiff is entitled to the relief of partition as claimed; if so, in respect of which properties and to what extent of share?
6) Whether the court fee paid by the plaintiff is proper and correct? To what other reliefs the plaintiff is entitled?
7) To what other reliefs the plaintiff is entitled?

6) In this case, on considering the documents and evidence marked on the side of the plaintiff and the defendants, on the side of the plaintiff, one Balan @ Balasubramaniam was examined as P.W.1 and documents Ex.C1 and Ex.C2 were marked. On the side of the plaintiff, Manikathai was examined as P.W.2 and Ex.A1 to A15 was marked. On the side of the defendants, the one Marimuthu was examined as D.W.1 and documents Ex.B1 to Ex.B5 were marked. On the side of the defendants, D3 Santha kumar was examined as D.W.2. one Chinnasamy was examined as D.W.3. one Dr. Jeyakumar was examined as D.W.4 and Ex.B6 to B8 was marked. One Murugasen was examined as D.W.5 .

7) Both sides were heard. Documents were perused. List of Authorities filed by the Plaintiff and Defendant side. Written araguments filed by the plaintiff side.

DEFENDANTS SIDE:

- 1) AIR 2004 Supreme Court Page 436
- 2) AIR 1976 Gauhathi Page 94
- 3) 2024 (4) CTC Page 271
- 4) 2019 (3) CTC Page 767

- 5) AIR 2005 Supreme Court Page 233
- 6) 2006-4 L.W. Page 351
- 7) AIR 2020 Punjab @ Haryana Page 20
- 8) AIR 2002 Orissa Page 101
- 9) AIR 2002 Himachala Pradesh Page 77
- 10) 2022-3 L.W Page 9
- 11) 2023 (1) CTC Page 9
- 12) AIR 2014 Supreme Court Page 937

8) Issues 1 to 3 – answered as below:

The present suit has been laid by the plaintiffs seeking the relief of declaration that the suit properties are the properties allotted under the Will dated 23.02.1983 executed by the deceased Ponnammal in favour of her granddaughter, the deceased 1st plaintiff, and for the consequential relief of recovery of possession. In order to find out whether the plaintiffs have established their case by acceptable oral and documentary evidence, the history of the litigation requires to be noticed at the outset. The original suit was instituted by the plaintiff Manickathai in the year 1986 in O.S. No.24 of 1986 on the file of the Sub Court, Udumalpet. Thereafter, by District Court proceedings in D.No.71/1996 dated 05.12.2000, the said suit came to be transferred to the Sub Court, Pollachi, and was received by that Court on 22.10.2002 and taken on file as O.S. No.339 of 2002. Subsequently, by order dated 20.01.2004 of the District Court, Coimbatore, the suit was transferred to the District Munsif Court, Pollachi, and was thereafter continued on the file of this Court as O.S. No.117 of 2008. It is further seen that even prior to such transfer, the Hon'ble High Court of Madras, in W.P. No.22691 of 2007, had directed that the case records available in the file be transmitted to this Court and had also directed early disposal of the suit. The above factual background makes it clear that the lis has been pending for a long period and that this Court is now called upon to decide the rights of the parties on the basis of the available materials.

(8.2) According to the plaintiffs, the deceased Ponnammal had, on 23.02.1983, executed a registered Will in respect of the properties belonging to her in favour of the deceased 1st plaintiff Manickathai and her siblings. In proof of the same, the plaintiffs have

relied upon Exs.C1 and C2. It has also been submitted by the learned counsel appearing on either side that the Will dated 23.02.1983 is not seriously in dispute and that both sides accept that such a Will had in fact been executed by Ponnammal. It is the further case of the plaintiffs that under the said Will, the 'E' Schedule property had been specifically allotted to the deceased 1st plaintiff Manickathai and that, on the death of Ponnammal, the said bequest took effect and the 'E' Schedule property devolved upon Manickathai. Inasmuch as the execution of the Will itself has been accepted by both sides, this Court has no hesitation in holding that the Will dated 23.02.1983 stood admitted and that the 'E' Schedule property was, under the terms of the said Will, allotted to the deceased 1st plaintiff.

(8.3) However, the defence set up by the defendants is that two years after the execution of the Will, Ponnammal executed a codicil in the year 1985, insofar as the very same property allotted to the plaintiff is concerned, thereby altering the earlier disposition. Therefore, though the original Will is admitted, the real and substantial controversy that falls for determination in this suit is whether the alleged codicil said to have been executed in 1985 was in fact executed by Ponnammal voluntarily, in a sound and disposing state of mind, and in the manner known to law.

(8.4) The learned counsel for the plaintiffs would contend that the alleged codicil is a fraudulent and fabricated document brought into existence by the defendants in collusion with one another, solely with an intention to deprive the deceased 1st plaintiff of the benefit conferred under the admitted registered Will dated 23.02.1983. According to the plaintiffs, Ponnammal never had any intention to revoke or vary the allotment made in favour of the deceased 1st plaintiff in respect of the 'E' Schedule property, and therefore the very plea of execution of a codicil is false and contrary to the surrounding circumstances. It is also contended that all the earlier documents executed by Ponnammal concerning her properties were registered documents, whereas the alleged codicil alone remained unregistered without any explanation, and that this circumstance assumes significance while testing the genuineness of the said document.

(8.5) Before advertent to the evidence regarding the codicil, it is first necessary to examine whether the plaintiffs have satisfactorily proved the Will dated 23.02.1983. In this regard, the plaintiffs have examined PW1 Balan, the scribe of the Will. PW1, in his chief

examination as well as in his cross-examination, has clearly stated that he wrote the Will on 23.02.1983, that the contents were furnished by Ponnammal herself, that at the relevant point of time she was in a sound and good mental condition, that Ponnammal signed the Will in the presence of himself and the attesting witnesses, namely Sattur Arumuga Gounder and Marimuthu, and that the attesting witnesses signed in her presence and she in turn saw them subscribing their signatures. This testimony, in the opinion of this Court, satisfies the essential requirements relating to due execution and attestation of the Will. Significantly, nothing worthwhile has been elicited in the cross-examination of PW1 on the side of the defendants so as to discredit his testimony or to probabalise that the Will was not executed in the manner spoken to by him.

(8.6) Added to this, the deceased 1st plaintiff Manickathai has, in her evidence, stated that her grandmother Ponnammal was not a person who behaved harshly with anybody; on the other hand, she was affectionate towards all her descendants, and that under the Will of the year 1983 she had allotted properties to all the grandsons and granddaughters. She has further deposed that at no point of time did her grandmother either alter the said Will or execute any codicil. This evidence is consistent with the admitted Will and also with the broad probabilities emerging from the record.

(8.7) On the side of the defendants also, certain admissions have come which fortify the plaintiffs' case regarding the Will. DW2, in his chief examination, has stated that Ponnammal had written a Will in the year 1972, though the details thereof came to be known only after her death, and that under that Will properties had been given to Muthammal. He has further admitted in his chief examination that in the year 1983, while Ponnammal was in the hospital, she had written a Will, and he has also admitted that the plaintiff was given about one-fourth share thereunder. In the view of this Court, once DW2 himself admits in substance that under the 1983 Will the plaintiff had been allotted the suit 'E' Schedule property, no further evidence is really necessary on the side of the plaintiffs to establish the due bequest made in favour of the deceased 1st plaintiff.

(8.8) DW2 has also admitted, in his cross-examination, that M.R.C. had bequeathed all his properties to his wife and the plaintiff, thereby indicating that both Ponnammal and her husband had shown favour towards the plaintiff and her branch. He has also admitted

that Ponnammal had, in 1972, written a Will in favour of her daughter Muthammal and that she had affection towards all her children and grandchildren. These admissions go a long way in probalising the case of the plaintiffs that the bequest in favour of the deceased 1st plaintiff under the Will dated 23.02.1983 was not an unnatural one.

(8.9) Thus, on an overall appreciation of the oral and documentary evidence, this Court has no hesitation in coming to the conclusion that the Will dated 23.02.1983 executed by Ponnammal has been duly proved by the plaintiffs and stood accepted even by the defendants. The next and more crucial question is whether the defendants have discharged the heavy burden cast upon them to prove the alleged codicil of the year 1985. In law, a Will or codicil is not to be accepted merely because formal proof is attempted through attesting witnesses. Where the execution is surrounded by suspicious circumstances, the propounder must dispel all legitimate suspicions to the satisfaction of the judicial conscience of the Court, and the burden becomes correspondingly heavier. These principles have repeatedly been reiterated by the Supreme Court and have also been followed by the Madras High Court.

(8.10) Indian Kanoon +3 The plaintiffs would contend that if really Ponnammal had intended to vary the registered Will dated 23.02.1983 only in respect of the 'E' Schedule property allotted to the plaintiff, there was absolutely no reason for her to keep the alleged codicil unregistered, especially when all other important dispositive documents executed by her had been registered. It is further contended that ordinarily a codicil is expected to accompany the original Will, but in the present case, the defendants themselves have taken inconsistent stands regarding the whereabouts of the original Will, and yet they claim that the codicil alone was available. This circumstance, according to the plaintiffs, strikes at the very root of the defendants' case.

(8.11) This submission merits acceptance. The evidence on record discloses that there is serious confusion and contradiction on the side of the defendants as to where the original Will was, who had custody of it, and how the alleged codicil surfaced. DW2, in his cross-examination, has admitted that the original Will had been given to D9; that D9's house was situated 12 kilometres away from the house of Ponnammal; that when there was a need to write the codicil, Ponnammal asked D9 for the original Will and he refused to give it; that

although he knew that the original Will was an important document and that under that Will he would also get some property, he did not question the matter; that he himself did not ask D9 for the original Will; that he did not request his grandmother to insist upon the return of the original Will; that he could not say whether D9 had torn the Will; and that after the death of Ponnammal he came to know, through his grandmother, that the original Will had been with D9 and that even during her lifetime the original Will had gone missing and Ponnammal had been searching for it. These admissions unmistakably show that even according to the defendants, the original Will was unavailable. If that be so, the very case that Ponnammal validly executed a codicil modifying the said Will becomes highly doubtful.

(8.12) The learned counsel for the plaintiffs is also right in contending that when the original Will was not available, if really Ponnammal had intended to alter the disposition in favour of the plaintiff, the natural and normal course for her would have been to revoke the earlier Will and execute a fresh Will. The strange theory that the original Will was missing and yet only a codicil was prepared and preserved, is not one that commends itself to reason.

(8.13) Further, the evidence of DW2 discloses another important circumstance. He has stated that after the death of Ponnammal, when her room was opened in the presence of village elders, old bundles of papers tied with thread were found, and that the plaintiff herself took them and handed them over to Arumuga Gounder; that Arumuga Gounder untied the bundle and found two documents, one being a copy of the 1983 Will and the other being the codicil. Here again, the defendants' own evidence creates suspicion. If only a copy of the Will was found, what happened to the original Will has not at all been satisfactorily explained. The failure of the defendants to account for the disappearance of the original Will while simultaneously relying upon the codicil makes their version inherently doubtful.

(8.14) The cross-examination of DW2 further weakens the defendants' case. He has admitted that until the codicil came to light, he had stated in his written statement that the 'E' Schedule property belonged only to the plaintiff; that until 18 days after the death of Ponnammal, he had thought that the 'E' Schedule property had been allotted only to the

plaintiff under the 1983 Will; that while the codicil was allegedly written, Ponnammal did not consult him; that she did not tell him that she would not give the property to the plaintiff; that she did not tell him that she was going to alter the Will; and that she did not speak to him about changing the Will. These admissions are of great significance. They clearly show that, till the death of Ponnammal and even thereafter for 18 days, there was no whisper among the defendants about any codicil. Such conduct is wholly inconsistent with the normal course of human affairs if really a codicil had been validly executed changing the disposition in a substantial manner.

(8.15) Equally important is the admitted fact that no steps were taken by the defendants to summon Arumuga Gounder, who is said to have had custody of the codicil, or at least to compel production of the document during his lifetime. DW3 has admitted in cross-examination that till Arumuga Gounder was alive, the defendants did not take any steps to call upon him to produce the documents before Court. This omission assumes significance because the best available evidence was deliberately withheld. The evidence of DW3 Chinnasamy also does not advance the defendants' case. In his cross-examination, he has stated that he does not know whether his father told him that Ponnammal had executed a Will and codicil; that he does not know whether, during her lifetime, Ponnammal handed over the codicil to his father for implementation; and that until the 18th day ceremonies were over and the family sat together and discussed, he was not aware that Ponnammal had executed any codicil.

(8.16) This testimony completely undermines the plea that the codicil had been genuinely executed and entrusted to the proper person during the lifetime of Ponnammal. On the contrary, it lends support to the plaintiffs' contention that the codicil was brought into existence only after her death for the purpose of the suit. The defendants rely heavily upon the testimony of DW1, who claims to be an attesting witness to the codicil. According to him, he was employed under Ponnammal; that she told him that the properties allotted under the original Will were not proper and that certain other properties had to be substituted; that on 02.09.1985 Murugesan came to Jamindar Muthur to Ponnammal's share house and informed that he would come again on 14.09.1985 and that stamp papers should be purchased before that date and attestors should be kept ready; that accordingly he went to

Anaimalai and purchased stamp papers on 04.09.1985; and that on 14.09.1985 at about 2.00 p.m. Marimuthu came and at about 3.00 p.m. Murugesan came, and all the three went into the bedroom, where, on Ponnammal dictating, Murugesan wrote the codicil. Far from helping the defendants, this version creates a cloud of suspicion. If really Ponnammal was hale, conscious, and acting independently, there was no need for the document to be prepared in such a secretive manner inside a bedroom. The very version that the codicil was written in the bedroom while Ponnammal was lying down probabalises the plaintiffs' contention that she was not in a fit and free condition and that the document was brought about under suspicious circumstances.

(8.17) Though the learned counsel for the defendants submitted that the codicil had been executed by Ponnammal in a sound state of mind and that the scribe Murugesan and the attesting witnesses have clearly spoken about the execution, this Court is unable to accept the said submission in view of the surrounding suspicious features which remain wholly unexplained. Mere statement by the witnesses that Ponnammal told the contents and that they signed in her presence cannot, by itself, suffice where the conduct of the parties, the non-availability of the original Will, the secrecy surrounding the codicil, and the subsequent emergence of the codicil after the death of Ponnammal all create grave doubt.

(8.18) Another circumstance highlighted by the plaintiffs also deserves notice. In the case of the original Will of the year 1983, copies were admittedly furnished to all concerned. But, in the case of the alleged codicil, no copy was given to anybody and it was allegedly kept as a secret document. If really Ponnammal had consciously and voluntarily intended to alter the bequest in favour of the plaintiff, nothing prevented her from disclosing the same openly just as she had done with the earlier Will. The unnatural secrecy surrounding the codicil is therefore a strong suspicious circumstance.

(8.19) Further, DW1 has stated in his chief examination that on the very date of death of Ponnammal, it was the plaintiff who took the silk cloth from the Godrej bureau kept in the bedroom and that the bureau key was in the possession of the plaintiff. If that version is accepted, then the defendants' further version that the codicil was discovered only on the 18th day becomes highly doubtful. If really the plaintiff had opened the bureau immediately after the death of Ponnammal, and if the codicil had been in the bureau, the same would

have come to light then and there. The contradictory stands of the defendants on this aspect render their story wholly unreliable.

(8.20) The plaintiffs have also pointed out that though Pollachi is a place where stamp papers could ordinarily be obtained, the defendants would state that stamp papers were not available there and were purchased at Anaimalai. This is yet another unusual feature surrounding the preparation of the codicil. While this circumstance alone may not be conclusive, when read along with the other doubtful circumstances, it adds to the cumulative suspicion. The scribe of the codicil, examined as DW5, also does not inspire confidence. It has come out in evidence that he is neither a licensed document writer nor an advocate. More importantly, it has also been elicited that criminal cases had arisen against him in relation to writing fraudulent documents and that those cases were later compromised. While this Court is conscious that a witness cannot be discarded solely on the ground of antecedents, the credibility of such a witness must be tested with greater caution, particularly in a case already bristling with suspicious circumstances. The testimony of DW5, instead of dispelling the doubts, only compounds them.

(8.21) This Court also finds force in the submission of the plaintiffs that there is absolutely no material to show that either the defendants or their family members were rendering such extraordinary service or assistance to Ponnammal as would impel her to deprive the plaintiff of the property already allotted under the registered Will. As rightly pointed out, DW2 has admitted in cross-examination that in the 1972 Will Ponnammal had specifically mentioned that her third son had been helping her and therefore had been given more; but no such recital or reason finds place either in the Will of 1983 or in the alleged codicil of 1985 insofar as the defendants are concerned. This omission is significant and renders the alleged change in disposition unnatural.

(8.22) On a cumulative assessment of the above evidence, this Court is satisfied that the defendants have not proved the codicil in the manner known to law. Even assuming that they have attempted formal proof through witnesses, the suspicious circumstances surrounding the document have not at all been removed. The law is well settled that where suspicious circumstances surround a Will or codicil, the propounder must offer a cogent and convincing explanation so as to satisfy the conscience of the Court; failing such explanation,

the document cannot be accepted merely on formal compliance. The Hon'ble Supreme Court in the line of authorities including the one reported in (2009) 4 SCC 780 has reiterated that the burden on the propounder becomes heavier in such situations. In a similar manner, our Hon'ble High Court of Madras in Panneer selvam @ Nellapan (died) and others VS Amsavali and another reported in 2025 SCC online Madras 5386 had also observed that the codicil ought to be proved in the same manner of proving the will by following the above principles of law contemplated under the Succession Act. The Extract of the discussions of our Hon' ble High Court in the above ruling is as follows:-

The learned counsel for the respondent also placed on the Judgment of the Hon'ble Supreme Court in **Civil Appeal No.3351 of 2014 [Meena Pradhan and Others Vs. Kamla Pradhan and another]**, wherein the Hon'ble Supreme Court had laid down the principles required for proving the validity and the execution of the Will. They were as follows:-

“i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfill all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will

or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be

dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

ix. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'
1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc. " execution and attestation of codicil is not proved in terms of law.

Applying the above principles to the present case, this Court finds that the alleged codicil is surrounded by several suspicious circumstances, namely: the admitted and undisputed registered Will of 23.02.1983 in favour of the plaintiff; the absence of any convincing reason for alteration; the non-availability of the original Will; the unexplained existence of only a copy of the Will and the codicil; the absence of any contemporaneous disclosure of the codicil; the admitted ignorance of the defendants about the codicil till 18 days after the death of Ponnammal; the failure to secure production of the document from the person said to be in custody thereof during his lifetime; the contradictory evidence regarding the bureau and the discovery of the codicil; the alleged preparation of the codicil in the bedroom while Ponnammal was in a bedridden condition; and the doubtful credibility of the scribe. None of these suspicious circumstances has been satisfactorily explained by the defendants.

(8.23) Therefore, this Court holds that the Will dated 23.02.1983 executed by Ponnammal has been duly proved by the plaintiffs, whereas the alleged codicil of the year 1985 has not been proved by the defendants and cannot be accepted as genuine. On the contrary, the materials on record probalilise the plaintiffs' case that the codicil had been brought into existence only for the purpose of defeating the lawful claim of the deceased 1st

plaintiff under the admitted Will.

(8.24) In the result, this Court concludes that the deceased 1st plaintiff derived title to the 'E' Schedule property under the Will dated 23.02.1983 and that the plaintiffs are entitled to the relief of declaration as prayed for. Consequently, they are also entitled to the consequential relief of recovery of possession.

9) Issues 4 to 6 – answered as below:

In view of the findings under issues 1 to 3 the plaintiff have clearly established their title over the suit property. Hence plaintiff are entitled to declaration and recovery of possession. Insofar as the 'E' Schedule property is concerned, it has been specifically allotted to the deceased first plaintiff under the Will. Hence, the question of partition does not arise with respect to that property, as it is an exclusive allotment. There is no substantial challenge or evidence to show that the court fee paid is insufficient.

In the result the suit is decreed as prayed for. No cost.

Dictated by me, directly typed by steno-typist on my computer and corrected by me and pronounced by me in open court on this 30th day of March , 2026.

PRINCIPAL DISTRICT MUNSIF
POLLACHI

Plaintiff side evidence :

PW1 ; Balasubramaniam

PW2; Manikathai (plaintiff)

Plaintiff side Documents

C1 and C2	-	Ponnammal signature and original Will
A1	04.06.2022	Original Will
A2	07.03.1989	Partition deed – Original copy
A3	09.06.1959	Will – Original
A4	20.02.1989	Sale deed – Original
A5	12.04.1972	Will – Original
A6	06.12.1982	Lease Agreement - Xerox
A7	06.12.1982	Lease Agreement - Xerox
A8	20.04.1990	Tenancy rights records U/S 3(9) TN Agricultural lands records of tenancy rights Act - Original
A9	12.04.1972	Will – Xerox
A10	14.02.1986	OS 495/1982 Judgment copy – certified copy
A11	25.04.1990	Birth Certificate - Original
A12	14.09.1985	Will – Xerox
A13	10.12.1960	OS 242/1960 Suit register extract – certified copy
A14	-	EP 238/1962 copy of register – certified copy
A15	14.07.1960	OS 133/1960 Suit register extract – certified copy

Defendants side evidence :

DW1 ; Marimuthu

DW2; Santhakumar

DW3; Chinnasamy

DW4; Dr. Jeyakumar

DW5; Murugesan

Defendants side Documents

B1	14.09.1985	Codicil- Original
----	------------	-------------------

B2	23.02.1983	Will - Original
B3	01.11.2023	Manikathai death certificate - certified copy
B4	12.04.1972	Will - Original
B5	06.08.1986	Patta name transfer order - original
B6 to B8	-	Recorded entries evidencing treatment was administered on 3 occasions (Not available in Bundle)

PRINCIPAL DISTRICT MUNSIF
POLLACHI

Fair/Draft Order
O.S.117/2008
Date: 30.03.2026
Principal District Munsif Court, Pollachi
