



**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, DINDIGUL**

**Present: Thiru. Swarnam J Rajagopalan, B.A.B.L.,(Hons.)**

**Additional District Judge, Dindigul**

Thursday, dated this the 30<sup>th</sup> day of April, 2026

**Original Suit No.4/2016 and Counter Claim**

**(CNR.No.TNDG01-000755-2016)**

1. Mr.Rajanna (Died)
2. Mrs.Palaniammal (Died)
3. Mrs.Periyammal (Died)
4. Mrs.Muthammal (Died)
5. Mr.S.Suresh
6. Ms.Karpagam
7. Ms.Selvi
8. Mr.Periyasamy
9. Mr.Karuppannagounder @ Veema Gounder
10. Mr.Velusamy
11. Ms.Karpagam

...Plaintiffs

-Vs-

1. Mr.A.Muthusamy
2. Mrs.Karuppai @ Kalaiyarasi
3. Ms.Banupriya
4. Mr.Eswaramoorthy
5. Mr.Senthilkumar
6. Ms.Kanimozhi
7. Mr.Vijayakumar

...Defendants

**Counter Claim :-**

1. Mr.A.Shanmugam
  2. Mrs.E.Palaniammal
  3. Mrs.V.Periyammal
  4. Mrs.K.Muthammal
- ....Plaintiffs

Mr.A.Muthusamy ... 1<sup>st</sup> Defendant

1. Mrs.T.Karuppayi @ Kalaiyarasi
  2. Ms.T.Banupriya
- ... 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Counter Claimants

This suit and counter claim came up on 21.04.2026 for final hearing before this court in the presence of Learned Counsel Thiru.P.Lakshmanan, appeared for the plaintiffs, the learned counsel Ms.Gayathiridevi appeared for the 1<sup>st</sup> defendant in O.S.No.4/2016 and for Counter claim, the learned counsel Mr.R.Ganesan appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in O.S.No.4/2016 and for plaintiffs in Counter claim, the learned counsel Mr.Jeyaprakash appeared for the 4<sup>th</sup> to 7<sup>th</sup> defendants, and upon hearing arguments on both sides, and upon having stood over under the consideration of this court till this date and this court this day doth delivers the following:-

**J U D G M E N T**

- **Suit in O.S.No.4/2016**

This suit has been filed by the plaintiffs under Order 7 Rule 1 of CPC, for the relief,

(i) to pass a preliminary decree for partition, directing the 1<sup>st</sup> and 2<sup>nd</sup> defendants to divide the suit properties by metes and bounds and allot the plaintiffs 3/6th share, putting them in separate possession,

(ii) In the event of failure by the 1<sup>st</sup> and 2<sup>nd</sup> defendants to effect such division within the time stipulated by this Hon'ble court, appoint an Advocate Commissioner and pass a Final Decree for partition by dividing the suit properties and allotting the plaintiffs 3/6th share,

(iii) to grant a permanent injunction, restraining the defendants from in any manner alienating, encumbering or otherwise creating any charge over the plaintiffs 3/6th share in the suit properties until such partition and separate possession is effected.

(iv) and to direct the defendants to pay the costs of the suit to the plaintiffs.

• **Counter Claim** :-

This Counterclaim has been filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/ Counter Claimants under Order 8 Rule 1 and Rule 6(A) of CPC, for the relief,

(i) to dismiss the suit filed by the plaintiffs.

(ii) Allow the Counter Claim of the 3<sup>rd</sup> defendant and declare that the schedule mentioned property absolutely belongs to the 3<sup>rd</sup> defendant alone,

(iii) Consequently grant a permanent injunction restraining the plaintiffs, the 1<sup>st</sup> defendant, their men, agents, or anyone claiming under them from in any manner interfering with the peaceful possession and enjoyment of the said property by the 3<sup>rd</sup> defendant,

(iii) to direct the plaintiffs to pay the costs of the proceedings to the 3<sup>rd</sup> defendant.

**2. Brief averments of the plaint is as follows :-**

I. According to the plaintiff, the suit schedule properties originally belonged to one Karuppanna Gounder. The said Karuppanna Gounder had two sons, namely Azhagiya Gounder and Arumugam Gounder. After the demise of Karuppanna Gounder, the family properties were partitioned under a registered partition deed dated 07.12.1976, wherein the legal heirs divided and allotted their respective shares.

II. Under the said partition, an extent of 16.81 acres of land comprised in Survey No.446/1, covered under Patta No.1168, was allotted to Arumugam Gounder. It is further averred that originally Karuppan Gounder possessed a total extent of 33.63 acres of land, out of which the aforesaid 16.81 acres came to be allotted to Arumugam Gounder by way of partition. Thereafter, Arumugam Gounder was in exclusive possession and enjoyment of the said property, and the patta was also mutated in his name.

III. It is further stated that, the said Arumugam Gounder had two wives, namely Nallammal and Meenakshi Ammal. Through his first wife Nallammal, he had begotten the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs and the 1<sup>st</sup> defendant. Through his second wife Meenakshi Ammal, he had begotten the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and the 2<sup>nd</sup> defendant. The 3<sup>rd</sup> defendant is the daughter of the 2<sup>nd</sup> defendant.

IV. According to the plaintiffs, Arumugam Gounder died intestate on 22.11.2011, and his wives Nallammal and Meenakshi Ammal had predeceased him. Upon his demise, his legal heirs namely the plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> defendants, became entitled to succeed to the suit properties and continued to possess and enjoy the same jointly. However, the patta in respect of the properties were not mutated in their names and continued to stand in the name of Karuppanna Gounder.

V. While so, it is alleged that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, without the knowledge of the plaintiffs and with an intention to defraud them and defeat their lawful share, fabricated a Will as if the same had been executed by Arumugam Gounder in favour of the 3<sup>rd</sup> defendant. The said Will is alleged to be a fraudulent and concocted document. Under the guise of the said Will, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have attempted to claim absolute rights over the entire suit properties, including rights of alienation, mortgage, and lease, to the exclusion of the plaintiffs.

VI. The plaintiffs further contend that they are entitled to three out of six equal shares in the suit properties. On 01.11.2015, in the presence of village elders, the plaintiffs demanded partition and separate possession of their legitimate shares from the 1<sup>st</sup> and 2<sup>nd</sup> defendants, who initially agreed. However, subsequently, the defendants set up the alleged Will in favour of the 3<sup>rd</sup> defendant and relied upon the same, along with a joint patta, to deny the plaintiffs' claim.

VII. It is also averred that till his last days, Arumugam Gounder was under the care and custody of the 1<sup>st</sup> plaintiff and had expressed his intention that the properties should be equally divided among all his legal heirs. It is further stated that at the

relevant time, he was of advanced age, suffering from poor eyesight, and was not in a sound and disposing state of mind, and therefore incapable of executing any Will. The defendants were fully aware of his physical and mental condition. The plaintiffs assert that he never intended to execute any Will in favour of any person.

VIII. In these circumstances, the plaintiffs claim that they are each entitled to their respective shares in the suit properties and have therefore filed the present suit seeking a preliminary decree declaring their three-sixth share, for partition and separate possession, for passing of a final decree through appointment of an Advocate Commissioner, and for permanent injunction restraining the defendants and their agents from interfering with their peaceful possession and enjoyment of the properties, along with costs of the suit.

**3. Brief averments of the Written Statement filed by the 1<sup>st</sup> Defendant is as follows :-**

- I. According to the 1<sup>st</sup> defendant, the plaint averments, except those specifically admitted herein, are false and are liable to be rejected. It is contended that the suit, as framed, is unsustainable and liable to be dismissed in limine.
- II. The 1<sup>st</sup> defendant, however admits the relationship between the parties as stated in the plaint. It is also admitted that the suit properties originally belonged to Karuppanna Gounder and that he had two sons, namely Azhagiya Gounder and Arumugam Gounder. The execution of the partition deed dated 07.12.1976 between the said two sons is also admitted.

**III.** The 1<sup>st</sup> defendant further elaborates that under the said partition deed, Azhagiya Gounder along with his children, namely Nachimuthu Gounder and Chinnasamy, were arrayed as one party, while Arumugam Gounder was arrayed as another party. In addition, Arumugam Gounder's first wife Nallammal and their son (1<sup>st</sup> defendant) were treated as one group, and his second wife Meenakshi Ammal along with her son (1<sup>st</sup> plaintiff) were treated as another group.

**It is specifically contended that under the said partition :-**

The **A-schedule properties** were allotted to Azhagiya Gounder and his legal heirs;

The **B-schedule properties** were allotted to Arumugam Gounder;

The **C-schedule properties** were allotted to Nallammal and her son, namely the 1<sup>st</sup> defendant;

The **D-schedule properties** were allotted to the second wife Meenakshi Ammal and her son, namely the 1<sup>st</sup> plaintiff.

Pursuant to the said partition, each of the parties entered into possession and enjoyment of their respective allotted shares independently.

**IV.** It is further stated that Arumugam Gounder died on 22.11.2011 at an advanced age. After his demise, the properties allotted to him (B-schedule) continued to be enjoyed by his legal heirs. The children born through the first wife, namely the 1<sup>st</sup> defendant, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs, and the children born through the second wife, namely the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and the 2<sup>nd</sup> defendant, have been in joint possession and enjoyment of the said properties.

V. The 1<sup>st</sup> defendant further contends that, without the knowledge of this defendant and other legal heirs, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, with the assistance of their associates, have fabricated a Will during the alleged lifetime of Arumugam Gounder in favour of the 3<sup>rd</sup> defendant, with an intention to defeat the legitimate rights of the other co-sharers. The said Will is specifically denied as forged, fabricated, and not binding on the other legal heirs.

VI. It is also stated that notwithstanding the said alleged Will, the parties have continued in joint possession of the suit properties. Attempts were made in the presence of village elders to amicably partition the properties. Though the 2<sup>nd</sup> defendant initially agreed for such division, he subsequently evaded the same for reasons best known to him.

VII. The 1<sup>st</sup> defendant asserts readiness and willingness to have the properties partitioned and to pay the necessary court fee for allotment of his rightful share. It is reiterated that the alleged Will set up by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are not genuine and has not been executed by the deceased Arumugam Gounder.

VIII. In such circumstances, while formally denying the plaint averments, the 1<sup>st</sup> defendant supports the claim for partition and prays that the suit be decreed by declaring and allotting the rightful shares to all legal heirs and by rejecting the alleged Will propounded by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

**4. Brief averments of the written statement and counterclaim filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants :-**

I. According to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the plaint averments are wholly false, misconceived, and liable to be rejected. However, they admit the relationship between the parties as set out in the plaint. It is also admitted that the suit properties originally belonged to Karuppanna Gounder and that a partition deed dated 07.12.1976 was executed among his legal heirs, namely Azhagiya Gounder and his branch, and Arumugam Gounder and his branch.

II. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants further submit that under the said partition deed, Azhagiya Gounder along with his legal heirs, namely Nachimuthu Gounder and Chinnasamy, constituted the first party. The said Arumugam Gounder was the second party, Arumugam Gounder's first wife Nallammal and their son (1<sup>st</sup> defendant) constituted the third party, and Arumugam Gounder's second wife Meenakshi Ammal and her son (1<sup>st</sup> plaintiff) constituted the fourth party. Thus, the properties of Karuppanna Gounder were partitioned among these branches.

III. Accordingly under the said partition the properties were allotted as follows :-

The A-schedule properties were allotted to Azhagiya Gounder and his heirs,

The B-schedule properties were allotted to Arumugam Gounder,

The C-schedule properties were allotted to Nallammal and her son (1<sup>st</sup> defendant),

The D-schedule properties were allotted to Meenakshi Ammal and her son (1<sup>st</sup> plaintiff),

Pursuant to the said partition, each party has been in separate possession and enjoyment of their respective shares, and there has been no joint possession thereafter.

IV. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants specifically deny the plaintiffs' contention that Arumugam Gounder died intestate. On the contrary, it is contended that, the said Arumugam Gounder, who was in exclusive possession of the B-schedule properties, had made valid testamentary arrangements during his lifetime.

V. It is further averred that, the said Arumugam Gounder had settled his daughters in marriage by providing them with sufficient *stridhana* and that they have been living separately with their respective families. The sons were also independently settled and in possession of their respective shares. It is therefore contended that there was no subsisting joint family arrangement or joint possession after the partition.

VI. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants states that, the said Arumugam Gounder had a special affection towards the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, who were taking care of him in his old age. In this regard, it is contended that he had initially executed a Will dated 19.06.2005 in favour of his second wife Meenakshi Ammal, which was subsequently cancelled by him on 29.01.2010.

VII. Thereafter, out of his own free will, sound disposing state of mind, and with full understanding, Arumugam Gounder executed a registered Will dated 08.02.2010 in favour of the 3<sup>rd</sup> defendant, his granddaughter, bequeathing his properties to her absolutely. The said Will was executed voluntarily, without any coercion or undue influence, and was duly attested by witnesses. It is further stated that the said Will

was registered in the jurisdictional Sub-Registrar Office and its execution was known to the plaintiffs and the 1<sup>st</sup> defendant even during the lifetime of the testator.

VIII. It is further contended that, at the time of execution of the Will, Arumugam Gounder was hale, healthy, and mentally sound, and therefore competent to execute the same. The allegations of the plaintiffs regarding his ill-health, lack of mental capacity, and forgery of signature are specifically denied.

IX. After the demise of Arumugam Gounder on 22.11.2011, the 3<sup>rd</sup> defendant being the sole beneficiary under the Will, became entitled to the suit properties. Since the 3<sup>rd</sup> defendant was employed at Chennai and unmarried at the relevant time, the 2<sup>nd</sup> defendant has been managing the properties on her behalf.

X. The defendants further contend that, there was no necessity for them to fabricate any Will, as alleged by the plaintiffs. The suit filed by the plaintiffs is stated to be devoid of merit and has been instituted only to defeat the lawful testamentary succession in favour of the 3<sup>rd</sup> defendant.

XI. In such circumstances, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have filed a counterclaim seeking:

- Declaration that the 3<sup>rd</sup> defendant is the absolute owner of the suit properties by virtue of the Will dated 08.02.2010,
- Permanent injunction restraining the plaintiffs and the 1<sup>st</sup> defendant, their agents, and men from interfering with the peaceful possession and enjoyment of the suit properties by the 3<sup>rd</sup> defendant, and

- Costs of the suit.

Accordingly, they pray for dismissal of the suit and for allowing the counterclaim as prayed for.

**5. Brief averments of the reply statement filed by the plaintiff to the written statement and counter claim filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants is as follows :-**

I. According to the plaintiffs, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have filed their written statement along with a counterclaim seeking declaration of title based on an alleged Will dated 08.02.2010, purported to have been executed by the deceased Arumugam Gounder in favour of the 3<sup>rd</sup> defendant.

II. The plaintiffs denied the genuineness, validity, and execution of the alleged Will dated 08.02.2010. It is contended that the said Will is a fabricated and concocted document, brought into existence by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants with the sole intention of defeating the lawful rights of the plaintiffs and other legal heirs. According to the plaintiffs, there was absolutely no necessity or occasion for the deceased Arumugam Gounder to execute a Will bequeathing the entire property in favour of his granddaughter (3<sup>rd</sup> defendant), to the exclusion of his own children and other legal heirs.

III. The plaintiffs further averred that, the said Arumugam Gounder, till his last days, was under the care and custody of the 1<sup>st</sup> plaintiff and died on 22.11.2011 at the advanced age of about 90 years. It is stated that he died intestate, without making any testamentary disposition in respect of his properties, especially when all his legal

heirs were alive at the time. It is also reiterated that both his wives had predeceased him.

IV. The plaintiffs also specifically deny the allegation that, the said Arumugam Gounder had earlier executed a Will dated 19.06.2005 in favour of his second wife Meenakshi Ammal and that the same was cancelled on 29.01.2010. Both the alleged earlier Will as well as its purported cancellation are denied as false and non-existent. Likewise, the subsequent alleged Will dated 08.02.2010 is also denied in toto.

V. It is further contended that the suit properties have always been in joint possession and enjoyment of the plaintiffs and defendants as co-sharers, and the alleged Will has been set up only to disturb such joint possession and to unlawfully exclude the plaintiffs.

VI. The plaintiffs assert that at the relevant point of time, Arumugam Gounder was suffering from old age-related ailments, including poor vision, loss of memory, and lack of a sound disposing state of mind. In such condition, he was not capable of understanding or executing any testamentary document out of his free will. The alleged Will, therefore, could not have been executed by him.

VII. The plaintiffs further contend that the signature found in the alleged Will is a forged one, and the burden squarely lies upon the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to prove the due execution and attestation of the Will in the manner known to law. In the absence of such proof, no right can be claimed by them on the basis of the said document.

**VIII.** In these circumstances, the plaintiffs prays that the counterclaim filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants be dismissed in limine, and that the suit be decreed as prayed for, by declaring the plaintiffs' rightful shares and granting consequential reliefs. It is also contended that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are not entitled to any relief based on the alleged Will.

**6.** On the basis of the rival pleadings put forth by the parties, this Court, by order dated 24.08.2017, has framed the following issues for determination :-

1. It is true to state that already a partition deed was executed on 07.12.1976 itself?
2. Is the said Will date 08.02.2010 a true and valid one?
3. Are the plaintiffs entitled for a partition and allotment of 4/6 shares in the suit properties?
4. Are the defendants 2 and 3 entitled for the prayer of their counter claim?
5. Are the plaintiffs entitled for a relief of permanent injunction ?
6. Any other relief?

**7. Evidence adduced by both sides :-**

I. On the side of the plaintiffs, the 5<sup>th</sup> plaintiff namely Mr.Suresh has been examined as PW1 and exhibited seven documents as Ex.A1 to Ex.A7 were marked through him. Mr.Kannappan has been examined as PW2 and no documents were marked through him.

The documents marked on the side of the plaintiffs are as follows :-

- **Ex.A1** - Genealogical Tree of Karuppana Gounder family.
- **Ex.A2** - Partition deed dated 07.12.1976 executed between Azhaginagounder and Arumugagounder.
- **Ex.A3** - Death Certificate of Arumugagounder dated 22.11.2011.
- **Ex.A4** - Death Certificate of Rajanna dated 04.11.2021.
- **Ex.A5** - Legal Heir Certificate of Rajanna dated 20.01.2022
- **Ex.A6** - Death Certificate of Palaniyammal dated 15.06.2021.
- **Ex.A7** - Legal Heir Certificate of Palaniyammal dated 13.08.2021.

II. On the side of the defendants, the 2<sup>nd</sup> defendant namely Mrs.Karupayee @ Kalaiarasi and one of the attesor of Ex.B3 Will of has been examined as DW1 and exhibited Ex.B3 to Ex.B6 were marked through her. Ex.B1 and Ex.B2 were marked through PW1 cross. Mr.Balamurugan one of the attesor to the Will Ex.B3 has been examined as DW2 and no document was marked through him. Mr.Chinnakaliyappan has been examined as DW3 and no document was marked through him. Further, the 1<sup>st</sup> defendant namely Mr.Muthusamy has been examined as DW4 and no document was marked. Mr.Karupusamy has been examined as DW5 and no document was marked through him.

The documents marked on the side of the defendants are as follows :-

- **Ex.B1** - Signatures and Photographs of Arumugagounder and Meenakshiammal in the Will revocation deed.
- **Ex.B2** - Will dated 20.05.2010 executed by Meenakshi Ammal to and in favour of Kalaiyarasi (2<sup>nd</sup> defendant)
- **Ex.B3** - Will dated 08.02.2010 executed by Arumugagounder to and in favour of 3<sup>rd</sup> defendant.

- **Ex.B4** - Patta bearing Patta No.1168 and FMV (Field Measuring Sketch) relating to the suit property.
- **Ex.B5** - Kist receipt issued in the name of the 3<sup>rd</sup> defendant Banupriya for the suit property.
- **Ex.B6** - Indian Overseas Bank passbook of Arumugagounder.

8. **Gist of arguments of the Learned Counsel for the Plaintiff is as follows:**

I. The learned counsel for the plaintiffs would submit that the suit properties are admittedly ancestral properties originally belonging to Karuppanna Gounder and, upon his demise, were validly partitioned under the registered partition deed dated 07.12.1976, whereby the properties fell to the share of Arumugam Gounder. It is contended that after the death of Arumugam Gounder on 22.11.2011, he having died intestate, the suit properties devolved upon all his legal heirs, namely the plaintiffs and defendants, as co-sharers, each being entitled to their respective shares.

II. The counsel would further argue that the alleged Will dated 08.02.2010 set up by the 2nd and 3rd defendants is a fabricated and concocted document, created solely with an intention to deprive the plaintiffs of their legitimate share. It is emphasized that at the relevant time, Arumugam Gounder was of advanced age, suffering from ailments affecting his mental and physical capacity, and was not in a sound and disposing state of mind to execute any testamentary document. The burden of proving the due execution and attestation of the Will lies heavily upon the propounders, which, according to the plaintiffs, has not been satisfactorily discharged.

III. It is further contended that the natural course of succession would be to distribute the properties equally among all heirs, and there was no plausible reason

for the deceased to exclude his own children and bequeath the entire estate to his granddaughter. The surrounding suspicious circumstances, including the alleged prior Will and its cancellation, further cast serious doubt on the genuineness of the Will propounded by the defendants.

IV. The plaintiffs' counsel would also submit that the parties have continued in joint possession and enjoyment of the suit properties, and the defendants are attempting to disturb such joint possession by setting up a false claim. Therefore, the plaintiffs are entitled to a preliminary decree for partition and separate possession of their lawful share, and the counterclaim filed by the 2nd and 3rd defendants deserves to be dismissed in limine.

**9. Gist of arguments of the Learned Counsel for the 2nd and 3rd Defendants is as follows:**

I. Per contra, the learned counsel appearing for the contesting 2nd and 3rd defendants would contend that though the relationship between the parties and the earlier partition of the year 1976 are admitted, the plaintiffs' claim of joint possession and intestate succession is wholly erroneous and misleading. It is submitted that after the partition, the respective sharers were in separate possession and enjoyment of their allotted properties, and there was no subsisting joint family or joint possession as alleged.

II. The counsel would strongly rely upon the registered Will dated 08.02.2010 filed in Ex.B3 executed by Arumugam Gounder in favour of the 3rd defendant, contending that the same is a valid and legally enforceable testamentary document. It

is argued that the Will was executed by the testator out of his own free will, while he was in a sound and disposing state of mind, and the same has been duly attested and proved in accordance with law through cogent oral and documentary evidence by examining the DW1 and DW2 witnesses to the Will.

III. It is further submitted that the testator had special affection towards the 2nd and 3rd defendants, who were taking care of him in his old age, and therefore consciously chose to bequeath his properties in favour of the 3rd defendant. The plaintiffs, having been sufficiently settled in life and provided for earlier, cannot now claim any right over the properties contrary to the expressed intention of the testator.

IV. The learned counsel would also contend that mere allegations of old age or ill-health are insufficient to invalidate a Will, in the absence of concrete evidence. The plaintiffs have failed to establish any suspicious circumstances surrounding the execution of the Will, and therefore the presumption of validity must operate in favour of the defendants.

V. Accordingly, it is prayed that the suit filed by the plaintiffs be dismissed, and the counterclaim be allowed by declaring the 3rd defendant as the absolute owner of the suit properties based on the Will, along with consequential relief of permanent injunction.

VI. The Learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants also relied upon the following decisions in support of their contentions :-

The Hon'ble Supreme Court of India, in the matter of ***Shanti Devi vs Daropti Devi and others***, reported in **2007(1)CTC 262**.

The Hon'ble High Court of Madras, in the matter of **1.K.Veerabdran 2. K.Balaraman vs 1. K.Venugopal, 2. Mohammed Yacob, 3. Devivanayagi, 4. Ambuja Ammal, 5. Devika**, reported in **2010(3) CTC 761**.

The Hon'ble Supreme Court of India, in the matter of **Vrindavanibai Sambhaji Mane, v.Ramchandra Vithal Ganeshkar and others**, reported in **AIR 1995 Supreme Court 2086**.

The Hon'ble High Court of Delhi in the matter of **S.K.Mahajan, J. Rani Devi vs Ashok Kumar Nagi and another**, reported in **1999(2) Civil LJ 109**.

The Hon'ble Supreme Court of India, in the matter of **Palanivelayutham Pillai and others, vs Ramachandran and others**, reported in **(2001) 1 T.L.N.J (SC) 57**.

The Hon'ble High Court of Judicature at Madras, in the matter of **S.Ramasamy vs Velappa Gounder (deceased) and others**, reported in **(2002) 2 M.L.J.830**.

The Hon'ble Supreme Court of India, in the matter of **S.Sundaresa Pai and ors. Vs. Mrs.Sumangala T.Pai and anr**, reported in **2002-3-L.W.9**.

The Hon'ble High Court of Madras, in the matter of **V.Thulasidass Vs V.Nanda Rao**, reported in **2002-3-L.W.345**.

The Hon'ble Supreme Court of India, in the matter of **Arunkumar and another vs Shriniwas and others**, reported in **(2003) 3 M.L.J.121(S.C)**.

The Hon'ble High Court of Judicature at Madras, in the matter of **Palaniswami vs. P.Vellingiri Gounder and others**, reported in **2003-3-L.W.363**.

The Hon'ble High Court of Judicature at Madras, in the matter of **Muthuselvi V.Sivagurunathan and others**, reported in **(2003) 3 M.L.J.419**.

The Hon'ble High Court of Judicature at Madras, in the matter of **Saroja and others Vs Chennimalai and others**, reported in **(2003) 3 M.L.J.492**.

The Hon'ble Supreme Court of India, in the matter of **Ramabai Padmakar Patil (dead) through Lrs. And others vs Rukminibai Vishnu Vekhande and others**, reported in **2004-1-L.W.584**.

The Hon'ble Supreme Court of India, in the matter of **Uma Devi Nambiar and others Vs T.C.Sidhan (Dead)**, reported in **2004(2) CTC 287**.

The Hon'ble Supreme Court of India, in the matter of ***Sridevi and others Vs. Jayaraja Shetty and others***, reported in ***AIR 2005 Supreme Court 780***.

The Hon'ble High Court of Madras, in the matter of ***Saroja vs. Senthilkumar***, reported in ***2014(3)MWN (Civil) 480***.

The Hon'ble High Court of Kerala, in the matter of ***T.V.Ramakrishnan and K.Narayana Kurup, J.J.Ettanunni Raja vs Arvindaksha Menon***, reported in ***1998(2) Civil LJ 282***.

The Hon'ble High Court of Patna, in the matter of ***Gaya Prasad vs. Smt.Jamwanti Devi and others***, reported in ***(1998 (4) Civil LJ 128)***.

The Hon'ble High Court of Madras, in the matter of ***S.Murugesan vs V.Vijay Sai and others***, reported in ***2006(5) CTC 560***.

The Hon'ble High Court of Judicature at Madras, in the matter of ***A.Mohamed Sulaiman and another vs A.Ameena Beevi (Deceased) and others***, reported in ***2013-2-L.W.770***.

The Hon'ble High Court of Judicature at Madras, in the matter of ***Oriental Insurance Company Limited, Madras vs T.Pitchaimani and others***, reported in ***C.M.A.No.147 of 1989 dated 17.12.1997***.

The Hon'ble High Court of Madras, Madurai Bench, in the matter of ***S.Ajija Begum vs S.Aisha Bevi (Died) & Ors*** reported in ***AIR 2017 MADRAS 94***.

10. **ISSUE No.1** :-

Heard both sides and perused the materials available on record and since the parties are not at variance with respect to Issue No.1, and it is an admitted position that a partition deed was executed on 07.12.1976, this Court refrains from rendering any finding on the said issue, as admitted facts do not require adjudication under Section 58 of the Indian Evidence Act *pari materia* with Section 53 of the BSA.

**11. Issues Nos. 2, 3, 4, and 5, being interrelated, are taken up together for common consideration and disposal.**

11.1. In the instant suit for partition, it is not in dispute that the suit property originally belonged to the deceased Arumugha Gounder, and that the parties before this Court claim their respective rights only through him and the relationship between the parties were also not in dispute. In such circumstances, the normal rule of devolution would be by intestate succession, whereby all his legal heirs would be entitled to succeed to the property in accordance with the governing personal law, each taking their respective shares as it is not in dispute that after the partition that took place in 1976 the properties were enjoyed by the parties as their individual properties. Therefore, but for the will propounded by the 3rd defendant, which seeks to alter the line of succession by conferring exclusive or preferential rights, the property would necessarily devolve in the ordinary course upon all the heirs of the deceased Arumugha Gounder as co-sharers.

11.2 The 2<sup>nd</sup> and 3<sup>rd</sup> defendants rely upon the Will dated 08.02.2010 (Ex.B3), said to have been executed by Arumugam Gounder in favour of his granddaughter, the 3<sup>rd</sup> defendant, born through his daughter, the 2<sup>nd</sup> defendant. On the other hand, the plaintiffs and the 1<sup>st</sup> defendant contend that, Arumugam Gounder died intestate and, therefore, they are entitled to their respective shares in the suit properties. They further assert that the properties are in joint possession and enjoyment of all co-sharers.

**11.3** While adjudicating whether the suit properties are in fact possessed and enjoyed jointly as claimed by the plaintiffs, it is be seen as elicited from the cross-examination of P.W.1, that the suit properties stands in the name of the 3<sup>rd</sup> defendant and that revenue records have been mutated in her favour apparently pursuant to the said Will dated 08.02.2010. Though P.W.1 has alleged that the Will is a fraudulent and fabricated document and that the consequent mutation is not binding on the plaintiffs and the 1<sup>st</sup> defendant.

**11.4** In order to adjudicate upon the genuineness and validity of the Will dated 08.02.2010, this Court is required to examine whether the said Will has been proved in the manner known to law, as contemplated under Section 68 of the Indian Evidence Act, 1872, and whether the propounders, namely the 2nd and 3rd defendants, have indeed satisfactorily dispelled the suspicious circumstances alleged by the plaintiffs.

**11.5** In this regard, the 2nd and 3rd defendants have examined D.W.1, who is not only an attesting witness to the Will but also the daughter of the testator. D.W.1 has categorically deposed to the due execution of the registered Will by Arumugam Gounder and has stated that the testator executed the same out of his own free will and volition, while in a sound and disposing state of mind. She has further deposed that she was taking care of the testator during his lifetime and that, after his demise, she has been managing the properties on behalf of the 3rd defendant, who was employed at Chennai. Furthermore, as evident from the records, the plaintiffs have raised strong objection while marking the Ex.B3 Will on the ground that the same

cannot be marked through the witnesses to the Will and that it was marked with objections. However, I find that there is absolutely no infirmity in marking the Will through the witnesses as there is not procedural irregularity for doing so.

**11.6** Furthermore, the testimony of D.W.1 clearly satisfies the essential requirements of proof of a Will, inasmuch as she has spoken not only to the execution but also to the attestation of the document. Despite extensive cross-examination, nothing material has been elicited to discredit her version. Merely because D.W.1 is related to the testator or is an interested witness, her testimony cannot be discarded when it is otherwise cogent, consistent, and inspires confidence, as it is quite natural for the testator to have his kith and kin to attest his last testament. Accordingly, this Court finds that the mandatory requirement under Section 68 of the Indian Evidence Act stands duly complied with as in this case the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant has also examined the second witness to the Will namely, Balamurugan as DW2, who has also categorically deposed that the deceased was in a fit and healthy state of mind while the testator himself asked his brother to prepare the Ex.B3 - Will on 08.02.2010 prior to the execution.

**11.7** On the other hand, P.W.1, namely Suresh, has admitted about the earlier partition deed and deposed that Karuppanna Gounder was succeeded by his sons Azhaginagounder and Arumugam Gounder, and that a partition was effected between them under a registered partition deed dated 07.12.1976, pursuant to which the suit properties fell to the share of Arumugam Gounder as his separate property. He has also admitted that Arumugam Gounder died on 22.11.2011 at the age of about 90

years, leaving behind the parties herein as his legal heirs. Thus, the title of the testator over the suit properties and the relationship between the parties stand admitted and undisputed in evidence and in pleadings.

**11.8** Leaving the principal contention of the plaintiffs that the Will propounded by the 2nd and 3rd defendants in Ex.B3 is a forged and fabricated document. In this context, it is well settled law that where the execution of the Will is proved, the burden shifts to the contestants to establish the existence of real, germane, and substantial suspicious circumstances. Mere conjectures or trivial inconsistencies cannot be elevated to the level of suspicious circumstances so as to discredit an otherwise valid testamentary document.

**11.9** In an attempt to create suspicion, a suggestion was put to D.W.1 that the Will was registered at Dindigul though the properties are situated elsewhere. D.W.1 has offered a plausible explanation that the place of registration was chosen in accordance with the convenience and intention of the testator. This explanation appears natural and acceptable to this court, since the registration and cancellation of the earlier will executed by the testator himself also took place at Dindigul. Thus the place of registration, by itself, does not constitute a suspicious circumstance.

**12.** As already observed by me supra, it has further come on record that the testator had earlier executed a Will dated 19.06.2005 in favour of his wife, Meenakshi Ammal, which was subsequently cancelled prior to the execution of the present Will. This fact has also been admitted by P.W.1 during cross-examination. The signatures

and photographs of the testator in the earlier Will have been marked as Ex.B1 during the cross examination of PW1.

**12.1** This sequence of execution, cancellation, and subsequent execution of the Will dated 08.02.2010 clearly demonstrates that the testator was consciously exercising his testamentary rights with respect to the properties owned by him and his previous execution of will and its due registration too appears to me that he was fully aware of the nature and effect of such dispositions. The said conduct establishes a consistent pattern of testamentary disposition by the deceased Arumugha Gounder and reinforces the conclusion that the impugned Will was executed with due deliberation and free state of mind and volition.

**12.2** The only other discrepancy pointed out by the plaintiffs is that the age of the testator is mentioned as 77 years in the Will in question, whereas the evidence on record indicates that he was between 80 and 90 years at the relevant time. In the considered opinion of this Court, such a minor discrepancy in the age alone does not go to the root of the matter and cannot be construed as a suspicious circumstance sufficient to discredit the Will. Except for this trivial inconsistency, no material contradictions or any disproportionate allocation of all his assets to the beneficiary, or any other circumstances casting doubt on the genuineness of the Will have been elicited.

**12.3** The contention of the plaintiffs that the testator was not in a sound and disposing state of mind at the time of execution of the Will is not substantiated by any acceptable evidence. On the contrary, the evidence of D.W.1 and DW2, coupled with

the surrounding circumstances, clearly establishes that the testator was in a sound and disposing state of mind and was capable of understanding the nature and consequences of his act.

**12.4** The further contention of the plaintiff that the Will is unnatural inasmuch as it excludes other legal heirs also cannot be accepted. The evidence presented and the PW1 himself has admitted that an extent of five acres was earlier allotted to his father, Rajanna, and that 86 cents had been gifted by Meenakshi Ammal in favour of Kalayarasi in S.No.41, Pudukottai Village. He has also admitted that the other Will executed by Meenakshi Ammal in favour of the 2nd defendant was attested by Arumugam Gounder and that was his signature. The records further disclose that, within a short span thereafter, ie. few months Arumugam Gounder himself executed the Will dated 08.02.2010, Ex.B3 which were earlier gifted to his father by Meenakshi Ammal. Furthermore, it is evident from the evidence of PW1 admitted that and that the PW1's father and the 1<sup>st</sup> Defendant were settled at Hosur and Thanjavur respectively after the 1976 year of partition and this being so mere exclusion of certain heirs does not, by itself, render the Will suspicious, particularly when there is evidence to show that the testator has also made arrangements earlier for the other beneficiaries and the beneficiary who has lost his father at tender age and they were taking care of the testator during his lifetime. In the present case, the evidence indicates that the 2nd and 3rd defendants were attending to the testator which provides a rational basis for the bequest in favour of the 3rd defendant as the

claim of PW1 that they used to visit from Hosur to take care of the deceased does not appear probable.

**12.5** It is also significant to note that P.W.1 has deposed that, subsequent to the partition effected in the year 1976, the parties have been in separate possession and enjoyment of their respective shares. He has further also admitted that the 1st defendant is residing at Thanjavur, while the plaintiffs and their father were residing at Hosur and were engaged in money-lending business as already observed by me supra. In such circumstances, the plea of joint possession and enjoyment of the suit properties at Dindigul District, as put forth by the plaintiffs, is untenable and improbable. Once it is established that the testator was in exclusive possession of the B-schedule properties, the question of joint possession loses significance in the context of testamentary disposition as well as in the light of the revenue records produced before this court

**12.6** These facts, when collectively considered, establish a consistent pattern of testamentary disposition within the family and clearly indicate that the testator was acting consciously, voluntarily, and with full awareness of his actions and he intended to create testamentary dispositions regarding his estate.

**12.7** P.W.1 has also deposed that the patta had been mutated in favour of the 3<sup>rd</sup> defendant. Significantly, when questioned as to whether any objection had been raised before the revenue authorities against such mutation, P.W.1 gave an evasive reply stating that his father “might have” taken steps, without specifically asserting that any objection had in fact been lodged. This equivocal response, coupled with the

absence of any documentary proof of objection, clearly establishes that the mutation of revenue records in favour of the 3<sup>rd</sup> defendant stood unchallenged. The acceptance of such mutation by P.W.1 is yet another a relevant circumstance which lends support to the case of the defendants 2 and 3.

13. It is also pertinent to note that, there is a conspicuous absence of any pleading in the plaint to the effect that the plaintiffs had, at any point of time prior to the institution of the suit, demanded partition from the defendants or issued any legal notice in that regard. The silence on this material aspect casts a serious doubt on the bona fides of the claim for partition.

14. Equally significant is the fact that the plaintiffs have not clearly explained as to how the Will dated 08.02.2010 came to his knowledge. P.W.1 has admitted that his father had applied for, and obtained copies of the Will from the Sub-Registrar's Office and only thereafter came to know of its existence. This circumstance probabilities, due registration and knowledge of Will to the plaintiffs and the existence of the Will in public records and militates against the allegation of fabrication.

15. All the above factors, when cumulatively considered, operate against the plaintiffs and effectively dispel the alleged suspicious circumstances sought to be pleaded by them. On the contrary, these circumstances lend credence to the genuineness and validity of the Will in question.

16. Moreover, the plaintiffs have not produced any revenue records standing in their names at any point of time with respect to the suit properties to show joint

possession and enjoyment over. On the other hand, the defendants have produced revenue records, including patta, standing in the name of the 3<sup>rd</sup> defendant along with other legal heirs. Though such records are not conclusive proof of title, they lend credence to the case of the defendants regarding separate possession and enjoyment.

17. The further plea of the plaintiffs that the properties were leased out to P.W.2 also does not merit acceptance. P.W.2 has claimed that he took the 16 acre property on lease in the Year of 2011 for a Yearly sum of Rs.10,000/- (Rupees Ten Thousand Only) appears artificial. However, no documentary evidence has been produced to substantiate the alleged lease. In the absence of any corroborative material, the oral testimony of P.W.2 cannot be relied upon.

18. On a cumulative consideration of the oral and documentary evidence, this Court is satisfied that the Will dated 08.02.2010 has been duly proved in accordance with law, that the testator executed the same in a sound and disposing state of mind, and that the alleged suspicious circumstances contended by the plaintiffs and 1<sup>st</sup> Defendant have been satisfactorily dispelled by the propounders.

19. The judgment relied on by the learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant in AIR 1995 SC 2012 is applicable to the facts of this case and the factum of improbability of the Will has to be cogently established, which is not the case in hand and the judgment in 2001 (1) TMJ(SC) 57 is also applicable in so far as mere old age of the executant does not by itself amount to suspicious circumstance, and the decision in 2003(3) MLJ 121 that the intention of the testator has to be gathered from the words used and surrounding circumstances is squarely applicable as the testator

has executed Wills regarding his estate in 2005 and three months prior to this Ex.B3 as well and thus it is not wholly improbable for the testator to have made the Will in question in favour of D3. For the sake of brevity this Court is not adverting to all the cited decisions as facts and evidence are clear for returning the instant decision by this court.

20. Accordingly, this Court holds that the Will dated 08.02.2010 is true, valid, and binding on the parties. Consequently, the plaintiffs' challenge to the said Will fails, and the testamentary succession set up by the 2nd and 3rd defendants is liable to be accepted. The plaintiffs are therefore not entitled to the relief of partition as claimed, and the counterclaim of the 2nd and 3rd defendants deserves to be allowed in terms of the prayer. In view of the foregoing discussion, this Court holds that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have successfully proved the Will dated 08.02.2010 (Ex.B2) in accordance with law. Consequently, the claim of the plaintiffs that the properties devolved intestate cannot be accepted.

21. Accordingly, Issues Nos.2, 3, 4, and 5 are answered against the plaintiffs and they are non-suited. The counterclaim preferred by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants is allowed, and the suit for partition filed by the plaintiffs is dismissed.

**RESULT :-**

**In the result,** the suit for partition filed by the plaintiffs is dismissed. The counterclaim filed by the 2, 3 defendants is allowed, and it is hereby declared that the suit schedule properties are allotted exclusively to the 3rd defendant. Consequently, a decree for permanent injunction is granted restraining the plaintiffs, the 1st defendant,

their men, agents, or anyone claiming under them from in any manner interfering with or causing obstruction to the peaceful possession and enjoyment of the said properties by the 3rd defendant. No costs.

Dictated to the stenographer, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 30th day of April 2026.

**Additional District Judge,  
Dindigul.**

**APPENDIX**

**Plaintiffs Side Witnesses:**

**PW1** - Mr.Suresh

**PW2** - Mr.Kannappan

**Plaintiffs Side Exhibits:**

Ex.A1	-	Genealogical Tree of Karuppanna Gounder family.	Original
Ex.A2	07.12.1976	Partition deed executed between Azhaginagounder and Arumugagounder.	Certified Copy
Ex.A3	22.11.2011	Death Certificate of Arumugagounder	Xerox
Ex.A4	04.11.2021	Death Certificate of Rajanna.	Computerized Copy
Ex.A5	20.01.2022	Legal Heir Certificate of Rajanna.	Computerized Copy
Ex.A6	15.06.2021	Death Certificate of Palaniyammal.	Computerized Copy
Ex.A7	13.08.2021	Legal Heir Certificate of Palaniyammal.	Computerized Copy

**Defendants side Witnesses :-**

**DW-1** - Mrs.Karupayee @ Kalaiyarasi

**DW-2** - Mr.Balamurugan

- DW-3** - Mr.Chinnakaliyappan  
**DW-4** - Mr.Muthusamy  
**DW-5** - Mr.Karupusamy

**Defendants Side Exhibits :-**

Ex.B1		Signatures and Photographs of Arumugagounder and Meenakshiammal in the Will revocation deed.	Original
Ex.B2	20.05.2010	Will executed by Meenakshi Ammal to and in favour of Kalaiyarasi (2 <sup>nd</sup> defendant)	Original
Ex.B3	08.02.2010	Will executed by Arumugagounder to and in favour of 3 <sup>rd</sup> defendant.	Original
Ex.B4	--	Patta bearing Patta No.1168 and FMV (Field Measuring Sketch) relating to the suit property.	Computerized Certified Copy
Ex.B5	--	Kist receipt issued in the name of the 3 <sup>rd</sup> defendant Banupriya for the suit property.	Original
Ex.B6	--	Indian Overseas Bank passbook of Arumugagounder.	Original

**Additional District Judge,  
Dindigul.**

Additional District Court,  
Dindigul.  
O.S.No.4/2016  
Fair/Draft/Judgment  
D.D.30.04.2026

