

TNKK050001582026



**IN THE COURT OF THE SPECIAL JUDGE FOR FOREST OFFENCE
CASES, NAGERCOIL.**

Present : Tmt. C. Kalaiyarasi Reena, M.L.,
Special Judge, Nagercoil.

Tuesday, the 14th day of July, 2026.

APPEAL SUIT No. 25 /2024

1. Muthar
2. Krishnan
3. Thangam
4. Saraswathy
5. Santhi
6. Ravikumar

... Appellants/Additional
Plaintiffs 2 to 7

//Vs//

1. Padmavathy
2. Sree Ramachandran
3. Nagammal

... Respondents/Defendants

(Appeal filed by the Appellants/Additional Plaintiffs 2 to 7 against the Judgment and decree of the I Additional District Munsif Court, Nagercoil in O.S.No.166/2014 dated 28.02.2024.)

PARTIES IN ORIGINAL SUIT No. 166/2014

1. Retnaswamy (died)
2. Muthar
3. Krishnan
4. Thangam
5. Saraswathy
6. Santhi

A.S.No.25 of 2024 dated 14.7.2026

7. Ravikumar
(Amended as per order in I.A.No.3/2023 dated 31.8.2023)

... Plaintiffs

//Vs//

1. Padmavathy
2. Sree Ramachandran
3. Nagammal

... Defendants

This appeal having coming up for final hearing before me on 29.06.2026 in the presence of Thiru.Kumarasamy, Advocate for Appellants/Plaintiffs, Thiru.Ramdhas, Advocate for 2nd and 3rd Respondents/Defendants and 1st respondent remains exparte and upon hearings the arguments of both sides and perusing all the relevant records and the same having stood over for consideration till this day, this Court delivers the following

JUDGMENT

The present appeal is filed by the Appellants/Plaintiffs against the Judgment and Decree of the I Additional District Munsif Court, Nagercoil in O.S.No:166/2014 dated 28.02.2024 dismissing the suit by not granting the relief of declaration and demarcation of the suit schedule properties.

2. Brief facts of plaint filed before Trial Court: -

The Plaintiffs are the absolute owner and in possession of suit schedule properties. The plaint schedule properties and other properties originally belonged to one Narayanavadivu Nadachi daughter of Nachiar Nadachi owned 96 cents of land in old S.No.1622, R.S.No.223/3 Kanniyakumari Village of 102 cents of land. The said Narayanavadivu Nadachi had 6 children namely, Nachiar, Chellammal, Retnaswamy(1st Plaintiff), Lekshmi, Gopalakrishnan and Thangavel. The Gopalakrishnan and Thangavel were unmarried and died. The said Narayanavadivu Nadachi executed a registered Will bearing No.3 of 1973 dated 29.01.1973

bequeathed the remaining 4 cents of land to her living sons the 1st plaintiff Retnaswamy and Gopalakrishnan and the said Gopalakrishnan died as a bachelor and had no legal heirs. The 1st defendant is the daughter of Chellammal and 2nd and 3rd defendants are the son and daughter of Nachiar who are the sisters of the 1st plaintiff. Moreover as per 10 cents of land the 1st item of schedule of properties situated in the southern end adjacent to this plaintiff's property which was purchased from his sister Lekshmi and mother Narayanavadivu as per a registered sale deed bearing No.2073 of 1996 and the 2 cents of land the 2nd item of schedule of property situated on the southern end. Further both the properties have no clear demarcations and hence the plaintiffs are not able to enjoy the properties peacefully, hence prays for relief of declaration and demarcation of suit schedule properties.

3. Brief facts of Written Statement filed by the 2nd and 3rd defendants: -

The entire property was originally belonged to Narayanavadivu Nadachi. The Narayanavadivu Nadachi had 2 husbands namely, Nainar and Sudalaimadan Nadar. She begotten 2 children namely, Nachiar and Chellammal through Nainar and she begotten 4 children namely, the 1st plaintiff Retanaswamy, Gopalakrishnan, Thangavel and Lekshmi through Sudalimadan Nadar. The Gopalakrishnan and Thangavel died as unmarried long ago. Narayanavadivu Nadachi bequeathed each 30 cents of land out of 102 cents her 3 daughters namely, Nachiar, Chellammal and Lekshmi. The 1st defendant is daughter of Challammal. The 2nd and 3rd defendants are son and daughter of Nachiar. The remaining 12 cents of land is equal to all legal heirs of Narayanavadivu. The 2 cents of land was taken for road purpose. The remaining 10 cents of land is to be partitioned among all the legal heirs of the Narayanavadivu. The execution of Will dated 29.1.1973 by the deceased Narayanavadivu in favour of 1st plaintiff and Gopalakrishnan is unbelievable, as Narayanavadivu never executed any Will. The plaintiff with a view to curb the entire

10 cents of land has filed the suit for demarcation concealing the right of other legal heirs over the property, hence the suit is liable to be dismissed.

4. Brief facts of Amended Additional Written Statement filed by the 2nd defendant: -

The 1st plaintiff did not appear before this Court for giving evidence during the trial and subsequently after his demise, the 3rd plaintiff examined as P.W.1. The 1st item of suit property is in possession of the plaintiffs. The plaintiffs and the 1st respondent jointly filed O.S.No.40/2005 before the 1st Additional District Munsif Court, Nagercoil seeking partition and permanent injunction. The suit was dismissed on 21.2.2011. Hence, the present suit is not maintainable. Further, the II item of suit property consists of 2 cents was not in existence. The Will relied upon by the plaintiff is a forged document, hence the suit is liable to be dismissed.

5. Based on the pleading the Trial Court framed the following issues:-

1. Whether the suit is bad for non-joinder of necessary parties i.e., legal heirs of Narayanavadivu ?
2. Whether the plaintiff prove that, on 29.1.1973 the deceased Narayanavadivu had executed the Will ?
3. Whether the plaint schedule properties absolutely belongs to the plaintiff ?
4. Whether the plaintiff is entitled to get declaration as prayed for ?
5. Whether the plaintiff is entitled to get demarcation of plaint schedule properties as prayed for ?
6. Cost and what other reliefs ?

6. On the side of plaintiffs, the 3rd plaintiff examined himself as P.W.1 and Ex.A1 to Ex.A11 and during his cross-examination Ex.B1 were marked. On the side of defendants, the 2nd defendant examined himself as D.W.1 and Ex.B2 and during his cross-examination Ex.A12 and Ex.A13 were marked.

7. Brief facts of the appeal memorandum is as follows:

The Judgment and Decree of Trial Court is against law. The Trial Court failed to appreciate the evidence given by the plaintiffs. The Trial Court failed to note that the plaintiffs are the absolute owners of the plaint schedule property. The Trial Court failed to note that the Ex.A1 Will is in operation and mutation has been effected in favour of the 1st plaintiff. The Trial Court did not consider the recital of the registered Will. Moreover the trial court miserably failed to consider that the defendant already filed suits for partitioning the plaint schedule property and both the suits were dismissed and there is no appeals and hence the dismissed order become final and from this it is very clear that the defendants are not entitled to any share in the plaint schedule property. The Will dated 29.1.1973 is a genuine one. Admitted the original plaintiff purchased 30 cents of land from his sister Lekshmi. As per Will the properties belongs to Narayanavadivu Nadachi goes to her son and as such the remaining 12 cents. The Trial Court failed to note that any other heirs of Narayanavadivu Nadachi receipt the defendant come forward to claim right over the plaint schedule property. It clearly proves that for the past 50 years the plaint schedule properties are in possession and enjoyment of the plaintiffs. Hence, the present appeal is filed to set aside the Judgement and Decree of the Trial Court in O.S.No.166/2014 dated 28.02.2024.

8. In this appeal, the 1st respondent who remains ex parte examined as P.W.1 and Ex.P1 and Ex.P2 were marked. On respondents side, no further evidences produced.

The present Appeal filed by the plaintiffs in the Original Suit. The respondents are the defendants in the original suit. Hence, for the sake of convenience, the petitioner of the Appeal will be stated as plaintiffs and respondents in the appeal will be stated as defendants.

9. Analysis and Finding:-

Argument of both side learned counsels heard. The present appeal is filed by the Petitioners/plaintiffs against the Judgement and Decree of the I Additional District Munsif Court, Nagercoil in O.S.No.166/2014 dated 28.02.2024 dismissing the suit seeking prayer for declaration and demarcation of the suit schedule properties. In the argument, as stated in the suit plaint and written statement, the appellants and respondents pleaded the same.

10. The case of the plaintiffs are that the plaint schedule properties originally belongs to Narayanavadivu Nadachi and she executed the Will dated 29.01.1973 bequeathing 4 cents of land to 1st plaintiff and Gopalakrishnan. Gopalakrishnan died as bachelor and had no legal heirs. The other plaintiffs are legal heirs of 1st plaintiff. The remaining 12 cents out of 102 cents absolutely belongs to 1st plaintiff, hence as the legal heirs of 1st plaintiff, 2 to 7 plaintiffs are entitled for relief of declaration and demarcation of the suit properties. The 2 to 7 plaintiffs are appellants in the present appeal.

11. Point for Consideration:

Both side arguments, reasons mentioned for preferring appeal, pleading of original suit, both side witnesses and documentary evidences are perused carefully. The learned counsels appearing for both the parties argued according to their prayer. The entire prayer of the appellants are based on the Will dated 29.01.1973 and in appeal the 1st respondent who remains exparte examined as appellants side witness.

Further through the said witness the original settlement deed dated 8.10.1960 executed by Narayanavadivu Nadachi in favour of her daughter Chellammal and Certified copy of Will dated 29.1.1973 executed by deceased Narayanavadivu Nadachi in favour of Retnasamy Nadar and GopalaKrishnan Nadar marked as Ex.P1 and Ex.P2 for proving the Will dated 29.01.1973. Upon consideration of rival contentions and evidence and materials on record and the Judgement of the trial court, the following points arise for consideration in this appeal,

- 1) Whether the appellants proved that, on 29.01.1973 the deceased Narayanavadivu Nadachi executed the Will?
- 2) Whether the Judgment and Decree of Trial Court warrants interference ?

12. The answer to the Point No. 1 and relief:-

In this case the 1st plaintiff Retnasamy died during pendency of the suit, hence his legal heirs impleaded as 2 to 7 plaintiffs. As the suit got dismissed, the 2 to 7 plaintiffs preferred this present appeal. The 1st plaintiff Retnasamy is the son of deceased Narayanavadivu Nadachi. In the suit, the 2nd appellant Krishnan examined as P.W.1 and original Will dated 29.01.1973 marked through him as Ex.A1. In the appeal to prove the Will on appellants side, the 1st respondent Padmavathi who remains exparte in appeal examined as witness and through her the Ex.P1 – Original settlement dated 8.10.1960 executed by Narayanavadivu Nadachi in favour of her daughter Chellammal and Ex.P2 - Certified copy of Will dated 29.1.1973 executed by deceased Narayanavadivu Nadachi in favour of Retnasamy Nadar and GopalaKrishnan Nadar were marked.

13. The Ex.A1 is the original of the Will and Ex.P1 is the Certified copy of Will dated 29.01.1973. On careful perusal of Ex.A1 and Ex.P1, it was stated that the said Will was executed by deceased Narayanavadivu Nadachi in favour of her sons

Retnasamy Nadar and Gopalakrishnan Nadar. Further, two attesting witnesses signed in the said Will. The attesting witnesses are 1.Gnanasigamani Nadar, S/o.Yacob Nadar, Lee Puram. 2. Manuvel Daniel, Narikulam.

14. Further this original suit has been already dismissed on 6.9.2016 by the Trial Court and appeal has been preferred in A.S.No.6 of 2017 before the II Additional Sub- Court, Nagercoil, in which appeal has been allowed on 7.11.2017. From the appeal order the 2nd appeal preferred before the Hon'ble Madurai Bench of Madras High Court in S.A.(MD) No.196/2019, in which the case was remanded back to the Trial Court with the following observations:-

“ this Court is of the opinion that unless the plaintiff proves execution of Exhibit A1 Will as per Section 68 of the Indian Evidence Act, he cannot claim a decree for declaration of title. In the present case, defendants 2 and 3 have remained exparte for the reasons best known to them. The issue regarding the title of 12 cents that were not covered under the settlement deeds in favour of the daughter, is yet to be decided. The suit for partition filed by the defendants 2 and 3 in O.S.No.306 of 2009 has been dismissed only on the ground of non-joinder of necessary parties. The genuineness or validity of Ex.A1 has not been decided in the said suit. Hence, it is all the more important for the plaintiff to prove Ex.A1 Will in the present suit for getting a decree for declaration of title.”

15. According to the Order of the Hon'ble Madurai Bench of Madras High Court dated 28.2.2022, the trial court framed the issues and finally held that Ex.A1 Will has not been proved and dismissed the suit. In the present appeal to prove the Will dated 29.01.1973, on appellants side submitted the additional documents under Order 41 Rule 27 of C.P.C. and the same marked as Ex.P1 - Original settlement dated 8.10.1960 executed by Narayanavadivu Nadachi in favour of her daughter Chellammal and Ex.P2 - Certified copy of Will dated 29.1.1973 executed by

deceased Narayanavadivu Nadachi in favour of Retnasamy Nadar and GopalaKrishnan Nadar.

16. Considering the authority of the **Hon'ble Supreme Court reported in 2009(3) SCC 687 Bahapur Singh and others Vs. Shamsheer Singh** in which it was held that *"A will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and Sec.68 of the Indian Evidence Act, 1872. In the event of the provisions thereof cannot be complied with, the other provisions contained therein namely. Secs.69 and 70 of the Evidence Act providing for exception in relating thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Sec.68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witness, if an attesting witness is alive and subject to the process of the court and capable of giving evidence."*

17. On careful perusal of above authority it reveals that the Will has to be proved in terms of Sec.63(c) of the Succession Act and Sec.68 of the Indian Evidence Act, if the provisions cannot be complied then it has to be proved by exceptions mentioned in Sec.69 and 70 of Indian Evidence Act. Further it was clearly stated that execution of Will must be proved by at least one attesting witness. In this regard, on careful perusal of Sec.63 of the Indian Succession Act which stated as follows:-

"Execution of unprivileged Wills – Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby

to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has 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 his signature or mark, or of the signature of such other person, and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

18. The provision of Succession Act clearly stated that the Will shall be attested by two or more witnesses, who had seen the testator sign or affix his mark to the Will and each of the witnesses such sign in the Will in the presence of the testator. Furthermore considering the Sec.68 of the Indian Evidence Act it stated as follows:-

“68. Proof of execution of document required by law to be attested. -

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, unless its execution by the person by whom it purports to have been executed is specifically denied.]

19. Considering the above mentioned provisions it was crystal clear that, the Will has to be attested by two or more witnesses and for proving its execution at least one attesting witness to be called for giving evidence. The original of the Will dated

29.01.1973 executed by deceased Narayanavadivu Nadachi in favour of Retnasamy Nadar and Gopalakrishnan Nadar and Certified copy of said Will dated 29.01.1973 marked as Ex.A1 and Ex.P1. The said Retnasamy Nadar is 1st plaintiff in the original suit, after his demise the present appeal filed by his legal heirs.

20. On careful perusal of Ex.A1 and Ex.P1, in the said Will dated 29.1.1973 two witnesses attested the Will. The name of the witnesses are 1.Gnanasigamani Nadar, S/o.Yacob Nadar, Lee Puram. 2. Manuvel Daniel, Narikulam. In this regard, on perusal of witnesses produced in the suit and appeal, the attesting witnesses of Will dated 29.01.1973 are not examined on the side of appellants. Further on careful perusal of evidence of P.W.1, who is 2nd appellant he deposed in his evidence as follows:-

“ மேற்படி உயில் 1973ம் ஆண்டு திருமதி.நாராயணவடிவு நாடாச்சி அவர்களால் எழுதி பதிவு செய்யப்பட்ட ஒன்றாகும். நாராயணவடிவு நாடாச்சி இறந்துவிட்டார். அந்த உயிலில் சாட்சி கையொப்பம் இட்ட நபர்களும் தற்போது உயிருடன் இல்லை. நாராயணவடிவு நாடாச்சியின் மக்கள் அனைவரும் தற்சமயம் காலமாகிவிட்டார்கள்”

21. Considering the evidence of P.W.1, he deposed that both the attesting witnesses of the Will dated 29.01.1973 got died. To prove the death of both the attesting witnesses on appellants side, the death certificate of attesting witnesses or other relevant documents relating to their death not submitted.

22. The attestation of the Will is significant and it is meant the signing of a document to signify that the attestor is a witness to the document. Attesting witness is one who signs the document in presence of the executant after seeing the execution of the document or after receiving the personal acknowledgment of the executant with regard to the execution of the document.

23. The P.W.1 in his evidence deposed that both attesting witnesses of the Will dated 29.1.1973 got died and admitted that death certificates or relating documents to their death not submitted in the case. Further no witnesses examined to corroborate the evidence of P.W.1. Hence, this Court comes to conclusion that, appellants failed to prove that the attesting witnesses of Will dated 29.1.1973, 1.Gnanasigamani Nadar, S/o.Yacob Nadar, Lee Puram. 2. Manuvel Daniel, Narikulam are not alive.

24. Even if assuming, that attesting witnesses got died, the appellants as to prove the Will as per Sec.69 of the Indian Evidence Act. In this regard, on perusal of Sec.69 stated as follows:-

“ 69. Proof where no attesting witness found

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

25. On careful perusal of above mentioned provision, if both the attesting witnesses are not found or died, then Will has to be proved by proving the handwriting of at least one of the attesting witness. But in the present case, on appellants side no witnesses produced to prove the handwriting of anyone of the attesting witnesses. In the appeal, the 1st respondent who remains exparte examined as witness and Ex.P1 and Ex.P2 marked through her. Both the Ex.P1 and Ex.P2 are not the documents to prove the handwriting of anyone of the attesting witnesses. Hence this Court comes to conclusion that, the appellants failed to prove the Will even as per Sec.69 of the Indian Evidence Act.

26. Considering the evidences submitted in the original suit and the oral evidence of witness examined in present appeal and the Ex.P1 and Ex.P2 submitted in appeal,

this Court comes to the conclusion that appellants failed to prove that both the attesting witnesses of the Will dated 29.01.1973 are not alive. Further appellants failed to prove the Will dated 29.01.1973 according to Sec.63 of Indian Succession Act, Sec.68 of Indian Evidence Act and even u/s.69 of Indian Evidence Act. Based on the above discussions, this Court comes to the conclusion that the appellants failed to prove that on 29.01.1973 the deceased Narayanavadivu Nadachi executed the Will in favour of his sons Retnasamy Nadar and Gopalakrishnan Nadar and the Point No.1 is answered accordingly.

27. The Answer to the Point No. 2 and relief:-

The trial court dismissed the suit seeking prayer for declaration of title and demarcation of suit schedule properties as the Will dated 29.01.1973 not proved by the appellants. Considering the discussions in Point No.1 this court is of consider view that the Ex.A1 and Ex.P1 the Will dated 29.01.1973 alleged to be executed by deceased Narayanavadivu Nadachi in favour of her sons, the execution of Will dated 29.01.1973 not proved by the appellants, hence the appellants not entitled for the relief of declaration and demarcation of the suit schedule properties.

28. The above said all aspects are considered by this court and comes to the conclusion that the learned I Additional District Munsif Court, Nagercoil has discussed elaborately in her Judgment as to why the Appellants/plaintiffs are not entitled to get the relief in suit O.S.No.166/2014 is sustainable one. In this circumstances, there is no necessity to interfere the trial court's Judgment and decree. Therefore, this court has come to the conclusion that the appellants are not entitled to any relief by way of appeal. There is no merits in the grounds of appeal memorandum and the Judgment and Decree of Trial Court warrants no interference and Point.No.2 is answered accordingly.

29. In the result, this appeal is dismissed. The Judgement and Decree of Trial Court in O.S.No. 166/2014 dated 28.02.2024 is hereby confirmed. The parties shall bear their own costs.

Dictated to the Steno-Typist and typed by her directly and corrected by me and pronounced in open court on 14th day of July, 2026.

Special Judge,
Nagercoil.

APPENDIX :

APPELLANTS SIDE EXHIBITS :

Ex.P1	8.10.1960	Original settlement deed executed by Narayanavadivu Nadachi in favour of her daughter Chellammal
Ex.P2	29.1.1973	Certified copy of Will executed by deceased Narayanavadivu Nadachi in favour of Retnasamy Nadar and GopalaKrishnan Nadar

APPELLANTS SIDE WITNESS :

P.W.1 – Padmavathi (1st Respondent)

RESPONDENTS SIDE EXHIBITS AND WITNESSES : Nil

Special Judge,
Nagercoil.

Copy to:-

The I Additional District Munsif Court,
Nagercoil.