



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

**PRESENT: Thiru.C. Mohanram, M.A., B.L.,  
Additional District Judge,  
Ramanathapuram.**

**Wednesday the 08<sup>th</sup> day of April 2026  
Original Suit No.46/2023**

**(CNR No.TNRM 01 002807 2023)**

1. Kamatchiammal

2. Ramesh

... Plaintiffs

/Vs/

01. Latha

02. Rani

03. Susila

04. Nagavalli

05. Balu @ Balasubramaniyan

06. Shankar

07. Chandra

08. Viji

09. Kavitha

10. Selvi

11. Divya

12. Kala

13. Suganya

14. Mugeshkannan

... Defendants

(Amended as per order in I.A.No.8/2024 dated 03.10.2024)



This suit came up for final hearing on 29.01.2026 before this Court in the presence of Thiru.K.Nagarajan,, Counsel for the plaintiffs and Thiru.M.Muhaideen Ibramsa, Counsel for 1<sup>st</sup> defendant, Tmt.Chandrakleha, Counsel for 5<sup>th</sup> defendant, Thiru.A.Habeeb, Counsel for the defendants 12 to 14 and the defendants 2 to 4, 6 to 11 have remained *exparte* and upon hearing both side arguments and reply argument and upon perusing the entire case records and having stood over for consideration till this date, this Court delivers the following...

### **JUDGMENT**

The plaintiffs have filed the suit for partition of their 14/70 shares and for declaration that the Will dated 16.05.1995 alleged to have been executed by Kamatchiammal in favour of Poomayil Ammal vide Doc.No.24/95 registered in the office of Sub-Registrar, Velipattinam and the Will dated 20.12.2007 alleged to have been executed by Poomayil Ammal, vide Document No.20/2007 registered in the office of Sub-Registrar, Velipattinam as null and void and for permanent injunction restraining the defendants 12 to 14 not to transfer or encumber the suit properties and for cost.



**2. Brief case of the plaintiffs as per amended plaint:**

1. The suit properties originally belonged to Ponnaiah Servai. He had two children namely Velusamy and Kamatchiammal. Ponnaiah Servai died before 1938 and his male son Velusamy had inherited the suit properties. The patta was mutated in the name of Velusamy.

2. The said Velusamy had no children and died leaving behind his wife Nagasoundaram ammal and she inherited the properties as legal heir of her husband. The said Nagasoundaram ammal in turn sold the properties to one Kuppusamy Servai by virtue of registered sale deed dated 08.12.1941.

3. The said Kuppusamy Servai for himself and on behalf of his minor children had sold the properties purchased by him to his wife Kamatchiammal by virtue of a registered sale deed dated 23.11.1943 due to a misunderstanding arose between them. The said Kamatchiammal had enjoyed the above said properties. The said Kuppusamy Servai had married another lady and left the Kamatchiammal permanently. Thereafter, the said Kamatchiammal was suffering from illness due to old age. She had two children namely Poomayil Ammal and Velusamy and she died on 08.05.1996. The said Poomayil Ammal and Velusamy had inherited the properties as legal heirs of Kamatchiammal and they had jointly been enjoying the properties



without effecting any partition.

4. The said Poomayil Ammal died on 10.10.2009 leaving behind defendants 2 to 6 and also her sons namely Marimuthu and Moorthy. The said Marimuthu died leaving behind his wife and children namely defendants 7 to 9. The said Moorthy also died leaving behind his wife and daughter, the defendants 10 and 11 herein. The defendants 2 to 11 have been enjoying the properties jointly in respect of undivided  $\frac{1}{2}$  share belonged to Poomayil Ammal. The 1<sup>st</sup> plaintiff is the wife of Velusamy, the brother of Poomayil Ammal. The 2<sup>nd</sup> plaintiff and 1<sup>st</sup> defendant are children of Velusamy. The said Velusamy was living with 12<sup>th</sup> defendant without divorcing his wife, the 1<sup>st</sup> plaintiff herein. The 12<sup>th</sup> defendant is not the legally wedded wife of Velusamy. The defendants 13 and 14 were children born to Velusamy and 12<sup>th</sup> defendant Kala out of illegal marriage and the defendants 13 and 14 are illegitimate children of the Velusamy. The plaintiffs are having undivided  $\frac{7}{70}$  shares each in respect of undivided  $\frac{1}{2}$  share belonged to Velusamy. The plaintiffs are jointly enjoying the suit properties. When that being so, the defendants 12 to 14 are making attempts to disturb the rights of the plaintiffs. The plaintiffs have been approaching the defendants for amicable settlement



on and from 10.01.2023. The defendants 12 to 14 are claiming right in respect of suit items 1 to 10 stating that the said Kamatchiammal had executed a Will dated 16.05.1995 and on the basis of that Will the defendants 12 to 14 are claiming exclusive right over the suit items 1 to 10 and the plaintiffs were informed on 20.04.2023 that the defendants 12 to 14 will not give any share to the plaintiffs.

5. The said Kamatchiammal did not execute any Will on 16.05.1995. She was not in a sound state of mind to execute the will and she had not been in a position to understand what she did. The said Kamatchiammal had no intention to give the properties to Poomayil Ammal and 12<sup>th</sup> defendant. The will dated 16.05.1995 was created by impersonation. The said Poomayil Ammal also had no intention to execute a Will in favour of 12<sup>th</sup> and 13<sup>th</sup> defendants on 20.12.2007. The said Poomayil Ammal had not voluntarily executed the Will on her own volition. The defendants 12 to 14 have no right over the suit properties on the basis of the Will executed by Poomayil Ammal. Hence, the plaintiffs have filed the suit for partition of their 14/70 shares and also for declaration that the Will dated 16.05.1995 alleged to have been executed by Kamatchiammal in favour of Poomayil Ammal vide the



Doc.No.24/95 registered in the office of Velipattinam, Sub-Registrar and the will dated 20.12.2007 alleged to have been executed by Poomayil Ammal, vide the document no.20/2007 registered in the office of Velipattinam, Sub-Registrar as null and void and for permanent injunction restraining the defendants 12 to 14 not to transfer or encumber the suit properties and for cost.

**3. Brief case of the 1<sup>st</sup> defendant as per written statement :**

The plaintiffs and this defendant have jointly been enjoying the suit properties in respect of 35/70 shares belonged to Velusamy. The said Kamatchiammal and Poomayil Ammal had not executed any Will and the defendants 12 to 14 had falsely created Wills as if the said Kamatchiammal and Poomayil Ammal had executed Wills and claiming full right over the suit properties. This defendant is having 7/70 share in respect of his father's share of 35/70 and she is paying Court fee for her share. Hence she prayed to pass a preliminary decree in respect of her 7/70 shares in the suit properties.

**4. Brief case of the 5<sup>th</sup> defendant as per written statement :**

1. It is true that suit properties originally belonged Ponnaiah Servai and he had two children namely Velusamy and Kamatchiammal and Velusamy



had acquired the properties by inheritance and he had no children through his wife Nagasoundaram ammal. The said Nagasoundaram ammal had acquired the properties by inheritance after the death of her husband Velusamy. It is also true that one Kuppusamy had purchased the properties from Nagasoundaram ammal and thereafter he sold the properties to his wife Kamatchiammal. It is also true that Velusamy, the husband of 1<sup>st</sup> plaintiff is the son of said Kamatchiammal. But, it is incorrect to state that the said Kuppusamy had left the Kamatchiammal permanently due to misunderstanding and the said Kamatchiammal had been affected by mental illness. The said Kamatchiammal and Kuppusamy were living together till their lifetime.

2. It is false to state that after the death of Kamatchiammal, her son Velusamy and daughter Poomayil Ammal had jointly been enjoying the properties without effecting partition. The said Kamatchiammal during her life time was hale and healthy and she had executed a Will in respect of suit items 1 to 10 in favour of her daughter Poomayil Ammal and in respect of 11<sup>th</sup> item in favour of 12<sup>th</sup> defendant. It is also false to state that the defendants 2 to 11 have jointly been enjoying the properties after the death of Poomayil



Ammal. The said Poomayil Ammal had executed a Will in favor of her brother's children namely defendants 13 and 14. The said Velusamy had married the 12<sup>th</sup> defendant after leaving his 1<sup>st</sup> wife (1<sup>st</sup> Plaintiff) permanently and defendants 13 and 14 were born to them. The suit properties belonged to Kamatchiammal, mother of Velusamy by purchase. The said Kamatchiammal had executed a Will and therefore her son Velusamy and children of Velusamy have no right over the properties and they cannot claim any partition.

3. It is false to state that the plaintiffs were demanding partition of their shares on 02.02.2023. The 2<sup>nd</sup> plaintiff is doing real estate business. He is unnecessarily claiming shares in respect of suit properties for the past 10 years. The plaintiffs were aware of the execution of Will and 2<sup>nd</sup> plaintiff has been giving complaints in order to grab the suit properties. Thereafter, the plaintiffs have filed this suit for partition stating that the said Kamatchiammal had not executed any Will while she was not in a sound state of mind. The said Kamatchiammal during her life time had executed Will on 02.08.1952 in respect of her share in favour of her daughter Poomayil Ammal and son Velusamy and subsequently cancelled the Will through the Will dated 16.05.1995 as her son Velusamy had not properly looked after his mother



Kamatchiammal. So, the said Kamatchiammal executed a Will in favor of her daughter Poomayil Ammal and daughter-in-law / Kala 12<sup>th</sup> defendant. The said Velusamy had not taken any steps in respect of execution of Will. The said Kamatchiammal executed the Will while she was in sound state of mind and therefore the plaintiffs and 1<sup>st</sup> defendant cannot claim any right over the suit properties and prayed for dismissal of the plaintiffs' suit with cost.

**5. Brief case of the defendants 7 to 9 as per their written statement :**

1. The 8<sup>th</sup> defendant name is Vijay but his name has been mentioned as Viji. It is true that the suit properties originally belonged to Ponnaiah Servai and he had two children namely Valusamy and Kamatchiammal. The said Velusamy had acquired the properties by inheritance and he had no children and his wife Nagasoundaram ammal had acquired the properties by inheritance as the only legal heir of Velusamy.

2. It is also true that one Kuppusamy had purchased the properties from Nagasoundaram ammal by virtue of Sale deed dated 08.12.1941 and he is the husband of Velusamy's sister Kamatchiammal. The said Kuppusamy Servai for himself and on behalf of his minor son sold the said properties to Kamatchiammal by virtue of Sale deed dated 23.11.1943. Then the said



Kamatchiammal had enjoyed the properties till her life time is also true. But the said Velusamy had some other properties in Valantharavai Village comprised in Survey Numbers 215/1C, 228/1, 244/2A, 244/2B, 243/13, 259/30, 293/4, 340/6, 340/2 and the same was also acquired by Nagasoundaram ammal and she sold the same to Kuppusamy Servai and he in turn sold the same to Kamatchiammal. These facts are deliberately suppressed in the plaint.

3. It is true that the said Kuppusamy Servai and Kamatchiammal had left due to misunderstanding. But it is false to allege that the said Kamatchiammal was affected mentally. She was in a sound state of mind till her life time. It is true that the said Kamatchiammal had two children Velusamy and Poomayil Ammal and Kamatchiammal died on 08.05.1996. The said Kamatchiammal during her life executed and bequeathed the suit properties in favour of her daughter Poomayil Ammal. She had also given the other properties comprised in Survey Numbers 215/1C, 228/1, 244/2A, 244/2B, 243/13, 259/30, 293/4, 340/6, 340/2 to Poomayil Ammal during her marriage as Sreethana. The said Poomayil Ammal died on 10.10.2009 is true. It is also true that she had 7 children namely defendants 2 to 6 and Marimuthu



and Moorthy. It is also true that Marimuthu died leaving behind his wife and children i.e. the defendants 7 to 9. The said Moorthy died leaving behind his wife and daughter namely the defendants 10 and 11. But it is incorrect to allege that the defendants 2 to 11 had acquired the properties of ½ share of Poomayil Ammal by inheritance.

4. It is false to allege that the said Velusamy brother of Kamatchiammal had married the 12<sup>th</sup> defendant Kala without divorcing the 1<sup>st</sup> plaintiff. The said Velusamy married the 12<sup>th</sup> defendant after divorce and the defendants 13 and 14 are legitimate children of said Velusamy and 12<sup>th</sup> defendant Kala. The said plaintiffs had not jointly enjoyed the properties either with Poomayil Ammal or with defendants 12 to 14. The said Poomayil Ammal had executed a Will on 20.12.2007 bequeathing her properties got under the Will dated 16.05.1995 executed by his mother Kamatchiammal in favour of 13<sup>th</sup> and 14<sup>th</sup> defendants. The defendants 12 to 14 are enjoying the properties. The plaintiffs and 1<sup>st</sup> defendant have no right over the suit properties and they have no right to object the Will executed by Kamatchiammal and Poomayil Ammal. No cause of action has arisen for filing of this suit. The Court fee paid by plaintiffs u/s.37(2) of TNCF (S&V)



Act is wrong and therefore the suit is liable to be dismissed with cost.

**6. Brief case of the defendants 12 to 14 as per written statement and additional written statement:**

1. In the plaint it has been wrongly stated that 12<sup>th</sup> defendant is the 2<sup>nd</sup> wife of late Velusamy and defendants 13 and 14 are illegitimate daughters of late Velusamy. The husband of 12<sup>th</sup> defendant namely Velusamy is alive and the defendants 13 and 14 are children of Velusamy. The genealogy filed in the plaint is not correct and the plaintiffs have to prove the same. The plaintiffs have to prove that the suit properties originally belonged to Ponnaiah Servai and he died before 1938 leaving behind Velusamy and Kamatchiammal as his legal heirs. Subsequently his son Velusamy had acquired the property by inheritance and patta was mutated in his favor. Thereafter, he died leaving behind his wife Nagasoundaram ammal and Nagasoundaram ammal had acquired the properties by inheritance after the death of Velusamy.

2. It is also false state that Nagasoundaram ammal had sold the properties to one Kuppusamy Servai and the said Kuppusamy Servai in turn the sold properties to Kamatchiammal. It is also false to state that the said Kuppusamy had left his wife Kamatchiammal permanently and said



Kamatchiammal had been suffering from mental illness. In fact, Kamatchiammal and Kuppusamy were living together till their life time and after the death of Kuppusamy, the said Kamatchiammal was looked after by her daughter Poomayil Ammal and daughter-in-law Kala. The said Kamatchiammal was in a sound state of mind and it is absolutely false to state that she was suffering from mental illness and she was looked after by her son.

3. It is false to state that the said Poomayil Ammal and Velusamy had jointly been enjoying the properties after the life time of Kamatchiammal and Poomayil Ammal and Velusamy have  $\frac{1}{2}$  share and defendants 2 to 11 have inherited the shares in respect of  $\frac{1}{2}$  share belonged to Poomayil Ammal. It is false to state that 1<sup>st</sup> plaintiff is the wife of Velusamy and Velusamy did not divorce her. The said Velusamy had been in a relationship of living together with 12<sup>th</sup> defendant and defendants 13 and 14 are not legitimate children of Velusamy. The said Velusamy had married the 12<sup>th</sup> defendant only after divorcing 1<sup>st</sup> plaintiff and the defendants 13 and 14 were born to Velusamy and 12<sup>th</sup> defendant and therefore the defendants 12 to 14 are legitimate legal heirs of Velusamy. It is false to state that the Velusamy had  $\frac{1}{2}$  share and the



plaintiffs, defendants 1, 13 and 14 have inherited in respect of his ½ share.

4. The genealogy filed along with plaint is not correct and the plaintiffs have no right to claim shares in respect of suit properties as the Kamatchiammal had executed a Will in favour of Poomayil Ammal and Kala (12<sup>th</sup> defendant). The allegation made in the plaint that the Will executed by Kamatchiammal was a created one and the said Kamatchiammal was not in a sound state of mind to execute Will and the said Poomayil Ammal have executed a Will on the strength of Will executed by Kamatchiammal are all false and invented only for the purpose of claiming right over the suit properties. Moreover, the claim of the plaintiffs have been refused by defendants on 02.02.2023 is also false. The defendants 12 to 14 have been enjoying the suit properties for more than 13 years excluding the rights of plaintiffs and defendants 1 to 11. The plaintiffs and defendants 1 to 11 have not jointly been enjoying the properties and suit filed by plaintiffs is barred by limitation. The plaintiffs are not entitled to claim for partition and injunction and therefore the suit filed by the plaintiffs is liable to be dismissed with cost.

**7. Issues:**

1. Whether the plaintiff is entitled to get the relief for partition and separate



possession over the suit schedule property as prayed for?

2. Whether the plaintiff is entitled to get the relief for declaration to declare that Will dated 16.05.1995 is null and void?
3. Whether the plaintiff is entitled to get the relief for declaration to declare that Will Doc.No.20/2007 dated 20.12.2007 is null and void?
4. Whether the plaintiff is entitled to get relief for permanent injunction ?
5. Whether the 5<sup>th</sup> defendant contention is true to say suit schedule properties are self acquired properties to the deceased Kamatchiammal?
6. Whether the defendants contention is that the deceased Kamatchiammal executed will in well state of mind?
7. Whether Velusamy is no right over the suit schedule properties?
8. Whether the suit is hit by Limitation?
9. Whether the defendants 12 to 14 are entitled to get claim by way Adverse Possession?
10. Whether no cause of action to file the suit?
11. To what any relief the plaintiff is entitled to?

**8. Additional Issues:**

1. Whether the 1<sup>st</sup> defendant contention is acceptable one the deceased Velusamy not married 12<sup>th</sup> defendant?
2. Whether the 1<sup>st</sup> defendant contention is acceptable one D13 and D14 are treated as a illegitimate children?



3. Whether the defendants 1, 13 and 14 are entitled to 7/70 share over the suit property?
  4. Whether the 1<sup>st</sup> defendant contention is the deceased Kamatchiammal and Poomayil Ammal not executed Will in favour of 12 to 14 defendants is true?
  5. Whether the 13 and 14 defendants are entitled to 7/70 share are entitled to the defendants 13 and 14 is true?
  6. Whether the 1<sup>st</sup> defendant is entitled to 7/70 share over the suit schedule property?
9. This Court upon perusing the pleadings and documents is of the considered view that the issues have to be recasted and the recasted issues are as follows:
1. Whether the Will dated 16.05.1995 alleged to have been executed by Kamatchiammal was created by impersonation?
  2. Whether the plaintiffs are entitled to get the relief for declaration that the Will dated 16.05.1995 is declared as null and void and the said Poomayil Ammal had not acquired right under the Will alleged to have been executed by Kamatchiammal?
  3. Whether the plaintiffs are entitled to get the relief of declaration that the Will dated 20.12.2007 is declared as null and void?



4. Whether the suit is hit by limitation?

5. Whether the plaintiffs are entitled to get the relief for partition and separate possession over the suit properties as prayed for?

6. To what other relief the plaintiffs are entitled to?

**10.** On the side of plaintiffs, the 2<sup>nd</sup> plaintiff Ramesh has been examined as PW1 and through him 11 documents were marked as Ex.A1 to A11. On the side of the defendants, 12<sup>th</sup> defendant has been examined as DW1 and through whom 18 documents have been marked as Ex.B1 to Ex.B18. Ex.B5, Ex.B6, Ex.B10 to Ex.B15 were marked with objection made on the side of plaintiffs.

**11. Issue No.1 to 3:**

1. It is the case of the plaintiffs that the suit properties originally belonged to one Ponnaiah Servai and who had two children namely Velusamy and Kamatchiammal. The said Ponnaiah Servai died before 1938 and his son Velusamy had inherited the properties of Ponnaiah Servai and he had also mutated the patta in his favour. Then he died leaving behind his wife Nagasoundaram ammal as his legal heir. The said Nagasoundaram ammal



had acquired the properties of Velusamy by inheritance and thereafter she sold the suit properties to one Kuppusamy Servai by virtue of registered sale deed dated 08.12.1941. **The registration copy of sale deed dated 08.12.1941 is marked as Ex.A1.** Then, the said Kuppusamy Servai had sold his properties to his wife Kamatchiammal and the said Kamatchiammal had acquired the suit properties by virtue of registered sale deed dated 23.11.1943. **The registration copy of sale deed dated 23.11.1943 is marked as Ex.A2.** Then, the said Kamatchiammal had enjoyed the properties by mutating the patta in her favour. **The 10(1) chitta stood in the name of Kamatchiammal is marked as Ex.B1 on the side of defendants 12 to 14.** The said Kuppusamy Servai and Kamatchiammal were left due to misunderstanding arose between them and the said Kuppusamy Servai had married another lady. The said Kamatchiammal and Kuppusamy Servai had two children namely Poomayil Ammal and Velusamy. The said Velusamy had married the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> plaintiff and 1<sup>st</sup> defendant were born to the above said Velusamy and 1<sup>st</sup> plaintiff Kamatchiammal. The said Poomayil Ammal died leaving behind defendants 2 to 11 as her legal heirs. These facts are not disputed by the defendants.



2. It is the case of the plaintiffs that the said Velusamy had married the 12<sup>th</sup> defendant during the life time of the 1<sup>st</sup> plaintiff and the marriage of 1<sup>st</sup> plaintiff with the said Velusamy was subsisting. The 1<sup>st</sup> plaintiff was not divorced by the said Velusamy. It is further case of plaintiffs that out of illegitimate marriage with 12<sup>th</sup> defendant, the defendants 13 and 14 were born to the above said Velusamy and 12<sup>th</sup> defendant and as such the defendants 13 and 14 are illegitimate children of Velusamy. These things are strongly disputed by the defendants 12 to 14. The plaintiffs have admitted that the defendants 13 and 14 are also having right over the share of Velusamy and they are also entitled to claim partition in respect of Velusamy's share.

3. It is the specific case of the plaintiffs that the said Kamatchiammal wife of Kuppusamy Servai had not executed any Will in favour of her daughter Poomayil and 12<sup>th</sup> defendant Kala on 16.05.1995. **The original Will dated 16.05.1995 has been marked as Ex.B2 on the side of defendants 12 to 14.** It is further case of the plaintiffs and 1<sup>st</sup> defendant that the said Poomayil Ammal had not executed any Will in favour of defendants 13 and 14 on 20.12.2007. **The original will dated 20.12.2007 has been marked as Ex.B3. The certified copies of Will dated 16.05.1995 and Will dated**



**20.12.2007** have been marked as **Ex.A6** and **Ex.A7** on the side of **plaintiffs**. The certified copies of death certificate of Kamatchiammal and Poomayil Ammal have been marked as Ex.A3 and Ex.A4 on the side of plaintiffs.

4. The 2<sup>nd</sup> plaintiff in his evidence has categorically deposed that the testator Kamatchiammal was not in a sound state of mind when she was alleged to have been executed the Will dated 16.05.1995. The learned counsel for plaintiffs would submit that the said Kamatchiammal was 80 years old at the time of alleged execution of Will dated 16.05.1995. It is the specific case of the plaintiff that the said Kamatchiammal was not in a sound state of mind and she was suffering with illness and taking advantage of her illness, her daughter Poomayil Ammal and 12<sup>th</sup> defendant had created the Will dated 16.05.1995 as if it was executed by Kamatchiammal. It is the specific case of the plaintiffs that the Will dated 16.05.1995 was created by impersonation as if the said Kamatchiammal was appeared before the Sub-Registrar Velipattinam and executed the Will in the presence of Sub-Registrar, Velipattinam.



5. The learned counsel for plaintiffs would submit that the plaintiffs have specifically denied the execution of Will dated 16.05.1995 and therefore the burden is upon the defendants 12 to 14 to prove that the Will dated 16.05.1995 was executed by Kamatchiammal. The learned counsel for plaintiffs would contend that the plaintiffs were aware of the Wills only in the year 2023 and prior to 2023, they were not aware of the execution of Will by Kamatchiammal. The learned counsel for plaintiffs would further contend that even if the Will is an ancient one, the legatees have to prove the due execution of the Will by examining the attestors to the Will under section 68 of the Indian Evidence Act and if attestors are not alive or not found as per section 69 of the Indian Evidence Act.

6. In support of his contention, the learned counsel for plaintiffs has relied on the following authorities:

**1. 2025 CTC page 737 Will - Required to be proved by examining at least one attesting witness even if will is not disputed by opposite party.**

**2. 2018 (6)CTC- page 172- Will- Suspicious circumstances- burden of proof- two out of portions executed Will- without specificity any reason for such execution held – suspicious circumstances surround for execution of will due to exclusion of two sons.**



**3. 2017 (5) CTC-page 821- Will- Proof of – admitted or not denied – Compliance u/s.68 of Indian Evidence Act mandating for proving Will. Non denied of Will is not proof of Will – Proof of Will is mandating irrespective of denial or non denial its existence. Unless and until Will is proved court cannot rely on Will.**

**4. 2023 (5) CTC-Page No.543-Will- Indian Evidence Act u/s.68- Attesting witness not examined- Scribe who drafted Will examined does not satisfy requirements for proof of will.**

**5. 2022 (3) CTC-Page 88-Will-Proof of Will is mandatory U/s.68 of Indian Evidence Act even if Will is admitted or not specifically denied by opposite party- Will must be proved by propounder.**

7. The learned counsel for plaintiffs would submit that the defendants 12 to 14 who are claiming right under Will dated 16.05.1995 alleged to have been executed by Kamatchiammal and Will dated 20.12.2007 alleged to have been executed by Poomayil Ammal have to propound the valid execution of Wills by the testators above named. The defendants 12 to 14 have not taken any steps to examine the attestors to the Will dated 16.05.1995 and 20.12.2007 nor taken any steps to prove due execution of Wills through the other modes embodied in the Indian Evidence Act. Therefore, the defendants 12 to 14 cannot claim any exclusive right over the suit properties. The learned counsel for plaintiffs would further contend that the said Poomayil



Ammal daughter of Kamatchiammal had three daughters and three sons. The defendants 2 to 4 and defendants 5 and 6 are daughters and sons of Poomayil. The defendants 7 to 8 and defendants 10 and 11 are wife and children of her predeceased sons namely Marimuthu and Moorthy.

8. It is the contention of the learned counsel for plaintiffs that when Poomayil Ammal had sons and daughters, she would not have executed Will in favour of defendants 13 and 14 excluding her own sons and daughters and grandsons. The exclusion of her own sons and daughters creates a suspicion over the execution of Will in favour of defendants 13 and 14. Therefore, the defendants 12 to 14 have to prove that as to why the said Poomayil Ammal had executed the Will excluding her sons and daughters. The defendants 12 to 14 who are claiming right over the suit properties under the Will dated 20.12.2007 alleged to have been executed by Poomayil Ammal have to prove the due execution of Will. The defendants have failed to prove the due execution of Will and therefore they cannot claim any exclusive right over the suit properties.

9. The learned counsel for defendants 12 to 14 would submit that as per Order 6 Rule 4 the party pleading relies on any misrepresentation, fraud,



breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be dated in the pleading.

10. He also relied on the provisions of Sections 101 to 104. He also relied on the provisions of Sec.6 of the transfer of the Property Act and Sec.30 of Hindu Law. The learned counsel for defendants 12 to 14 would submit that the plaintiffs have not specifically pleaded as to misrepresentation, fraud and undue influence alleged to have been committed by defendants 12 to 14. The learned counsel for defendants 12 to 14 would submit that the testator Kamatchiammal had specifically stated in the Will dated 16.05.1995 that her son Velusamy and his wife Kamatchiammal (1<sup>st</sup> Plaintiff) had left and both of them were living in their own way. Her son Velusamy and daughter-in-law Kamatchiammal (1<sup>st</sup> plaintiff) did not look after her when she was suffering from illness at her final stage of life and her daughter Poomayil Ammal and her niece Kala (12<sup>th</sup> defendant) had looked after her and therefore she bequeathed the properties in favour of her daughter Poomayil Ammal and her niece Kala (12<sup>th</sup> defendant). The learned counsel for defendants 12 to 14 has



invited the attention of this court as to the contents made in the Will. The excerpts of the Will dated 16.05.1995 are as follows,

"எனது மகன் வேலுச்சாமியும் மேற்படியார் மனைவி காமாட்சியும் ஒருவரை விட்டு ஒருவர் பிரிந்து அவரவர் மனம்போல தனித்து வாழ்ந்து வருகிறார்கள். மேற்படி எனது மகனும் மேற்படியார் மனைவியும் என்னை கவனிக்காமல் அனாதை போல் ஆக்கி தனிமைப்படுத்திவிட்டார்கள். இந்த தள்ளாத வயதில் நான் தனிமைப்பட்டு நோய் நொடியில் அவதிப்படும்போது என்னை எனது அன்பு மகள் பூமயிலும், எனது தாயார் பாப்பாத்தி அம்மாளுடைய சகோதரி அம்மாளு அம்மாள் உடைய குமாரரும் எனது தம்பியுமான ராசு சேர்வையின் 5 வது குழந்தையும் என் மருமகளுமான கலா தன் இரண்டு வயது கைக்குழந்தை முனீஸ்வரியுடன் என்னை பொறுப்புடனும், அன்புடனும் எனக்கு வேண்டிய சவரச்சனைகள் செய்தும், நான் நோய்வாய்ப்பட்டிருக்கும்போது எனது கழிவுகளை சுத்தம் செய்து எனக்கு சேவை செய்ததையும் எனது அந்திம காலம் வரை மகள் பூமயிலும் மருமகள் கலாவும் கண்கலங்காமல் காப்பாற்றுவார்கள் என தான் நம்புவதாலும், என்னை சீராட்டியவர்களுக்கு எனது மரண காலத்திற்குள் ஓர் ஆதரவு செய்து வைக்க வேண்டும் என்று விருப்பப்பட்டும், என் விருப்பத்தை நிறைவேற்றும்பொருட்டும், எனது வயோதிக நிலையை கருத்திற்கொண்டும், என் இறப்பிற்கு பிறகு எனது சொத்துக்களில் எவ்வித வில்லங்க விவகாரம் ஏற்படக்கூடாது என தீர்க்கமான முடிவு செய்து நல்லெண்ணத்துடன் சுய அறிவுடனும், பிறர் தூண்டுதலின்றியும் மணப்பூர்வ சம்மத்துடனும், எழுதி வைத்த உயில் சாசனம்."

11. The learned counsel for defendants 12 to 14 would further contend that the testator Kamatchiammal had cancelled the Will dated 02.08.1952 executed in favour of her daughter Poomayil Ammal and son Velusamy. The learned counsel for defendants 12 to 14 would further submit



that the defendants 12 to 14 are in possession and enjoyment of the suit properties by mutating the patta in their favour. The said Kamatchiammal was in a sound state of mind during the time of execution of Will. The defendants 12 to 14 are residing in the suit 11<sup>th</sup> item of the property. The 2<sup>nd</sup> plaintiff has admitted in his cross examination that the defendants 12 to 14 are residing in the suit 11<sup>th</sup> item and suit 11<sup>th</sup> item of property is a house bearing Door No.5/20, Middle street, Valuthoor and plaintiffs have shown the address of the defendants as Door No.5/20, Middle street, Valuthoor in the plaint and prior to execution of Will, the said Kamatchiammal and his son and daughter were residing in the above said address and subsequently the plaintiffs have shifted to Door. No.1487 which is situate near Railway Gate, Valuthoor. The plaintiffs have failed to establish that the testator Kamatchiammal was not in a sound state of mind while executing the Will on 16.05.1995. The plaintiffs have failed to establish that by whom the Will dated 16.05.1995 was created by impersonation. The learned counsel for defendants 12 to 14 would submit that the Will dated 16.05.1995 is a registered one and the legatees Poomayil Ammal and Kala have mutated the patta in their favour after execution of Will and they have also paid taxes to the Government. **The tax receipts are**



marked as **Ex.B4 to Ex.B18**. On the other hand, the plaintiffs have not produced any document to show that the Revenue documents are still in the name of Kamatchiammal. He would further contend that the defendants 12 to 14 have established the due execution of Will dated 16.05.1995 and 20.12.2007. Therefore, the plaintiffs are not entitled to claim partition and other relieves as prayed for. Hence, he prayed for dismissal of the suit.

12. To begin with, it is pertinent to note here that the 5<sup>th</sup> defendant and the defendants 7 to 9 have supported the case of the defendants 12 to 14 in their written statement. Other defendants namely 2 to 4, 6, 10 and 11 neither supported the case of the plaintiffs nor the case of the defendants 12 to 14. Though the defendants 5,7 to 9 have filed their statements, they have not chosen to participate in the trial proceedings and did not come forward to cross examine the plaintiffs witness nor chosen to examine themselves as a witness to disprove the case of the plaintiffs.

13. Considering the above circumstances, this Court perused the pleadings, evidence and documents and also considered the submissions made on both sides. As contended by the learned counsel for plaintiffs, the defendants 12 to 14 who are claiming exclusive right over the suit properties



in exclusion of plaintiffs and defendants 1 to 11 have to prove the due execution of Will dated 16.05.1995 alleged to have been executed by Kamatchiammal and execution of Will dated 20.12.2007 alleged to have been executed by Poomayil Ammal. The defendants 12 to 14 have not stated anything either in their written statement or in their evidence as to the presence of attestors to the Wills dated 16.05.1995 and 20.12.2007. The Will dated 16.05.1995 was attested by three witnesses and witness No.1 and 2 namely Muthuramalingam and Thavasi had also identified the testator to the Sub-Registrar. The 12<sup>th</sup> defendant in her evidence has not specifically stated as to why they could not examine the attestors to the Wills dated 16.05.1995 and 20.12.2007. Even she has not stated that the attestors to the Wills are not alive. Even, for the sake of argument that the attestors to the Wills are not alive, the defendants who are claiming right over the properties under the Wills dated 16.05.1995 and 20.12.2007, must have taken some steps to prove due execution of Wills dated 16.05.1995 and 20.12.2007 in the manner known to law. i.e. as per the provisions of Section 69 of the Indian Evidence Act.

14. The learned counsel for defendants 12 to 14 would submit that as per Sec.101 to 104 of Indian Evidence Act, the burden of proof lies on the



plaintiffs. The plaintiffs have miserably failed to prove the same and therefore the plaintiffs are not entitled to claim partition. As per Sec.102 of the Indian Evidence Act, if a person claims right under Will is on the possession of the property and if no evidence were given on either side, the burden of proof lies on person claiming right under the Will. So far as execution and proof of Will is concerned, the propounder of the Will has to dispel the suspicious circumstances surrounding the execution of the Will. It is pertinent to mention here that the 2<sup>nd</sup> plaintiff is the grandson of testator Kamatchiammal. Even for the sake of argument that the testator Kamatchiammal was not looked after by 1<sup>st</sup> plaintiff and her husband Velusamy, one cannot expect that the testator Kamatchiammal would have settled the properties in favour of 12<sup>th</sup> defendant who is not the wife of his son Velusamy at the time of execution of Will dated 16.05.1995. As contended by the learned counsel for plaintiffs, the testator Kamatchiammal in the Will marked as Ex.B2= Ex.A6 had not stated anything about the relationship between his son Velusamy and 12<sup>th</sup> defendant Kala.

15. As contended by the learned counsel for plaintiffs if Velusamy had relationship with 12<sup>th</sup> defendant either as a wife or live in relationship, the



testator would have stated as to the relationship of 12<sup>th</sup> defendant with his son Velusamy. The contents of Ex.B2=Ex.A6 Will reveals that there was no relationship between Velusamy, the father of 2<sup>nd</sup> plaintiff and 12<sup>th</sup> defendant. It is also pertinent to mention here that the testator Kamatchiammal had executed a Will on 02.08.1952 itself in favour of her daughter Poomayil Ammal and Son Velusamy. She has not taken any steps to revoke / cancel the Will dated 02.08.1952 till 16.05.1995. The Will dated 02.08.1952 was cancelled by the testator after 43 years. Under such circumstances the burden heavily lies upon the defendants 12 to 14 to prove due execution of the Will dated 16.05.1995. As they have failed to prove due execution of the Will dated 16.05.1995, the claim of the defendants 12 to 14 on the strength of Will dated 20.12.2007 alleged to have been executed by Poomayil Ammal is also unsustainable in law. Once, the valid execution of Will dated 16.05.1995 is not proved, the execution of Will dated 20.12.2007 alleged to have been executed by Poomayil Ammal on the strength of Will dated 16.05.1995 also fails.

16. Moreover, the defendants 12 to 14 have not filed any document to show that, the patta was mutated in the names of Poomayil and Kala (12<sup>th</sup>



defendant) on the strength of Will dated 16.05.1995. **The 10(1) Chitta extract marked as Ex.B1 reveals that the patta was stood in the name of Kamatchiammal for Fasli year 1397 which corresponds to English Calendar year 1988. The land revenue Tax Receipts for the Fasli years 1410-1411,1415 are marked as Ex.B4 to Ex.B7 which corresponds to English Calendar year 2001, 2002 and 2005 for patta no.268.** Patta no.268 stood in the name of Kamatchiammal. So, merely because the tax was paid by Poomayil, it cannot be said that she had acquired right under Will dated 16.05.1995. Moreover, **the patta in respect of survey nos.244/1A, 337/4, 340/10, 340/5 stood in the names of Poomayil and defendants 13 and 14 as per Ex.B9.** The patta was transferred to defendants 13 and 14 only on 13.01.2020 though the Will alleged to have been executed by Poomayil Ammal was executed on 20.12.2007. Moreover, a separate patta excluding the name of testator Poomayil Ammal was not given to defendants 13 and 14. The patta for survey nos.227/3B, 340/4B and 340/8B in patta no.4342 was mutated in the names of defendants 13 and 14 only on 31.01.2020. As per Ex.B3 the Poomayil Ammal had executed the Will as early as on 20.12.2007 but the patta was transferred in the names of defendants 13 and 14 only on



31.01.2020 after more than 12 years. The defendants 12 to 14 have failed to state as to why the patta was not transferred immediately in the names of defendants 13 and 14 and why such a longer time had taken for mutation of patta. These things are suspicious in nature and such suspicious circumstances have to be dispelled by the propounder of the Will. Though the plaintiffs have failed to establish that the Will dated 16.05.1995 was created by impersonation in the name of Kamatchiammal, the burden lies upon the defendants 12 to 14, of the due execution of the Will dispelling the rights of plaintiffs.

17. As the defendants 12 to 14 have failed to dispel the surrounding suspicious circumstances of the due execution of the Will dated 16.05.1995, the Will dated 16.05.1995 is liable to be declared as null and void. The Will executed by Poomayil on 20.10.2007 on the strength of the Will executed by her mother Kamatchiammal on 16.05.1995 is also liable to be declared as null and void. Accordingly issue No.1 to 3 are answered in favour of plaintiffs and as against defendants 12 to 14.

**12. Issue No.4:**

It is the contention of the defendants 12 to 14 that the suit filed by the plaintiffs is barred by limitation. The defendants 12 to 14 in para 12 of their statement have specifically stated that the defendants 12 to 14 have been in possession and enjoyment of the suit properties for about 30 years excluding the rights of plaintiffs and defendants 1 to 11 and their possession is open and hostile and therefore the suit is barred by limitation. The defendants 12 to 14 have not filed any document to show that the patta was mutated immediately after the death of testators Kamatchiammal and Poomayil Ammal. The documents produced on the side of defendants 12 to 14 reveal that the patta was mutated only in the year 2020. The suit was filed in the year 2023. Therefore, the contention of the defendants 12 to 14 that the suit is barred by limitation is unsustainable in law. Hence, the issue No.4 is answered in favour of plaintiffs and against the defendants 12 to 14.

**13. Issue No:5**

1. It is admitted case of both that the suit properties belonged to Kamatchiammal by virtue of registered sale deed dated 23.11.1943 marked as Ex.A2. In issue No.1 to No.3 this court after elaborate discussion came to



conclusion that the Will alleged to have been executed by Kamatchiammal was not proved in accordance with law. Similarly, the Will alleged to have been executed by Poomayil Ammal was also not proved in accordance with law. Moreover, the Poomayil Ammal had no right to execute another Will in favour of defendants 13 and 14 on the strength of Will alleged to have been executed by her mother Kamatchiammal. As discussed in Issues No.1 to No.3, the said Poomayil Ammal had not mutated the patta on the strength of the Will alleged to have been executed by her mother Kamatchiammal and she was in exclusive possession of the properties belonged to her mother Kamatchiammal. When the Will alleged to have been executed by Kamatchiammal is not proved, the claim of the defendants 13 and 14 on the strength of the Will alleged to have been executed by Poomayil Ammal also goes. On the side of plaintiffs the death certificate of Kamatchiammal is marked as Ex.A3. As per Ex.A3 Kamatchiammal died on 08.05.1996. The legal heirship certificate of Kamatchiammal is marked as Ex.A4. As per Ex.A4 the father of the 2<sup>nd</sup> plaintiff namely Velusamy was the only legal heir of Kamatchiammal. The death certificate of Poomayil Ammal is marked as Ex.A5. As per Ex.A5 Poomayil Ammal died on 10.10.2009 subsequent to the



death of her mother Kamatchiammal. So, on the date of death of Kamatchiammal, Poomayil Ammal and Velusamy were the only legal heirs of Kamatchiammal and they are entitled to inherit the properties of their mother Kamatchiammal.

2. As already discussed herein above, the Will alleged to have been executed by Kamatchiammal is not proved in accordance with law. It is admitted by 2<sup>nd</sup> plaintiff in his cross examination that his father Velusamy died on 14.02.2024 and his father was alive on the date of filing of this suit. The learned counsel for defendants 12 to 14 would submit that the suit filed by plaintiffs was not maintainable when Velusamy was alive. The learned counsel for defendants 12 to 14 would contend that the 2<sup>nd</sup> plaintiff admitted in his cross examination that they (plaintiffs) are claiming right through Velusamy. So, the plaintiffs suit for partition is not maintainable and therefore he prayed for dismissal of the suit.

3. It is not the case of either of the parties that the said Velusamy son of Kamatchiammal had not died as intestate. The plaintiffs are claiming right under the shelter of Velusamy. The plaintiffs themselves admitted that defendants 13 and 14 are children born through Velusamy and 12<sup>th</sup> defendant.



It is the specific case of the plaintiffs that the said Velusamy had married the 12<sup>th</sup> defendant when the marriage between Velusamy and 1<sup>st</sup> plaintiff was subsisting. The defendants 12 to 14 have not tendered any oral or documentary evidence to prove that the 1<sup>st</sup> plaintiff was divorced by her husband Velusamy and only after divorcing the 1<sup>st</sup> plaintiff, he had married the 12<sup>th</sup> defendant. So, the 12<sup>th</sup> defendant is not legally wedded wife of the Velusamy. Therefore, the 12<sup>th</sup> defendant is not entitled to claim any right over the Velusamy properties. On the other hand, the plaintiffs and defendants 1, 13 and 14 are entitled to inherit the properties of Velusamy.

4. As already discussed herein above, the said Velusamy and his sister Poomayil Ammal were entitled to  $\frac{1}{2}$  share each over the properties of their mother Kamatchiammal. Since the said Velusamy had acquired right through his mother, the properties acquired by him were his separate properties. So, the plaintiffs and defendants 1, 13 and 14 are equally entitled to  $\frac{1}{5}$  share in the  $\frac{1}{2}$  share belonged to Velusamy. Therefore, the plaintiffs entitled to claim for partition and separate possession of their  $\frac{7}{70}$  shares each and defendants 1, 13 and 14 are entitled to claim  $\frac{7}{70}$  shares each over the suit properties. Accordingly issue No.5 is answered in favour of plaintiffs.



**14. Issue No.6:**

Considering the relationship of parties, there is no order as to cost and parties are directed to bear their own cost.

In the result, the suit is decreed declaring that the plaintiffs are entitled to 7/70 shares each in respect of ½ share belonging to Velusamy and 1<sup>st</sup> defendant is also entitled to 7/70 shares and preliminary decree for partition is granted as prayed for. The Will dated 16.05.1995 alleged to have been executed by Kamatchiammal is declared as null and void. The Will dated 20.12.2007 alleged to have been executed by Poomayil ammal on the strength of Will dated 16.05.1995 is also declared as null and void. The plaintiff is also entitled to get an order of permanent injunction restraining the defendants 12 to 14 and their men and agents and persons claiming under them not to alienate or encumber the suit properties by way of sale, mortgage, exchange, gift or any other deed of conveyance. No cost.

Dictated to the Steno-Typist, directly typed by him in the Computer,



corrected and pronounced by me in the open Court this the 08<sup>th</sup> day of April 2026.

**Additional District Judge,  
Ramanathapuram.  
08.04.2026**

**Annexure:**

**List of Witness on the side of Plaintiffs:**

PW1 - Thiru. Ramesh (2<sup>nd</sup> plaintiff)

**List of Exhibits on the side of Plaintiffs:**

- |       |            |   |
|-------|------------|---|
| Ex.A1 | 08.12.1941 | Sale deed executed by Soundaram Registration ammal in favour of Kuppusamy Copy Servai   |
| Ex.A2 | 23.11.1943 | Sale deed executed by Kuppusamy Registration Servai for himself and on behalf of Copy his minor son Velusamy in favour of Kamatchiammal |
| Ex.A3 | 13.04.2024 | Death certificate of Certified Copy<br>Kamatchiammal  |
| Ex.A4 | 28.07.2015 | Legal heirship certificate of Original<br>Kamatchiammal   |
| Ex.A5 | 02.08.2014 | Death certificate of Poomayil Xerox Copy  |
| Ex.A6 | 16.05.1995 | Will executed by Kamatchiammal Registration vide the document No.24/95 in Copy Book No.3 on the file of SRO Velipattinam                |



- Ex.A7 20.12.2007 Will executed by Poomayil Ammal Registration  
vide the document No.20/2007 in Copy  
Book No.3 on the file of No.2  
Joint Sub-Registrar,  
Ramanathapuram
- Ex.A8 14.11.1994 Mortgage deed executed by Registration  
K.Velusamy in favour of Abdul Copy  
Majeeth
- Ex.A9 23.10.2017 Mortgage discharge receipt Registration  
executed by A.Mohamed Hatheen Copy  
in favour of K.Velusamy
- Ex.A.10 14.11.1994 Mortgage deed executed by Registration  
K.Velusamy in favour of Abdul Copy  
Majeeth
- Ex.A11 23.10.2017 Mortgage discharge receipt Registration  
executed by A.Mohamed Hatheen Copy  
in favour of K.Velusamy

**List of Witness on the side of Defendants:**

DW1 – Kala (12<sup>th</sup> defendant)

**List of Exhibits on the side of Defendants:**

- Ex.B1 22.01.1988 10(1) Chitta extract for Fasli Year True Copy  
1397 issued by VAO, Valantharavai  
Group, Ramanathapuram Taluk
- Ex.B2 16.05.1995 Will executed by Kamatchiammal Original  
vide the document No.24/95 in  
Book No.3 on the file of SRO  
Velipattinam
- Ex.B3 20.12.2007 Will executed by Poomayil Ammal Original  
vide the document No.20/2007 in  
Book No.3 on the file of No.2



Joint Sub-Registrar,  
Ramanathapuram

- Ex.B4 25.03.2001 Land Revenue receipt for Fasli Original Year 1410 paid in the name of Poomayil
- Ex.B5 21.01.2002 Land Revenue receipt for Fasli Original Year 1411 paid in the name of Poomayil
- Ex.B6 09.03.2006 Land Revenue receipt for Fasli Original Year 1415 paid in the name of Poomayil
- Ex.B7 26.02.2014 Patta transfer order passed by Original Zonal Deputy Thasildar, Ramanathapuram Taluk
- Ex.B8 12.10.2025 Computerized 10(1) extract for Online copy patta No.4342
- Ex.B9 12.10.2025 Computerized 10(1) extract for Online copy patta No.4489
- Ex.B10 25.01.2022 Land Revenue receipt for Fasli Original Year 1431 paid in the name of Mugeshkannan (13<sup>th</sup> defendant)
- Ex.B11 02.05.2024 Land Revenue receipt for Fasli Original Year 1433 paid in the names of Mugeshkannan and Suganya
- Ex.B12 05.02.2025 Land Revenue receipt for Fasli Original Year 1434 paid in the names of Mugeshkannan and Suganya
- Ex.B13 02.05.2024 Land Revenue receipt for Fasli Original Year 1433 paid in the name of Poomayil, Mugeshkannan and Suganya



- Ex.B14 25.01.2022 Land Revenue receipt for Fasli Original Year 1431 paid in the names of Mugeshkannan and Suganya
- Ex.B15 05.02.2025 Land Revenue receipt for Fasli Original Year 1436 paid in the names of Poomayi, Mugeshkannan and Suganya
- Ex.B16 30.06.2022 House Tax receipt paid in the name Original of Kala (12<sup>th</sup> defendant)
- Ex.B17 03.07.2025 Property Tax receipt paid in the Original name of Kala (12<sup>th</sup> defendant)
- Ex.B18 11.05.2024 Receipt for Pradhan Mantri Fasal Original Bima Yojana

**Additional District Judge,  
Ramanathapuram.  
08.04.2026**