



S.A. No. 786 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	18.11.2025
Pronounced on	17.02.2026

CORAM

**THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN
THILAKAVADI**

S.A.No.786 of 2023 and
C.M.P.No.24747 of 2023

1. S. Jagadhamabal
2. A.S. Kathiresan
3. S. Umamaheswari
4. T. Sumathi

...Appellants

Vs.

1. Kokilambal
2. M. Saraswathi
3. Ravikumar
4. Veluchamy

....Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 12.08.2022 passed in A.S. No.42 of 2017, on the file of the II Additional District and Sessions Court, Tiruppur, confirming the Judgment and decree dated 19.12.2016 passed in O.S. No.115 of 1998, on the file of the Principal Subordinate Court, Tiruppur.

For Appellants : Mr.S.T. Bharath Gowtham

For Respondents: Ms. S.B. Madhura for Mr.R. Bharath Kumar
for R2 to R4
R1 – No appearance.



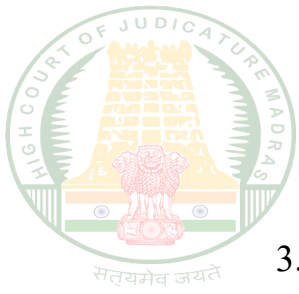
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JUDGMENT

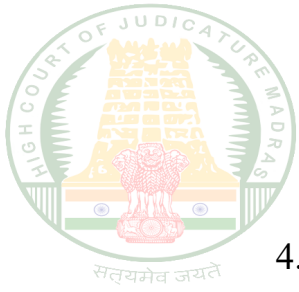
This Second Appeal is preferred as against the decree and judgment dated 12.08.2022 passed in A.S. No.42 of 2017, on the file of the II Additional District and Sessions Court, Tiruppur, confirming the Judgment and decree dated 19.12.2016 passed in O.S. No.115 of 1998, on the file of the Principal Subordinate Court, Tiruppur.

2. The appellants as plaintiffs filed the above suit for the relief of declaration of title under a Will dated 09.12.1980 executed by one Chinna Kondathu Gounder and for passing a preliminary decree directing division of 'A' schedule properties into 9 equal shares and allot 4 such shares to the plaintiffs and also directing the division of 'B' schedule properties into 3 equal shares and allot one such share to the plaintiffs; directing the division of 'C' schedule properties into 3 equal shares and to allot one such share to the plaintiffs; directing the division of 'D' schedule properties into 3 equal shares and allot one such share to the plaintiffs and for appointing an Advocate Commissioner to fix the turn for using the well for irrigation in S.F.No.232/2 and another well in S.F. No.229/1.



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3. The case of the plaintiffs is that the 1st Plaintiff is the son of Late.Chinna Kondathu Gounder and his first wife Late.Karunaiyammal, and the Defendants 1 & 2 are the children of Late. Chinna Kondathu Gounder through his second wife Kondammal. It is the case of the Plaintiffs that, on 09.12.1980, Late. Chinna Kondathu Gounder executed a last Will bequeathing suit properties to the 1st Plaintiff and the Defendants, and that the said Will clearly mentions that the Will dated 08.12.1980 in favour of the 1st Defendant and his children (impleaded as 4th and 5th Defendant later) stands cancelled as they threatened the Testator to execute the Will. Thus, the Plaintiffs have pleaded that the Will dated 09.12.1980 is true, valid, genuine and came into effect upon the death of the testator on 18.09.1991. After the death of his father, i.e., on 19.09.1991, the 1st Plaintiff, made public the said Will dated 09.12.1980, and gave photocopy of the Will to the Defendants 1 and 2, but they did not come forward for partition based on the said Will. Thus the 1st plaintiff sent a legal notice dated 17.12.1991 to the Defendants 1 and 2 to which the 1st Defendant sent reply notice dated 27.12.1991 denying the Will dated 09.12.1980 and also denying that the 1st Plaintiff is the son of Late.Chinna Kondathu Gounder. Thus, the 1st Plaintiff preferred the suit for declaration and partition based on the Will dated 09.12.1980.



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4. The claim of the plaintiffs was resisted by the defendants 1, 3 to 5 stating that the 1st plaintiff is not the son of Late. Chinna Kondathu Gounder, and that the said Late. Chinna Kondathu Gounder had only one wife namely Kondammal, and the defendants 1 and 2 are the only children of Late.Chinna Kondathu Gounder. According to the defendants, their father Late.Chinna Kondathu Gounder executed a Will dated 08.12.1980, which is a valid and genuine Will executed by him out of free will in sound state of mind in the presence of two attesting witnesses. It was also denied that the 1st Plaintiff performed the last rites of Late. Chinna Kondathu Gounder, and that no disclosure of the alleged Will was made on the next day of his death as alleged by the 1st Plaintiff. It is the case of the 1st defendant that, after the death of his father , Late. Chinna Kondathu Gounder, the Will dated 08.12.1980 came into force and he and his sons who are the owners of the suit properties as per the said Will are in possession and enjoyment of suit properties, and that the 1st Plaintiff, falsely claiming to be the son of Late. Chinna Kondathu Gounder, to usurp the properties, has fabricated a Will dated 09.12.1980 and filed the present suit. Hence, prayed for dismissal of the suit.



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5. The trial court, after perusing the oral and documentary evidences dismissed the suit by holding that the plaintiffs have not proved that the 1st plaintiff is the son of Late Chinna Kondatthu Gounder and that the Will dated 09.12.1980 is not genuine and valid as the same was not proved in accordance with law and the plaintiffs failed to clear the suspicious circumstances raised by the defendants. The trial court also held that the Will dated 08.12.1980 is proved in the manner known to law and thus valid and genuine.

6. Aggrieved by this, the plaintiffs preferred the appeal suit, which was also dismissed by the first appellate court by holding that, the 1st plaintiff failed to produce any document to show that he is the legal heir of Late Chinna Kondathu Gounder and that the Will dated 09.12.1980 was not proved to be genuine by the plaintiffs, thus confirming the judgment of the trial court.

7. Aggrieved by this, the present Second Appeal is preferred by the plaintiffs. The Second Appeal has been filed on the following substantial



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questions of law.

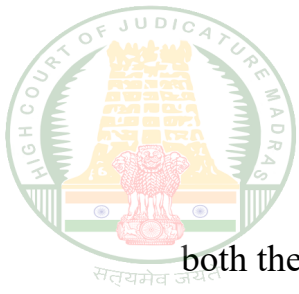
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“1)Whether the courts below right in holding that Ex A2 Will was not proved, when the signatures of Deceased Chinna Kondathu Gounder found in Ex A2 was not questioned by the Defendants?

2) Whether the courts below right in the absence of any independent witness is the Learned Additional District Judge merely relying upon the Testimony of DW1 in holding that 1 st plaintiff is not the son of Chinna Kondathu Gounder When Dw 1 is not a competent witness?

3)Whether the Lower Appellate Court is correct in law in overlooking the fact that under Ex.B.4 will, there is no explanation forthcoming from the Testator as to why he has overlooked the other legal heirs and has proceeded to bequeath his entire property on the 1 st defendant and is this not a suspicious circumstances?”

8. Mr.S.T. Bharath Gowtham, learned counsel for the appellants / plaintiffs would submit that, without appreciating the materials on record,



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both the courts below erroneously held that, the plaintiffs have failed to prove that the 1st plaintiff is the son of the deceased Chinna Kondathu Gounder and that Ex.A2 Will propounded by the plaintiffs was not proved in accordance with law. The thumb impression found in Ex.A2 Will belongs to the deceased Chinna Kondathu Gounder and the same was proved by the plaintiffs. The plaintiffs have discharged their onus by proving the Will in accordance with law and the alleged suspicious circumstances set out by the defendants relating to the execution of subsequent Will is based on conjectures and surmises, having no bar on question of validity of Will. The testator was in sound state of mind at the time of execution of the subsequent Will dated 09.12.1980. However, the courts below erroneously held that the said Will is forged. To support his contentions, he relied on the following judgments:

1. Mahesh Kumar (dead) by Lrs vs. Vinod Kumar and others reported in (2012) 4 SCC 387.

2. Moturu Nalini Manth vs. Gainedi Kaliprasad (dead through Lrs) reported in 2023 SCC Online SC 1488.

9. Ms.S.B. Madhura, learned counsel appearing for the respondents 2 to 4 / defendants would submit that 1st Plaintiff has failed to establish that he



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is the son and legal heir of Late Chinna Kondathu Gounder and, therefore, has not discharged the initial burden of proof that lies upon him. Since the Plaintiff asserts that he is the son of the deceased, the burden rests squarely on him to prove the same, as held in ***Rangammal v. Kuppuswami reported in 2011 (12) SCC 220***, which lays down that a party who asserts a fact must first prove it before shifting the burden to the opposite side. However, the Plaintiff has not produced satisfactory evidence and has made contradictory statements during cross-examination, particularly regarding the performance of funeral rites, thereby affecting his credibility. The defendants, on the other hand, have produced documentary evidence indicating that the Plaintiff is the son of one Kondathu Gounder and not Chinna Kondathu Gounder, and the Plaintiff has failed to dispel the doubts created by such evidence.

9.1. She further submitted that, with regard to the alleged unregistered Will dated 09.12.1980 (Ex.A2) relied upon by the Plaintiffs, the same is surrounded by suspicious circumstances, including inconsistencies between the testimonies of PW1 and PW2 and unexplained thumb impressions on blank or backside sheets. In light of the principles laid down in ***H.Venkatachala Iyengar v. B.N.Thimmajamma, AIR 1959 SC 443***, where



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suspicious circumstances exist, the propounder bears a heavier burden to remove such suspicion to the satisfaction of the Court. The Plaintiffs have failed to clear these doubts, and both courts below have rightly held that Ex.A2 is not genuine or valid. Conversely, the Defendants have proved the registered Will dated 08.12.1980 (Ex.B4) by examining an attesting witness and establishing the sound state of mind of the testator. The signatures and thumb impressions on this Will are not disputed. No real or germane suspicious circumstances have been shown, and as reiterated in ***Meena Pradhan & Anr v. Kamla Pradhan & Anr*** reported in (2023) 9 SCC 734, suspicion must be valid and not merely the product of a doubtful mind. It is a registered Will and though that does not attract any sanctity, presumption ought to be drawn under Section 114 of Indian Evidence Act attached to registered documents. Moreover, the 1st Defendant has produced the original Ex.B4 WILL, examined the Attesting Witness to the Will as DW2 Subramaniam, who has deposed categorically about the execution of the Will, and about testator's sound state of mind. Thus, the Defendants 1, 3 to 5 have proved the execution of the WILL in the manner known to law. When the requirements of Sec.63 Indian Evidence Act and Sec 68 Indian Succession Act are complied with and the execution of the Will is proved by examining attesting witness who has deposed on the sound state of Testator,



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and when there were no records available to conclude the presence of any suspicious circumstances, the court below rightly held that the Will was proved to be true, valid and genuine.

9.2. The learned counsel further submitted that in view of the Plaintiff's failure to prove heirship and to establish the genuineness of the alleged Will, and in light of the Defendants successfully proving the registered Will in accordance with law, the substantial question of law framed by the Court ought to be answered against the Appellants/Plaintiffs, and the Second Appeal deserves to be dismissed.

10. Heard on both sides. Records perused.

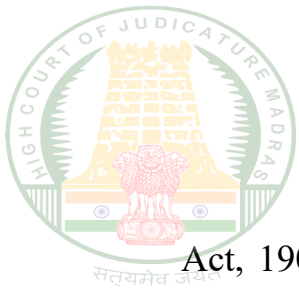
11. The 1st plaintiff claims to be the son of Chinna Kondathu Gounder through his first wife Karunaiammal. Therefore, the initial burden of proof lies on the plaintiff to prove the same. The 1st defendant has produced Ex.B1, B2, B3 and B6 to disprove the same. The above documents would go to show that the 1st plaintiff Swaminathan is the son of one Kondathu Gounder belong to Kaadailulam sect. It is not in dispute that, Chinna Kondathu Gounder,



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belongs to Kooraikulam sect. The plaintiffs failed to establish that the 1st plaintiff is the son of Chinna Kondathu Gounder. It is well settled law that the person who is asserting a claim holds the burden to prove the same. The courts below not only relied upon the evidence of D.W.1, wife of the 1st defendant and also relied upon the documents produced on the side of the 1st defendant, concluded that the plaintiffs failed to discharge their initial burden. Moreover, there is nothing on record to discard the evidence of D.W.1.

11.1. The next question to be answered is that, whether Ex.A2 Will dated 09.12.1980 is the last testament of Late. Chinna Kondathu Gounder. It is the specific case of the 1st defendant that on 08.12.1980, his father Late Chinna Kondathu Gounder executed a Will and the same is registered. It is submitted that at the time of execution of the said Will, the father was in sound state of mind and the Will was executed in the presence of two attesting witnesses. The Will dated 09.12.1980 propounded by the plaintiffs is shrouded by suspicious circumstances. Admittedly, the Will dated 09.12.1980 is an unregistered one. No doubt, an unregistered Will is legally valid and enforceable, as registration is not mandatory under the Registration



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Act, 1908. However, it is easier to challenge. If challenged, the burden of proof is on the propounder to prove its authenticity, often requiring the testimony of attesting witnesses or others familiar with the testator's signature. Unregistered Wills are subject to higher scrutiny if there are suspicious circumstances. It is the case of the plaintiffs that, the Will dated 09.12.1980 marked as Ex.A2 was executed the very next day after the first Will was executed by the deceased Chinna Kondathu Gounder on 08.12.1980, stating that it was obtained by criminal force. But the same is not established by the plaintiffs. The specific contention of the defendants is that the Will dated 09.12.1980 is fabricated on blank sheets. P.W.2, attesting witness deposed that, the said Will was written on stamp papers. Whereas, Ex.A2 Will is written on green sheets and the same is accepted by the plaintiffs. Moreover, the thumb impression of the testator are found on the back side of the green sheets and not on the recital pages. Though the expert opines that the thumb impression found in Ex.A2 Will and in Ex.B4 Will infavour of the 1st defendant are one and the same, there is no explanation on the side of the plaintiff or the attesting witness, as to why the thumb impression was found in the blank sheets, i.e., on the back side of the Will and not on the main pages. Moreover, P.W.2 deposed that, at the time of writing Ex.A2 Will by the scribe, the 1st plaintiff Swaminathan was not



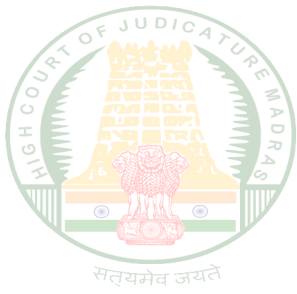
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present and that he came later. However, the said Swaminathan, examined as P.W.1, deposed that he came to know about Ex.A2 Will only one month prior to the death of the testator, which is on 18.09.1991, while the said Will was allegedly executed on 09.12.1980 itself. The above contradictions in the testimonies of the witnesses P.W.1 and P.W.2 lead to suspicious circumstances in the execution of Ex.A2 Will. Moreover, the case of the plaintiffs is that, Ex.B4 Will in favour of the 1st defendant was executed by using criminal force. Neither the attesting witness nor the 1st plaintiff deposed about the testator disclosed anything about using criminal force. When it is found that suspicious circumstances were made out with regard to the thumb impression being found on the blank papers and no reasons given by the plaintiffs, the duty is cast upon the plaintiffs to clear all the suspicious circumstances, which is not done. If there are suspicious circumstances surrounding the execution of the Will, the propounder must remove those suspicious circumstances to the satisfaction of the court, and the onus on the propounder is heavier. On the other hand, the first defendant has categorically pleaded and proved that his father Late Chinna Kondathu Gounder had only one wife Kondammal, i.e., his mother, and that the defendants 1 and 2 are the only children of Chinna Kondathu Gounder and that he executed only one Will on 08.12.1980, bequeathing the property to his grand children, namely



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the defendants 4 and 5 respectively. The signatures and thumb impression of the testator in the said Will is not disputed by any of the parties. The only dispute by the plaintiffs is that Ex.B4 Will was executed by using criminal force. However, as already pointed out, the same is not established by the plaintiffs. Moreover, the 1st defendant has examined the attesor of the Will as D.W.2, who has deposed categorically about the execution of the Will, and about testator's sound state of mind. There is nothing on record to discredit his evidence. Thus the defendants 1, 3 to 5 have proved the execution of Ex.B4 Will in the manner known to law. The only contention of the plaintiffs is that, the 2nd defendant, daughter of Chinna Kondathu Gounder, was not given any property under Ex.B4 Will, leads to suspicious circumstances. The same cannot be accepted for the reason that, the suit in O.S. No.8/1993 filed by the 2nd defendant for partition was dismissed and she had not preferred any appeal against the dismissal of the suit. Therefore, the non inclusion of the 2nd defendant would not lead to suspicious circumstances. Hence, the Courts below have rightly held that Ex.A2 Will dated 09.12.1980 is not found to be true, valid and genuine. All the substantial questions of law are answered against the appellants.



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12. In the result,

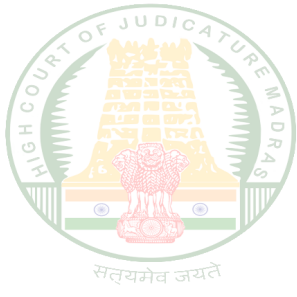
- 1) The Second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- 2) The decree and judgment dated 12.08.2022 passed in A.S. No.42 of 2017, on the file of the II Additional District and Sessions Court, Tiruppur, confirming the Judgment and decree dated 19.12.2016 passed in O.S. No.115 of 1998, on the file of the Principal Subordinate Court, Tiruppur, is upheld.

17.02.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The II Additional District and Sessions Judge, Tiruppur.
2. The Principal Subordinate Court, Tiruppur
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
bga

Pre delivery judgment in
S.A.No.786 of 2023 and
C.M.P.No.24747 of 2023

17.02.2026