



SA No. 124 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-02-2026

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 124 of 2026 & CMP.No.3558 of 2026

M. Arumugam
S/o Late Murugappan, Thondikadu,
Thiruneelakandapuram,
Thirumuruganpoondi Post,
Rakkipalayam Village, Avinashi Tk,
Tiruppur Dist.

Appellant(s)

Vs

1. Neelamani
W/o Subramaniam, D.No 3/344,
Velayuthampalayam, Avinashi Tk,
Tiruppur Dist.

2.Poovathal (Died) 2. Kannammal
W/o. Aruchamy, D.No.1/115,
Thandukarampalayam Village, Avinashi
Taluk, Tiruppur Dt.

3.Baby @ Achiammal
W/o. Balasubramaniam, Thatchan
Thottam, Authupalayam,
Tirumuruganpoondi Post, Avinashi
Taluk, Tiruppur Dt.

4.Palanisamy
S/o. Ramasamy, D.No.195,
Velliampudur, Ettiveerampalayam
Village, Tiruppur Taluk and Dt.

Respondent(s)



PRAYER : Second Appeal filed under section 100 of Code of Civil Procedure to allow the above Second Appeal by setting aside the Judgement and Decree dated 11.08.2025 passed in AS No.74/2021 on the file of the I Additional District and Sessions Court, Tiruppur modifying the Judgement and Decree dated 09.08.2019 passed in OS No.118/2015 on the file of the Sub Court, Avinashi.

For Appellant(s): Mr.K. Govi Ganesan

JUDGMENT

Challenging the concurrent finding of the Courts below, the present Second Appeal has been filed by the fourth defendant.

2. The plaintiff is one of the sister of the appellant. The plaintiff along with her sister had filed the suit in O.S.No.118 of 2015 claiming their lawful share in the suit properties. The plaintiffs and the defendants are sisters and brothers. The case of the plaintiffs is that the property originally belonged to their grand father. The plaintiffs' grand father and his brother have partitioned the property as per the registered partition deed dated 22.05.1941. Thereafter, there was a partition among the plaintiffs and the defendants father and his brothers as per the registered partition deed dated 17.01.1991 and the suit B schedule properties were allotted to the father of the plaintiffs. The plaintiffs' father died intestate and the plaintiffs and the defendants are his legal heirs. But the third defendant alone contested the case stating that his father had executed a Will dated 23.4.1998 [Ex.B.2] bequeathing entire suit properties in his favour

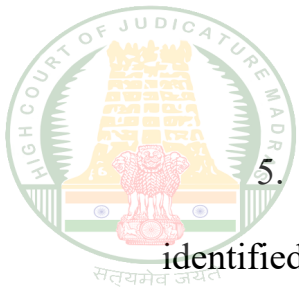


and thereafter he had constructed a house in the suit property and he claims absolute right in the suit property.

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3. As per the Will Ex.B.2, entire suit property has been settled in favour of the fourth defendant. Whereas, the plaintiff had disputed the Will. To prove the Will, two witnesses have been examined one of the attesor of the Will was examined as D.W.3 and during his evidence, he stated that he was not aware of the execution of the Will, but he admitted his signature in the Will. Another attesor of the Will had died and hence, his son was examined as D.W.2. D.W.2 in his evidence has identified the signature of his father in the Will without supporting document to confirm the signature of his deceased father. The Courts below had held that the evidence of D.W.2 is not reliable since no document has been filed to prove the identity of the signature of Govindaraj, who is the second attesor in the Will, thereby holding that genuineness of the will has not been proved, granted preliminary decree in favour of the plaintiffs. Challenging the same, the present Second Appeal has been filed.

4. The learned counsel appearing for the appellant would submit that the signature of one of the attesor's in the Will has been identified by his son and hence, the Will has been proved in the manner known to law and the Courts below erroneously granted preliminary decree in favour of the plaintiffs, which require interference.



5. A perusal of evidence of D.W.2, it is seen that he has not properly identified his father's signature in the Will [Ex.B2]. Mere identification of the signature alone is not sufficient to prove the execution of the Will and signature of the attester has to be verified before the Court by producing contemporary documents. But no such document has been produced through D.W.2. Another attesting witness of the Will has turned hostile and not supported the case of the fourth defendant. So truth and genuineness of the Will [Ex.B.2] has not been proved by the appellant as per manner known to law. Hence, the Courts below rightly had granted preliminary decree in favour of the plaintiffs, which requires no interference. The contention of the appellant is that he had borrowed considerable amount and put up further construction in the suit property. In view of the above submissions, the appellant is at liberty to submit his liabilities in the final proceedings and the same shall be considered by the trial Court and pass appropriate Orders as per law within 3 months from the date of filing of such application.

6. Accordingly, this Second Appeal is dismissed, as no substantial question of law is involved, the findings of the Courts below is confirmed. No costs. Consequently, connected miscellaneous is closed.

12-02-2026



Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

1. The I Additional District and Sessions Judge,
Tiruppur.
2. The subordinate Judge,
Avinashi.
3. The Section Officer,
VR Section, High Court, Madras.



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T.V.THAMILSELVI J.

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