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S.A.No.767 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.02.2026

Pronounced on: 27.04.2026

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

S.A.No.767 of 2018

Kosalai @ Renuka

... Appellant

VS

1.D.Srinivasan

2.Vasanth Devi

Karthikeyan (Deceased)

4.B.Kamalathai

5.T.P.Pameswaran

Periyanayaki (died)

7.Vijayalakshmi

8.A.Chitra Karthikeyan

9.V.K.Kaviya

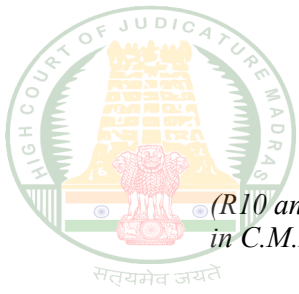
(R8 and R9 brought on record as Lrs of the deceased R3 vide order of the Court dated 20.11.2018 made in C.M.P.No.5118 of 2018)

10.V.Bhoopathy

11.Surya

.... Respondents

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(R10 and R11 are brought on record as Lrs of the deceased R6 vide order dated 22.08.2025 made in C.M.P.No.10232 of 2025)

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Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the judgment and decree made in A.S.No.36 of 2014 on the file of the Subordinate Judge, Dharapuram, dated 23.02.2017, confirming the judgment and decree made in O.S.No.127 of 2008, dated 03.10.2012, on the file of the Subordinate Judge, Kengeyam.

For Appellants : Mr.N.Manoharan
For Respondents : M/s.Chitra Sampath
Senior Counsel
for Mr.P.Navaneetha Krishnan (for R4)

Mr.Sriram
for Mr.K.N.Selvabharathi (for R5)
R3 and R6 died
R1, R7 to R11-Served-No appearance
R2-Party-in-person

JUDGMENT

This Second Appeal has been preferred as against the judgment and decree made in A.S.No.36 of 2014 on the file of the learned Subordinate Judge, Dharapuram, dated 23.02.2017, confirming the judgment and decree made in O.S.No.127 of 2008, dated 03.10.2012, on the file of the learned Subordinate Judge, Kengeyam.



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2.The appellant is the 7th defendant in O.S.No.127 of 2008 filed by the plaintiff, who is the 1st respondent in this appeal for the relief of partition.

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The trial Court dismissed the suit and the plaintiff filed an appeal in A.S.No.36 of 2014 on the file of the learned Subordinate Judge, Dharapuram, and the appellate Court also dismissed the appeal by confirming the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the 7th defendant in O.S.No.127 of 2008 has preferred this second appeal.

3. The brief facts of the averments made in the plaint before the trial Court are as follows:

The suit properties originally belonged to one V.G.Periyasamy Goundar by ancestrally. The 1st defendant is the 2nd wife of said Periyasamy Goundar. The 2nd defendant is the son of 1st defendant and the said Periyasamy Goundar. The defendants 5 and 6 (Deceased Balagurunathan and Karpagavalli) are the Children born to the said Periyasamy Goundar through his 1st wife, namely Valliyammal. The said Periyasamy Goundar died intestate in the year 1968. The son of deceased Periyasamy Goundar, namely, Balagurunathan, died intestate leaving behind the plaintiff and the 5th defendant as his legal heirs in the year 1974. The daughter of the



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deceased Periyasamy Goundar, namely Karpagavalli also died intestate

leaving behind the defendants 3 and 4 as her legal heirs. The 1st item of the

suit properties ancestrally belonged to the deceased Periyasamy Goundar.

The 2nd item of the suit properties and others originally belonged to the

father of the deceased Periyasamy Goundar separately. The sons of

Gurusamy Goundar, namely Periyasamy Goundar, Chinnasamy Goundar,

Archuna Goundar, partitioned their properties through partition deed dated

04.04.1949 and the 2nd item of the suit properties and other properties were

allotted to the said Periyasamy Goundar as 'B' schedule properties through

the said partition. In respect of the properties allotted to the Periyasamy

Goundar through the said partition, the said Periyasamy Goundar and his

sons Balagurunathan and the 2nd defendant namely, Parameshwaran

partitioned their properties through partition deed dated 29.11.1959. The 2nd

item of the suit properties, which was allotted as 'A' schedule in the said

partition to the said Periyasamy Goundar and after his demise, his 2nd

wife/1st defendant and his sons and daughters/Defendants 2, 6 and 7 along

with Karpagavalli and Balagurunathan jointly enjoyed the properties. The

suit properties are jointly enjoyed by the plaintiffs and the defendants and

are under common enjoyment. The defendants 1 and 2 jointly entitled to

1/6th share, the defendants 5 to 7 are separately entitled to 1/6th share, the



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defendants 3 and 4 jointly entitled to 1/6th share and the plaintiff and the 5th

defendant jointly entitled to 1/6th share of the suit properties. The 5th

defendant executed a release deed dated 21.11.1990 in favor of the plaintiff

and thereby, the plaintiff is entitled to 1/6th share of the suit properties. The

defendants are evading partition and thereby, the plaintiff filed the suit.

4.The gist of the written statement filed by the 2nd defendant is as follows;

The suit is not maintainable and same is liable to be dismissed. The plaintiff is not entitled to get the relief of partition. Neither the plaintiff nor the defendants 3 to 7 have right or interest over the suit properties. All the properties belonging to Periyasamy Goundar through partition deed dated 29.11.1959 and thereby, those properties are his separate properties. The first wife of Periyasamy Goundar, namely Valliathal, predeceased him. Thereafter, he married the 1st defendant and the 2nd defendant was born to the 1st defendant through the said Periyasamy Goundar and the partition was effected on 29.11.1959 itself. Therefore, there are no joint family properties as alleged by the plaintiff. The said Periyasamy Goundar, while he was in a sound state of mind, executed a Will dated 15.07.1968 in favour of the first defendant. After the demise of the said Periyasamy Goundar, the Will came



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into effect and the 1st defendant had been in possession enjoyment of the properties. The other legal heirs of the Periyasamy Goundar have also not raised any objection over the enjoyment of the properties of the 1st defendant. The father of the plaintiff Balagurunathan not died in the year in 1974. In fact, he died on 27.08. 1976. The wife of Balagurunathan, who is the mother of the plaintiff died intestate in the year 1968. The daughter of the Periyasamy Goundar namely Karpagavalli died in between 1971 and 1972. After the demise of the Periyasamy Goundar, the 1st defendant alone enjoyed the properties as her absolute properties and the allegation that after the demise of the Periyasamy Goundar, the defendants 1, 2, 5, 6 and 7 are in common possession are false. The said Balagurunathan and his legal heirs admitted the above said Will in the land ceiling proceedings and therefore, they are estopped from denying the Will. The property in S.F.No.549, to an extent of 6.65 acres was already sold in the year 1969 to one V.M.Chinnasamy and the property in S.No.533 measuring to an extent of 1.30 acre was sold through sale deed dated 1.3.1995 and the land in S.No.534 to an extent of 0.10 acre was sold to the 7th defendant through sale deed dated 12.11.1990. Thereafter, the plaintiff purchased the same property from one Renuka through sale deed dated 30.5.1994. Therefore, they have already admitted the Will executed by the Periyasamy Goundar. Therefore,



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the plaintiff is estopped from denying the Will and after accepting the will, he purchased the property. The plaintiff also witnessed the sale deed dated 12.11.1990. Further, the property was also mortgaged to the primary agricultural co-operative bank and the properties were alienated in favour of several individuals. The said transactions have not been disputed for more than 12 years by the plaintiff. Further, the purchasers of the properties have not been included in the suit. Therefore, the suit is not maintainable and liable to be dismissed.

5.The gist of the written statement filed by the 5th defendant is as follows:

The 5th defendant is the daughter of Periyasamy Goundar through his first wife Valliathal. She also has a share in the property. Since this defendant is also in constructive possession, she has not claimed any mesne profits. She is entitled to a 1/6th share of the suit property .

6.The gist of the written statements filed by the defendants 3, 4, 6 and 7 are as follows;

The averments made in the plaint are admitted. The defendants 3, 4, 6 and 7 are jointly entitled to 1/6th share. Therefore, there is no objection to



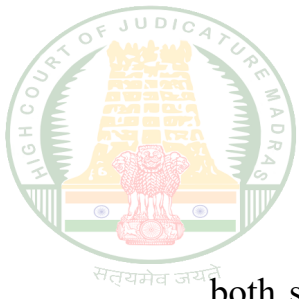
pass preliminary decree and they are also ready to pay Court fee for their shares.

7. The other defendants have not filed any separate written statements before the trial Court.

8. Based on the above said pleading and after hearing both sides, the trial Court framed the following issues:

- a) Whether the plaintiff is entitled to the preliminary decree as prayed for in this suit?*
- b) Whether the suit properties belong to the first defendant through the unregistered Will dated 15.7.1968?*
- c) Whether the suit is barred for non-joinder of necessary parties?*
- d) What other reliefs is the plaintiff entitled to?*

9. Before the trial court on the side of the plaintiff P.W.1 was examined and Exhibits A1 to A5 were marked. On the side of the defendants, D.W.1 to D.W.7 were examined and Ex.B.1 to Ex.B.38 were marked. Apart from those documents, Ex.X1 was also marked.



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10. After evaluating the oral and documentary evidence adduced on both sides the trial Court dismissed the suit . Aggrieved by the said decree and judgment, the defendants 3 and 4 have preferred appeal before the Subordinate Judge, Dharapuram, in A.S.No.36 of 2014 on various grounds.

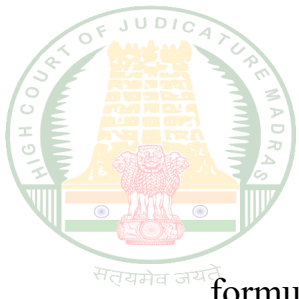
11. The first appellate Court has framed the following points for determination:

a)Whether the decision of the trial Court that the defendants 3 and 4/appellants 1 and 2 are not entitled to share over the property is correct?

b)Whether the decree and judgment passed by the trial Court is correct?

c)Whether this appeal is to be allowed or not?

12. After analyzing the evidence on both sides, the first appellate Court also dismissed the appeal by confirming the decree and judgment passed by the trial court. Aggrieved by the said decree and judgment, the 7th defendant, who is the 6th respondent in the first appeal has preferred this second appeal.



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13. This Court at the time of admitting the second appeal had formulated the following substantial questions of law:

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(1)Whether the Courts below are correct in law in accepting a copy of the Will Ex.B.5 especially when the loss of the original Will has not been mentioned anywhere in the pleadings?

(2)Whether the Courts below are correct in law in dismissing the suit for partition especially after finding that the suit properties are joint family properties and when the Will is not proved in the manner known to law?

14. For the sake of convenience and brevity, the parties in this appeal hereinafter will be referred to as per their status/ ranking in the trial Court.

15. The learned counsel appearing for the appellant would submit that originally the suit properties belonged to one V.G.Periyasamy Goundar and the said Periyasamy Goundar had two wives, namely, Valliathal, the first wife and Kamalathal/first defendant, the second wife. The said Periyasamy Goundar had one son, Balagurunathan and one daughter, Karpagavalli,



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through his first wife. The said Balagurunadhan is the father of the plaintiff

and the fifth defendant. The said Karpagavalli died intestate leaving behind

with the defendants 3 and 4 as her legal heirs and the defendants 2, 6 and 7

were born to the said Periyasamy Goundar through his second wife/first

defendant. Thereafter, the said Periyasamy Goundar died in the year 1968

and the son of the said Periyasamy Goundar who born through the first wife

namely, Balagurnadahan died in the year 1974. Therefore, the plaintiff and

fifth defendant are jointly entitled to 1/6th share. The defendants 3 and 4 are

jointly entitled to 1/6th share. The defendants 2, 6 and 7 are each entitled to

1/6th share. The plaintiff has filed a suit for the relief of partition claiming

share of the properties and the defendants admitted the relationship of the

parties and also admitted that the properties belonged to said Periyasamy

Goundar. However, the first defendant had taken a plea that the said

Periyasamy Goundar entitled the properties through partition deed dated

29.11.1959 and those properties are his separate properties and thereafter, he

executed a unregistered Will dated 15.07.1968 in favour of the first

defendant and after the demise of said Periyasamy Goundar, the first

defendant has been in possession and enjoyment over the property as her

absolute properties. Therefore, neither the plaintiff nor the defendants 3, 4

and 5 have any right over the property. In fact the alleged will dated



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15.07.1968 has not been produced before the court. Per contra, according to

the defendants, the said Will was produced before the land ceiling proceedings before the Authorised officer under the Tamilnadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, (*for brevity hereinafter called as "The Act, 1961"*) and the copy from the land ceiling proceedings alone has been produced. The said Will has not been proved by examining the attested witnesses in the said Will. Therefore, the Will has not been proved by the defendants. The said Will has been marked as Ex.B5. Even as per the recitals of the Will, the testator had signed in Tamil. However, in earlier proceedings, the partition deeds Ex.A1, A2, B9 and B10 signed in English. The evidence given by the attestors to the so-called Will, which was produced before the authorized officer has not been marked before the trial Court. The evidence of D.W.7 completely falsifies the version of the defendants that Ex.B.5 was very same Will allegedly produced before the authorized officer in the land ceiling proceedings. The Ex.B5 has not been proved in accordance with law. The D.W.7 has reported that Ex.B5 was prepared without even producing the original Will and according to his evidence, the original Will is not available in their office. Therefore the original Will has not been proved by the defendants. Moreover, as per recitals of the Ex.B11, sale deed dated 25.05.1969 executed by

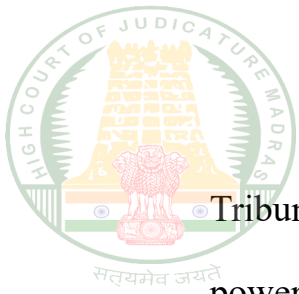


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Balagurunathan, who is the father of the plaintiff and the first defendant,

who is said to be the beneficiary under the Will and Parameswaran/second defendant in favour of one Chinnasamy Goundar had not returned the said Will. Similarly, Ex.B.21 sale deed dated 30.08.1973 executed by the first defendant, Kamalathal, Balagurunathan, Karthikeyan/plaintiff, Peiyanayagi/D5, Vasanthadevi/D4 in favour of one M.s.Palanichamy Goundar, there was no reference at all to any Will. Therefore, had the Ex.B.5/Will been executed in favor of the first defendant on 15.07.1968, there would be no necessity to sell the properties on 25.05.1969 and 30.08.1973 by the legal heirs of the said Periyasamy Goundar. Therefore, the conduct of the first defendant in executing sale deeds along with the other legal heirs of the said Periyasami Goundar would show that there was no Will Ex.B5 was in existence on the date of those sale deeds. Therefore, it is clear that Ex.B.5/Will was created after thought, to protect the family properties from the clutches of land ceiling proceedings launched on 19.07.1974.

15.1.Moreover, the assessing authority has no power to decide the genuineness of the Will and as per Section 9 of the Act, 1961, only confers the Assessing Authority with powers to decide such questions summarily. Section 77 of the Act, 1961, stipulates jurisdiction and powers of land



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Tribunals and specifically states that every land Tribunal shall have the same

powers as are vested in a civil Court under the Code of Civil Procedure, 1908. Therefore, the powers given to the Tribunal are not available with the Authorized officer under the Act, 1961. Moreover, the evidence adduced before the land ceiling proceedings is not relevant to this case as they are not fulfilled the conditions under Section 33 of the Indian Evidence Act. The appellant was not a party to the proceedings before the authorized officer. Moreover, neither Balagurunathan nor Kamalathal can said to be “representatives in interest” of the seventh defendant. the entire proceedings took place behind her back. Therefore, the appellant being an adverse party had no right to cross-examine the witnesses, who deposed before the Authorized officer. Therefore, the evidence given before the Authorized officer is not relevant to the present case due to the non-compliance of essential requirements of the proviso to Section 33 of Evidence Act. Therefore, the will has now been proved by the defendants. However, the Courts below have failed to consider the same and have dismissed the suit by holding that the Will was admitted by the parties and that the suit is bad for non-joinder of necessary parties due to non-inclusion of some purchasers of the properties. Without producing the Will, the Courts below have accepted the Ex.B5, which is neither the original and nor a copy of the Will



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and the parties admitted the relationship between the parties and the properties are the joint family properties and without proving the Will, the Courts below accepted the Will. Therefore, the decree and judgement passed by the Courts below are liable to be set aside and the second appeal has to be allowed.

16.The learned counsel appearing for the respondents would submit that the plaintiff filed a suit for partition alleging that the properties are joint family properties of the plaintiff and the defendants. In fact, the properties belonged to the said Periyasamy Goundar through partition deed dated 29.11.1959 and therefore, the said properties are separate properties of the said Periyasamy Goundar. During his life time, he executed a Will on 15.07.1968 and the said Periyasamy died in the year 1969 and after his demise, the Will came into effect and thereby, the first defendant alone is entitled to the properties and the said Will was accepted by the defendants in the land ceiling proceedings initiated by the authorities under the Act, 1961 and the appellant has also accepted the Will. In land ceiling proceedings, the defendants are also parties and thereafter, the properties were sold to the third parties and the said sale deeds have not been disputed by the appellant and all other respondents. However, by suppressing the said facts, the



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plaintiff filed a suit for partition and the trial court, after analyzing all the evidence on both sides, correctly dismissed the suit on the grounds that the said Periyasamy Goundar executed the Will in favour of the first defendant and the said Will was accepted by the plaintiff and other defendants in the land ceiling proceedings and all the purchasers of the properties are not parties to the suit and thereby, the suit is bad for non-joinder of necessary parties. The suit has been filed without including all the necessary parties and thereby, the Courts below have correctly dismissed the suit. Therefore, there is no any illegality or perversity in the judgment and decree passed by the Courts below. Therefore, the second appeal is liable to be dismissed.

17. Heard both sides and perused the materials available on record.

18. In this case, there is no dispute in respect of the relationship between the parties and the properties originally belonged to one Periyasamy Goundar and the said Periyasamy Goundar had two wives. The father of the plaintiff and the fifth defendant, namely Balagurunathan and one Karpagavalli were born to the said Periyasamy Goundar through his first wife, namely Valliyathal. After the demise of Valliyathal, the said Periyasamy Goundar married the first defendant and the defendants 2, 6 and 16/30



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7 were born to the said Periyasamy Goundar through the first defendant.

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These are all the admitted facts. According to the plaintiff, since he is one of the legal heirs of the said Periyasamy Goundar, he is also entitled to the share over the suit properties. According to the plaintiff, he along with the fifth defendant are jointly entitled to 1/6th share. The defendants 3 and 4 are jointly entitled to 1/6th share. The defendants 2, 6 and 7 are each entitled to 1/6th share over the properties of the said Periyasamy Goundar. According to the first defendant, the suit properties were acquired by the said Periyasamy Goundar through partition deed dated 04.04.1949 and thereby the properties are self acquired properties of the said Periyasamy Goundar, during his life time, he executed a Will dated 15.07.1968 in favour of the first defendant and he died in the year 1968 and thereby after the demise of the said Periyasamy Goundar, the first defendant alone is entitled to get properties through Will. The plaintiff and the other defendants 3 to 5 have denied the Will. Therefore, it is the duty of the first defendant to prove the Will.

19. The said Will has not been produced before the trial Court. According to the first defendant, the said Will was produced before the land ceiling authorities under the Act, 1961 and the said Will was not available and thereby the copy extracted from the office of the authorised officer of

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land ceiling proceedings under the Act, 1961 has been produced before the trial Court and the said documents has been marked as Ex.B5. To that effect, the D.W.7 was also examined and the same was produced by him. Even according to the first defendant, the said Will was an unregistered Will and it was produced before the land ceiling proceedings. Since the Will was not available in the records, a copy extracted from the said Will has been marked as Ex.B5. There is no evidence that the Ex.B5 is original extract of the original Will produced in the land ceiling proceedings. Moreover, attested witnesses of the said Will have not been examined in this proceedings and thereby the Will has not been proved in accordance with law. The appellant, who is the 7th defendant herein is not a party to the proceedings under the Act, 1961. Even assuming that the Will was produced before the authorities, since the appellant is not a party to the proceedings, the evidence of the P.W.7 and the Ex.B.5 are not relevant and the same Will not come under Section 33 of the Indian Evidence Act.

20. In this context, the learned counsel appearing for the appellant would submit that Rule 11 of the Act, 1961, reiterates that the proceedings of the Authoised Officer shall be summary and shall, subject to the provisions of the Act and these rules, as far as possible, be governed by the provisions



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of the code of Civil Procedure, 1908 with regard to the issue of service of

summons, examination of parties and witnesses, production of documents, amendment of pleadings, addition of parties, passing of ex-parte orders and setting them aside for good cause. Since the proceedings are summary in nature, the Will cannot be proved through the summary proceedings and the Will has to be proved in the manner known to law under Section 63 of Indian Succession Act, 1925 and Section 68 of Indian Evidence Act, 1872. Even though the Will was produced before the Land Ceiling proceedings, that by itself is not sufficient to prove the Will in civil proceedings for deciding title to the properties. The summary proceedings were conducted only to determine surplus lands, and therefore, the Will produced before the Tribunal cannot be taken as having been proved in the manner known to law. More over, after execution of the alleged Will and after demise of V.G.Periyasamy Goundar, his properties were sold by his legal heirs including the first defendant. The first defendant has not returned the Will in the sale deeds, however, the reasonable doubt would arise about the alleged Will as to whether it was executed as alleged by the first defendant. There is no explanation on the side of the first defendant as to why the 1st defendant executed sale deed along with other legal heirs of the said Periyasamy Goundar, when the Will was executed by the said Periyasamy Goundar and



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the said Will was first time produced before the land ceiling proceedings, after execution of the sale deeds by the legal heirs of the said Periyasamy Goundar. The said evidence would show that the will was executed at the time of sale of the said properties by the legal heirs of the said Periyasamy Goundar.

21.In this context, the learned counsel appearing for the appellant relied upon the judgment of the Honourable Supreme Court in the case of ***V.Kalyanswamy and another Vs. L.kakthavatsalam and others*** reported in ***(2021) 16 SCC 543***, wherein, the Honourable Supreme Court held as follows:

The evidence regarding the Will would be relevant in a subsequent judicial proceedings only if the proceeding was between the same parties or their representatives in interest, the adverse party in the first proceeding had the right and opportunity to cross examine.

In the present case, the appellant was not a party to the proceedings before the authorized officer. Neither the Balagurunathan, father of the plaintiff, nor the Kamalathal/D1 can be said to represent the interest of the appellant /D7. Therefore, the proceedings before the authorized officer in the

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land ceiling proceedings are not relevant, in so far as the appellant is concerned.

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22.The learned counsel appearing for the appellant further relied upon the judgment of this Court in the case of ***Selvaraj Vs. Loganayagi and others*** in ***S.A.No.32 of 2017 and Cross.Obj.No.98 of 2022, dated 05.04.2024***, wherein this Court held that since the plaintiff was not made as a party to the earlier civil suit, wherein the Will was proved behind back the plaintiff, such proceedings would not bind a non-party to the proceedings and the appellant is entitled to a fresh opportunity to prove the Will in the presence of the plaintiff.

23.Further, he relied upon the judgment of the High Court of Madhya Pradesh, in the case of ***Anand Choudhary Vs. State of Madhya Pradesh and others***, reported in ***2025 SCC online MP 977***, wherein the High Court of Madhya Pradesh held that the scope and ambit of the powers to be exercised by the Tahsildar are limited and the Tahsildar has no authority to decide the validity of a Will. The Civil Courts alone have jurisdiction to decide the validity of a Will, and revenue courts have no jurisdiction to adjudicate upon its validity. Therefore, as per the aforesaid judgments, it is



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clear that the Will produced before the authorities under the Act, 1961, will not bind the plaintiff, as she was not a party to the proceedings.

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24.Further, the learned counsel appearing for the appellant submitted that the Tribunal under the Act, 1961, is only a person designated and not a Court. The authorised officer has not been invested with all the powers of a Civil Court, and only certain enumerated powers have been conferred upon him. However, the Land Tribunal has not been vested with all the powers of a Civil Court. Therefore, the authorised officer has no authority to decide upon the validity of a Will.

25.To support this contention, he relied upon the judgment of this Court in the case of ***S.Sundararajan Vs. The Authorised Officer***, reported in ***(1980) 1 Mad LJ 36***.

26.On careful perusal of those judgments, it is clear that the land Tribunal under the Act 1961 is only a person designated and not a Court and the authorized officer has not been invested with all the powers of the civil Court and only certain enumerated powers have been conferred on the authorized officer. The nature of enquiry conducted by the authorized officer



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shall only by summary and any substantial questions of law or fact shall be

referred to the land Tribunal. In this case, the appellate Tribunal remanded

back the matter to the authorized officer to decide the Will and thereby, the

authorized officer decided the Will and the authorised officer held that Will

has been proved. Though the Will has been proved before the authorized

officer, that is only for the purpose of deciding the land ceiling proceedings

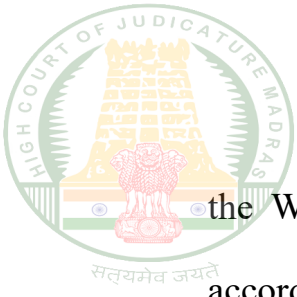
and the title of the parties cannot be decided in those proceedings, Since

those proceedings are summary proceedings. Moreover, the appellant is not

a party to the land ceiling proceedings and thereby, the said will has not been

proved in accordance with law.

27.The learned counsel appearing for the respondents also relied upon the judgments of this Court in the case of *Thayarammal @ Sundarlakshmi Vs. The Tamilnadu Land Reforms Special Appellate Tribunal, Chennai* reported in *2011 SCC Online Mad 700*. In this case, this Court has not dealt with the Will but decided that the Tribunal has power to take evidence. No doubt the Tribunal has power to take evidence but the dispute is whether the authorised officer has power to decide the validity of the Will or not. Therefore, the aforesaid judgment is no way helpful to decide the case. In the case on hand,the Will has not been produced and no attesting witness of



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the Will have been examined, thereby, the Will has not been proved in

accordance with law. As far as the Will is concerned, it has to be proved in the manner known to law that is under section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. There are no pleadings in the plaint about the availability of the original Will. In the land ceiling proceedings, the appellant is not a party to the proceedings and thereby, the said Will has to be proved in the presence of the plaintiff and the other defendants or in the presence of the appellant. The said Will has not been produced before the trial Court and the first defendant has not even examined any witnesses to prove the above said Will and mere conduct of enquiry under the land ceiling proceedings to decide the surplus land will not amount to proving the Will for the purpose of deciding the title of the property. However, the Courts below have erroneously held that Will has been proved and the Will has been admitted by the parties in the land ceiling proceedings.

28. Even the Will has been admitted by the parties, it has to be proved in the manner known to Law. In this regard, **V.Prabhakara Vs. Basavaraj K.(Dead) by L.R. and another** reported in **2022 1 SCC 115**, wherein the Hon'ble Supreme Court held that in a case where a party admits the



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execution of the document in the nature of a Will, which is otherwise proved

in accordance with Section 63 and Section 68 of the Indian Evidence Act respectively, it becomes a relevant fact duly proved, in the absence of any discretion by the Court. In this case, there are no witnesses to the Will and neither the original Will nor the copy of the Will has been produced before the Courts below, thereby, the first defendant failed to prove the Will in the manner known to law. Therefore, the findings of the Courts below in that aspect is not in accordance with law.

29.As far as the first substantial questions of law: *Whether the Courts below are correct in law in accepting a copy of the Will Ex.B.5 especially when the loss of the original Will has not been mentioned anywhere in the pleadings* is concerned, the first defendant relying upon the Will allegedly executed by the said Periyasamy Goundar dated 15.07.1968, but the said original Will has not been produced before the Courts below and the first defendant has produced the copy of Ex.B5, which is copy received from the Land ceiling proceedings authority under the Act, 1961. D.W.7 was examined as a witness, and he deposed that he does not know whether Ex.B5 is an extracted copy of the Will or not. The first defendant has not taken any steps to retrieve the original Will after the land ceiling proceedings, nor has



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she produced the extracted copy of the Will/Ex.B5. Further, Ex.B5 is not an authenticated document, and there are no pleadings regarding the alleged loss of the Will. Therefore, the Courts below are not correct in law in relying upon the copy of the Will, especially when the loss of the original Will has not been mentioned anywhere in the pleadings. Thus, the first substantial question of law is answered.

30.As far as the second substantial question of law, *whether the Courts below are correct in law in dismissing the suit for partition especially after finding that the suit properties are joint family properties and when the Will is not proved in the manner known to law* is concerned, there is no dispute in respect of the relationship between the parties and according to the first defendant, the said Periyasamy Goundar executed a Will dated 15.07.1968. The copy of the Will has not been produced before the trial Court and the Will has not been proved in the manner known to law. The production of Will before the authorised officer under the Act, 1961, has not been proved. The findings rendered by the authority in respect of the Will are not sufficient to prove its authenticity, particularly when the same is disputed by the other side. Therefore, the mere production of the Will and the conclusion of the land ceiling proceedings based on it are not sufficient



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to prove the Will and the same has to be produced in the manner known to law. Moreover, the appellant was not a party to the said land ceiling proceedings under the Act, 1961, and therefore, the production of the Will from the previous proceedings is not in consonance with the provisions of Section 33 of the Indian Evidence Act. Therefore, the Will has not been proved in the manner known to law and therefore, in view of the same, the Courts below are not correct in law in dismissing the suit for partition especially after finding that the suit properties are joint family properties and Will has not been proved in the manner known to law. Thus, the second substantial question of law is answered.

31.However, the defendants have taken plea that the suit is bad for non-joinder of necessary parties, since the properties have been sold and the purchasers of the properties have not been implicated in this case. The trial Court also framed proper issues in respect of the non-joinder of necessary parties, despite that no steps have been taken to implead all the purchasers in this suit and the Courts below have correctly concluded that the suit is bad for non-joinder of necessary parties. Therefore, without presence of the purchasers of the properties, the suit being the partition suit cannot be decided effectively. Therefore, the suit is bad for non-joinder of necessary



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parties.

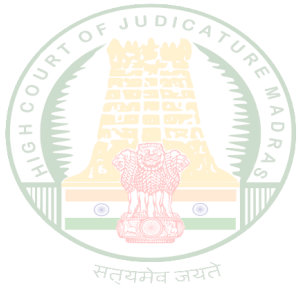
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32.In view of the aforesaid discussions and the answers to the substantive questions of law, the Court is of the opinion that the suit filed by the plaintiff is bad for non-union of necessary parties and thereby, without the presence of the purchasers of the properties, the suit cannot be decided and thereby, the suit is liable to be dismissed. The Courts below also have rendered concurrent finding in respect of that point and thereby the second appeal has no merits.

33.Accordingly, this Second Appeal stands dismissed. However, the parties are at liberty to file a fresh suit by including all the shareholders as parties to the suit in the manner known to law. No costs.

27.04.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsg/MJS

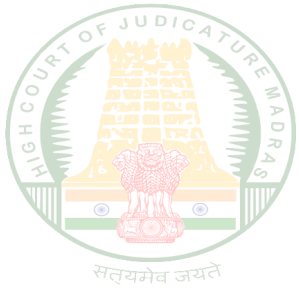


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To

1. The Subordinate Judge, Kengeyam.
2. The Subordinate Judge, Dharapuram.
3. The Section Officer, VR Section, High Court, Madras.



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