

A.S.No.13 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 10.03.2025

PRONOUNCED ON : 02.04.2025

CORAM

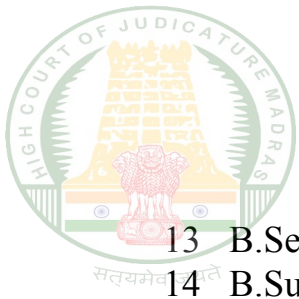
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

A.S.No.13 of 2014

1	Rani	
2	S.Vaidyanathan	
3	Kalvikarasi	
4	Senthamizhselvi (died)	
5	Nedunchezian	
6	Vijay Mani	...
		Petitioners

Appellant 5 to 6 and RR18 & 19 brought on record as LR's of the deceased 4th appellant (Senthamizhselvi) vide court order dated 03.12.2021 made in CMP No.16119, 16124 & 16126 of 2021 in A.S.No.13/2014.) Vs

1	T.N.Vayamani (deceased)
2	T.N.Agilan
3	T.N.Vinmani
	Natarajan [died]
4	Chandran
5	Mallika
6	Sakkubai(died)
7	Saroja
8	Vijaya
9	A.Pugalendhi
10	A.Mani
11	Santhi
12	B.Sathish Kumar



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13 B.Senthil

14 B.Suresh

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(RR9 to 14 brought on record as LR's of the deceased 6th Respondent viz. Sakkubai vide order of Court dated 12.11.2019 made in CMP.No.8030 and 8042 of 2019 in A.S.No.13 of 2014.)

15 Kasturi

16 Lakshmi

17 Senkathiravan

(RR15 to 17 brought on record as LR's of the deceased T.N.Vayamani R1 vide order of Court dated 27.11.2019 made in CMP.No.25244 of 2019 and 25246 of 2019 in A.S.N.13 of 2014.)

18 Velpandiyan

19 Velpari

...

Respondents

PRAYER : First Appeal has been filed under Section 96 r/w Order 41 Rule 1 of CPC against the Judgement and Decree dated 12.09.2013 passed in O.S.No.149/2004 on the file of the Principal District Court, Cuddalore.

For Appellants

... Mr.K.Govi Ganesan

For Respondent

... Mr.S.Rajavelavan

Nos.2 to 5 & 7 to 17

For Respondent

... Notice served (No appearance)

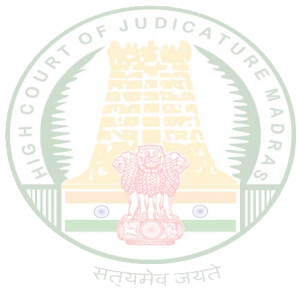
No.18

For Respondent

... Dismissed

No.19

vide Court order dt.03.02.2025



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JUDGMENT

Aggrieved over the Judgement and Decree dated 12.09.2013 passed in O.S.No.149 of 2004 by the Principal District Judge, Cuddalore.

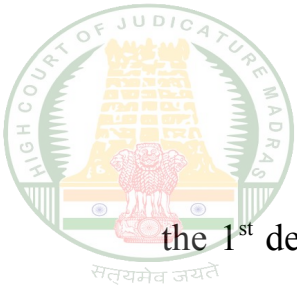
2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for partition and separate possession.

4.The defendants in O.S.No.149 of 2004 on the file of the Principal District Court, Cuddalore, is the appellants herein.

5.The plaintiffs' case is as follows:

Kuppusami Pillai married twice. His first wife is Thayarammal. His second wife is Amaravathi. The marriage of Amaravathi was celebrated on 25.10.1926. Through the 1st wife Thayarammal, Kuppusami Pillai had 3 sons by name Arumugham, Subramaniam and Shanmugham. All the aforesaid persons are dead. Shanmugham died without marriage. Arumugham's wife is dead. He left behind him only one issue, a female issue by name Rani, who is



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the 1st defendant in the suit. Subramanian has a son namely Vaidyanathan, who is the 2nd defendant and 3 daughters namely Kalvikarasi, Senthamizhselvi and Vijaya. They are defendants 3 and 4 and 9th plaintiff in the suit respectively. Subramanian's wife is dead.

5.1. Through the 2nd wife Amaravathi, Kuppusamy had only 4 daughters and no sons. They are Dhanalakshmi, Meenakshi, Sakkubai and Saroja. Dhanalakshmi is no more. Her husband Natarajan is also dead. Plaintiffs 1 to 3 are their 3 sons and her legal heirs. Meenakshi is also dead. Plaintiffs 4 to 6 are husband, son and daughter and hence, her legal heirs. Plaintiff 7 & 8 are other two daughters. 9th plaintiff has married 2nd plaintiff.

5.2. The suit properties belonged to Kuppusami Pillai. On the death of Kuppusami Pillai, all his issues through both wives became entitled to his properties equally. Of them, Shanmugham died without any issues. Hence, in all the properties, the remaining two sons Arumugham, Subramaniam and 4 daughters Dhanalakshmi, Meenakshi, Sakkubai and Saroja each became entitled to 1/6 share. Since Dhanalakshmi is no more, plaintiffs 1 to 3 are entitled to 1/6 share. Plaintiffs 4 to 6 are entitled to the 1/6 share of Meenakshi. Plaintiffs 7 & 8 are each entitled to 1/6 share. Arumugham's 1/6



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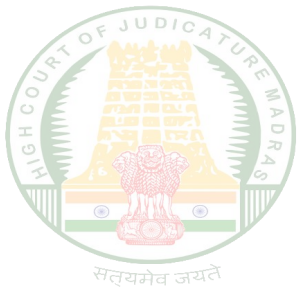
share has been obtained by the 1st defendant. Subramaniam's 1/6 share shall

be succeeded to by 9th plaintiff and defendants 2 to 4. Thus, 9th plaintiff is entitled 1/24 share while defendants 2 to 4 are entitled to 1/24 share each.

Thus, the position of sharers is as follows:

Plaintiffs 1 to 3	1/6 share
Plaintiffs 4 to 6	1/6 share
7 th plaintiff	1/6 share
8 th plaintiff	1/6 share
1 st Defendant	1/6 share
9 th plaintiff	1/24 share
2 nd defendant	1/24 share
3 rd defendant	1/24 share
4 th defendant	1/24 share

The 1st defendant is residing in suit item 1. 3rd defendant is residing in suit item 3. In suit item 2, a tenant is in occupation. Till recently, the parties were living amicably. There has been no partition till date. On and from 15.8.2004 plaintiffs have been making a demand for partition but the defendants had been evading. Hence, plaintiffs 1, 5, 7 & 8 issued a notice dated 26.8.2004 to defendants 1 and 2 calling upon them to effect a division. The plaintiffs are not concerned with the release deed alleged to have been executed by 1st defendant in favour of 2nd defendant. The plaintiffs are not parties to any of the transactions. Their right has not been denied until now. In the circumstances, the question of adverse possession and ouster do not arise and thus, pleaded to allow the suit.



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6. The defendants contested the suit and filed a written statement and denied the allegations contained in the plaint and contended that the deceased Kuppusamy had two wives and they are no more. As per the genealogy, the Plaintiffs excepting the 9th Plaintiff all are legal heirs of the second wife of the deceased Kuppusamy and the defendants are the legal heirs of the deceased Kuppusamy. None of the plaintiffs are entitled for a share in the suit property. The plaintiffs have come up with a false case. The deceased Kuppusamy has executed a Will dated 10.09.1950. As per the Will, the said Kuppusamy has gifted all the suit mentioned properties to the male legal heirs of his family. As per the Will, the male successors alone are entitled to share in the suit property. Accordingly, the three sons of Thayarammal, the first wife of the deceased Kuppusamy partitioned the suit properties among themselves in the year 1953. The first son Arumugam Pillai, and the second son Subramaniam Pillai, and the third son namely one minor Shanmugam having his mother Thayarammal as his guardian. But the said Shanmugam died at an early age and his share was once again vested with both the brothers namely Arumugam and Subramaniam, as there are no other male successors.



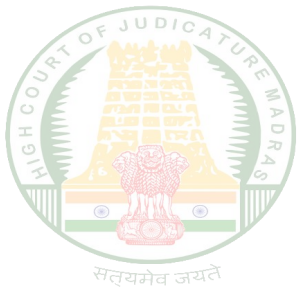
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6.1.The learned counsel further contended that during the year 1958, the said Arumugam executed a release deed in favour of Subramaniam. Hence after 1958, the entire properties were administered and enjoyed by the said Subramaniam solely. After the death of the said Subramaniam, his legal heirs namely the defendants started enjoying the suit properties. But as per the Will, the male member of the legal heirs of the deceased Subramaniam, namely the 2nd Defendant alone is entitled to the suit property. Hence there is no question of partition ever among the other female legal heirs of Subramaniam. The second wife of Kuppusamy namely Amaravathi had female issues only. They were not entitled to have title rights over the suit property as per the Will and thus pleaded to dismiss the suit.

7.The trial Court, upon the above pleadings, framed the following issues:

1.Whether the two wives of Kuppusamy Pillai namely Thayarammal and Amaravathi were entitled to his properties?

2.Whether the Will dated 10.09.1950 executed by Kuppusamy is valid and binding upon the parties?



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3. Whether the released deed executed by Arumugam in favour of Subramani in the year 1958 is binding on all the parties?

4. Whether the 8th plaintiff Saroja is liable for the marriage expenditures incurred by the 3rd defendant and others?

5. Whether the plaintiffs are entitled to 17/24 shares in the “B” schedule of the suit properties?

6. To what relief, the plaintiffs are entitled?

8. On the side of the plaintiffs, one witness was examined as PW1 and Ex.A1 to Ex.A7 were marked. On the side of the Defendants, three witnesses were examined as DW1 to DW3 and Ex.B1 & Ex.B15 were marked. One document was marked as X1.

9. The trial Court, upon considering the oral and documentary evidence on record, passed the preliminary decree with costs and the plaintiffs are entitled to 17/24 shares in the B schedule properties and to divide the properties by appointing an advocate/commissioner by metes and bounds into 24 equal shares and to allot 17 such shares to the plaintiffs in FD proceedings

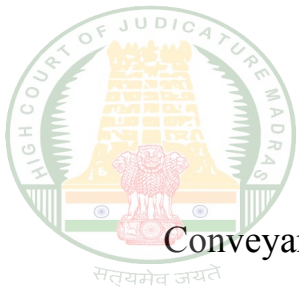


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and also the future account to be determined in separate proceedings in FD proceedings, aggrieved by this, the defendants have preferred the appeal suit.

10.The learned counsel appearing for the appellants/defendants submitted that the judgment and decree of the trial Court is against law, weight of evidence and probabilities of the case and contended that the Court below failed to see that admittedly the marriage between Kuppusamy and Amaravathi Ammal on 25.10.1926 much prior to the commencement of the Hindu Succession Act, 1956 and therefore, the Plaintiffs are not entitled to any share in the suit properties and the deceased Kuppusamy bequeathed the suit properties to the male members only through his Will dated 10.09.1950 and the said Document is more than 30 years old and as per section 90 of Evidence Act, it is a valid one.

10.1. The learned counsel further contended that the Court below failed to see that the Attestors of EX.B.4 Will is not alive and the appellants/defendants have proved the same by marking Ex.B.1 and B2 letters which will prove the said Will. Further, the Court below failed to see that Ex.B.4, discloses that the suit properties are self acquired properties of late Kuppusamy and it is not necessary to state that how it was purchased unlike a



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Conveyance Deed. The Court below failed to consider the vital admission of

the signature of the Author of Ex.B1 and B2 to prove that Ex.B.4 came into existence prior to that itself. The reasoning of the Court below that there is no pleadings regarding Ex.B.1 and B.2 is not only erroneous but absolutely perverse overlooking that the defendants have pleaded about the Will Ex.B.1 and B2 were marked to establish the Will and there is no need to plead such documents and thus, pleads to allow the appeal suit.

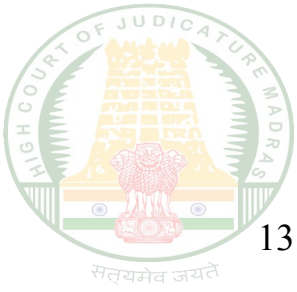
11.To support his argument, the learned counsel appearing for the defendants relied upon the following judgments:

1.(2024) 5 MLJ 282 (K.Rajeswari and others Vs. Kungumayee (Deceased) and others.

2.2024 SCC OnLine Mad 5153 (Marathal (died) and another Vs. Kanniammal (died) and others)

12.The learned counsel appearing for the respondents/plaintiffs supported the judgment of the trial Court and contended that the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Sections 63(c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872.

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13.To support his argument, the learned counsel appearing for the

respondents/plaintiffs relied upon the following judgments:

***1.2023 SCC OnLine SC 255 (Ashutosh Samanta (D) by
Lrs., and others Vs. SM.Ranjan Bala Dasi and others)***

***2.2024 (3) MWN (Civil) 134 (Narasimha Bhattar Vs.
Venkatesan and 10 others)***

14.The points for consideration before this Court are,

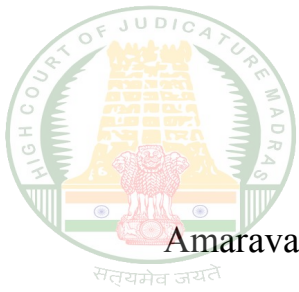
***1.Whether the plaintiffs are entitled to 17/24 shares in
the “B” schedule of the suit properties?***

***2.Whether the Will dated 10.9.1950 executed by
Kuppusamy is true, valid and binding upon the parties?***

3.To what relief, the plaintiffs are entitled?

15.I have considered the matter in the light of the submissions made on either side and perused the materials available on record.

16.On perusal of the materials available on record, the fact reveals that Kuppusamy had two wives, namely, Thayarammal (first wife) and



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Amaravathi (second wife). Further, it is noticed that on 25.10.1926 Kuppusamy married Amaravathi (second wife). Through his first wife Thayarammal, Kuppusamy had three sons viz., Arumugam, subramaniam and Shanmugam. Now, all are died. Shanmugam died without marriage. Arumugam's wife also died. He had one female issue namely Rani (the first defendant), Subramaniam has a son and 3 daughters. The 2nd defendant Vaidayanathan is only son of the deceased Subramaniam and Kalvikarasi, Senthamizhselvi and Vijaya are daughters of the deceased Subramaniam, in which, Kalvikarasi and Senthamizhselvi are the defendants 3 & 4 and Vijaya, is the 9th plaintiff in the suit. The second wife Amaravathi has four daughters namely Dhanalakshmi, Meenakshi, Sakkubai and Saroja and through her, no son was born. Now, Dhanalakshmi is died. Her husband Natarajan is also died. Plaintiffs 1 to 3 are sons and daughter of Dhanalakshmi. Meenakshi is died. The plaintiffs 4 to 6 are husband, son and daughter of the deceased Meenakshi. Plaintiffs 7 and 8 are remaining two daughters of the deceased Kuppusamy. The 9th plaintiff married the 2nd plaintiff. The relationship is admitted by the parties.

17.The suit properties are owned by Kuppusamy Pillai is also admitted and not disputed. Kuppusamy married Amaravathi, who is the second wife,

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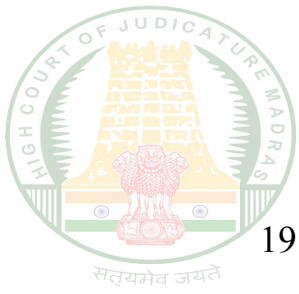


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before coming into force of Hindu Succession Act, 1956. Her status is also

not disputed. Therefore, the deceased Thayarammal and Amaravathi are legal heirs of the deceased Kuppusamy and entitled to get a share in the estate of Kuppusamy. It is also not disputed. According to the defendants, Kuppusamy executed a Will dated 10.09.1950, in which, he bequeathed all the properties to his male members. The said unregistered Will is evidenced as Ex.B4. The knowledge about the Will dated 10.09.1950 (Ex.B4) to the parties, is evidenced by Ex.B1 & Ex.B2 letters dated 17.07.1953 a letter from Natarajan to Subramanian and dated 12.05.1995 a letter from Natarajan to Vaithiyanathan.

18.Further, it is also noticed that the properties are purchased by Kuppusamy Pillai by way of sale deed from Kuppammal and others. This fact is evidenced by Ex.B3 sale deed dated 09.10.1936. In pursuance of Ex.B3 sale deed dated 09.10.1936, Kuppusamy Pillai purchased the suit properties by way of sale deed is established and this is personal property. Therefore, on his death, his legal heirs are equally entitled to have a share. This is also not seriously disputed by the parties. The only question remaining is, whether the Will dated 10.09.1950 Ex.B4 is true and proved by the parties.



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19. Admittedly, the Will dated 10.09.1950 is a 30 year old document.

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20. The learned counsel appearing for the defendants/appellants contended that Section 90 of Evidence Act, it does not exclude a Will from its operation. As per Section 90, if any document which is more than 30 years old and it is produced from proper custody, the Court may presume that the signatures on every part of such document is that of the person who executed the document and if it is a document which requires execution or attestation, it was duly executed and attested by the persons who is said to have executed and attested this document. To support his argument, he relied on the judgment of this Court reported in **2024 SCC OnLine Mad.5153 (Marathal (Died) and another Vs. Kanniammal (died) and others and (2024) 5 MLJ 282 (K.Rajeswari and others Vs. Kungumayee (Deceased) and others)**.

21. In reply, the learned counsel appearing for the plaintiffs/respondents submitted that the judgment relied on by the learned counsel is not correct decision of law and in view of the judgment of this Hon'ble Supreme Court in *Asutosh Samanta (D) by Lrs and Others V. SM.Ranjan Bala Dasi and Others*), the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills,



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which have to be proved in terms of Sections 63(c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872.

22. With regard to the applicability of Section 90 Evidence Act, in the case of proof of Will, the Hon'ble Supreme Court in *Ashutosh Samanta (D) by Lrs. And others Vs. SM.Ranjan Bala Dasi and others* reported in 2023 SCC OnLine SC 255 stated the legal position and observation as follows:

"11. The main argument of the appellant is that the application for letters of administration was made after a considerable delay, and that the courts below should not have relied on Section 90 of the Evidence Act, 1872, which reads as follows:

"Section 90 - Presumption as to documents thirty years old

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.



Explanation-Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81."

12.This court, in M.B. Ramesh (D) by L.Rs. v. K.M. Veerahe Urs (D) by L.Rs., while dealing with a similar argument regarding applicability of Section 90 in the case of proof of will, held as follows:

"At the same time we cannot accept the submission on behalf of the Respondents as well that merely because the will was more than 30 years old, a presumption under Section 90 of the Indian Evidence Act, 1872 ('Evidence Act for short) ought to be drawn that the document has been duly executed and attested by the persons by whom it purports to have been executed and attested. As held by this Court in Bharpur Singh Shamsher Singh reported in (2009) 3 SCC 687, a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with section 68 of the Evidence Act.

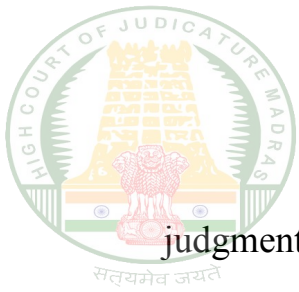


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That takes us to the crucial issue involved in the present case, viz. with respect to the validity and proving of the concerned will. A Will, has to be executed in the manner required by Section 63 of the Succession Act. Section 68 of the Evidence Act requires the will to be proved by examining at least one attesting witness. Section 71 of the Evidence Act is another connected section "which is permissive and an enabling section permitting a party to lead other evidence in certain circumstances", as observed by this Court in paragraph 11 of Janki Narayan Bhoir v. Narayan Namdeo Kadam reported in (2003) 2 SCC 91 and in a way reduces the rigour of the mandatory provision of Section 68. As held in that judgment Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but would otherwise be let down if other means of proving due execution by other evidence are not permitted."

13. In view of the above decision, wills cannot be proved only on the basis of their age - the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Sections 63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872.

In view of the above decision of the Hon'ble Supreme Court, the



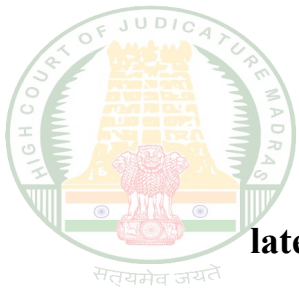
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judgment relied on by the learned counsel appearing for the defendants/appellants to support his argument that the Will being more than 30 years old and the presumption under Section 90 of the Act is inapplicable and has no merit and rejected.

23.The legal principles in regard to proof of a Will are no longer res integra. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses, where, however, the validity of the will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

24.This Court in **2011 (3) CTC 433 (Govindaraj Vs. Ramadoss)** held that Section 90 of the Evidence Act is not applicable relating to proving of Will, even if Will might be 30 years old and produced from proper custody. For better appreciation, it is reproduced hereunder:

“At this juncture, I would like to point out that the

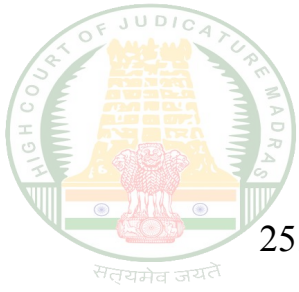


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latest and the recent decision of the Hon'ble Apex Court reported in *Bharpur Singh and others Shamsher Singh, 2009 (3) SCC 687* should necessarily be adhered into as under Certain excerpts from it would run thus:

"19. The provisions of Section 90 of the Evidence Act, 1872 keeping in view the nature of proof required for proving a Will have no application. A Will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. In the event of the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Evidence Act providing for exceptions in relating thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witnesses, if an attesting witness is alive and subject to the process of the Court and capable of giving evidence."

It is therefore crystal clear from the decision of the Hon'ble Apex Court that Section 90 of the Indian Evidence Act is not applicable relating to proving of the Will is concerned; even though the Will like Ex.B4 might be of 30 years old and produced from proper custody, yet strictly in accordance with Sections 68 and 69 of the Indian Evidence Act, the Will should be proved.



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25.In this case, the Will Ex.B4 is not proved and also the Will surrounded suspicious circumstances as stated by the trial Court in its judgment in para – 25, 26, 27, 28 & 29 are acceptable.

26.In the absence of the Will dated 10.09.1950 Ex.B4, the legal heirs of Kuppusamy Pillai are entitled to have equal shares in his properties after his death. Therefore, the trial Court rightly decided and declared that the plaintiffs are entitled to 17/24 shares in the B schedule properties. There is no illegality in the judgment and decree of the trial Court. I find no valid ground for interference and no merit in the appeal suit and the appeal suit is liable to be dismissed. The judgment and decree of the trial Court is hereby confirmed and the appeal suit is dismissed. No costs. Consequently, the connected miscellaneous petition, if any, is closed.

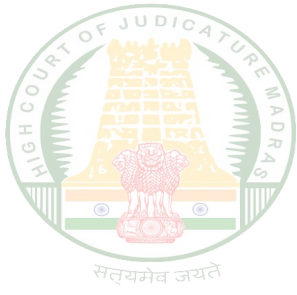
Index/Internet: Yes / No
Speaking order: Yes/No
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02.04.2025

To

- 1.The Principal District Court, Cuddalore.
- 2.The Section Officer, VR Section High Court, Madras.

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V.SIVAGNANAM, J.

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Pre-delivery judgment made in
A.S.No.13 of 2014
and M.P.No.1 of 2014

02.04.2025