IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**17.10.2025**
Pronounced on	**09. 01.2026**

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.665 of 2025 and
C.M.P. No.23816 of 2025

T. Rajeshwari ...Appellant

Vs.

1. P. Karunambigai
2. Vijayalakshmi
3. Indrani ...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 17.06.2025 passed in A.S. No.17 of 2024, on the file of the I Additional District Court, Coimbatore, confirming the Judgment and decree dated 22.01.2024 passed in O.S. No.39 of 2010, on the file of the Sub Court, Pollachi.

For Appellant : Mr. Srinath Sridevan, Senior Advocate
for Mr. Praveen S. Kumar

For Respondents : Mr. P. Valliappan, Senior Advocate
for Mr. T. Deeraj
for M/s. P.V. Law Associates for R1

Mr. M. Madhan Kumar for R2 and R3

JUDGMENT

The present Second Appeal is preferred against the judgment and decree dated 17.06.2025 in A.S. No.17 of 2024 on the file of I Additional District Court, Coimbatore, confirming the judgment and decree dated 22.01.2024 passed in O.S. No.39 of 2010 on the file of the Sub Court, Pollachi.

2. The 1st respondent, as plaintiff, filed the above suit for partition, claiming 1/3rd share in the suit properties and for separate possession.

3. The plaintiff and the defendants 1 and 2 are the sisters of one Thirugnana Shanmugam and the 3rd defendant is the wife of the said Thirugnana Shanmugam.

4. According to the plaintiff, one Mylsamy Gounder was the absolute owner of the suit properties situate in Naickenpalayam Village, Pollachi Taluk. He and his wife, Valliammal had four daughters, namely,

Karunambigai, Vijayalakshmi, Tamilarasi and Indirani and one son Thirugnana Shanmugam. After the demise of Mylsamy Gounder, his wife and four daughters executed a release deed dated 25.11.1981 in favour of Thirugnana Shanmugam, who thereafter married one Rajeswari, who is the appellant herein. The said Thirugnana Shanmugam passed away on 24.01.2010. During his life time, he gifted a house property on 23.05.2007 in favour of his sister Tamilarasi, who was financially weak. Considering the facts that he was issueless; that his wife Rajeswari was financially strong, and that he was suffering from heart ailments, executed a Will dated 07.10.2009, bequeathing the suit 'A' schedule property to his sisters Karunambigai, Vijayalakshmi and Indirani and the suit 'B' schedule property to his wife Rajeswari. Though she was initially granted only a life estate in the 'B' schedule property, the latter portion of the Will vested absolute ownership upon her. While so, the said Rajeswari, after the demise of her husband, mutated the revenue records in her favour and attempted to create third party interest in the suit properties with the intention of defeating the rights of the sisters as conferred under the Will. In these circumstances, the sister Karunambigai instituted a suit in O.S. No.39/2010 before Sub Court, Pollachi, seeking

1/3 share in the suit properties. The other sisters Vijayalakshmi and Indirani were arrayed as defendants 1 and 2 in the above suit. The said Rajeswari was arrayed as the 3rd defendant in the above suit. The said Raheshwari resisted the suit on the ground that her husband would not have thought of executing a Will at that young age, that too, disinheriting his wife. Her further submission is that, her husband was hale and healthy till his death. The Will has been fabricated by the sisters of her husband with an intention to grab the properties from her. Hence, prayed for dismissal of the suit.

5. The learned trial judge, proceeded to consider the validity of the Will. The suit was decreed with respect to 'A' schedule property and dismissed the relief with respect to 'B' schedule property. Aggrieved by this, the wife/3rd defendant preferred the appeal suit in A.S. No. 17 of 2024 before the I Additional District Court, Coimbatore. The first appellate court dismissed the appeal by confirming the judgment and decree passed by the trial court.

6. Challenging the same, the 3rd defendant has preferred the present

Second Appeal.

7. The Second Appeal is admitted on the following substantial questions of law:

"1. Whether the judgments of the courts below are perverse in rendering a finding that the Will dated 07.10.2009 is proved in accordance with law?

2. Whether the courts below erred in ignoring the vital documents, that is, the expert opinion while deciding the genuineness of the Will?"

8. Mr. SrinathSridevan, learned Senior Advocate appearing for Mr.T. Deeraj, learned counsel on record for the appellant / 3rd defendant would submit that, to prove the Will, plaintiff has to examine the attesting witnesses as per Section 63 of Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872. He would submit that Section 69 of Indian Evidence Act, 1872, will not apply to the present case for the reason that, the plaintiff had examined the wives of the attesting witnesses, namely Muthu Kumar and Kumar, as P.W.2 and P.W.3, without

examining one another attesting witness Marimuthu in the alleged Will. He would further submit that Section 69 of the Indian Evidence Act, 1872 will apply only when no attesting witness is available and that the onus is on the plaintiff to prove that there is no attesting witness. He would further contend that even a mere statement that attesting witness was won over by the opposite party is not sufficient to prove his absence. Where there are attesting witnesses capable of being produced, all means of compelling the appearance has to be exhausted. In case of documents required by law to be attested, not only the executant's signature is to be proved but it is also to be proved that the document was duly attested. The present case does not fall under any of the exceptions under Section 69 and 70 of the Indian Evidence Act, 1872. To support his contentions he has relied upon the following judgments:

1. Doraiswami vs. Rettinammal reported in AIR 1978 Mad 78

2. Babu Singh and others vs. Ram Sahai Alias Ram Singh reported in (2008) 14 SCC 754

3. Seethaiammal (died) & others vs. Ramakrishnan Asari (died and others) reported in 2017 SCC OnLine Mad 38173

9. The learned counsel for the appellant would further submit that, the expert opinion in the present case holds that the signature in the Will does not belong to Thirugnana Shanmugam. Therefore, the non compliance of Section 69 of the Indian Evidence Act, 1872 assumes greater significance in the benefit of doubt cast upon the Will and the handwriting expert. His further contention is that, the Will is made 3 months prior to the death of the Thirugnana Shanmugam and the suit was filed within 35 days from the date of his demise. The plaintiff has clandestinely omitted to examine the other attesting witness Marimuthu. The plaintiff has allegedly called all her family members for a meeting on the sixteenth day after Thirugnana Shanmugam's death to open a sealed cover containing the alleged Will and strangely the appellant was not called even as per the plaintiff to participate in the meeting. Whereas, the specific case of the plaintiff is that she was with the appellant in the deceased's house for the sixteenth day ceremony. That being the case, it cannot be believed that the plaintiff would have opened the sealed cover of the deceased on the same day in the absence of the appellant. His further contention is that, since the defendants 1 and 2 have conceded to the claim made in the plaint, there is no cause of action for a partition suit

and they could have simply executed a partition deed among themselves. The above facts would go to show that, in order to deprive the valuable rights of the appellant / 3rd defendant, the present partition suit has been filed by the plaintiff. The courts below, without considering the above facts, erroneously decreed the suit in favour of the plaintiff, which warrants interference by this Court.

10. On the other hand, Mr. P. Valliappan, learned Senior Advocate, appearing for Mr. T. Deeraj, learned counsel on record for the 1st respondent would submit that, considering the facts that he was issueless and his wife was financially secured, and also considering his heart ailments, the deceased ThirugnanaShanmugam executed a Will on 07.10.2009 bequeathing the suit 'A' schedule property to his sisters and 'B' schedule property to his wife. Since the whereabouts of Marimuthu, one of the attesting witnesses, was unknown, he was not examined by the plaintiff. However, the plaintiff has examined the wives of the deceased attesting witnesses Muthu Kumar and Kumar to identify their signatures. Moreover, the forensic expert, who issued Ex.B11, during cross examination admitted that her report contained errors, lacked supporting

photographs and analysis report and did not meet the standards required under law. He would submit that an expert opinion is immaterial in determining the validity of the Will. Expert opinion cannot influence the finding as to the genuineness of the Will. To support his contention he has relied upon the following judgments:

1. 2018 (3) MWN (Civil) 584

2. 2023(2) MWN (Civil) 509

3. AIR 1989 Kerala 228

He would further submit that during cross examination, D.W.1 and D.W.3 affirmed that the signature appearing on Ex.A1 Will belonged to Late Thirugnana Shanmugam. No contrary evidence was produced by the appellant to discredit their testimony. The trial court below upheld the validity of Ex.A1 Will and rightly decreed the suit and the same was confirmed by the first appellate court. He would further submit that only the attesting witnesses are competent to identify the testator's signature under the combined operation of Section 63 of Indian Succession Act, 1925 and Sections 68 and 69 of the Indian Evidence Act, 1872. Since the attesting witnesses were unavailable, the requirements under Section 69 of the Evidence Act, 1872, were duly fulfilled, as the signatures of the

attesting witnesses were properly identified by their wives. The requirement to prove the signature of the person executing the document as being in his handwriting is a general rule not applicable to Wills, in view of the express provisions of Section 63A of the Indian Succession Act, 1925. To support his contentions, he has relied upon the judgment reported in **AIR 1989 Kerala 228**. Thus, it is urged that the testator's signature was conclusively proved and the issue concerning of non examination of another witness Marimuthu was neither raised before the courts below and therefore, the same cannot be raised for the first time during the course of arguments in the Second Appeal. He would further submit that the appellant herself, during her examination, admitted about the existence and knowledge of the Will, though she initially feigned ignorance of the Will in her written statement. Therefore, the appellant was fully aware of the Will and has taken false defenses through out. In fact, her husband had made ample provisions for her in the Will by bequeathing the 'B' schedule property, gifting her a house worth Rs.60,00,000/- and ensuring she had independent ownership of 6 acres of agricultural lands. Though, initially the appellant was granted only a life estate in the 'B' schedule property under the Will, the latter

portion of the Will vested absolute ownership upon her. The intention of the testator must be ascertained from all the clauses of the Will, and that the latter clause shall prevail over the earlier one. To support his contention, he has relied upon the following reported judgments:

1. AIR 1955 SC 2491

2. 2011 (6) CTC 172

He would submit that it is settled principle that concurrent findings of fact, even if erroneous, cannot be interfered with under Section 100 of the Code of Civil procedure, unless perversity is shown. In the present case, both the courts below, have correctly appreciated the evidence and rendered well reasoned findings, free from any perversity. To support his contentions, he has relied upon the following judgments:

1. AIR 1999 SC 2213

2. AIR 1999 SC 1441

3. 2006 AIR SCW 2404

4. AIR 2019 SC 1441

Hence, prays for dismissal of the Second Appeal.

11. Heard on both sides. Records perused.

12. The solitary controversy raised in this regular Second Appeal relates to the genuineness or validity of the Will, Ex.A1 alleged to have been executed by Thirugnana Shanmugam on 07.10.2009 bequeathing the suit 'A' schedule properties to his sisters namely, the plaintiff and the defendants 1 and 2 and the suit 'B' schedule property to his wife/appellant/3rd defendant. It is not a matter of dispute that by now different courts including the final one have laid down a number of tests to judge the nature and standard of evidence required to prove a Will, some of these being that but for the requirements of Section 63 of the Succession Act and 68 of the Evidence Act, a Will has to be proved like any other document to the satisfaction of a prudent mind. However, what makes a Will to differ from any other document is that it speaks from the death of the testator and this aspect introduces an element of solemnity in the decision of the question whether the document is proved to be the testament of the testator. Further, cases in which the execution of the Will is surrounded by suspicious circumstances, such as, unfair and unjust disposition of property and the propounder taking a leading part in the making of the Will under which he/she receives a substantial benefit,

have to be dispelled by the propounder. The presence of such suspicious circumstances makes the initial onus heavier on the propounder. The plaintiff was duty bound to examine at least one attesting witness to prove the execution of the Will, Ex.A1. It has come in evidence that two attesting witnesses, namely, Muthu Kumar and Kumar died before they could be examined as witnesses. The other attesting witness, namely Marimuthu, had been given up by the plaintiff. However, the plaintiff had examined the wives of the deceased witnesses. A will ordinarily must be proved keeping in view the provisions of Section 63 of the Succession Act and Section 68 of the Indian Evidence Act. However, when the attesting witness is either dead or out of jurisdiction of the Court or kept out of the way by the adversed party or cannot be traced, despite diligent search, the Will may be proved in the manner indicated in Section 69 of the Indian Evidence Act.

13. Section 69 of the Indian Evidence Act reads, thus:

"69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved

that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person."

14. In the case of ***KL.Anandan vs. State of Kerala*** reported in ***AIR 1989 Kerala 228***, it was held that it is sufficient if the signatures of the attesting witnesses are identified. The requirement to prove the signature of the person executing the document as being in his handwriting is a general rule not applicable to Wills, in view of the express provisions of Section 63(a) of the Indian Succession Act, 1925. The Court further clarified that there is no necessity to prove that the signature of the executant is in his handwriting. This Court in ***Selva Subramanian vs. Subbarathinam*** reported in ***2015 (2) MWN (Civil) 415*** held that it is sufficient if one witness is examined to identify the signature of either one of the attestors, in which case the Will shall be deemed to be proved. In the present case, the plaintiff has examined P.W.2 and P.W.3, wives of the deceased attesting witnesses, namely Muthu Kumar and Kumar, to identify the signatures of the attesting witnesses. In cases where the attesting witnesses are unavailable, any

competent witness to identify the signatures of the attesting witnesses is sufficient and it is not necessary to separately prove the signature of the testator, as the latter requirement applies to registered documents other than a Will. The non examination of one of the attesting witnesses, namely Marimuthu, is not fatal to the plaintiff's case. Therefore, the requirements under Section 69 of the Evidence Act, 1872, were duly fulfilled, as the signatures of the attesting witnesses were properly identified and the testator's signature was conclusively proved. Moreover, only during the course of arguments, for the first time in the Second Appeal, and without any factual basis, contended that Section 69 was inapplicable on the ground that the death of Marimuthu had not been established. This issue was neither raised before the first appellate court nor included in the grounds of Second Appeal and being a pure question of fact, cannot be introduced for the first time during the course of arguments in the Second Appeal (**Ref: AIR 1966 SC 1953, 2015 (2) CTC 262, 2022 (1) MWN (Civil) 530 and 2023 (5) CTC 138).**

15. Regarding the contention that the Will was not read over to the appellant, she herself admitted in cross examination that disputes arose among family members on the sixteenth day after the death of her

husband in respect of the alleged Will. With regard to the forensic expert's report marked as Ex.B11, the expert in her cross examination has revealed the glaring deficiencies and procedural non compliances. Moreover, it is well settled that forensic Reports have no determinative value in matters relating to Wills, as their probative value is limited.

16. Furthermore, it is not in dispute that the testator Thirugnana Shanmugam died issueless and the appellant is financially secured. Therefore, there is nothing strange the appellant / wife is disinherited. However, the testator under the Will has bequeathed 'B' schedule property to the appellant / wife.

17. Coming to the aspect of the scope of the Second Appeal under Section 100 of the Code of Civil Procedure, it is no more *res integra,* as several judgments have been rendered by the Hon'ble Apex Court and this Court explaining the scope and limitations contained in Section 100 of the Code of Civil Procedure. While deciding an appeal and the provisions of Section 100 of the Code of Civil Procedure, the scope is very narrow and limited to examine only if there is any perversity or

illegality or arbitrariness in the judgment rendered by both the trial court and the first appellate court. It is also relevant to mention that the aspect of perversity has been the subject matter of several decisions again rendered by the Hon'ble Apex Court that, unless the findings of the courts based on evidence both oral and documentary are perverse, this Court cannot in the Second Appeal decide for its own opinion being different from that of the two courts to decide the same as perverse. It is also necessary to mention that when two courts have recorded a concurrent finding on fact, this Court in Second Appeal should be circumspect in interfering with such findings of fact unless it is shown that there is serious perversity having been committed by both the courts. The two courts below have correctly understood the facts of the case and rightly concluded the Will to be genuine and valid. Hence, no interference warrants.

18. In the result,

i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

ii. The decree and judgment dated 17.06.2025 passed in A.S. No.17 of 2024, on the file of the I Additional District Court, Coimbatore, confirming the Judgment and decree dated 22.01.2024 passed in O.S. No.39 of 2010, on the file of the Sub Court, Pollachi, is upheld.

--.01.2026

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

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To

1. The I Additional District Judge, Coimbatore.

2. The Sub Court, Pollachi,

3. The Section Officer, VR Section, High Court, Madras.

K.GOVINDARAJAN THILAKAVADI,J.

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Pre delivery judgment in

S.A.No.665 of 2025 and
C.M.P. No.23816 of 2025

--.01.2026