IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2012

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.548 of 2009

1.Karuppathal
2.Kannammal
3.Saroja
4.Dhanalakshmi
5.Jayalakshmi . Appellants /Plaintiffs 2 to 6

-Vs-

1.Natesan (died)
2.V.P.Chinnasamy
3.Matheswaran (died)
4.Sundaram
5.Baby
6.Kamala
7.Kondammal ..Respondents 2 to 7/Defendants 2 to 7
8.Krishnaveni
9.Balakrishnan
10. Thangam @ Nagraj
11.Jothimani
12.Uma ..RR8 to 12 Legal representative of deceased R1 vide court order dt.18.2.2008 MP 11196/2008
13.Jothi
14.Minor Sivananthan ..Respondents
RR 13 & 14 Legal representative of deceased R3 vide order dt.1.4.11 CMP 1 to 3/2010

Second Appeal filed under section 100 of C.P.C against the judgment and decree dated 24.02.1995 made in A.S.No.50/1994 passed by the I Additional Sub-Judge, Erode reversing the judgment and decree dated 10.03.1994 made in O.S.No.454 of 1989 on the file of the Court of the II Addl. District Munsif, Erode.

For appellant : Mr.N.Manokaran
For Respondents : Mr.T.Murugamanickam RR 8 to 12

JUDGMENT

The legal heirs of the original plaintiff Kannaiyan (since deceased), who figured as plaintiffs 2 to 6 in the suit, are the appellants in the second appeal. The suit O.S.No.454 of 1989 was filed by Kannaiyan, claiming to be entitled to 1/3rd undivided share in the suit properties, for the relief of partition and separate possession. Since Kanniyan died after the filing of the suit, Karuppathal, Kannammal, Saroja, Dhanalakshmi and Jayalakshmi, the appellants herein (plaintiffs 2 to 6) got impleaded.

2. The suit was resisted by Natesan (died after the filing of the second appeal), the first respondent /first defendant and Kondammal, the 7th respondent herein/7th defendant. After trial, the learned trial Judge, namely II Additional District Munsif, Erode decreed the suit and granted a preliminary decree for partition directing division of the suit properties into three equal shares and allotment of one such share to the appellants herein/plaintiffs. Aggrieved by and challenging the preliminary decree dated 10.03.1994 passed by the trial Court, Natesan, the first respondent herein/first defendant alone preferred an appeal on the file of the Sub-Court, Erode in A.S.No.50 of 1994. The learned First Additional Sub-ordinate Judge, Erode, after hearing the appeal, by judgment and decree dated 24.02.1995, allowed the same, set aside the preliminary decree passed by the trial Court and dismissed the suit for partition and separate possession. The said decree passed by the lower appellate Court is challenged in the present second appeal.

3. Initially notice before admission had been issued. Pursuant to the issuance of notice, the first respondent Natesan alone entered appearance. After the filing of the second appeal, the first respondent Natesan passed away and Respondents 8 to 12 have been impleaded as his legal representatives. The other respondents have not chosen to enter appearance to contest the appeal. Now, the Respondents 8 to 12 alone are the contesting respondents.

4. The case of the appellants/plaintiffs, in brief, as reflected in the averments found in the plaint, is as follows:

Suit properties originally belonged to one Madha Naicker. Rangasamy Naicker, Seeranga Naicker and Kannaiyan (Original plaintiff) were the sons of Madha Naicker and one Pappammal was his only daughter. The said Pappammal and her husband died without issues. The first son of Madha Naicker, namely Rangasamy Naicker died leaving behind his only son Natesan (the deceased first defendant/first respondent). Rangasamy Naicker had two daughters, named Ponnal and Kamala. Ponnal died leaving behind defendants 2 to 6/Respondents 2 to 6, namely P.Chinnasamy (husband), Matheswaran (son), Sundaram(son), Baby(daughter) and Kamala(daughter-in-law).

The second son of Madha Naicker, namely Seeranga Naicker died without issues leaving behind him Kondammal, the 7th defendant/7th respondent as his sole legal heir. The suit properties were the ancestral joint family properties of Kannaiyan and the defendants 1 to 7/respondents 1 to 7. They jointly enjoyed the same without any division. Desirous of having his share separated from the joint family properties, the deceased first plaintiff Kanniayan asked Defendants 1 to 7/Respondents 1 to 7 for effecting such a division in the month of September 1998. His request was turned down by the respondents 1 to 7/defendants 1 to 7. The deceased first plaintiff was entitled to 1/3rd share in the suit properties which devolved upon plaintiffs 2 to 6/appellants 1 to 5 in the second appeal, on his death. 7th respondent/7th defendant is entitled to 1/3rd share and the remaining 1/3rd share belongs to defendants 1 to 6/Respondents 1 to 6 as legal heirs of Seeranga Naicker. Since the deceased first defendant/first respondent Natesan, did not heed to the request made by the first plaintiff Kannaiyan for partition and on the other hand was trying to sell away the entire suit properties and cheat the other co-owners and since he was also trying to cause damage to the suit properties by demolishing existing structures, the deceased first plaintiff Kanniayan was constrained to file the suit for partition and separate possession.

5. Respondents 2 to 6/Defendants 2 to 6 did not contest the suit. Natesan, the deceased first defendant/first respondent and Kondammal, the 7th defendant/7th respondent alone contested the suit on the basis of the written statement filed by Natesan and adopted by Kondammal. The case of the contesting defendants as found in the written statement is as follows:-

No doubt the suit properties originally belonged to Madha Naicker, who died intestate in 1934 survived by his three sons and the names of the first two sons were Rangasamy Naicker and Seeranga Naicker. But the name of the third son of Madha Naicker is not Kannaiyan and his name is Arumuga Naicker. Kannaiyan, who filed the plaint was not the third son of Madha Naicker and he was a stranger to the family of Madha Naicker. He did not have any right, share or interest in the suit properties. After the death of Madha Naicker, his three surviving sons, namely Rangasamy Naicker, Seeranga Naicker and Arumuga Naicker became entitled to 1/3rd share each. Seeranga Naicker, the second son of Madha Naicker died leaving behind 7th defendant/7th respondent Kondammal as his sole legal heir. The said Seeranga Naicker, during his life time sold his 1/3rd share in the entire joint family properties to his elder brother Rangasamy Naicker by a register sale deed dated 07.02.1935. Hence he did not leave any share in the suit properties to devolve upon his wife Kondammal, the 7th defendant/7th respondent and thus, the 7th defendant/7th respondent does not have any interest in the suit properties. Subsequently, Arumuga Naicker, the third son of Madha

Naicker sold his undivided 1/3rd share in the suit properties to his elder brother Rangasamy Naicker by means of a registered sale deed dated 07.10.1950. Thus, Rangasamy Naicker and his son, namely Natesan (the deceased first defendant/first respondent) became entitled to the suit property in entirety. Rangasamy had got half share and Natesan, the first defendant/first respondent, had got ½ share in the suit properties as coparcenors. They had been in exclusive possession and enjoyment of the same. Arumuga Naicker, the third son of Madha Naicker had got an alias name Kannaiyan. He, having sold his share in the suit property and having left the place, appeared to have filed the suit christening his name as Kanniayan. Rangasamy Naicker died intestate on 20.10.1984. On his death, his son Natesan and daughters Ponnal and Kamala became entitled to equal shares in the half share of Rangasamy Naicker. Thus, Ponnal and Kamala (6th defendant/6th respondent) were entitled to 1/6th share each. Since Ponnal died intestate, her husband V.P.Chinnasamy (second defendant/second respondent), her sons Matheswaran and Sundaram (defendants 3 and 4/Respondents 3 and 4) and her daughter Kamala (5th defendant/5th respondent) jointly became entitled to her 1/6th share. The 6th defendant Kamala has got 1/6th share in the suit property as one of the legal heirs of her father Rangasamy Naicker. The said Kamala, namely 6th respondent/6th defendant and all the heirs of Ponnal, namely defendants 2 to 5/respondents 2 to 5 jointly released their shares in the suit property by executing a release deed dated 25.05.1989. Thus, Natesan (the deceased first defendant/first respondent) became exclusively entitled to the entire suit properties. Even if the plaintiff would have got any right in the suit property, such right could have got extinguished by means of ouster and non-participation in possessing and enjoying the suit properties for well over the statutory period. The alleged demand for partition and the refusal are also not correct. The allegations regarding attempt to alienate and cause damage to the properties are also false. Hence, the suit should be dismissed with compensatory costs.

6. After the filing of the said written statement of the first defendant, which was adopted by the 7th defendant, the deceased first plaintiff Kannaiyan filed a reply statement with the following contentions:

Madha Naicker had got no son by name Arumugam Naicker and the first plaintiff Kannaiyan alone was the third son of Madha Naicker. At the age of 15 he left Erode. After working at various places, he got settled in Coimbatore 25 years prior to the filing of the suit. Taking advantage of the absence of the deceased first plaintiff Kannaiyan for about 45 years, Rangasamy, the father the first respondent/first defendant created several deed in his favour in respect of the suit properties. At no point of time the deceased plaintiff Kannaiyan executed any sale deed conveying his 1/3rd share in the suit properties to Rangasamy Naicker. If there is any such

sale deed, the same should have been fraudulently created. The deceased first plaintiff Kannaiyan had left Erode asking his elder brother Rangasamy Naicker to manage his 1/3rd share in the suit properties also along with his share till he would return back. Only in the middle of the year 1988, the deceased plaintiff Kannaiyan came to Erode and demanded partition, which was declined. The deceased plaintiff Kannaiyan should be deemed to be in legal possession of the suit properties. Separate proceedings would be initiated to recover mesne profits.

7. Based on the above said pleadings, necessary issues were framed by the trial Court and in the trial Pws 1 and 2 were examined and Exs. A1 to A9 were marked on the side of the plaintiffs, whereas DW1 was examined and Exs.D1 to D8 were marked on the side of the contesting defendants. Learned trial Judge, at the conclusion of trial, accepted the case of the appellants herein/plaintiffs and passed a preliminary decree for partition directing division of the suit properties into three equal shares and allotment of one such share to the appellants herein/plaintiffs. Aggrieved by the judgment and preliminary decree passed by the trial Court on 10.03.1994 in O.S.No.454 of 1989, Natesan, the deceased first defendant/first respondent preferred an appeal in A.S.No.50 of 1994 on the file of Sub-Court, Erode. The learned First appellate Judge, namely the first additional Subordinate Judge, Erode, after hearing, allowed the appeal, set aside the preliminary decree passed by the trial Court and dismissed the original suit O.S.No.454 of 1989 for partition and separate possession on the file of the trial Court without costs. Questioning the correctness of the judgment and decree of the lower appellate Court, the present second appeal has been filed by the appellants herein, who were the defendants 2 to 6.

8. The learned counsel for the appellant projected the two questions as substantial questions of law involved in the second appeal and based on the said representation, the following questions were formulated as substantial questions of law allegedly involved in the second appeal.

1) Whether the lower appellate Court has committed an error in holding that the plaintiff was not the son of Madha Naicker disregarding the admission made in the written statement of defendants 1 to 7?
2) Whether the lower appellate Court has rendered a perverse finding that the sale deed produced as Ex.B4 was genuine and the same would be binding on the plaintiff?

9. The arguments advanced by Mr.N.Manokaran, learned counsel for the appellants and Mr.T.Murugamanickam, learned counsel for the

contesting respondents were heard. The materials available on record were also perused and this Court paid its anxious considerations to the same.

10. It is an admitted fact that one Madha Naicker was the owner of the suit properties and he had got three sons and one daughter. There is also no dispute regarding the names of the first two sons. They were Rangasamy Naicker and Seeranga Naicker. There is also no dispute that Pappammal was the daughter of Madha Naicker. It is the case of the appellants/plaintiffs that the name of the third son of Madha Naicker is Kannaiyan, whereas according to the contesting respondents/ defendants, the name of the third son of Madha Naicker is Arumuga Naicker and not Kannaiyan. The suit was filed by Kannaiyan on the premise that he was the third son of Madha Naicker. The contesting defendants (defendants 1 and 7) in their written statement had taken a plea that the name of the third son of Madha Naicker was not Kannaiyan and on the other hand, his name was Arumuga Naicker. Besides the said plea, they had also taken a stand that the deceased first plaintiff Kannaiyan was not the son of Madha Naicker and he had nothing to do with the family of Madha Naicker. However, in the later part of their written statement they had taken a plea which is destructive of the above said plea that the original plaintiff Kannaiyan was not the third son of Madha Naicker. In paragraph 6 of the written statement, they have admitted that the deceased plaintiff was the third son of Madha Naicker. The relevant portions of Paragraph 6 of the written statement is extracted hereunder:

> "Arumuga Naicker has alias name as Kannaiyan"
>
> "The said Arumuga Naicker having left the place after selling his share, now probably christening his name as Kannaiyan appeared to have filed the present suit. Under such circumstances, the present suit for partition will not lie"

The said statement diluted the earlier plea that the original plaintiff Kannaiyan was not the third son of Madha Naicker and he had nothing to do with the family of Madha Naicker. In addition, there is a categorical admission by DW1 that the deceased first plaintiff Kannaiyan was his junior paternal uncle and his wife, namely the first appellant Karuppathal (second plaintiff) is his aunt, namely the wife of the junior paternal uncle (சின்னம்மா). The relevant portion of DW1's evidence in vernacular reads thus:

" இரண்டாம் வாதி கருப்பாத்தாள் என் சின்னம்மா "

At the same time, DW1 has ventured to state that it was not his statement made in the written statement that the third son of Madha

Naicker had an alias name Kannaiyan besides the name Arumuga Naicker. He has also stated that if any statement to the said effect had been incorporated in his written statement, that would have been a mistake and an incorrect statement. A conjoint reading of the averments found in the written statement and the above said testimony of DW1 which is contrary to his pleadings, along with his admission that the second plaintiff / first appellant Karuppathal is his aunt (rpd;dk;kh), will go to show that the original plaintiff Kannaiyan was the third son of Madha Naicker. Besides the plea of the contesting defendants being contradictory, the same contains an admission which is also corroborated by an admission made in the testimony of DW1. There is clear evidence adduced on the side of the appellants herein/plaintiffs that the deceased first plaintiff Kannaiyan was the third son of Madha Naicker. The learned lower appellate Judge, in his judgment has referred to the respective pleadings of the parties and dealt with the issues in controversy holding that there is no controversy regarding the relationship of the parties to the suit with each other. At the same time, the learned lower appellate Judge accepted the contention of the contesting defendants/respondents that the name of the third son of Madha Naicker was Arumuga Naicker and the said Arumuga Naicker was none other than the deceased plaintiff Kannaiyan. The entire judgment of the lower appellate Judge proceeds on the basis of his finding that the third son of Madha Naicker was Arumugam and he got an alias name Kannaiyan. Nowhere in the judgment the learned lower appellate Judge expressed any view that the deceased plaintiff was not the third son of Madha Naicker. The first question has been formulated as a substantial question of law involved in the second appeal, remains one formulated on the basis of the representation made on a misconception and misinterpretation of the judgment of the lower appellate Court. The said question does not arise at all since the lower appellate Court has proceeded on the basis that the deceased first plaintiff was the third son of Madha Naicker. Thus, the question formulated as the first substantial question of law is answered accordingly.

11. The learned counsel for the appellant has argued that the well considered judgment of the trial Court holding that Ex.B4 sale deed was not proved to be one executed by the decease first plaintiff was erroneously set aside and reversed by the lower appellate Court and that the said finding of the lower appellate Court could be even termed perverse. Learned counsel for the appellant has contended further that it was the case of the appellants/plaintiffs that the deceased first plaintiff was known as Kannaiyan alone and he had no alias name as Arumuga Naicker, whereas it was the plea of the contesting defendants that the third son of Madha Naicker was Arumuga Naicker and he had an alias name Kannaiyan and the lower appellate Court instead of holding that the burden to prove the same was on the contesting defendants, erroneously cast

the burden on the appellants/plaintiffs and rendered a perverse finding to the effect that the deceased first plaintiff was also known as Arumuga Naicker. Learned counsel for the appellant also made the following submission:

"Since the deceased first plaintiff, who filed the suit denied and disputed having executed Ex.B4, the contesting defendants/contesting respondents ought to have examined the attestors, the scribe or anybody who saw the first plaintiff executing Ex.B4 or else they ought to have taken steps to get the thumb impression of the deceased first plaintiff during the pendency of the suit and before his death, got it compared by a finger print expert and adduced evidence through the finger print expert to show that it was the deceased first plaintiff who executed Ex.B4. Since the contesting defendants failed to do so, the lower appellate Court ought to have held that Ex.B4 was not proved to be one executed by the deceased plaintiff"

12. Per contra, learned counsel for the contesting respondents would submit that since Ex.B4 is an ancient document of 30 years old, it attracts the presumption contemplated under Section 90 of the Evidence Act and that burden of rebutting such presumption is on the appellants/plaintiffs and that the appellants/plaintiffs on whom such rebuttal burden lies ought to have led evidence by producing authenticated documents having the thumb impression of the deceased first plaintiff to prove that the thumb impressions found therein and the thumb impression found in Ex.B4 are not that of one and the same persons. It is the further contention of the learned counsel for the contesting respondents that they have proved by documentary evidence that the plaintiff was earlier known as Arumuga Naicker and only after the execution of Ex.B4, he could have changed his name as Kannaiyan; that when the appellants themselves have admitted that the deceased first plaintiff Kannaiyan had got an alias name Arumugam and on the other hand contend that Ex.B4 was not the one executed by him, they ought to have taken steps to refer the disputed documents with admitted documents to the finger print experts to show that Ex.B4 was not the one executed by the deceased first plaintiff and that since they failed to do so, the burden to prove cast on them remains undischarged.

13. This Court gave its anxious consideration to the above said rival submissions.

14. Of course it is true that except the deceased first defendant Natesan, who figured as DW1, no other witness was examined on the side of the respondents/defendants to speak about the execution of Ex.B4 sale deed. But the contesting defendants have produced Ex.B2 registered mortgage deed dated 25.10.1935 to show

that the name of the third son Madha Naicker at that point of time was Arumuga Naicker. Under Ex.B2, Rangasamy Naicker, the first son of Madha Naicker and Ramayammal as guardian and mother of Arumuga Naicker executed a mortgage deed registered as Document No.324/1941 in the office of the Sub-Registrar, Erode. The same, after discharge with an endorsement for discharge, had been obtained by the mortgagors. Similarly, Rangasamy Naicker for himself and as guardian of his younger brother Arumuga Naicker had executed Ex.B3 registered mortgage deed on 06.03.1941. PW1 in her evidence admitted that her husband was a minor when her father-in-law died and her marriage with her husband took place only after the death of Madha Naicker. She has clearly admitted that her mother-in-law and brothers-in-law jointly conducted her marriage. Therefore, the case of the contesting defendants that the third son of Madha Naicker was known as Arumuga Naicker and during his minority documents came to be executed by his mother and brother in their capacity as guardians under Ex.B2 and B3 stands proved. It cannot be said that such documents were brought into existence clandestinely with an intention of denying the right of the deceased first plaintiff. The said documents clearly show that the third son of Madha Naicker was known during his minority as Arumuga Naicker.

15. When the defendants have proved that the third son of Madha Naicker was known as Arumuga Naicker and registered documents had been brought into existence in the name of Arumuga Naicker, the contention of the appellants/plaintiffs that the name of the third son of Madha Naicker was only Kannaiyan and he did not have an alias name as Arumuga Naicker at any point of time, is bound to be rejected as untenable. Moreover, Mr.N.Manokaran, learned counsel for the appellants, in his arguments very much relied on the admission made by the contesting defendants in their written statement that the third son of Madha Naicker was Arumuga Naicker and he had an alias name as Kannaiyan in support of his contention that the contesting defendants ought to have taken steps to prove that Ex.B4 contains the signature or thumb impression of the deceased first plaintiff. By advancing such an argument, it has been admitted on behalf of the appellants that the deceased first plaintiff was proved to have an alias name Arumuga Naicker also besides name Kannaiyan. In fact, the appellants/plaintiffs have produced Ex.A1 death certificate and Ex.A2 Legal Heir Certificate to show that the name of the deceased first plaintiff was only Kannaiyan and he was not known as Arumuga Naicker. The record sheet of the 6th plaintiff/5th appellant has been produced as Ex.A7. The date of the said document has been wrongly noted in the list of documents annexed to the judgment of the trial Court as 03.05.1962. Actually the said document is dated 18.01.1985. The date of birth of 5th appellant/6th plaintiff Jayalakshmi alone has been noted as 03.05.1962. As per the said document, she left the school on 21.07.1975 itself. But the record sheet came to be obtained after 9

½ years from the date of her leaving the school. Besides there is no authenticity to show that the Kannaiyan, shown to be the father of Jayalakshmi, was the deceased first plaintiff. It is pertinent to note that Jayalakshmi as per the said document was admitted in the school on 06.06.1968. Therefore, at the best, we can take that the deceased first plaintiff was using Kannaiyan as his name at that point of time. The appellants/plaintiffs have not produced any other document to show that the deceased first plaintiff was known only as Kannaiyan prior to 1962, especially during the dates on which Exs.B2 to B4 came to be executed. Ex.B2 is a document dated 25.10.1935. Ex.B3 is a document dated 06.03.1941. In both the documents, the deceased first plaintiff was referred to as Arumuga Naicker. Ex.B4 is the registered sale deed dated 07.10.1950 executed by Arumuga Naicker, son of Madha Naicker in favour of his elder brother Rangasamy Naicker referred to as Ranga Naicker. All the three documents, namely Exs.B2 to B4 are registered documents. Ex.B4 sale deed contains the left thumb impression of Arumuga Naicker as the person who admitted the execution of the document before the registering authority.

16. No doubt as per Section 68 of the Evidence Act, a document required by law to be attested shall not be received in evidence unless one of the attestors atleast is called as a witness in proof of execution provided such attestor is alive, is capable of giving evidence and is subject to the process of Court. But the very same provision contains a proviso that in case such a document not being a Will has been registered in accordance with the provisions of the Indian Registration Act, then it shall not be necessary to call the attestors as witnesses to speak about the execution unless the execution of the said document by the person who is purported to have executed the same is specifically denied. Of course in this case the proviso does not get attracted because, even though Ex.B4 is a document registered in accordance with the Registration Act, it has been specifically denied by the plaintiffs that the same was not executed by the deceased first plaintiff. Therefore, there will not be any escape from the mandate of the main provision of Section 68 of the Evidence Act, unless the document becomes admissible under other provision. In this case there is no evidence as to whether any one of the attestors are alive or both of them have died. Even then, the presumption contemplated under Section 90 of the Evidence Act Squarely applies.

17. Admittedly Ex.B4 is an ancient document aged more than 30 years. It is dated 07.10.1950. It has also been proved that the document has come from proper custody, namely Natesan, the first defendant/first respondent (died during the pendency of the second appeal). When a document is proved or admitted to be of 30 years old and it has come from proper custody, then it has to be presumed that the document was executed by the person who is purported to

have executed the same. Though, the term "may" has been used in the section, unless there is a doubt regarding the age of the document or a doubt regarding the custody from which it has come, the Court shall draw a presumption as contemplated under the said section. Of course when a presumption is drawn under Section 90 of the Evidence Act, it does not mean that the same shall be the conclusive proof and such presumption is irrebuttable. Unless the law prescribes that on establishment of certain facts shall be the conclusive proof, the presumption contemplated shall be rebuttable. The contesting defendants/contesting respondents have made out a case for drawing a presumption in respect of Ex.B4 that the same was executed by the deceased first defendant. Such a presumption is only rebuttable. But the appellants/plaintiffs have not adduced reliable and sufficient evidence to rebut the presumption. As pointed out by the learned counsel for the contesting respondents, since the first plaintiff Kannaiyan was alive when the written statement was filed and he also chose to file a reply statement denying the execution of the sale deed dated 07.10.1950, he could have very well volunteered to give his left thumb impression and his specimen writings writing the name "Arumuga Naicker" to be compared with the left thumb impression and the signature "Arumuga Naicker" found in Ex.B4. The deceased first plaintiff did not take any steps even though he knew that the document relied on by the contesting defendants even on the date of filing of the suit was an ancient document of 30 years old. After the death of the first plaintiff, the other plaintiffs, namely the appellants also failed to produce any document containing the left thumb impression of the deceased first plaintiff for being compared with the thumb impression found in Ex.B4. The appellants/plaintiffs have also failed to produce any other document containing the left thumb impression of the deceased first plaintiff. They have also not produced any document containing the signature of the first plaintiff which was contemporary to Ex.B4. Moreover, they have not produced any document to show how his signature as Arumuga Naicker differed from the signature found in Ex.B4. Therefore, we have to come to a necessary conclusion that the appellants/plaintiffs have not adduced reliable and sufficient evidence to rebut the presumption indicated above.

18. However, the learned lower appellate Judge seems to have undertaken an unnecessary exercise of making a comparison of the letters found in the signature of Kannaiyan in Ex.A8 and the letters found in the signature of Arumuga Naicker in Ex.B4 to arrive at a conclusion that both the signatures were made by one and the same person. The said approach made by the learned lower appellate Judge is totally erroneous. First of all, he should not have assumed the role of a handwriting expert without having requisite qualification. Suppose both the signatures are made in one and the same name, the total outlay of signatures, structural formation and other aspects could have been considered for arriving at a decision. That is not

the case here. The lower appellate Court should not have ventured to make a comparison of the signatures, that too when the signatures are in two different names, to come to a conclusion that both the signatures were made by one and the same person. Secondly, contemporary writings and contemporary signatures alone can be compared. There is a time gap of 36 years from the date of Ex.B4 and Ex.A8. Moreover, in Ex.A8 Kannaiyan's signature is found not as the father of the student but as a guardian of the student. Ex.A7 relates to the 5th respondent/6th plaintiff Jayalakshmi, who is proved to be the daughter of the deceased first plaintiff. Curiously it was obtained in the year 1985. The same does not contain the signature of the first plaintiff. It does not contain the signature of any one of the parent. But the transfer certificate of one Ramesh, son of Kathirvel has been produced to show that the deceased first plaintiff signed as Kannaiyan as guardian of that student. The said signature found in Ex.A8 made in the year 1986, that is 36 years after the date of Ex.B4. The same ought not to have been used for comparison with the signature found in Ex.B4. The discussion made by the learned lower appellate Judge in this regard would show nothing but over enthusiasm to load with additional reasons in support of his verdict without considering the above said aspects. Therefore, that part of the judgment of the lower appellate Court holding that the signature of Kannaiyan found in Ex.A8 and the signature of Arumuga Naicker found in Ex.B4 had been made by one and the same person should be discountenanced and this Court records its disapproval of the above said reason assigned by the lower appellate Judge for arriving at the conclusion that Ex.B4 was the document executed by the deceased first plaintiff.

19. Simply because one of the reasons assigned by the court below for arriving at the conclusion does not get the approval of this Court, it cannot be concluded that the finding regarding Ex.B4 is erroneous. As pointed out supra, since Ex.B4 is an ancient document and it attracts the presumption contemplated under Section 90 of the Evidence Act regarding its due execution as it has come from proper custody. The burden of rebutting the presumption lies on the appellants/plaintiffs. They have failed to rebut the presumption by producing reliable and sufficient evidence. Therefore, but for the erroneous attempt made by the lower appellate Court to make a comparison of the signature found in Ex.B4 and Ex.A8, the finding of the lower appellate Court that Ex.B4 sale deed was genuine and it was proved to be executed by the deceased first plaintiff in his other name, namely Arumuga Naicker deserves countenance Hence, the question framed as the second substantial question of law is to be answered in favour of the respondents and against the appellants holding that the finding of the lower appellate Court that the sale deed produced as Ex.B4 was genuine and it was binding on the plaintiffs cannot be termed either infirm or

defective, much less perverse, warranting interference by this Court in this second appeal.

20. For all the reasons stated above, the second appeal fails. However, considering the nature of the case and the relationship of the parties and also the fact that the contesting respondents/defendants had even denied the relationship of the deceased first plaintiff with Madha Naicker, this Court deems it appropriate to direct the parties to bear their respective costs to direct the parties to bear their respective costs.

In the result, the second appeal is dismissed. No costs.

Sd/
Asst.Registrar(Ad-I)

/true copy/

Sub Asst.Registrar

gpa

To

1. I Additional Sub-Judge
   Erode

2. II Addl. District Munsif
   Erode.

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

+1cc to Mr.T.Murugamanickam, Advocate Sr 78386

KJI(CO)
km/19.2.