



WEB COPY



S.A.No.1022 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 23.07.2024

JUDGMENT PRONOUNCED ON: 02.09.2024

CORUM

THE HON'BLE MRS JUSTICE N.MALA

S.A.No.1022 of 2021

and

CMP.No.19410 of 2021

- 1.Bommi
- 2.Amudha
- 3.Thenmozhi
- 4.Devanathan
- 5.Ranjitham
- 6.Sumathi

...Appellants

VS

- 1.Dhinakaran
- 2.V.Gukulan

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to set aside the Judgment and Decree dated 20.02.2020 passed in A.S.No.31 of 2016 on the file of the II Additional District Court, Vellore @ Ranipet confirming the Judgment and Decree dated 15.06.2016 passed in O.S.No.517 of 2014 on the file of Subordinate Court, Arakonam.

For Appellants : Mr.K.Venkatasubban

For Respondents : Mr.K.V.Ananthakrishnan



S.A.No.1022 of 2021

JUDGMENT

WEB COPY

This Second Appeal is filed to set aside the Judgment and Decree dated 20.02.2020 passed in A.S.No.31 of 2016 on the file of the II Additional District Court, Vellore @ Ranipet confirming the Judgment and Decree dated 15.06.2016 passed in O.S.No.517 of 2014 on the file of Subordinate Court, Arakonam.

2.The unsuccessful plaintiffs are the appellants in the Second Appeal.

3.The Second Appeal is filed against the confirming judgment and decree of the lower appellate court in dismissing the suit for partition of the plaintiff.

4.The parties will be referred to as per their rank in the trial court.

5.The summary of facts leading to the Second Appeal are as follows:

The plaintiffs and the defendants are the children of one Vedachalam. The said Vedachalam had two wives and the plaintiffs are the first wife's children. The defendants are the children of second wife of Vedachalam. According to the plaintiffs,

<https://www.mhc.tn.gov.in/judis>



S.A.No.1022 of 2021

the suit property was the ancestral property of their father Vedachalam. After the death of Vedachalam on 02.11.2007, the plaintiffs and defendants jointly enjoyed the suit property. The plaintiff's state that both the plaintiffs and defendants had equal share in the suit property, but as the defendants were acting against the interest of plaintiffs and also because the defendants were not ready for amicable partition, the plaintiffs were constrained to file the above suit for their 6/8 share in the suit properties.

6.The defendants in the written statement admitted that they were step brothers of plaintiffs, but the defendants denied that the suit property was ancestral property. According to the defendants, the suit property originally belonged to their grandmother, Dheivanaiammal and she executed a settlement deed in favour of their father, Vedachalam, on 07.04.1973. The defendants hence stated that the suit property was the absolute property of Vedachalam. According to the defendants, out of love and affection for the defendants, Vedachalam, their father, executed a registered Will on 15.02.2007 bequeathing the suit properties to them. Under the Will, the 1st defendant was allotted 'A' schedule property and the 2nd defendant was allotted 'B' schedule



S.A.No.1022 of 2021

property. After the demise of Vedachalam on 02.11.2007, the defendants became the absolute owners of their respective shares and they were in possession and enjoyment of the property by affecting mutation of revenue records in their names. The defendants therefore stated the plaintiffs were not entitled to any share in the suit property.

7.Before the trial court the 4th plaintiff was examined as P.W1 and marked Ex.A1 to Ex.A3. The 1st defendant examined himself as D.W1 and examined one of the attestors of the Will as D.W2. The defendants marked Ex.B1 to Ex.B12 on their side.

8.The trial court on an appreciation of the entire evidence on record held that the suit property was the absolute property of Vedachalam and that the Will executed by Vedachalam in favour of the defendant was valid and it was proved in accordance with law. The trial court therefore dismissed the suit. Aggrieved by the judgment and decree of the trial court, the plaintiffs filed an appeal in A.S.No.31 of 2016 before II

Additional District Judge, Vellore at Ranipet. The lower appellate court concurred



S.A.No.1022 of 2021

with the findings of the trial court and held that the suit property was the absolute property of Vedachalam, that the propounder of the Will had proved the same and hence held the Will was valid. The lower appellate court further found that there were no suspicious circumstances surrounding the execution of the Will. The lower appellate court therefore dismissed the appeal. Aggrieved by the confirming judgment of the lower appellate court, the plaintiffs have filed the Second Appeal.

9. At the time of admission of the Second Appeal, this court framed the following substantial questions of law:

“i) Whether the Courts below are right in finding that Exhibit B12 Will was proved, when actually the signatures of the testator and attester were not shown to the attester at the time of his examination and proved in accordance with law?

ii) Whether non-suiting the plaintiffs when the Will was not proved in accordance with law can be sustained?”



S.A.No.1022 of 2021

10. The learned counsel for the appellants in support of the above substantial questions of law submitted that the Will was not proved in a manner known to law and therefore the findings of the courts below to the contrary were unsustainable.

11. The learned counsel for the appellants relied on the following judgments

1. Duraikannu Padayachi Vs. Meera reported in 2003 SCC Online Mad 1121;

2. Suguna Bai Vs. Muniammal @ Dhanalakshmi and Others reported in 1996 MLJ 596;

3. Ram Piari Vs. Bhagwant and Others reported in 1990 (3) SCC 364; and

4. Govindan Chettiar (Died) Vs. Akilandam alias Seethalakshmi reported in 1997 3 LW 673.

The learned counsel for the appellants relied on the above judgments in support of his contention that the attestation and execution of the Will was not proved by the propounders of the Will.



S.A.No.1022 of 2021

12.The learned counsel further submitted that there were suspicious circumstances shrouding the execution of the Will and therefore the courts below erred in finding that the Will was valid. The learned counsel therefore submitted that the concurrent judgments of the Court's below deserved to be set aside.

13.The learned counsel for the respondents submitted that inspite of the defendant's legal notice dated 23.01.2009, the plaintiffs did not even whisper about the Will in the plaint, leave alone denying its execution. The learned counsel further submitted that as there were no pleadings denying the execution of the Will and the suspicious circumstances shrouding the execution of the Will, the Will is deemed to be proved and the plaintiff's cannot question the validity of the Will. The learned counsel further submitted that a presumption of validity of will under Section 114(e) of the Indian Evidence Act arises, as admittedly the Will is a registered Will. The learned counsel finally submitted that this court under Section 100 CPC should be reluctant in interfering with the concurrent findings of facts of the courts below.



S.A.No.1022 of 2021

14.I have heard both the learned counsels and I have perused the materials placed on record.

15.As both the substantial questions of law are interrelated, the same are taken-up together.

The undisputed facts of the case are that plaintiffs and defendants are the children of one Vedachalam who had two wives. The 1st wife of Vedachalam, Ananthammal predeceased Vedachalam, so also 2nd wife Manimegalai predeceased him. The plaintiffs are the children of the 1st wife, Ananthammal. The defendants are the children of 2nd wife Manimegalai. Vedachalam died on 02.11.2007. The plaintiffs claimed that the suit properties were the ancestral property of Vedachalam and after his death the same were enjoyed jointly by the plaintiffs and the defendants. As the defendants were acting against the interest of the plaintiffs, the plaintiffs approached the defendants for an amicable partition, but because the defendants declined, the plaintiffs filed the suit for their 6/8 share in the suit properties.



S.A.No.1022 of 2021

16. The defendants on the other hand contended that the suit properties were not ancestral property but were the absolute property of Vedachalam who acquired the property from his mother, Deivanaiammal under the settlement dated 07.04.1973 marked as Ex.B2. The defendants further case was that Vedachalam out of love and affection for the defendants executed a registered Will in their favour on 15.02.2007 which is marked as Ex.B12. Under the Will 'A' schedule properties were allotted to the 1st defendant and the 'B' schedule properties were allotted to the 2nd defendant. Vedachalam died on 02.11.2007 and after his demise, the defendants were in peaceful possession and enjoyment of their respective shares by transferring revenue records in their names. The defendants therefore submitted that the plaintiffs were not entitled to the relief of partition.

17. On the nature of the property it is seen that the plaintiffs have not let in any evidence to establish their plea that the suit property was ancestral property of Vedachalam, but the defendants on the other hand have produced Ex.B2 dated 07.04.1973, which clearly proves that the suit property was the absolute property of Vedachalam. In the absence of any evidence on the side of the plaintiffs on the



S.A.No.1022 of 2021

ancestral nature of property, the irresistible conclusion is that the suit properties are only the absolute properties of Vedachalam, he having acquired the same under Ex.B2, the settlement deed dated 07.04.1973 executed by his mother in his favour.

18.The learned counsel for the respondent submitted that as the execution of the Will was not denied and even the suspicious circumstances were not pleaded, this court should not interfere with the concurrent findings of facts of the Courts below on the validity of the Will. I am afraid the said contention cannot be countenanced. It is settled that the burden to prove the Will is on the propounder of the Will. The provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act are mandatory and therefore the propounder of the Will is bound to satisfy the mandatory requirements of Section 63 and Section 68. In my view therefore the absence of plea is of no consequence.

19.The Will is a solemn document. The Will speaks from the death of the testator and therefore the court has to sit in the arm chair of the testator to find out if the Will was the last testament of the maker. The propounder has to satisfy the Courts



S.A.No.1022 of 2021

conscience on the validity of the Will by dispelling all suspicious circumstances shrouding it.

20.The Hon'ble Supreme Court as early as in 1959 laid down the guiding principles to be followed while examining the validity of the will. The guideline laid down in the Judgment of the Hon'ble Supreme Court in ***H.Venkatachala Iyengar versus B.N.Thimmajamma and Others*** reported in ***AIR 1959 SC 443*** are summarized as follows:

“...Generally a propounder of the Will has to prove the due and valid execution of the Will.

...in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents.

The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will.

Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and



disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder.

There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances.

In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator.

The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator.

.... if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

... in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had



been validly executed by the testator who is
no longer alive.

21.The law as laid down by the Hon'ble Supreme Court in the aforesaid judgment is followed till date and there is no dearth of case laws on the subject. I would like to refer to just one more judgement in this regard. The Hon'ble Supreme Court in the case of ***Savithri and others v. Karthyayani Amma and others***, reported in 2007 (11) SCC 621, succinctly enumerated the legal requirements of a Will. The Hon'ble Supreme Court stated as follows:

“17. The legal requirements in terms of the said provisions are now well-settled. A Will like any other documents is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the Propounder. The testamentary capacity of the Propounder must also be established. Execution of the Will by the Testator has to be proved. At least one Attesting Witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the Testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and



effect of the disposition. It is also required to be established that he has signed the Will in the presence of two Witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the Propounder to explain them to the satisfaction of the Court before it can be accepted as genuine.”

22.Keeping the above guiding principles in mind, it is to be seen if the defendants who are the propounders of the Will have discharged the burden cast on them of proving the due execution and attestation of the Will under Section 63 Indian Succession Act and Section 68 Indian Evidence Act. To prove the execution and attestation of the Will, the defendants examined one of the attesting witnesses as D.W2. DW2 deposed that Vedachalam was in sound and disposing state of mind while executing the Will, that Vedachalam executed the Will voluntarily, that on request of Vedachalam he signed the Will and that Vedachalam saw him affixing his signature to the Will. D.W1 also spoke about the attestation by the other attesting witness one, Arasu. DW2 stated that Vedachalam signed in the presence of both of them and they also saw Vedachalam affixing his signature to the Will. It is to be seen



S.A.No.1022 of 2021

if this copy book style evidence is sufficient to conclude that the Will was proved in accordance with law.

23. Attestation of will under Section 63 of the Indian Succession Act is not an empty formality. The attesting witness should have signed in the Will with an intent and for the purpose of testifying the signature of the testator as found in the Will and he should also speak that he attested the document with anime attestandi.

24. In the Judgment reported in 1996 (2) MLJ 596, this court held as follows:

“18. Even though D.W.5 speaks that he is an attester, when he was examined, I do not find that the Will is shown to him and the signatures of the various attestors or the testator are identified by him. It is seen that Ex.B-8 was marked through D.W.3, the third defendant, wherein the court noted “subject to proof.” I do not find that any step has been taken by the third defendant (appellant) to have the same proved in accordance with law, i.e., when attestation to a Will is sought to be proved, naturally, the witness must say that the document contains either the thumb-impression or signature of the attestator, and that he has also signed in token of the attestation. He



S.A.No.1022 vj 4021

must identify the signature as seen in the document.....”

WEB COPY

25.The said judgment was subsequently followed in 1997-3-L.W.673 and also in 1998-2-L.W.744. It is therefore clear that identification of the signature of the testator should be with reference to the document itself. Unless and until the document is shown to the attesting witness, it cannot be said that execution and attestation was satisfactorily proved.

26.The statement of DW2, the attesting witness is a general statement about the procedure of execution and attestation and therefore the same cannot be relied on as proof of execution and attestation. The Will ought to have been shown to the witness and the witness would then have to identify his signature as well as the testator's signatures in the Will. The Will was marked through D.W1, propounder of the Will, but was not shown to DW2 at the time of evidence. From a reading of the evidence of D.W2, it is seen that the D.W2, has spoken about the execution and attestation of the Will even without looking into document. Unless and until the document is exhibited to the witness and he identifies the testator's signature, the other attesting



S.A.No.1022 of 2021

witnesses signature and his signature as seen in the document, the execution and attestation cannot be said to have been properly proved. The witness should see the document, identify the signature therein as the testator's and speak that the testator signed in his presence in sound and disposing state of mind. The attesting witness should further speak that he affixed his signature in the presence of the testator and with an animus to be a witness to the execution. I am therefore of the view that the general statement of DW2 does not satisfy the mandatory requirements of Section 63 Indian Succession Act and Section 68 of Indian Evidence Act, and therefore, I hold that the will is not validly proved. One more relevant circumstance is that the other attesting witness one Arasu though alive was not examined and further no reasons were given for his non-examination. Be that as it may, it is to be now examined whether the requirement of the testator's sound and disposing mind is established.

27.It is to be noted that the attesor should not only speak about execution of the Will but also that the testator was of sound and disposing state of mind and had executed the Will without any coercion or influence of the propounder. In the present case, the evidence of the attesting witness D.W2, is as follows:



“பதிவுசெய்த அன்றைய தினம் பிரதிவாதிகளும் வந்திருந்தார்கள் என்றால் தெரியாது. முதல் பிரதிவாதி சொல்லி தான் கையெழுத்து போட்டார் என்றால் தெரியாது. முதல் பிரதிவாதியின் தூண்டதல் மற்றும் நிர்பந்தத்தின் பேரில் தான் வேதாசலம் உயில் எழுதினார் என்ற விவரம் எனக்கு தெரியுமா என்றால் தினகரன் நிர்பந்தித்ததாக வேதாசலம் என்னிடம் சொன்னார்.....

நான் இதற்கு முன்னர் கு.வி.சாட்சியத்தில் வேதாசலம் மகன் நிர்பந்தித்தால் உயில் எழுதுவதாக சொன்னார் என நானாக தான் சொன்னேன். ஏன் அவ்வாறு சொன்னேன் என்றால் அவர் எழுத வேண்டும் என சொன்னதாக தான் சொன்னேன் வேறு எதுவும் சொல்லவில்லை. நிர்பந்தித்து எழுதியதாக சொன்னதாக சொல்லியிருந்தேன் என்றால் சொல்லியது தவறு என்றால் நிர்பந்தமாக எழுத வேண்டும் என சொன்னதாக தான் சொன்னார். அவர் சொன்னதை தான் நான் சொன்னேன்.”

28.From the above evidence of D.W2, it is clear that the Will was not executed voluntarily by the testator. DW2 clearly stated that the testator told him that Dinakaran the 1st defendant forced him to execute the will. D.W2 tried to retract from his statement but on further cross-examination reiterated the same. It is



S.A.No.1022 of 2021

therefore clear that the Will was also not voluntarily executed and hence is held to be invalid on this vital ground also.

29. Apart from the above, the Will in my view, from its recitals appears to be rather unnatural, improbable and unfair. The relevant portion of the Will is as follows.

“எனக்கு வயது சுமார் 75 ஆகின்றபடியாலும் எனக்கு அடிக்கடி உடல் நிலை சரியில்லாமல் போவதாலும் இன்யும் நான் நீண்ட நாட்கள் உயிர் வாழ்வேன் என்ற எண்ணம் எனக்கில்லாத காரணத்தினாலும் எனக்கு தான் செட்டிஸ்மெண்ட் பத்திரம் மூலம் கிடைக்கப் பெற்றும் என் பெயரில் மனைவரி பட்டா எண் (1112)ன்படி எனக்கு சொந்தமும் என் அனுபவத்திலும் சுவாதீனத்திலும் இருந்து வரும் சொத்துக்களைப் பொருத்து என் காலாந்திரத்துக்கு பிறகு எவ்விதமான சிக்கலும் வரக்கூடாது என்ற எண்ணம் கொண்டு இன்று தேதியில் இந்த மதிப்புக் காணாத உயில் சாசனம் மூலம் என் விருப்பப்படி எழுதி வைத்துள்ளேன். அதாவது இதில் சொத்து விவரத்தில் கண்டச் சொத்தை இரண்டு பாகமாக பிரித்துள்ளேன். எனக்கு முன்று குமாரர்கள்) அவர்களின் தினகரன் என்பவன் A ஷெட்யூலில் கண்ட சொத்தையும் கோகுலன் என்பவர் B ஷெட்யூலில் கண்டச்



S.A.No.1022 of 2021

சொத்தையும் (அடைய வேண்டும்) என் காலாந்திரத்துக்கு
பிறகு இச்சொத்தை மேற்கண்ட இரண்டு வாரிசுகள் மட்டும்
சொத்துக்களை கைப்பற்றிக் கொண்டும் பட்டா பெயர்
மாற்றம் சர்வீஸ் மற்றும் குழாய் இணைப்பு பெயர் மாற்றம்
செய்துக் கொண்டும் கதவிலக்க எண். பெயர் மாற்றம்
செய்துக் கொண்டும் புத்திரபெளத்திர பாரம்பர்யமாய் தானாதி
வினிமய விக்கிரையங்களுக்கு அருகமாய் அடைந்து ஆண்டு
அனுபவித்துக் கொள்ள வேண்டியது.”

30.A reading of the will shows that the testator had not even mentioned about plaintiff's who are his children through the first wife. It is no doubt true that the properties being the absolute properties of the testator, he was at liberty to bequeath to anyone he pleased, but when the plaintiff's who were equally related to the testator as the defendant's, were deprived of the testator's bounty, prudence requires that some reason for such deprivation be assigned. The facts namely non-mention of the plaintiff's in the will (not to talk about deprivation of bounty) and mentioning that he had 3 sons, but bequeathing only to 2 that too without assigning any reasons raises a doubt on the fairness and the naturalness of the Will.



S.A.No.1022 of 2021

WEB COPY

31. The above part, there are suspicious circumstances surrounding the execution of the Will and therefore the defendant's are bound to dispel the same. The following suspicious circumstances shroud the Will in the present case.

1) Disinheritance of equally related legal heirs without assigning reasons.

2) Attestation by total strangers, eventhough, near relations like testators brother and other relatives resided in the opposite and nearby houses.

3) Discrepancy in the defendant's evidence as regards the sound and disposing mind of the testator.

32.1) Disinheritance of equally related legal heirs without assigning reasons.

It is true that a will cannot be invalidated for disinheritance of a legal heir. But this is not a hard and fast rule but is circumscribed by the facts of the case. Admittedly the plaintiff's are first wife's children and the defendant's are 2nd wife's children. The plaintiff's and the defendants were equally related to the testator. The Will did not even whisper about the plaintiff's leave alone assigning the reasons for disinheriting them. The testator refers to having 3 sons in the will but no reasons are



S.A.No.1022 of 2021

assigned for disinheriting of the 3rd son (i.e.) the 4th plaintiff. When the testator himself referred to having 3 sons why did he not assign any reason for depriving the 3rd son of his bounty. The absence of reasons shrouds the disposition with suspicion as it does not reflect the true state of mind of the testator at the time of disposition leaving the Court in doubt as to whether the disposition was really voluntary?

33.The Hon'ble Supreme Court in the case of *Rampari Versus Bhagwant and Others* reported in 1990(3)SCC 364 held that, even though the disinheritance of a legal heir by itself cannot be a ground to invalidate the Will. However the absence of reasons for disinheriting the legal heirs shrouds the disposition with suspicious circumstances as it does not give any inkling to the mind of the testator to enable the court to judge if disposition was a voluntary act. The aforesaid Supreme Court judgment squarely applies to the facts of the present case.

34.2) Attestation by total strangers eventhough admittedly near relations like testators brother and other relatives resided in the opposite and nearby houses.

"என் தந்தை இறக்கும் வரையில் நெல்லூர்ப்பேட்டையில்



S.A.No.1022 of 2021

இருந்தார் என்றால் ஆமாம். என் அப்பாவின் சகோதரர்கள் எதிர் வீட்டிலும் பின் வீட்டிலும் வசித்து வந்தார்கள். அது மட்டும் அல்லாமல் ஊரில் உள்ளவர்கள் எல்லாரும் உறவினர்கள் என்றால் ஆமாம். நல்லது கெட்டது என்றால் ஊராரிடம் கலந்து கொள்வார். எதுவாக இருந்தாலும் ஊரில் உள்ளவர்களிடம் சொல்லி விட்டு தான் மற்றவர்களிடம் சொல்லுவார் என்றால் ஆமாம்."

35.From the evidence of DW1, it is clear that the testator's close relatives like brothers etc. were living in the opposite houses and close by. While so, what was the reason for calling total strangers, who had gone to the registrar's office on some personal registration work, to attest the will. The DW1 admits that his father was in the habit of consulting his relatives in all matters. If so, what was the reason for not consulting them about the Will. There is absolutely no explanation for these questions.

36.3) Discrepancy in the defendant's evidence as regards the sound and disposing mind of the testator.

The 1st defendant as DW1 deposed that his father was in sound and disposing



S.A.No.1022 of 2021

state of mind at the time of the disposition. But in the recitals in the Will it is stated that the testator was suffering from ill health and had lost hope of long life. The statement of DW1 is contrary to the recitals in the will.

37.Last but not the least, PW1 clearly deposed that he was still residing in the suit property. The evidence of PW1 is as follows:

"நான் தான் தாவா சொத்து வீட்டில் இன்று வரை இருந்து வருகிறேன். மேற்கண்ட உயில் செல்லத்தக்கது மட்டுமல்லாமல் நடைமுறைக்கும் உகந்ததல்ல".

38.The 1st defendant also admitted that the 4th plaintiff was residing in property since his father's death. It is not explained on what basis the plaintiff continued to reside in the suit property. The will was published to the plaintiff's through the legal notice only on 23.01.2009 almost 2 years after Vedachalam's death. There is absolutely no explanation from the defendant's as to why they waited for almost 2 years for publishing the Will, moreso, when the 4th plaintiff was residing there. Even the original will was not filled along with the written statement.



S.A.No.1022 of 2021

WEB COPY

39.The defendant's have miserably failed to dispel all the above suspicions circumstances and therefore for the said reason also I find that the Will is invalid.

40.The learned counsel for the respondent further pleaded that the Will being a registered one, the presumption under Section 114(e) of the Indian Evidence Act has to be invoked. It is true that the registration of the Will is a piece of evidence which would be taken into consideration for the purpose of determining the genuineness of the Will, but for that there should be evidence that the registration formalities were followed in accordance with law. There is absolutely no evidence to show that the formalities of registration were made in accordance with law and therefore the said contention is also rejected. The learned counsel lastly submitted that this court under Section 100 of CPC should not interfere with the concurrent finding of facts of the courts below. There is no dispute about the propositions but of the validity of the Will is a mixed question of law and fact and therefore necessarily this court has to probe the facts to answer the substantial questions of law.



S.A.No.1022 of 2021

WEB COPY

42.The learned counsel for the respondent relied on several judgments reported in (1996) 9 SCC 324, (2004) 2 SCC 321, (2012) 4 SCC 387, O.S.A.No. 121 of 2017, 2017 (4) CTC 810. In my view, the said judgments are distinguishable on the facts of the case and are therefore rejected.

43.In the light of the above discussions, the substantial questions of law are answered in favour of the appellant. The Second Appeal is accordingly allowed and the Judgment and Decree of the courts below are set aside. No costs. Consequently connected CMP is closed.

02.09.2024

dsn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

To

1.The II Additional District Court,
Vellore, Ranipet.

2.The Subordinate Court,

<https://www.mhc.tn.gov.in/judis>



Arakonam.

WEB COPY



S.A.No.1022 of 2021

N.MALA,J.

dsn

PRE-DELIVERY JUDGMENT IN
S.A.No.1022 of 2021

JUDGMENT PRONOUNCED ON
02.09.2024