



C.M.A.No.4295 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**C.M.A.No.4295 of 2019 and**  
**CMP No.24281 of 2019**

|                                                  |                                                    |
|--------------------------------------------------|----------------------------------------------------|
| <b>Judgment reserved on</b><br><b>04.01.2024</b> | <b>Judgment pronounced on</b><br><b>17.04.2024</b> |
|--------------------------------------------------|----------------------------------------------------|

1.Chinnusamy  
2.Sivaprakasam  
3.Loganathan ... Appellants

Vs.

1.R.Poovaragavan  
K.Kuppusamy(Died)  
2.Balasubramani  
3.Kailasam  
4.Kannammal  
5.Senthil Kumar  
6.Indumathi  
7.Minor Pradeev Raj  
Rep. by mother Indhumathi  
8.Santhi@Santhavathi  
9.Ammakannu  
10.Sagunthala ... Respondents  
(Respondents 2 to 6, 8 remained exparte  
in lower court and hence they are given up)

**Prayer in CMA No.4295 of 2019**: Civil Miscellaneous Appeal filed under Section 299 of Indian Succession Act, 1925 against the fair and final order in Probate O.P.No.63 of 2005 on the file of the Additional District (Fast Track Court), Mettur dated 26.07.2019.



C.M.A.No.4295 of 2017

For Appellants : Mr.A.K.Kumarasamy  
Senior Counsel for  
Ms.J.Prithivi  
For R.1 : Mr.S.Rajendrakumar  
R2 to R6 : Exparte  
R7, R9 & R10 : No appearance  
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### **JUDGMENT**

For the sake of convenience, parties are referred to as per their ranking in the Probate OP.

2. Challenging the grant of probate to the alleged Will of Kandasamy Gounder S/o Chinnappa Gounder, the respondents 2 to 4 (Appellants herein) have preferred the present appeal.

3(a) The first respondent herein is the petitioner who filed Probate OP No.63 of 2005 before the Additional District Judge, (Fast Track Court), Mettur in connection with Will executed by Kandasamy Gounder S/o Chinnappa Gounder wherein the other respondents and appellants herein were made as parties.

3(b) The first respondent/Poovaragavan filed the above OP for probate of the Will under Section 276 of the Indian Succession Act for grant



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of probate in favour of the first respondent, in respect of the Will dated 13.08.2003 said to have been executed by Kandasamy Gounder s/o Chinnappa Gounder.

4. The brief averments that are necessary for determination of the appeal are as under -

**4(i)(a)** As per the petition, the schedule of property absolutely belongs to one Kandasamy Gounder s/o Chinappa gounder who is the maternal grandfather of the first respondent and the said Kandasamy Gounder acquired the property by virtue of a Registered Partition Deed bearing No.5790 of 1973 that are described as 'A' schedule property in the said partition deed.

**4(i)(b)** It is alleged that on 13.08.2003, the said Kandasamy Gounder had executed a Will in favour of the first respondent in respect of the property which was attested by a notary public and executed in the presence of two witnesses namely Kandasamy and Ranganathan. Supporting affidavits were also filed. At the time of filing of the petition, the said Kandasamy Gounder died on 07.10.2003 at Karuppa Reddiyur



Kattu Valavu and the death certificate was also filed.

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**4(i)(c)** Pending Probate Proceedings, some of the respondents have also died and hence their legalheirs were brought on record and some of the persons who agitated in the property were also added as parties. The main contestants are the respondents 1 & 2 before the Trial Court.

**4(ii)(a)** It is the specific case of appellants/respondents that 'A' schedule property in the partition deed registered as Regn.No.5790 of 1973 and allotted to Kandasamy Gounder is admitted but it is denied that the Will was executed by Kandasamy Gounder in favour of the first respondent herein. Kandasamy Gounder is the father of the first respondent and grand father of the second respondent.

**4(ii)(b)** Kandasamy Gounder had four brothers namely Rathinam, Subramaniam, Kuppusamy, Rasapan and two daughters namely Periya Pappa and Chinna Papa. The first respondent's father divided his property into six equal shares and allotted four shares to his sons and retained one such share for himself and the remaining one share was allotted to his wife Periyammal. Kandasamy Gounder divided his share into four equal shares



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and allotted to his sons in the year 2002 itself and therefore, pursuant to the oral allotment, they are in possession and enjoyment of the property and hence the alleged Will is ranked forgery. Kandasamy Gounder died on 07.10.2003 is admitted.

**4(iii)** Further, it is the specific case of the first respondent that Kandasamy Gounder was bedridden from 2002 to till his death. He was unable to move anywhere and he was unconscious till his death and hence the alleged Will is forged and fraudulent one. The father of the first respondent herein was a Village Administrative Officer (VAO). Hence, in connivance with some unscrupulous persons, he has created the Will. The alleged Will was executed in a suspicious circumstances and the same was not registered. It was created by the first respondent herein for getting unlawful gain with the help of his close relative. Kandasamy Gounder usually puts his signature and his alleged thumb impression has created a suspicious circumstance. The other legal heirs of the Kandasamy Gounder were not impleaded as parties in the petition. The other respondents also have taken a similar stand.



5. During the trial, the first respondent here was examined himself as PW1, one of the attestor of the alleged Will – Ex.P11, was examined as PW2. Ex.P1 is the death certificate of Kandasamy Gounder. Ex.P11 is the original Will of the subject matter. Other documents marked as Exs.P2 to P10 are the communications and the supporting affidavits. On behalf of the appellants/respondents, RW1 to RW3 were examined and Exs.R1 to R15 were marked.

6. After hearing both oral and documentary evidence, the learned Additional District Judge (FTC), Mettur has held that the petition is filed in time and also granted the relief claimed in the petition. Hence, the respondents 1 to 4 (appellants) have filed the present appeal.

7. After hearing both sides, the following points arise for determination.

- (i) Whether the Probate Petition is barred by limitation ?
- (ii) Whether Ex.P11 – Will is true and valid or is a forged and fabricated document, as pleaded by the first respondent ?
- (iii) Whether the petitioner before the Trial Court has proved the Will in the manner known to law ?



**Legal position :-**

**8(i)(a)** A Will is a commitment, desire, inclination and intention to bequeath and dispose of properties in the future, in favour of the beneficiary. When the will is made, the law requires that there should be sound disposing mind, both at the time when the instructions for preparation of the will is given and when the will is executed, but it would appear that if the will is shown to have been drawn in accordance with the instructions given while the testator was of sound disposing mind, it is sufficient that, when he executes it, he appreciates that he is being asked to execute a will, a document drawn in pursuance of those instructions shall remain valid.

**8(i)(b)** It is presumed that the testator was sane at the time when he made his will but if the question of his insanity or mental incapacity is contested, the initial onus is on the propounder to prove that the testator was of sound disposing mind and have the required mental capacity at the time when he made his will. While there must be a vigilant examination of all the evidence, if the Court feels that there is no doubt substantial enough to defeat a grant of probate, then the grant must be made.



**8(ii)** The law requires that at the time of bequeath the testator has a disposing mind so that he is able to make a disposition of his property with understanding and reason. In the decision of this Court in ***H.venkatachala Iyengar v. B.N.Thimmajamma***, the following circumstances were held to be relevant for determination of the existence of the suspicious circumstances:

- 34.....(i) *when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;*  
(ii) *when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances; and*  
(iii) *where propounder himself takes prominent part in the execution of will which confers on him substantial benefit".*

**8(iii)** It is trite law that the burden of proof is on the propounder to prove that the will has been voluntarily executed, that the testator has signed the will and put his signature or his own free Will having sound disposition of mind, understanding the nature and effect thereof and that the Will is a genuine document. The onus of the propounder may be discharged if he succeeds in bringing on record sufficient cogent evidence in this regard and removing all suspicions.



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**8(iv)** It is paramount duty of the propounder to explain away the suspicions circumstances attending the execution of the Will. This burden gets heightened when a caveat is entered challenging the Will as forged or vitiated by undue influence, etc. These principles are elaborately stated by the Supreme Court in ***H.Venkatachala Iyengar v. B.N.Thimmajamma***. In the said case, the Court clearly distinguished the nature of proof required for a Will as opposed to any other document reads as under :

*"18. .... Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant."*

**8(v)** Similarly, Sections 59 and 63 of the Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by Will and the three illustrations to this Section indicate, what is meant by the expression 'a person of sound mind' in the context. Section 63 requires that the testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it



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shall appear that it was intended thereby to give effect to the writing as a Will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last Will of the testator has to be decided in the light of these provisions. Has the testator signed the Will? Did he understand the nature and effect of the dispositions in the Will? Did he put his signature to the Will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of Wills.

**8(vi)** It is for those who propound the Will to remove that suspicion. Whenever a Will is prepared under circumstances which raised a reasonable suspicion that it does not express the mind of the testator, the Court ought not to pronounce in favour of it unless the suspicion is removed *Tyrrell v. Painton*.

**8(vii)** On the point of limitation, the Supreme Court in *Kunvarjeet Singh Khandpur's* case explained the concept of right to apply for probate in the context of Article 137 of the Limitation Act, 1963. It was held that an application for grant of probate and letters of administration is in effect



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seeking permission of the court by the executor to perform the legal duty and discharge the instruction of the testator as mentioned in the Will and same is a 'continuous right' which can be exercised 'at any time' after the death of the testator as long as the right to do so survives and the object of the trust exists or any part of the trust if created remains to be executed.

**8(viii)(a)** The application for grant of probate or letter of administration is not governed by any article of the Limitation Act. The crucial expression in the petition is "right to apply". In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of letters of administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the court to perform a duty because of the nature of the proceedings it is a 'continuing right'.

**8(viii)(b)** One must keep in mind that the grant of probate by a competent court operates as a judgment in rem and once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of



limitation under Article 137 of the Limitation Act in proceedings for revocation of probate.

**8(ix)** There is no outer limit for filing of application for probate and the time would commence from the date when the right to apply accrues. The right to apply under Article 137 of the Limitation Act for the purpose of limitation has to be contextual and it would apply from the date on which the right to apply accrues which is variable and would depend upon the facts of the case. It would vary from case to case. The date of death was not reckoned to be the date when the right to apply "accrues".

**9.** Death of Testator gives life to Will. Probate Court is Court of conscience. In the Probate Proceedings the Propounder of Will has to satisfy conscience of Court, even if defendants had not joined issue. Any defense raised by other legal heir, who has caveatable interest on suspicious circumstance surrounding execution of Will is admissible.

**10.** The language of Article 137 of the Limitation Act should not be construed as 3 years from the date of death of the testator but when "the right to apply accrues" which means that the time envisaged Will be



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activated once the right is denied, giving rise to a consequent need to assert the right. Further while Section 293 of the Indian Succession Act provides for a cooling-off period of expiration of 7 clear days from the day of the testator's or intestate's death before a probate of a Will can be granted (and 14 clear days for a letter of administration), there is no outer limit within which an executor has to take out an application for grant of probate. The absence of an end-point within which, such an application has to be filed is a deliberate legislative omission, pointing to a larger rationale underlying cases involving grant of probate.

**10(i)** A combined reading of Sections 211 and 213 of the Indian Succession Act makes it clear that an executor is the legal representative of a deceased person for all purposes and the property of a deceased person vests in the executor. Further, no right as executor or legatee can be established unless the Will is probated by a competent court. Hence, even if the executor does not apply for grant probate, a beneficiary to a Will does not lose any valuable right bequeathed to him by the testator since the probate relates back to the date of death of the testator (Section 227).



**10(ii)** Keeping the above legal position in mind in connection with validity of the Will and burden of proof and onus of the proof, thereof and Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, let us examine the evidence available on record, in the instant case.

**Facts of the case :**

**11(i)** As per Ex.P11, original Will is dated 13.08.2003. As per Ex.P1, the date of death of Kandasamy Gounder is 07.10.2003. As per Ex.P11, the said Kandasamy Gounder is said to be aged 95 years on the alleged date of execution of the Will. The Trial Court has believed the version of PW2, the attester.

**11(ii)** Challenging the said finding of the Trial Court, the learned Senior Counsel Mr.A.K.Kumarasamy draw my attention to the attester of the Ex.P11-Will viz. PW2.

**11(iii)** A bare perusal of the evidence of PW2 in the chief examination goes to show that the said Kandasamy Gounder has come to his house in a car, has also taken Ranganathan s/o. Raman and went to the document writer Sathyamurthy and it was typed by one Vasanthi and



thereafter they all went to notary public at Mettur by name R.Vasu and there, affixed the thumb impression.

**11(iv)** The answer elicited in the cross examination assumes significance, in view of the specific stand of the first respondent (appellant) before the Trial Court that it is forged and fabricated document which reads as follows -

அவருக்கு உயில் எழுதும்போது 80 வயதிற்கு மேல் இருக்கலாம். கந்தசாமி கவுண்டரின் வெளி பழக்கவழக்கம் குறித்து எனக்குத் தெரியாது.....

உயில் ஆவணத்தில் தமக்கு 95 வயதாகிவிட்டது என்றும், நாளுக்குநாள் உடல்நிலை குன்றி வருவதாலும் என்று குறிப்பிட்டுள்ளார் என்றால் சரிதான்.....

அந்த பத்திரங்களுக்கு சட்டபூர்வ அங்கீகாரம் அளிக்கும் வழக்கறிஞரின் பெயர் எனக்கு நினைவில்லை. பத்திர எழுத்தார் அலுவலகத்திற்கும், பத்திரங்களுக்கு சட்டபூர்வ அங்கீகாரம் அளிக்கும் வழக்கறிஞர் அலுவலகத்திற்கும் இடையே 1/2 கி.மீ தொலைவு இருக்கும்.

அவர் நல்ல நிலையில் இல்லை என்றும், என்னை அழைத்துச் சென்று அவர் உயில் எழுதவும் இல்லை என்றும் சொன்னால் சரியல்ல.

உயில் ஆவணத்தில் "இதற்கு முன்பு நான் கையெழுத்திட்டு வந்தேன் என்றும், வயது முதிர்வின் காரணமாக கைநடுக்கத்தின்



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காரணமான கைரேகை செய்கிறேன்" என்று எழுதப்பட்டுள்ளது என்றால் சரிதான்.

11(v) In the cross examination on behalf of third and fourth respondents, it is stated that கந்தசாமி கவுண்டரின் பேரன் கிராம நிர்வாக அலுவலராக இருந்ததாகக் கேள்விப்பட்டேன். இந்த மனுவில் கண்டுள்ள உயில் தொடர்பாக நான் உயில் எழுதப்பட்ட பின்னர் யாரிடமும் எதுவும் சொல்லிக்கொள்ளவில்லை என்றால் சரிதான். கந்தசாமி கவுண்டர் உயில் பத்திரத்தில் எத்தனை கைரேகை வைத்தார் என்பது எனக்கு நினைவில்லை.

11(vi) In this connection, the evidence of Probate Petitioner as PW1 assumes significance.

கந்தசாமி கவுண்டர் இறந்து 15 நாட்கள் கழித்து அதில் சாட்சி கையொப்பம் போட்ட ரங்கநாதன் என்பவர் தான் உயில் இருப்பதைப் பற்றி தெரிவித்தார். இந்த உயில் சாசனத்தை சாட்சி கையொப்பம் செய்த ரங்கநாதன் தான் என்னிடம் கொடுத்தார். மனுவிலும், பிரமாண வாக்குமூலத்திலும் சொல்லவில்லை. கந்தசாமி கவுண்டரின் 2-வது மனைவி இவர் இறக்கும் வரை கூடவே இருந்து பராமரித்து வந்தார். அதன் பிறகு ரேகை கந்தசாமியின் ரேகை என்பதற்கு நாங்கள் எந்தவித நடவடிக்கையும் எடுக்கவில்லை. அந்த ரேகை பொய் என்ற காரணத்தினால் தான் நடவடிக்கை எடுக்கவில்லை என்றால் சரியல்ல. (emphasis supplied)



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**11.(vii)** In connection with as to why the testator had affixed his left thumb impression instead of putting his regular signature. PW2-the attesor of the Will would state that thumb impression alone has been affixed however he would state that testator was in good state of mind. However, in the cross examination, he would further state that since the testator was not well and having a shake in the hand and thus he preferred thumb impression as per the recital in the said document. It is suggested on behalf of the Probate Petitioner during the cross examination of RW1 that cross examination on 02.03.2019,

கேள்வி : அவ்வாறு அடமான செய்த பத்திரத்தில் கந்தசாமி கவுண்டரின் கைரேகை உள்ளது என்கிறேன்.

கேள்வி : விருப்பறுதி ஆவணத்தில் உள்ள கைரேகை கந்தசாமி கவுண்டருடைய கைரேகை அல்ல என்பதை எண்பிப்பதற்கு நீங்கள் ஏதேனும் நடவடிக்கை எடுத்தீர்களா?

சாட்சியின் பதில் : இல்லை

கேள்வி: பூவராகவன் கந்தசாமி கவுண்டரின் மகளின் பேரன் என்றும், பாலகப்பிரமணியன் கந்தசாமிகவுண்டரின் மகளின் மகன் என்றும் சொல்கிறேன் சாட்சியின் பதில்: சரிதான்.

So also the first respondent has chosen to cross examine RW2 – Loganathan.

வழக்கறிஞரின் கேள்வி – கந்தசாமி கவுண்டர் தடுக்கி விழுந்ததற்கு சிகிச்சை அளித்தார்களா

சாட்சியின் பதில் – வீட்டில் வைத்து சிகிச்சை அளித்தார்கள்.



வழக்கறிஞரின் கேள்வி - கந்தசாமி கவுண்டருக்கு சிகிச்சை அளித்தது  
பூவராகவனும், அவருடைய தந்தையும் என்கிறேன்-  
சாட்சியின் பதில் - ஆமாம்

**11(viii)** Thus, from the answers elicited from the attesor of the Will- PW2 who alleged he had attested Ex.P11 – unregistered Will dated 13.08.2003 and attested by the notary advocate, there is a clear admission by the PW2 that the office where the documents have been typed and the office of the Sub Registrar lies within ½ km. So also the office of the notary public. For the reasons best known, the testator is said to have preferred notary public for attestation of the document rather than registering the same in the Sub Registrar's office which lies within ½ km between the two place. Be that as it may, the notary public who had attested the document is close friend of the advocate appearing for the Probate Petitioner, as admitted by PW1 in the cross examination, though he candidly admitted and openly avoided to answer the question. The said advocate who is a notary public is still practising in the very same court but for the best known reason, the Propounder of WILL has not chosen to examine the advocate who is said to have notarised the document assumes significance.



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**11(ix)** Coming to the evidence of PW2, according to him, the testator could have been 80 years old, he had further deposed another attesting witness Ranganathan, who was reported dead at the time of trial. He also admitted that as per Ex.P11 – unregistered Will, even in that, it is mentioned that the age of the testator is 95 years old. He conveniently avoided the question regarding the notary advocate who has notarised the the document in the presence of PW2. Moreover, he has admitted that office of the Advocate and the Sub Registrar's office lies within ½ km. At the time of execution, he was not well. Further, PW2 would depose that the father of the first respondent is a VAO. There is another Will in favour of the grandson through another daughter of the said Kandasamy Gounder which is dealt with in Probate OP No.196 of 2008 against which CMA No.18 of 2020 is filed before this Court and the same is dealt with separately. While, RW3 was in witness box on behalf of the Probate Petitioner. During PW3 cross, it is suggested that the testator Kandasamy Gounder fell down and was taking treatment and the witness has answered in affirmative and it remains to be stated that by suggesting so, it is clear that the testator is having a physical as well as mental ailments around the period of execution of disputed Will.



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**11(x)** On behalf of the Probate Petitioner, it is suggested to the contesting respondent, RW1, that the thumb impression of the testator is available in the Co-operative Department Bank in the Mortgage Deed and it was a suggestion made to the RW1 on behalf of the Probate Petitioner assumes significance.

**11(xi)** It is the specific case of the Probate Petitioner through the suggestion to RW1 that thumb impression of the testator Kandasamy Gounder is available in one of the mortgage deed said to have been executed in favour of the Agricultural Bank. When there is a specific suggestion is put forwarded by the Probate Petitioner as to the affixation of left thumb impression instead of signature and a specific suggestion has been made to PW1 (during the cross examination) that the thumb impression is not that of the testator Kandasamy Gounder, when that be so, this Court is of the considered view that as a propounder of the Will (also as beneficiary of the Will who seeks probate of the Will), the burden is casted upon him to prove that the thumb impression found in Ex.P11 – unregistered Will is that of the testator and as stated supra, when he has source of information available to the said mortgage deed executed by the testator, while he was alive and such a suggestion has also been put to RW1



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(contesting respondent), this Court is of the considered view that the Probate Petitioner having known a source information as to the availability of the thumb impression in one of the mortgage deed and as to its place of existence, which he himself has made a suggestion to the RW1, he ought to have summoned the document to dispell the suspicion found in Ex.P11-Will. For the reasons best known, he has not taken any steps for sending the disputed thumb impression in Ex.P11-unregistered Will for comparison, by calling for the available document which he himself is aware, in the mortgage deed with the Bank but to dismay, he did not do so.

**11(xii)** In this connection, the answer elicited during the cross examination of PW1 is that he firmly answered in negative that he will not take steps to call for the document and hence I find that PW1, the Probate Petitioner in probate proceedings has miserably failed to dispell the suspicious surrounding, the thumb impression on the dispute thumb impression in Ex.P11-disputed Will. Besides in view of the contradictions as elicited from PW2, with regard to the age of the testator and introduction of the testator and non-explanation as to the attestation by other attesting witness Ranganthan (who was reported dead at the time of trial), I find that the oral evidence of PW2 does not pass the test of reliability and credibility.



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**11(xiii)** In view of the reasoning discussed in the preceding paragraphs, this Court finds following circumstance are grave, suspicious in nature; to sum up;

(a) The testator Kandasamy Gounder was aged 95 years when he died on 07.10.2003 whereas the alleged unregistered Will is said to have been executed in less than two months prior to his death. It remains to be stated that both in the petition and chief examination, the beneficiary under the Will – PW1 is silent in respect of how he had knowledge about the possession of the Will and he never whispered how he had the knowledge and how he got possession of the Original Will. Only in the cross examination, he comes with an explanation as to how he got the knowledge assumes significance.

(b) When the Will came to his possession through Ranganathan, one of the attester who died pending trial, he could very well stated in the petition as well as in the chief examination and hence the fact which is material as to coming to know about the existence of the Will and taking custody of the Will was never disclosed anywhere in the petition or in the chief examination of PW1 assumes significance.



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(c) Though PW2-attestor states that he know about attestor Kandasamy for 40 years, he is not aware of the age and particulars of his family members and the number of wives and location of the house and the contents of the Will as recited in Ex.P11. Kandasamy Gounder is unwell is found to be contrary to the deposition of PW1 & PW2 who deposed that the testator was hale and healthy while the recital in Ex.P11-Will is found to be otherwise. No reason has been assigned in the execution of the Will in favour of the grandson born through the daughter ignoring male descendants of the Kandasamy Gounder though this factor in isolation cannot be a matter for creating a suspicion but in association with other matters, creates doubt in the mind of the Court.

12. It remains to be stated that as per the evidence of PW2 and PW1 cross examination, no possible explanation as to why the Will was not registered when Kandasamy Gounder was hale and healthy and was spending the entire time between the office of the document writer and Advocate Notary Public while the Sub Registrar office is ½ km away from the said place.



13. Yet another crucial point, which run against PW1 is that a bare perusal of Ex.P11- Will, the space between the contents of the Will and thumb impression which clearly is like bay of space, creates a serious doubt as to the submissions made by the learned Senior Counsel that there is a bay of space between the contents of the Will and the thumb impression. Hence, this Court is of the considered view that the contention advanced by the learned Senior Counsel that the contents of the Will has been made fit in, be fabricated assumes significance.

14. As per law, evidence of one of the testator is sufficient. Admittedly, the document writer, scribe and the notary public are living in the very same vicinity . No reason has been assigned for non-examination of the document writer, scribe and the notary public advocate who is also practising in the very same court, has added to the factor of suspicion. PW2 in the cross examination has conveniently spoken the language of silence when questioned about who had caught hold of hands of Kandasamy Gounder for fixation of thumb impression in the Will also creates doubt as he has avoided the question, thereby creates a doubt in the mind of the Court as to the very presence of PW2 at the time of alleged execution of Ex.P11-disputed Will.



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**15.** The evidence of RW1, RW2 & RW3 that Kandasamy Gounder was bedridden and was in vegetative state for years together. On the similar lines, a suggestion was put to RW2 & RW3. When that being so, the evidence of PW2 that on the date of execution of the Will, the testator Kandasamy Gounder was hale and healthy appears to be more doubtful.

**16.** Hence, on the ground that the Probate Petitioner has failed to discharge the burden upon the his shoulder to prove the Will in the manner known to law, the order passed by the Trial Court, without any discussion as to the evidence of PW2 and answer elicited during the cross examination of PW1 & PW2 and suggestion that are made during cross examination RW1, RW2 & RW3 on behalf of the Probate Petitioner clearly shows that coming to the existence of alleged Ex.P11-unregistered Will is surrounded by sea of suspicion and the Probate Petitioner has miserably failed to dispell and clear the cloud of suspicion surrounding the disputed Will. Hence, I have no hesitation to hold that the first respondent has miserably failed to comply with Sections 63 of Indian Succession Act and Section 68 of Indian Evidence Act. Thus, this appeal is allowed and the order of Probate court is liable to be set aside.



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**17.** In the result, this Civil Miscellaneous Appeal is allowed and the fair and final order in Probate O.P.No.63 of 2005 on the file of the Additional District (Fast Track Court), Mettur dated 26.07.2019 is hereby set aside and the Probate OP No.63 of 2005 stand dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

**17.04.2024**

Index : Yes/No  
Speaking / Non-Speaking Order  
Neutral Citation : Yes/No  
**rgr**

To

1. The Additional District Judge,  
(Fast Track Court), Mettur.
2. The Section Officer,  
VR Section, High Court, Madras.



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C.M.A.No.4295 of 2019

**RMT.TEEKAA RAMAN,J.,**

rgr

**Judgment in**  
**C.M.A.No.4295 of 2019**

**17.04.2024**