



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16-06-2026

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DATE OF DECISION : 08-07-2026

CORAM

**THE HONOURABLE MR JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN
THILAKAVADI**

OSA Nos. 121 & 213 of 2020

T.S.Sridharan

E-31, 2nd Avenue

Besant Nagar, Chennai 600 090

Appellant in OSA No.121 of 2020

1. Davis Thomas (Deceased)

2. Geetha Davis

Wife of late Davis Thomas

No.9, Mowbrays Court

No.167, TTK Road, Chennai

(A2 brought on record as LR of the

deceased A1 viz. (Davis Thomas)

vide order of Court dated 10.03.2025

made in CMP.3761 of 2021, 12002 of

2020 in OSA.213 & 121 of 2020)

Appellants in OSA No.213 of 2020

Vs

Johanna Lobo (Deceased)

1. John Lobo

1459/A, H-Block, 16th Street

Anna Nagar – West

Chennai 600 040

2. Gerald Lobo

Rep.by Power of Attorney Agent

Reymond Lobo



169, Greams Road
Chennai 600 006

3. Reymond Lobo
169, Greams Road
Chennai 600 006

4. Laura Ann Shahani
GA-Temple Rock Apartments
New Avadi Road, Chennai 600 010

5. Ester Louise Miranda
1505, Glade Street, College Station
TX 77840, U.S.A.

6. Davis Thomas (Deceased)

7. The Rev.Mother Superior
“The Little Sisters of the Poor”
No.11, Harrington Road, Chetpet
Chennai 600 031

8. Geetha Davis
No.9, Mowbrays Court
No.167, TTK Road
Chennai
(R8 brought on record as LR of the
deceased R6 viz., (Davis Thomas)
vide order of Court dated 10.03.2025
made in CMPs.3761 of 2021,
12002 of 2020 in OSA.213 & 121 of
2020)

Respondents in OSA No.121 of 2020

1. T.S.Sridharan
30, IV Main Road, Gandhi Nagar
Adyar, Chennai 600 020

Johanna Lobo (Deceased)

2. John Lobo
1459/A, H-Block, 16th Street
Anna Nagar-West, Chennai 600 040



3. Gerald Lobo

Rep.by Power of Attorney Agent

Raymond Lobo

169, Greams Road, Chennai 600 006

4. Raymond Labo

169, Greams Road, Chennai 600 006

5. Laura Ann Shahani

GA-Temple Rock Apartments

New Avadi Road, Chennai 600 010

6. Esther Louis Miranda

1505 Glade Street, College Station

TX 77840, U.S.A.

7. The Rev.Mother Superior

“The Little Sisters of the Poor”

No.11, Harrington Road, Chetpet

Chennai 600 031

Respondents in OSA No.213 of 2020

Memorandum of Grounds of Original Side Appeals under Order XXXVI, Rule 1 of the Madras High Court Original Side Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 06.09.2018 made in T.O.S.No.49 of 2001 (O.P.No.414 of 2001).

For Appellant(s):

Mr.T.Mohan

Senior Counsel for

Mr.A.S.Ashif Mohammed in

OSA No.121 of 2020 and

for R1 in OSA No.213 of 2020

Mr.Bijesh Thomas

in OSA No.213 of 2020 and

for R8 in OSA No.121 of 2020

For Respondents:

Ms.V.Srimathi for R1 & R5

in OSA No.121 of 2020 and for

R2, R3 & R6 in OSA No.213 of 2020

Mr.Arvind Srivatsava for R2

in OSA No.121 of 2020



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OSA Nos. 121 & 213 of 2020



Mr.B.Shivakumar for R3 in
OSA No.121 of 2020 & for R4
in OSA No.213 of 2020

Mr.C.T.Murugappan for R4 in
OSA No.121 of 2020 and for R5
in OSA No.213 of 2020

R7 in OSA Nos.121 & 213/2020 -
No appearance

R6 in OSA No.121/2020 - Died

COMMON JUDGMENT

P.Velmurugan J.

The instant original side appeals are directed against the judgment and decree dated 06.09.2018 made in T.O.S.No.49 of 2001 (O.P.No.414 of 2001).

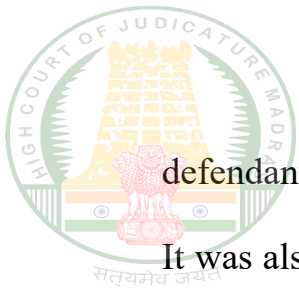
2. The plaintiff in the testamentary original suit is the appellant in OSA No.121 of 2020. The 7th defendant in the testamentary original suit is the appellant in OSA No.213 of 2020. During the pendency of the appeal, since the 7th defendant died, his wife has been brought on record as the 2nd appellant, to prosecute the appeal. For the sake of convenience, the appellant(s) and the respondents in both the appeals will be hereinafter referred to as arrayed in the testamentary original suit.

3. The plaintiff filed the Original Petition No.414 of 2001, which was converted as Testamentary Original Suit No.49 of 2001, for grant of Probate in



respect of the last Will and Testament executed by Dr.L.C.Lobo on 26.10.1994 appointing the plaintiff, practising lawyer as one of the executors and the 7th defendant as another executor in respect of the property known as “Foxholes” measuring about 9.487 grounds. The 1st defendant is the wife of the testator-Dr.L.C.Lobo and the defendants 2 to 6 are the nephews and nieces of the said testator.

4. The case of the plaintiff is that the testator-Dr.L.C.Lobo is a highly educated person having worked in Loyola College and the 1st defendant is his wife. They have no issues. The testator owned 40 grounds of land, out of which more than 30 grounds have already been settled in favour of the defendants 2 to 6, who are the nephews and nieces of the testator. The testator retained 9 ½ grounds for himself. Initially the relationship between the testator and the defendants 2 to 6 were cordial. Subsequently, disputes arose between them in respect of the accounts and so the defendants 2 to 6 raised allegations against the testator. Affidavits have been filed in the Court of law making serious unjust allegations against the testator. In view of such developments, the testator subsequently was constrained to execute the Will bequeathing the property ultimately for the benefit of the 8th defendant-The Little Sisters of the Poor. The testator appointed the plaintiff and the 7th defendant as executors and also made provisions for life interest for his wife/1st defendant and thereafter to the 7th



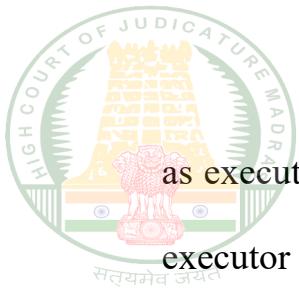
defendant and his wife and thereafter the property shall go to the 8th defendant.

It was also pleaded that one of the attesting witnesses was also examined before this Court and his evidence also clearly proved the fact that the testator himself took a decision to execute the Will, exonerating his nieces and nephews. Even the wife of the testator in her evidence clearly supported the Will. The testator has taken such a stand due to unjust allegations made against him by the defendants 2 to 6. Therefore, the execution of the Will is natural. The evidence of DW1 clearly shows the reason for the testator excluding the defendants 2 to 6 from the bequest. The Will itself was prepared by the testator and attested by Mr.Terence Shenoy and Mrs.C.B.Tamilselvi. However, a different stand has been taken by the defendants about the Will. The defendants are aware of the Will in the year 1997 itself. Merely because 5% of the income was given to one of the executors in the Will, that cannot be a suspicious circumstance. When the testator has already given sufficient properties to the defendants 2 to 6 and they have been benefited from such settlement, they cannot make serious allegations against the testator in the subsequent proceedings and in such a situation, it is the normal conduct of any person to exclude such persons in the Will. Since the Will was prepared by the testator himself, being a man of knowledge, the same cannot be doubted. Merely because the 7th defendant is one of the co-executors of the Will, it cannot be a suspicious circumstance. The evidence of DW1 also proves the animosity between the parties. Therefore, there was every reason for



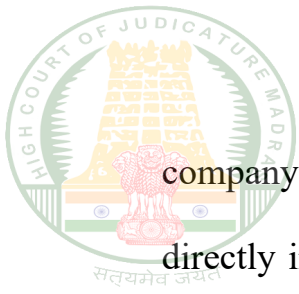
the testator for exonerating the defendants 2 to 6 from the Will. Mere allegations cannot be taken as suspicious circumstances. Merely because the plaintiff, being a lawyer, had acquaintance with the testator, that cannot be a ground to suspect the Will. The 7th defendant has also supported the case of the plaintiff. The 1st defendant/wife of the testator also admitted in her evidence that the Will was executed by her husband. All these facts would clearly prove that the Will is genuine and it does not suffer from any infirmity.

5. The defendants 2 to 6 filed a written statement objecting the stand taken by the plaintiff stating that the signature in the Will supposedly executed by the deceased, differs from what his usual signature used to be and the genuineness of the Will is also disputed. The recitals in the Will contained strange dispositions contrary to the normal intention of a man aged 67 years and the same are contrary to the facts. Even though the Will dated 26.10.1994 was executed by the testator, he was under the direct influence of Mr. Davis Thomas, the co-executor mentioned in the Will and the other executor being the plaintiff. It was also pleaded that the testator was under the direct influence of the co-executor/beneficiary during the last years of his life. The said Davis Thomas frequently used to visit the testator and his aged wife at their residence under the pretext of attending to their personal needs. The testator had substantial funds of his own and also had access to huge amounts of unutilised funds, in his capacity



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as executor of his mother's and his father's estates, of which the testator was an executor and the defendants 2 to 6 were the beneficiaries. The said Davis Thomas with the intention of generating huge investments for M/s.Metro General Credit Pvt. Ltd., had succeeded in influencing the testator to invest large amounts of the above said funds, substantial amount of which 2nd defendant is beneficiary to, into the said company. It is also apparent that the said Davis Thomas succeeded to have also influenced the testator in the execution of the Will. To corroborate the above, Clause-3 of the Will contains a stipulation that after the death of the testator's wife, Mr.Davis Thomas shall have the right of residence for his lifetime and that of his wife. During this time, the rental which shall be paid to the Little Sisters of the Poor, shall be Rs.1,000/- per annum. The Will further mentions that on the death of the other executor, i.e, the plaintiff herein, his son Mr.Vikram Raghavan shall be the executor and trustee in place of his father. That if Mr.Raghavan is for any reason unable to act as executor and trustee, his function will be exercised by the senior partner of M/s.Pais, Lobo, and Alwares. It was further pleaded that the second executor, the plaintiff herein, shall be entitled to an honorarium of 5% of the net income of the estate. Since the provisions are unnatural, which have special benefits and no reasons were cited by the testator as to why the said provisions have been made, the same would show that the testator was influenced into investing huge sums of money of his own and that of which he had no control into the



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company-M/s.Metro General Credit Pvt. Limited, where Mr.Davis Thomas is directly involved and interested, which makes it obvious that there was a deep conspiracy and collusion between interested parties and the Will was executed under undue influence and coercion. The Will was alleged to have been executed in the office of M/s.Metro General Credits Pvt. Ltd., and also allegedly attested by its employees Mr.Terence Shenoy and Ms.C.B.Tamilselvi. The signatures of the alleged witnesses were obtained by the authority of Mr.Davis Thomas on blank papers. The Will is not genuine and conveniently does not contain the mandatory attestation clause to evidence that the attesting witnesses had signed the same in the presence of each other and in the presence of the testator after witnessing the testator signing the Will in their presence. Though the testator was a Christian and highly educated and knowledgeable and had recourse to the legal advice of the second named executor, the plaintiff and prior to that the senior partner of the law firm, he failed to register the said Will, especially when he intended to dispose the properties belonging to him in the manner as made out in the said Will. It is not a case where the testator died immediately after execution of the Will and therefore did not have time and recourse to seek legal advice. The alleged disposition regarding the bequest to the charitable organisation is squarely hit by the provisions of Section 118 of the Indian Succession Act, which itself shall render the bequest invalid. It can only be assumed that the said bequest was included in the Will as a ruse to try and



show genuineness of the said Will. The testator died on 15.01.1997 and the plaintiff on many occasions had informed the defendants that there was no trace of any Will and all of a sudden in July 1998 he sent a copy of the alleged Will to the husband of the 5th defendant. The above facts show that there are serious doubts on the genuineness and validity of the Will. The 2nd defendant also sent a letter dated 07.05.1997 to the plaintiff enquiring about the estate of the testator, for which the plaintiff replied vide his letter dated 24.05.1997 that he shall revert in the matter shortly. But he neither replied nor informed about the alleged Will. Clause 8 of the Will also creates serious doubts about the genuineness of the Will, wherein it has been stated that “my nephews and nieces being wicked and ungrateful wretches are deliberately excluded from any benefits under this Will”. When such mention was made in the Will, the testator ought to have given reason thereon and the same cannot be explained by the executor later on presuming as to why the testator could have made any such mention. Even the affidavit of assets filed by the plaintiff does not include the details of the deposits made by the testator and huge dues recoverable, of which defendants have vital and beneficial interest from M/s. Metro General Credit Pvt. Ltd., the company in which Mr.Davis Thomas, the first named executor is the manager of the deposits and his father Mr.V.M.Thomas is a director.

6. The 7th defendant Mr.Davis Thomas, one of the executors, has filed a



written statement supporting the case of the plaintiff that the 1st defendant, wife of the testator also confirmed the Will in her evidence. Dr.L.C.Lobo stated that except the Will properties, they have settled other properties in the year 1972 to defendants 2 to 6. Despite the above facts, defendants 2 to 6 dragged the testator Dr.L.C.Lobo to Court forcing him needlessly to expend time and money on wasteful litigation to safeguard his own interest. Despite such magnanimity, the defendants 2 to 6, to use the words of the testator himself, were, to put it mildly, wicked and ungrateful. Hence, the defendants were expressly excluded from the bequest of the testator's property, subject to a life interest in favour of the 7th defendant and his wife Mrs.Geetha Davis, who ultimately bequeathed the property to a charity viz., Mother Superior, Little Sisters of the Poor, by late Dr.Lobo's last Will and Testament on 26.10.1994. Dr.Lobo's brother and defendants' father late W.A.J.Lobo was unemployed and consequently could not provide for his family. Therefore, Dr.L.C.Lobo during his lifetime, settled the properties to the defendants. The defendants took possession of the properties after the death of the 1st defendant and not allowed the properties to be maintained as per the Will. In short, it is the contention of the 7th defendant that the Will dated 26.10.1994 left by Dr.L.C.Lobo is genuine and valid.

7. The 8th defendant, the ultimate beneficiary of the estate of Dr.L.C.Lobo, stated that the Will of late Dr.L.C.Lobo dated 26.10.1994 is a



genuine one and denied the entire allegations of the defendants 2 to 6.

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8. The defendants 3 to 5 filed a reply to the written statement of the 8th defendant stating that the 8th defendant was not present at the time of execution of the Will by the testator and she came to know about the Will from one of the executors only on 19.07.1997.

9. In his reply, the plaintiff denied the allegations of the defendants that he had never informed the defendants at any time that there was no trace of a Will. In fact, the plaintiff had two meetings with some of the defendants regarding the estate of their grandmother and grandfather during April/May 1997 at his office and the husband of the 5th defendant in the late 1997 or early 1998 asked for a copy of the Will while he was in St.Mary's Church compound and said that he would be back next day for it. However, he did not come the next day, but came after a few months and said that he was at sea and therefore he could not come earlier. It is further averred by the plaintiff that he received the Will some time in February 1997 and the probate papers along with the Will were filed by him in Court as early as 15.07.1997. The plaintiff contended that the Will is genuine and valid one and thereby denied the other allegations also.

10. In order to substantiate the case, the plaintiff examined himself as



PW1 and one of the attesting witnesses viz., Mr. Terence Shenoy was examined as P.W.2 and Exs.P1 to P22 were marked. On the side of the defendants, 3rd and 5th defendants were examined as DWs.1 & 2 and Exs.D1 to D21 were marked.

The 1st defendant was examined through Advocate Commissioner.

11. Based on the above pleadings, the learned single Judge initially framed the following issues for consideration:-

- (1) Whether the last Will and Testament dated 26.10.1994 is valid and genuine?
- (2) Whether the execution of the Will is surrounded by suspicious circumstances and hence, invalid?
- (3) Whether the Will been executed by the testator whilst in a sound and disposing state of mind?
- (4) To what reliefs are the parties entitled to?

Subsequently, on 14.03.2008, the following additional issue was framed:-

- (1) Whether the Will is hit by Section 118 of the Indian Succession Act?

Thereafter, on 26.03.2008, the following additional issues were framed:

- (1) Is not the Will mentioning two executors Mr. Davis Thomas and Mr. Sridharan to act jointly and severally invalid?
- (2) Whether the bequest of a life time interest to the first executor Mr. Davis Thomas and to his wife Geetha is not hit by the Rule against perpetuity?



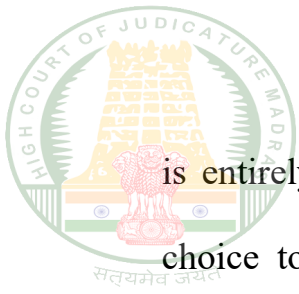
12. The learned single Judge, after hearing the learned counsels appearing for the parties and appreciating both the oral and documentary evidence, dismissed the suit with costs. Challenging the said judgment and decree, the plaintiff and the wife of the deceased 7th defendant have preferred the above appeals before this Court.

13. Mr.T.Mohan, learned Senior Counsel appearing for the plaintiff/appellant in O.S.A.No.121 of 2020 would contend that the impugned judgment is vitiated by ex facie errors of fact and law, relying on chronological impossibilities, and substituting judicial surmise for proven testamentary intent, since the testator, a highly educated individual and a man of sound jurisprudence, as conceded by D3, had executed the said Will voluntarily and in a sound and disposing state of mind. After the testator died on 15.01.1997, the plaintiff, acting strictly in his fiduciary capacity as the named executor, initiated the Probate proceedings on 15.07.1997, demonstrating utmost alacrity. The learned single Judge has presumed that the Will was fabricated posthumously using a blank signed paper after Section 118 of the Indian Succession Act was struck down by the Hon'ble Supreme Court in 2003. Furthermore, the plaintiff had officially intimated various banks regarding the existence of the Will as early as 29.05.1997 and had issued a written intimation to the 8th defendant (The Little Sisters of the Poor) on 19.07.1997. However, the learned single

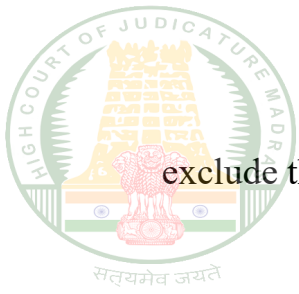


Judge has erred in holding that the Will, which was the subject of a probate petition filed in 1997, was fabricated to circumvent a judicial pronouncement delivered six years later in 2003 (John Vallamattom v. UOI). This erroneous presumption alone renders the judgment unsustainable in law and requires it to be set aside. Even the 1st defendant (Mrs. Johanna Lobo, wife of the testator) unequivocally admitted her husband's signature and asserted the Will's authenticity. She affirmed that her husband was a very independent man with a strong personality who remained mentally alert until his death. Therefore, the statutory requirements of execution and attestation have been duly fulfilled, as PW2, the attesting witness, has clearly deposed in his chief examination and cross-examination that the testator was of sound mind, made personal corrections to the document and signed it in the presence of the witnesses. Hence the averment by the 5th defendant that the execution is not proved simply because the co-executor (D7) was not examined, is legally untenable. Section 68 of the Evidence Act mandates the examination of at least one attesting witness, a statutory burden the plaintiff has discharged. Further, D7 was an executor, not an attesting witness.

14. The learned Senior Counsel would further contend that the defendants attempt to cast a shadow on the Will by arguing that an educated man would have registered it. It is a settled proposition of law that the registration of a Will



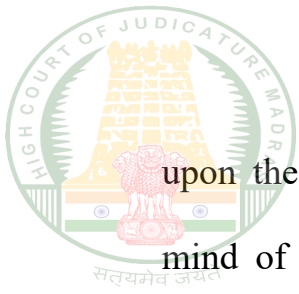
is entirely optional. Given the extreme hostility of his relatives, the testator's choice to keep his testamentary dispositions private and unregistered aligns perfectly with his desire to avoid immediate, violent familial confrontation during his twilight years. The suspicion raised by the learned Judge regarding the 'cramped manner' of typing fails to appreciate that the testator drafted the Will himself. He was an independent, highly educated professional accustomed to prepare his own documents. Minor formatting irregularities or signatures appearing in two different styles and places, are hallmarks of a layman personally drafting and correcting his own document, which in itself underscores active testamentary intent rather than passive submission to a fabricated draft. The provision of a 5% honorarium for the executor was viewed suspiciously by the defendants. However, this is a standard, lawful mechanism to compensate for the duties of estate administration, not a sinister 'personal interest'. It is also submitted that the 5% honorarium was on the proceeds of the estate and as of today, there is absolutely zero income arising out of the estate. Furthermore, the conferral of powers to act 'jointly and severally' was not an anomaly but a consistent legal phrasing utilised by the testator in prior documents, as evidenced by Ex.P-17, reinforcing his authorship. The defendants erroneously characterise the exclusion of the testator's nieces and nephews and the ultimate bequest to a charity as 'unnatural'. The evidentiary record justifies the testator's decision to label them as 'wicked and ungrateful wretches' and



exclude them entirely.

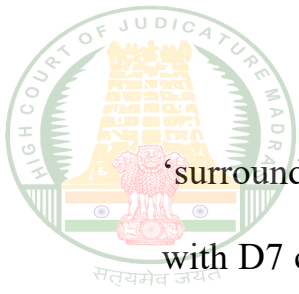
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15. The learned Senior Counsel would also contend that the testator had not left his family destitute. Out of natural love and affection, he had already settled highly valuable properties in 1972, transferring over 30 grounds to defendants 2 to 6 retaining merely 9 and a half grounds (the subject property, "Fox Holes") for himself. This has also been admitted by DW1 in his cross-examination as evidenced in Ex.P17. Despite receiving a fortune, they repaid the testator with severe hostility by initiating O.P.No.97 of 1982, levelling baseless and defamatory allegations accusing him of criminal misappropriation, tax evasion, autocratic behaviour, manipulation of accounts and deliberately destroying share certificates. Even DW1 admitted that his uncle was 'annoyed' by these accusations. Since the testator was deeply hurt by the continuous attacks on his character, a fact solemnly affirmed by his widow D1 in her affidavit, the bequest to charity (Little Sisters of the Poor) to avoid further vicious familial disputes, was not only natural, but highly prudent, as conceded even by D5 during her cross-examination. But the impugned judgment misdirected itself by treating natural testamentary decisions such as compensating an executor, excluding hostile relatives who had already been provided for and donating to charity, as suspicious circumstances to dismiss the suit. Since the plaintiff has meticulously dispelled every alleged shadow cast



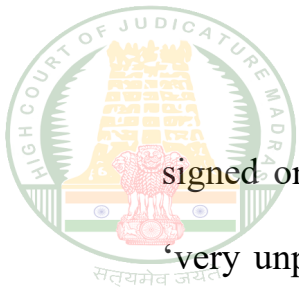
upon the Will by proving the execution, attestation and the sound disposing mind of the testator beyond any legal reproach, the learned Senior Counsel prayed for allowing the appeal by setting aside the impugned judgment and decree.

16. Mr.Bijesh Thomas, learned counsel appearing for the wife of the deceased 7th defendant/appellant in O.S.A.No.213 of 2020 would contend that the testator is a well educated man, who obtained his doctorate from the Kings College, London and the testator's wife, late Johanna Lobo has vouched for the independent strength of will of the testator stating that his mental condition was very sound until the last moment. The testator was one of the two executors of the Will of his mother, late Hermoine Lobo along with the 6th defendant. In such separate proceedings, two affidavits (Exs.P16 & P18) were filed by his nephews and one niece (except D6 Esther Louise) seeking for his removal by accusing that he behaved in an autocratic manner, treated them as servants, abused his position, colluded with bankers etc. In the course of such proceedings, the defendants not only made several such allegations against the testator but also reiterated them. This along with the defendants subsequent conduct made the testator to believe that they were ungrateful for all that he had done for them and soured their relationship further. Further DW1, without any prior pleading or proof, even went to the extent of accusing the testator of



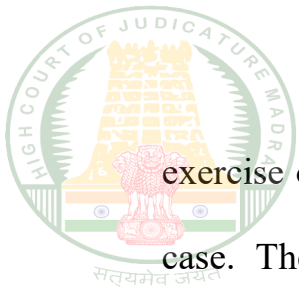
‘surrounding himself with effeminate men and possibility of him being involved with D7 cannot be ruled out’. Evidently, the defendants venom of bitterness and hatred for the testator had not subsided even so many years after the testator's death. Only seeing their disrespectful conduct towards the testator at social events, as spoken to by the 1st defendant that her husband told that ‘this is the end nothing more for the nieces and nephews. Will never forgive them for what they did to me’.

17. The learned counsel would further contend that so far as the proof of execution and attestation of Will is concerned, the law does not mandate any particular form of attestation. One of the two attesting witnesses, PW2-Terence Shenoy was cross-examined atleast on six occasions (from 20.06.2013 to 01.04.2014) over a period of almost one year and his evidence remained unshaken that Ex.P1 is the Will and Testament of late LC.Lobo and that the signature found therein is that of the testator, which was attested by himself (PW2) and Mrs.C.B.Tamilselvi. The evidence of PW2 is further supported by the testator's wife, late Johanna Lobo, who has been examined de bene esse in these proceedings, in clear and unmistakable terms that the testator was a very independent and strong person; that the testator discussed all matters with her and discussed Ex.P1-Will also together; that this is the Will and Last settlement (sic) of her husband and the signature is her husband's; that her husband has



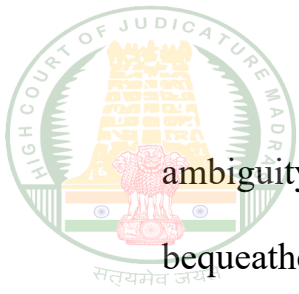
signed on the side and bottom of the Will; that the nephews and nieces were 'very unpleasant to her husband' (the testator). Hence the evidence of PW2 is

credible and remains unshaken in cross-examination. Even the attesting witnesses of Ex.P1 are not the employees of late Davis Thomas. The learned counsel also would contend that the plea of 'undue influence' must be proved with material particulars. In the present case, there is no such material particulars, except bald statements that deposits were obtained. Even assuming without admitting and taking that allegation at its height, obtaining deposits does not establish influence at the time of execution of Will, since Late Davis Thomas did not and could not have unduly influenced the testator, as he was not present at the time of execution of Ex.P1 Will. Even otherwise, persuasion and urgent appeals do not invalidate a Will, provided the testator retained his free agency and capacity to exercise his own judgment. The various findings of fact recorded by the learned single Judge in the suit are mere surmises and conjectures that are not supported by the evidence on record. When Section 118 of the Indian Succession Act, 1925 has been struck down as unconstitutional by the Hon'ble Supreme Court, the finding on that score is incorrect. A testamentary Court is a 'Court of conscience' and not a 'Court of suspicion'. But the learned Judge erred in overlooking the settled position of law that a man may act foolishly and ever heartlessly, however, if he acts with full comprehension of what he is doing, the Court will not interfere with the



exercise of his volition in the form of his Last Will & Testament, Ex.P1 in this case. The very purpose of a Will is to interfere with the natural line of succession and in the instant case, the defendants 2 to 6, by their ungrateful conduct in the opinion of the testator, had earned his wrath and disintitiled themselves from getting the benefit of the testator's estate. When the uninterested & unimpeachable evidence of (Johanna Lobo the wife of the Testator for 50 years and who was examined de bene esse) & PW2 (Terrence Shenoy the attesting witness), would establish beyond any reasonable doubt that the Ex.P1-Will was executed by the testator (Late L.C.Lobo) of his own free will in the presence of two attesting witnesses including PW2-Terrence Shenoy, who witnessed the testator affixing his signature in their presence and that the attesting witnesses affixed their signature in the testator's presence and in the presence of each other, the impugned judgment and decree need to be interfered with by this Court.

18. On the other hand, Mr.B.Shivakumar, learned counsel appearing for the 4th defendant would contend that the plaintiff has totally failed to discharge the heavy onus of explaining the suspicious circumstances surrounding the execution of the Will. He would contend that the extent of property is not mentioned in the Will and the same is fatal to the bequest. The authorship and execution of the Will is not that of the said Dr.L.C.Lobo as evident from its



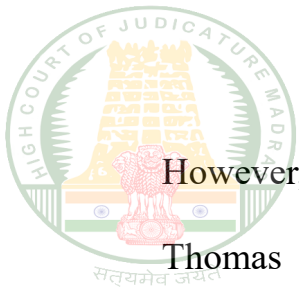
ambiguity and manner of drafting. The property which is sought to be bequeathed has not been described in terms of the extent of land and building.

Considering that the said Dr.L.C.Lobo lived in the premises for decades and dealt with every aspect of the property in terms of its extent, boundaries, survey numbers and having had to deal with documentation at various points in time, leaves no room for doubt that the Will was not executed by him. As admitted, when Dr.L.C.Lobo was a learned person and conscious of the propriety and precision in all his doings, the form and manner in which the Will has been prepared/typed in a cramped single line spacing with multiple corrections, contradictory clause about bequests of movables, substantial benefits to both the executors without rhyme or reason, leaves no room for doubt that it was not the Will of Dr.L.C.Lobo. Even the evidence of the attesting witness Mr.Terence Shenoy leaves much room for doubt. Admittedly, he deposed in the cross examination that he was a partner in Metro Consultancy Services which had its office within the premises of Metro General Credit Ltd. He further admits that the 7th defendant/co-executor/beneficiary in the Will was a partner of the same Metro Consultancy Services at some time. This reflects the affinity between the attesting witness and the co-executor, who is a beneficiary under the said Will. Though the attesting witness claims that he had no idea about where the Will was prepared, whereas Johanna Lobo (wife of Dr.LC.Lobo) states clearly in her cross examination that the Will was typed in the office of Mr.Davis Thomas, the



7th defendant/co-executor/beneficiary. This further reinforces the contention that the Will came to be prepared in the co-executor's office. The learned counsel would also contend that no reasons have been given by the testator for reserving the right that Mr.T.S.Sridharan can take 5% annuity on the property, a substantial benefit from the property located at the heart of the city. Similarly, no reasons have been given by the testator for reserving the right of residence till his life on the co-executor and thereafter to his wife in the property. Since the learned Judge has considered all these aspects while dismissing the suit, the impugned judgment and decree need no interference.

19. Mr.C.T.Murugappan, learned counsel appearing for the 5th defendant would contend that admittedly the Will is not registered. If at all the testator had real intention of bequeathing a very valuable property in Chennai city for life in favour of his wife and the executor/trustee and thereafter to a charitable organisation, the testator, being an educated person, would have chosen to execute a registered Will rather than an unregistered Will. There is no justifiable reason as to why the Will was not registered, if at all it was a true Will. The burden of proof that the Will was duly executed by the testator and was also duly attested in accordance with law by the two attesting witnesses is on the propounder of the Will. In the present case, even though there are two trustees/executors, only one viz., Mr.T.S.Sridharan has entered the box.



However, the other trustee/executor/life time beneficiary of the Will Mr.Davis

Thomas has avoided entering the witness box. When it is the case of the

plaintiff that the Will was executed in the office of the Metro General Credit,

which is under the control of Mr.David Thomas, the other executor cum

beneficiary, his failure of entering the witness box is fatal in proving the Will.

He would further contend that there is absolutely no shred of evidence towards

loss of love and affection between the testator, his wife and the niece and

nephews to disinherit them, but to give life interest to various persons before

giving the property to charity. In fact, Mrs.Johanna Lobo (D1) has stated that

she was in good terms with her nieces and nephews and has gone further to state

that this respondent/defendant took good care of her in times of her illness. If at

all the intention of the testator was to do charity, the interregnum life interest

except for the wife would not have been given. Soon after the life interest of the

wife, the property would have been given to charity. The fact that the control

over the property is purported to be given to Mr.T.S.Sridharan and after his life

time to his son Mr.Vikram Raghavan and that 5% of the income is to be given to

them as honorarium over and above the legal fees and the life interest given to

Mr.Davis Thomas and his wife, who also claimed to be executors/trustees, is

more than sufficient to show that the alleged Will has been brought about by

Mr.Davis Thomas and Mr.T.S.Sridharan for their own benefit under the guise of

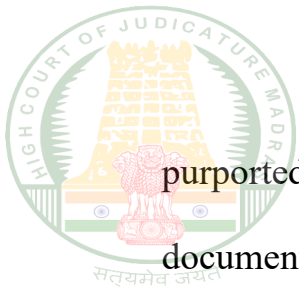
a charity. There is absolutely no explanation whatsoever to explain the above



circumstances or remove any of the above suspicious circumstances.

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20. He would also contend that the attestation as required under Section 68 of the Evidence Act and Section 63 of the Indian Succession Act has not been proved. The name and address of the attesting witness is not mentioned in the document. The attesting witness does not even state that the testator read and understood the Will and willingly signed the Will and therefore the voluntary execution of the Will is not established. The second witness even though alive has not been examined. As a matter of fact, she appears to have refused to give evidence. Even the evidence of Mr. Terrence Shenoy (PW2) is unreliable, as he has deposed that he signed in the presence of the testator and other witnesses and all the three of them have signed at the same time. But, however, in cross examination, he stated that he did not know where the Will was prepared, on what date the Will was signed by him as an attester. He did not know who made the corrections in the Will and when he signed the affidavit as an attesting witness. He did not know whether the affidavit as an attesting witness in Ex.P22 was signed by him in June, 1997 or January, 2000, as he came to know about the contents of the Will only now and did not have any idea about the contents of the Will earlier. Also he did not know where the Will was typed. He further admitted that certain words in the Will Metro General Credits were written after he signed the Will, meaning thereby the signature as a



purported testator was not on fully completed Will but on an incomplete document. He also admitted that he was working with David Thomas from

1985. This shows that the Will has not been duly attested and due attestation of the Will by the two attesting witnesses has not been established to the satisfaction of the Court. Equally the plaintiff has not put forth any evidence to the satisfaction of the Court to justify the interest created in his favour and in favour of his son by way of honorarium and life interest in favour of other executor/trustee and no evidence to justify the wrong impression sought to be created against the relatives of the Will. Hence the Will is shrouded with suspicion. Mere proof of signature and evidence by one attesting witness is not sufficient to hold that the Will was duly executed. It is settled principle of law that mere proof of signature of the testator and the identification of the same by witnesses and the signatures of the attestors is not sufficient proof of due execution of the Will for grant of probate. The Court will have to examine all the probabilities of the case and if there are suspicious circumstances, the said suspicious circumstances should be removed to the satisfaction of the Court. In the present case, even for the sake of argument without admitting that the signature of the attestator in the Will is proved, that does not amount to proof of execution of the Will. There is no evidence about the voluntary nature of execution of the Will and there is no evidence to remove any of the suspicious circumstances referred to herein above. Mere proof of signature of the testator



on the Will is not sufficient proof of a Will under Section 63 of the Indian Succession Act and that the Court's conscience should be satisfied that the testator signed understanding the nature of the document and the bequest under the document; that he read and understood the contents of the Will before signing; that the propounder has not played active role in the preparation of the Will; that the propounder does not get any substantial benefit under the Will and that there are strong reasons to disinherit the natural heirs. In the absence of cogent evidence as to the above, the Will is not proved to be a true and genuine Will. In support thereof, the learned counsel also relied upon the following judgments:-

1. 1958 SCC Online SC 31 - H.Venkatachala lyengar vs B.N. Thimmajamma and others
2. (1977) 1 SCC 369 – Smt.Jaswant Kaur vs Smt.Amrit Kaur and others
3. (2008) 14 SCC 754 - Babu Singh and others vs Ram Sahai alias Ram Singh
4. (2009) 3 SCC 687 - Bharpur Singh and others vs Shamser Singh
5. (2024) 20 SCC 125 - Chinu Rani Ghosh vs Subhash Gosh & others

Therefore, the learned counsel submitted that the impugned judgment and decree need not be interfered with by this Court.

21. We have also heard Ms.V.Srimathi and Mr.Arvind Srivatsava, learned counsels appearing for the defendants 2, 3 & 6. None appeared for the 8th

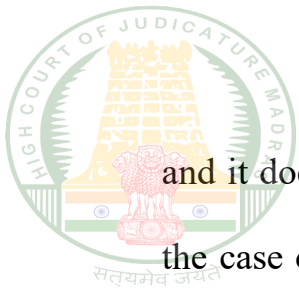


defendant charity.

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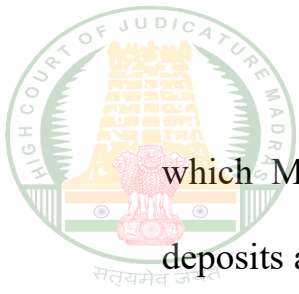
22. This Court considered the rival contentions and perused the materials available on record.

23. It is the case of the plaintiff that the testator-Dr.L.C.Lobo is a highly educated person and the 1st defendant-Johanna Lobo is his wife. They had no issues. The testator owned 40 grounds of land, out of which more than 30 grounds were settled in favour of the defendants 2 to 6 and retained the balance 9 ½ grounds for himself, namely, the property known as “Foxholes” covered under the Will, Ex.P1. Since the defendants 2 to 6, who are nephews and nieces, raised certain allegations against the testator, he was constrained to execute the Will bequeathing the property ultimately for the benefit of the 8th defendant. In this process, the testator appointed the plaintiff and the 7th defendant as executors and also made provisions for life interest for his wife/1st defendant and thereafter to the 7th defendant and his wife after which the property shall go to the 8th defendant. Since the Will was prepared by the testator himself, being a man of knowledge, which came to be attested by Mr.Terence Shenoy (PW2) and Mrs.C.B.Tamilselvi in the presence of the testator, the same cannot be doubted or suspected. Since the 1st defendant/wife of the testator also admitted in her evidence that the Will was executed by her husband, the Will is genuine



and it does not suffer from any infirmity. The 7th defendant has also supported the case of the plaintiff that the wife of the testator confirmed the execution of Will in her evidence and hence the Will is genuine and valid, thereby denied the allegations made by the defendants 2 to 6.

24. On the other hand, it is the case of the defendants 2 to 6 that even though the Will dated 26.10.1994 was executed by the testator, since he was under the direct influence of Mr.Davis Thomas, the co-executor/beneficiary and the other executor, being the plaintiff, during the last years of his life, it is apparent that the said David Thomas succeeded to have influenced the testator in the execution of the Will. Even the provision of 5% of the net income of the estate on the second executor/plaintiff, without any valid reason, is unnatural and the same would prove that there was a deep conspiracy and collusion between interested parties. Though the testator was a knowledgeable and educated person, he has miserably failed to register the Will when he intended to dispose the property in the manner as made out in the Will. The alleged disposition to the charitable organisation is squarely hit by the provisions of Section 118 of the Indian Succession Act making the bequest invalid. Even the affidavit of assets filed by the plaintiff does not include the details of deposits made by the testator and huge dues recoverable, of which defendants have vital and beneficial interest from M/s Metro General Credit Pvt.Ltd., the company in



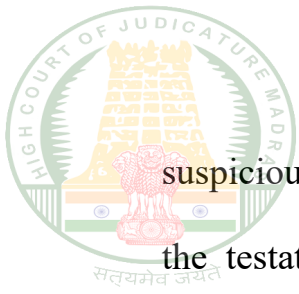
which Mr.Davis Thomas, the first named executor was the manager of the deposits along with his father as a director. The above suspicious circumstances throw serious doubt on the genuineness and validity of the Will.

25. In order to prove the genuineness of the Will, the plaintiff, who was examined as PW1, has clearly stated that the Will dated 26.10.1994 was executed by the testator Dr.L.C.Lobo in the presence of two attesting witnesses, of which one was examined as PW2. The first defendant is the wife of the testator. One of the co-executors was impleaded as the 7th defendant, who also supported the case of the plaintiff. The 8th defendant, who is the ultimate beneficiary, also supported the Will. One of the attestors to Ex.P1 Will, who was examined as PW2, has also clearly stated in his chief examination that the testator executed his last will and testament on 26.10.1994 in his presence and in the presence of the other attesting witness Mrs.C.B.Tamilselvi. The testator subscribed his signature in their presence. At the request of the testator, PW2 subscribed his signature as the first attesting witness along with Mrs.C.B.Tamilselvi, who attested the Will as the second attesting witness in the presence of the testator. The testator also made some corrections in Ex.P1 Will on his own handwriting before signing the Will with their office address, namely, Metro General Credits, Greaves Road, Madras. This was written by the testator in the Ex.P1 Will. This shows that the testator was in a sound and



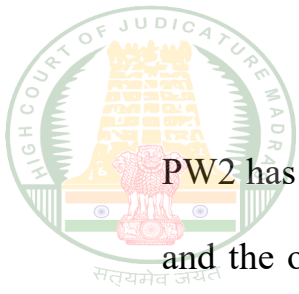
disposing state of mind, memory, understanding and in good health at the time of executing the Ex.P1 Will. However, nothing was shattered during the cross examination. Usually the attesting witness would be cross examined on a single day after completion of the chief examination. But the attesting witness herein was cross examined on six different dates. Section 63 of the Indian Succession Act speaks about how the Will should be executed. In this case, on a reading of the evidence of PW2, it is seen that the provisions of Section 63 of the Indian Succession Act have been complied with. Similarly, Section 68 of the Indian Evidence Act speaks about the proof of attestation for execution of the Will, which says that the Will has to be proved by examining at least one of the attesting witnesses. In this case, one of the attesting witnesses has been examined as PW2, who has also clearly spoken about the execution of the Will by the testator, who has subscribed his signature in the presence of two attesting witnesses. The two attestors have also subscribed their signatures as attesting witnesses in the presence of the testator. The 1st defendant was examined through Commissioner, who has also supported the case of the plaintiff. A combined reading of the evidence of PWs.1, 2 & D1 and Ex.P1 Will would show that the plaintiff has proved that the Will came to be executed in the manner known to law and the same was proved in the manner known to law.

26. However, the learned single Judge has given much importance to the



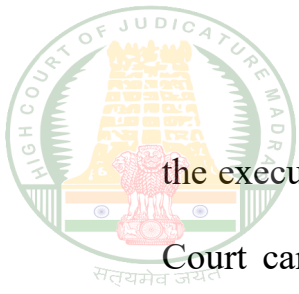
suspicious circumstances projected by the defendants 2 to 6 that the signature of the testator differs in the Will; that the defendants 2 to 6 have been fully eliminated in the Will; that the plaintiff as one of the executors has been given the benefit of 5% income derived from the estate; that the Will is hit by Section 118 of the Indian Succession Act; that the lifetime interest conferred on the first executor and his wife is hit by the rule of perpetuity. Though the learned single Judge found from the Will that the lifetime interest was given to the 1st defendant wife and thereafter to the 7th defendant and his wife and after that to the 8th defendant charity and therefore the same is not hit by the rule of perpetuity, since the first executor and his wife were existing at the time of execution, so far as the other aspects are concerned, the learned Judge rejected the case of the plaintiff mainly on the grounds that the signature of the testator differs in the Will; that the plaintiff, being one of the executors, was given the benefit of 5% of the net income derived from the estate and that the defendants 2 to 6 were totally eliminated by the testator and therefore the execution of Will is shrouded by suspicious circumstances.

27. So far as the suspicious circumstance regarding the signature difference of the testator in the Will is concerned, now the plaintiff is not the attesting witness. He is only one of the executors. As per the evidence of PW2, PW1 was not present at the time of execution of the Will. As already stated,



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PW2 has clearly spoken that the testator subscribed his signature in his presence and the other attesting witness and they also subscribed their signatures in the presence of the testator and that the testator himself corrected and subscribed his signature. Though the learned single Judge has pointed out the evidence of PW2 during cross examination regarding the difference and other things, admittedly, the Will was said to have been executed on 26.10.1994. Whereas PW2 was examined in chief on 14.03.2013, wherein he has clearly stated that he subscribed his signature on 26.10.1994 when the testator subscribed his signature. However, he was cross examined on various dates i.e., 20.06.2013, 27.08.2013, 04.11.2013, 06.11.2013, 19.03.2014 and lastly on 01.04.2014. When the chief examination was completed on 14.03.2013, the cross examination went upto 01.04.2014 for more than a year and that too, after a period of nearly 20 years. Therefore, it cannot be said that the attesting witness was not able to give the exact date and time. The signature of PW2 in the Will as well as in his deposition seems to be similar and the defendants 2 to 6 did not establish that PW2 was not one of the attesting witnesses. Once PW2 has clearly deposed that he was one of the attesting witnesses to the Will and has seen the testator subscribing his signature, as per Section 68 of the Indian Evidence Act, when the execution of Will was proved by examining one of the attesting witnesses, there is no material discrepancy to discard the evidence of PW2 and therefore the rejection of the evidence of PW2 is legally unsustainable. Once



the execution of Will is proved by examining one of the attesting witnesses, the

Court cannot interpret the Will on its own, as the Will has to be interpreted

keeping in mind the intention of the testator alone. A mere perusal of the Will

shows that the testator had subscribed his signature at the bottom and after

making the correction with his own handwriting in clause 7, has initialled the

document, which cannot be treated as suspicious.

28. So far as the suspicious circumstance regarding the elimination of the defendants 2 to 6 is concerned, admittedly, out of 40 grounds, more than 30 grounds were already settled in favour of the defendants 2 to 6 way back in the year 1972 and 9 ½ grounds were retained by the testator. It is also seen that even in the year 1982, there were legal proceedings between the testator and the defendants 2 to 6 due to some animosity and they went to the extent of making certain allegations against the testator. The evidence of DW1 also shows that the testator was annoyed by these accusations and was deeply hurt by the continuous attacks on his character, which fact was also admitted by the 1st defendant in her affidavit to bequeath the property to a charity in order to avoid further vicious familial disputes. Therefore, the testator was constrained to label the defendants 2 to 6 as wicked and ungrateful wretches for excluding them from the benefits. Though the defendants 2 to 6 have stated that the Will came to be executed by the testator under the influence of the executors, it is not their



case that the testator was not in a sound state of mind or suffered from ill-health or was over-aged. From the material evidence, it can be seen that more than 30 grounds were already transferred to the defendants 2 to 6 even in the year 1972 retaining 9 ½ grounds alone, which is the subject matter of this lis, and further the defendants 2 to 6 have already instituted proceedings in O.P.No.97 of 1982 levelling baseless and defamatory allegations accusing the testator of criminal misappropriation, tax evasion, autocratic behaviour, manipulation of accounts and deliberately destroying share certificates. Therefore, when there was strained animosity between the testator and the defendants 2 to 6, who had been allotted more than 30 grounds, the testator, who had no issues, might not have maintained good relationship with his nephews or nieces and in that way, their elimination may not be a sufficient ground to allege suspicious circumstance against the existence of the very Will itself.

29. So far as the contention as to the grant of 5% honorarium on the net income of the estate to one of the executors is concerned, the same may not be a suspicious circumstance. As admitted by both the parties, the testator was a highly educated personality and nobody can question the wisdom or intention of the testator to execute the Will by appointing the two executors as trustees to act jointly and severally in respect of the property known as 'Foxholes'. Therefore, the grant of 5% honorarium to one of the executors may not be a reason to hold



that the Will was shrouded by suspicious circumstance. Moreover, PW2 has witnessed the testator affixing his signature in the Will and the attesting witnesses affixing their signatures in the presence of each other before the testator. Subsequently, after 20 years, taking advantage of some discrepancy in evidence, the defendants 2 to 6 cannot state that the Will was shrouded by suspicious circumstances. Though the defendants 2 to 6 have stated that the existence of the Will was not brought to their knowledge, the fact remains that the same was duly intimated to the bank and also to the 8th defendant, which is the ultimate beneficiary under the Will. Therefore, one of the findings that the Will might have been typed subsequent to the striking off Section 118 of the Indian Succession Act, is not sustainable. The striking off Section 118 came only in the year 2003. On the earlier occasion, the plaintiff has officially intimated various banks regarding the existence of Will as early as on 29.05.1997 and also issued written intimation to the 8th defendant on 19.07.1997 itself and at that stage, they would not have known that subsequently in 2003, the provision of Section 118 would be struck off and hence the observation made by the learned single Judge that the Will might have been prepared taking advantage of the signature of the testator found in the blank paper after 2003, cannot be accepted. A reading of the Will, Ex.P1 dated 26.10.1994 and also the evidence of the 1st defendant, who is none other than the wife of the testator, identifying the signature of the testator of her husband



with the help of torchlight during examination, as she was aged 83 and naturally for such an old lady, it would be difficult to identify the signature with naked eyes. Moreover, she has also accepted the genuineness of the Will and not doubted the same. Since the evidence of PWs.1, 2 and 1st defendant are cogent and convincing, the suspicious circumstances projected by the defendants 2 to 6 have not been proved in the manner known to law.

30. As already stated, when the contesting defendants were already granted substantial extent of property and only 9 ½ grounds were retained by the testator and subsequently, on account of the judicial proceedings initiated by the nephews and nieces in the year 1982 due to animosity by making certain frivolous allegations against the testator, the reason for their elimination is quite understandable, as the intention of the testator alone has to be taken into consideration. Further, the title of the property of the testator is not in dispute. Even the wife (D1) did not challenge the Will at all. One of the co-executors was impleaded as the 7th defendant and he has also supported the case of the plaintiff. Equally the 8th defendant, who is the ultimate beneficiary of the Will, has also supported the case of the plaintiff. Though the contesting defendants have chosen to challenge the Will, they have failed to prove the suspicious circumstances in the manner known to law. The learned Judge failed to consider the evidence of the 1st defendant as well as PW2, one of the attesting



witnesses, in the right perspective and has given much importance to the suspicious circumstances projected by the defendants 2 to 6 and has arrived at the conclusions by pointing out certain irregularities, which cannot be considered as material discrepancies. When the Will has been executed under Section 63 of the Indian Succession Act and the same has been proved under Section 68 of the Indian Evidence Act, the suspicious circumstances projected by the defendants 2 to 6 cannot be accepted at all, as the plaintiff has established the reason for their elimination. Even otherwise, it is the intention of the testator, who is the absolute owner of the property and nobody can question his wisdom. It is not even the case of the contesting defendants that the Will has been executed in favour of strangers or unknown persons, as the parties have admitted that the executors and the testator were good family friends for a considerable length of time, more so the ultimate beneficiary of the Will is the 8th defendant. When the contesting defendants have raised certain suspicious circumstances surrounding the Will, it is for the plaintiff/propounder to dispel the alleged suspicious circumstances, which he has in fact done in this case. The defendants 2 to 6 have also not filed any cross appeal on other issue(s).

31. Further, one of the grounds urged by the contesting defendants is that the 7th defendant has not entered the witness box. This Court finds that mere non-examination of one of the executors (D7) is not fatal to the case of the



plaintiff, as the law requires that at least one of the attesting witnesses should have been examined to prove the execution of Will. In this case, admittedly, one of the attesting witnesses was examined as PW2 and he has clearly spoken about the execution of the Will by the testator. Therefore, the execution of Will has been proved, as mandated under Section 68 of the Indian Evidence Act, to the satisfaction of the Court. It is equally settled law that the registration of a Will is not mandatory and therefore, mere non-registration cannot be treated as a suspicious circumstance in this case.

32. For all the aforementioned discussions and reasons, while re-appreciating the evidence, this Court finds that the plaintiff/propounder has proved the genuineness of the Will, Ex.P1 by examining one of the attesting witnesses for issue of Probate in his favour. Accordingly, the judgment and decree passed by the learned single Judge are set aside and both the appeals are allowed. Issue Probate to the plaintiff/propounder in respect of the Will dated 26.10.1994 under Ex.P1. There shall be no order as to costs.

(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)

08-07-2026

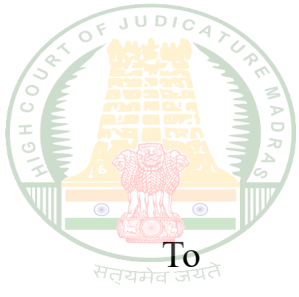
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Speaking/Non-speaking order

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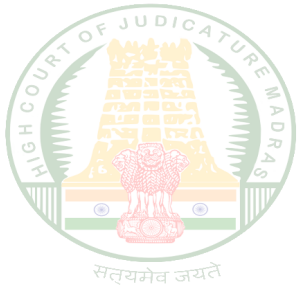
OSA Nos. 121 & 213 of 2020



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The Sub Assistant Registrar (O.S.)
High Court, Madras



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OSA Nos. 121 & 213 of 2020



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.**

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**Common Judgment in
OSA Nos. 121 & 213 of
2020**

08-07-2026