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A.S(MD)No.110 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.04.2026

Pronounced on : 06.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.110 of 2017

and

C.M.P(MD)No.6407 of 2017

A.K.Kumaravel,
S/o.Karuppannan Chettiar,
No.28, Chinthamani Bazaar,
Trichy.

... Appellant/2nd Defendant

Vs.

1.K.Ravi,
S/o.Karuppannan Chettiar,
Residing at P-14, 3rd Main Road,
Ramalinga Nagar,
Woraiyur,
Tiruchirappalli.

...1st Respondent/Plaintiff

2.L.Vanalakshmi,
W/o.Lakshmanan,
Residing at Chandra Nagar,
36, Malar Illam, Periyar Nagar,
Mambazhasalai,
Tiruchirappalli.

3.R.Saraswathi,
W/o.Ramkumar,
D.No.44/221, Pidari Kovil Street,
Thiruvarur Town,
Thiruvarur District.

...2nd & 3rd Respondents/
1st & 3rd Defendants



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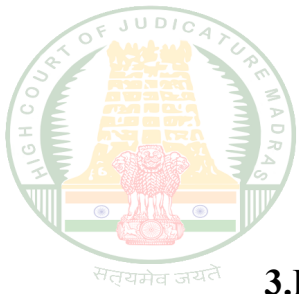
PRAYER:- This Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 of CPC., to set aside the judgment and decree passed in O.S.No.165 of 2010, dated 23.12.2016 on the file of the II Additional District Judge, Tiruchirappalli.

For Appellant : Mr.V.Meenakshi Sundaram
for Mr.R.Mohana Sundaram
For R1 : Mr.J.Barathan
For R2 : Mr.P.Sesubalan Raja
For R3 : No Appearance

JUDGMENT

This Appeal Suit is directed against the judgment and decree, dated 23.12.2016 passed in O.S.No.165 of 2010 on the file of the learned II Additional District Judge, Tiruchirappalli.

2.The appellant is the 2nd defendant in O.S.No.165 of 2010 on the file of the learned II Additional District Judge, Tiruchirappalli. The 1st respondent is the plaintiff and the respondents 2 and 3 are the defendants 1 and 3 in that suit. The 1st respondent/plaintiff filed the suit for partition of his 1/4th share in the suit properties.



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3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The averments of the plaint in brief:-

The items 1 to 7 of the suit properties belonged to one Janakiammal, wife of Karuppanan Chettiar. The said Karuppanan Chettiar purchased the suit items 8 to 19. Karuppanan Chettiar ran JVJ Textiles in the 2nd item along with his brother-in-law Lakshmanan. The plaintiff ran a business in the name of "Karuppanna Piece and Cut Piece Centre" in item No.21. There was a suit in O.S.No.552 of 1989 on the file of the Sub Court, Trichy filed by the father Karuppanan against the owner of item No.21 for specific performance. That suit was decreed and the appeal filed by its owner was also dismissed. The execution proceedings are pending. The said Karuppanan Chettiar was a cancer patient and became bedridden for six months prior to his death on 08.06.2010. The mother, Janakiammal, was an Aplastic Anemia patient for about two years and she was not in a good state of mind. She was hospitalized prior to her death. She died on 29.12.2004. Both Karuppanan Chettiar and Janakiammal died intestate. The plaintiff and the defendants are the sole legal heirs of Karuppanan Chettiar and Janakiammal. As there was misunderstanding



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arose, the plaintiff demanded partition of the suit properties in respect of suit items 1 to 21. But, the defendants were not ready for amicable partition. Hence, the plaintiff filed the suit for partition of his 1/4 share in the suit properties. The items 22 and 23 of the suit properties are self acquired properties of the plaintiff. The said properties are included at the instance of the 2nd defendant by filing petitions in I.A.No.936 of 2011 and I.A.No.578 of 2012.

5.The averments of the Written Statement filed by the defendants

1 and 2 in brief:-

The parties' mother, Janakiammal, died on 29.12.2004. Items 1 to 7 belonged exclusively to her. Janakiammal was in a sound disposing mind and she executed a registered Will, dated 20.12.2004, bequeathing her properties in favour of her husband Karuppanan Chettiar and her son Kumaravel. As there was a difference of opinion between the plaintiff and his mother Janakiammal, she did not give any property to him. After the death of Janakiammal, her last Will, dated 20.12.2004, came into effect. While their father Karuppanan Chettiar was of sound disposing mind, he executed a registered Settlement deed, dated 12.04.2010, in favour of all his children. The defendants have no



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objection to allotting a 1/4th share in item No.21 of the suit properties to the plaintiff, as there was litigation pending in respect of item No.21. In the rest of the suit properties, the plaintiff does not have any share. The suit properties are not in joint possession of the plaintiff. The Court fee paid U/s.37(2) is not correct. Hence, the suit is liable to be dismissed.

6.The 3rd defendant remained ex-parte before the trial Court.

7.The trial Court framed the following issues upon the pleadings of both parties.

(1) Whether the plaintiff is entitled to 1/4th share in the suit properties?

(2) To what other relief?

Additional Issues were also framed:

(1)Whether the Will dated 20.12.2004 is true, valid and binding the parties to the suit?

(2)Whether the settlement deed dated 12.04.2010 is valid and binding on the parties?

(3)Whether the plaintiff is entitled for past and future profits?



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8.During the trial, the plaintiff examined himself as P.W.1 and one doctor Ramanidevi was examined as P.W.2 and marked one document as Ex.A.1. On the defendants' side, D.W.1 to D.W.4 were examined and Ex.B.1 to Ex.B.29 were marked. In addition, Ex.X.1 to Ex.X.3 were also marked.

9.On appreciation of the evidence and the submissions made on behalf of the parties, the trial Court has held that the registered Will, dated 20.12.2004, was not executed by mother Janakiammal in a sound state of mind and the registered settlement deed, dated 12.04.2010 was executed by Karuppanan Chettiar in a sound state of mind. The items 22 and 23 of the suit properties are proved as absolute properties of the plaintiff. So, the trial Court passed a preliminary decree in favour of the plaintiff for 1/4 share in suit items 1 to 7 and 21, in other respects, the suit was dismissed by its judgment and decree dated 23.12.2016.

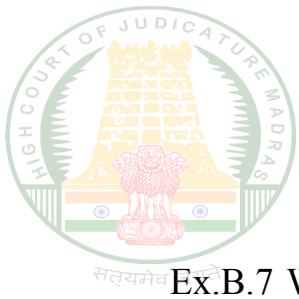
10.Aggrieved by the judgment and decree of the trial Court, dated 23.12.2016, the 2nd defendant has preferred this appeal.



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11.Both parties have argued their respective cases. On hearing both sides and perusing the material records along with the grounds of appeal, both sides admitted that there are 23 items of suit properties and out of which item Nos.1 to 7 belong to Janakiammal and item Nos. 8 to 21 belong to Karuppanan Chettiar. The plaintiff and the defendants are the children of Karuppanan Chettiar and Janakiammal. Item Nos.22 and 23 stand in the name of the plaintiff, later, they were included as suit properties. It is the case of the plaintiff that their parents died intestate, whereas it is the case of the 2nd defendant that their mother Janakiammal executed Ex.B.7 registered Will, dated 20.12.2004 and their father executed Ex.B.8 settlement deed, dated 12.04.2010. The plaintiff opposed the Will executed by his mother, Janakiammal, as she was an Aplastic Anemia patient and she was not in a sound state of mind. The Trial Court came to the conclusion that Ex.B.7 was not executed under a sound state of mind by Janakiammal in respect of items 1 to 7 of the suit properties and that Ex.B.8, the registered settlement deed executed by father Karuppanan Chettiar, is valid and binding on both the plaintiff and the defendants. The trial Court further held that the suit items 22 and 23 are absolute properties of the plaintiff. The 2nd defendant has preferred this appeal challenging the decision of the trial Court regarding



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Ex.B.7 Will and also regarding item Nos.22 & 23. However, the plaintiff has not preferred any appeal and the 1st defendant has also not preferred any appeal. So, the only dispute is in respect of Ex.B.7 - Will executed by Janakiammal and item Nos.22 and 23.

12.The points for consideration in this appeal are:

1)Whether the registered original Will dated 20.12.2004 is executed by Janakiammal under sound state of mind?

2)Whether the item Nos.22 and 23 are absolute properties of the plaintiff?

3)Whether the judgment and decree of the trial Court dated 23.12.2016 passed in O.S.No.165 of 2010 are liable to be set aside and the appeal is to be allowed?

13.Point Nos.1 to 3:

The learned counsel for the appellant/2nd defendant submitted that the mother of the parties, Janakiammal, was in a sound state of mind. She executed the Will on 20.12.2004 and registered the same at the Sub Registrar's Office on her discharge on 23.12.2004. The 2nd defendant examined one of the attestors as DW.4, who clearly deposed about the execution of the Will by Janakiammal.

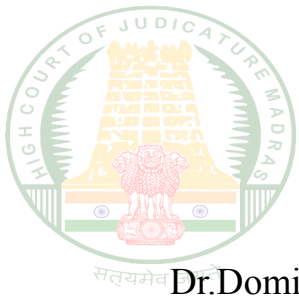


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D.W.4 is also an identification witness in Ex.B.8 settlement deed in respect of item Nos.8 to 20 executed by father Karuppanan Chettiar. D.W.4 is none other than the husband of the 1st defendant, who is the sister of the plaintiff also. The 1st defendant was not given any benefit through the Will. The plaintiff has not preferred any appeal in respect of item Nos.8 to 20. So, the evidence of the attesting witness D.W.4 Lakshmanan, who is an attestor in Ex.B.7 - Will and who is also an identification witness in Ex.B.8, is an authenticated one. Hence, the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act are satisfied in respect of Ex.B.7 – Will. Moreover, on the death of the mother, Ex.B.7 - Will came into effect and the revenue records were mutated in the name of the 2nd defendant even in the year 2006. Everyone in the family, including the plaintiff, knows about the said mutation. The plaintiff has filed the suit in the year 2010. Because of a dispute over share in the business, the plaintiff filed the suit by dragging all the properties.

14.The learned counsel for the appellant/2nd respondent further argued that the plaintiff has examined the Director/Consultant of the Hospital where Janakiammal took treatment as P.W.2. The plaintiff has not examined



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Dr.Dominic, who treated the said Janakiammal. The case history, medical investigation chart and report given by Dr.Dominic are marked as Ex.X.1 to Ex.X.3. The P.W.2 has admitted in his cross examination that Ex.X.1 to Ex.X.3 reveal that the said Janakiammal was in self conscious. Though the defendants stated in their written statement that the testatrix Janakiammal was in a sound state of mind, the plaintiff has not filed any reply statement denying the same. The trial Court has also observed this fact in its judgement. Moreover, D.W.1 and D.W.2 have categorically stated in their evidence that the testator Janakiammal was in a good state of mind. But the trial Judge has discussed the Will only in paragraph No.9 and decided about the mental condition of Janakiammal and held that the Will was not executed by her in a sound state of mind. There is no medical evidence regarding her unsound state of mind, and the doctor who treated her was not examined. The trial Judge should not apply his notions or opinions in the absence of medical officer evidence. Ex.X.1 to Ex.X.3 medical record report of the testator would show her sound state of mind.

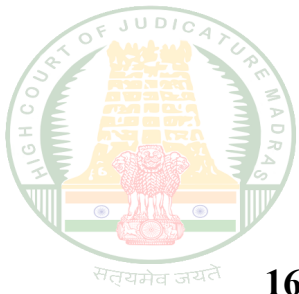
15.The learned counsel for the appellant/2nd defendant further argued that the other daughters of Janakiammal were not allotted any share through



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the Will, and the other daughters have not questioned the Will. So, the Ex.B.7 is a registered Will and D.W.4 clearly deposed about the execution of the Will by the testator. So, the Will is proved by the 2nd defendant. Further, the plaintiff has no independent income, and he was not an earning member at the time of purchasing the suit items 22 and 23 and hence, these items were included at the instance of filing the petition by the 2nd defendant. The plaintiff has not preferred any civil revision against the inclusion of those items in the suit properties. The trial Court has also observed in its judgment in paragraph No.12 that the item Nos.22 and 23 were purchased by the father Karuppanan Chettiar in the name of the plaintiff. The trial Court held that the said items Nos. 22 and 23 are the properties of the plaintiff, as D.W.1 admitted that in the settlement deed the properties of Karuppanan Chettiar alone are mentioned. The plaintiff has not proved that he purchased items 22 and 23 out of his own income and there is no proof of his personal income. Therefore, the suit has to be dismissed in respect of items 1 to 7 and in respect of items 22 and 23, amendable for partition. To that effect, the judgment of the trial Court has to be set aside by allowing this appeal.



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16.In support of his arguments, the learned counsel for the 2nd defendant has relied on the following rulings of the Hon'ble Supreme Court and this Court.

(1) 86 Law Weekly Page 122 in the case of Irudayam Ammal and Ors. /v/ Salayath Mary (Madras High Court), it is held in paragraph No.6 as follows:

"6. There is a general presumption about the execution of the will arising under [Section 60](#) of the Indian Registration Act (vide Mullah's Indian Registration Act 7th Edn., page 256). It is true that registration, by itself, in all cases, is not proof of execution, but if no other evidence is available, the certificate of registration is prima facie evidence of its execution and the certificate of the registering officer under [Section 60](#) of the Registration Act is relevant for proving execution. (See discussion in Sarkar's evidence latest 12th Edn., p. 640). As observed by the Privy Council in [Md.Ihtisham v. Jamna Prasad](#), registration is a solemn act and if no other evidence is available the court can presume that the Registrar performed his duty of satisfying himself that the document presented to him for registration was duly executed by the executant and the executant was duly and properly



identified before him. The same view was taken in Gopaldas v. Sri Thankurji (2) in which after referring to the earlier decision of the Privy Council in Md.Intishan Ali v. Jamma Prasad (1) (referred to above) Sir George Rankin observed that the evidence of due registration is itself some evidence of execution as against the other side. There is a full discussion on this question as to the presumption arising coupled with the presumption arising under [Section 114](#) of the Indian Evidence Act in a Bench decision of the Mysore High Court in [Huthegowda v. Chennigowda](#) (3) in which it was held that the evidence that a document was duly registered is some evidence of its execution by the person by whom it purports to have been executed.

(2)2004 (3) CTC 561 High Court of Madras in the case of Senthilkumar, rep. by guardian Chockalinga Mudaliar and Anr. /v/ Dhandapani and Others, wherein it is held in paragraph No.22 as follows:

"22.Now let us consider whether the plaintiffs have established the genuineness and validity of Ex. A-3 in accordance with law. As said earlier, the plaintiffs have specifically pleaded that Ex. A-3-will dated 11-10-84 was duly executed in a sound and



disposing state of mind and validly attested. As per the terms of the will, the first plaintiff is absolutely entitled to the property described in schedule A and B of the will, while the second plaintiff is entitled to the properties described in schedule C to the will. The executant Arumugha Mudaliar died only on 14-5-85, nearly after 3 months of the execution of Ex.A-3 will. In order to prove the due execution and validity of Ex. A-3, the plaintiffs have examined one of the attestors of the will, namely, Umar Dhatha as P.W.4. He deposed that while drafting the will-Ex.A-3, he was very well present and the same was written by Kalyanasundaram-P.W.5. After the drafting process is over, Arumugha Mudaliar signed the will and he saw Arumugha Mudaliar signing the will. He put his signature as attestor in the will along with one Seenu. In cross examination, he mentioned that Ex.A-3 was written in 1984 and he did not know the exact month and date. By pointing out certain discrepancies in his statement that only one person attested Ex. A-3 etc., learned counsel for the first defendant contended that P.W.4 would not have attested the will. After going through his entire evidence, we are unable to accept the said contention. It is to be noted that though the will Ex. A-3 was executed on 11-10-84, P.W.4 was



examined in the Court nearly after 4 years i.e., on 2-12-88 and in such a circumstance, one cannot expect that P.W.4 should say or depose all the details about the will accurately. Any how, the fact remains that he is one of the attestors of Ex. A-3 and he saw Arumugha Mudaliar signing Ex.A-3 in his presence and it is his evidence that the will was written by Kalyanasundaram-P.W.5. There is no reason to disbelieve the version of P.W.4. Thus, the plaintiffs have complied with the requirement under [Section 68](#) of the Indian Evidence Act.

(3) 2023 (3) CTC 30 of Madras High Court in the case of G.Lakshmi

and Anr. /v/ U.Saraswathi, it is held in paragraph No.40 as follows:

"40.The evidence of the attesting witnesses cannot be expected to be given with arithmetical precision. The fact that evidence is being given before the Court after several years after the execution of the Will should also have to be remembered by the Court while assessing the evidence adduced by the parties. This Court has already found that there is more than sufficient evidence available on record to establish the fact that Ex.P1-Will was indeed executed by the testatrix, in the presence of the second appellant



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and the respondent herself. Moreover, applying the ratio laid down by the Hon'ble Supreme Court in Naresh Charan's case and this Court's in M.S.Thanigachala Pillai's case, this Court has no hesitation to hold that the evidence of P.W.1, one of the attestors, coupled with the evidence of R.W.1, the other attestor satisfies the requirement of Sec.63 of the Indian Succession Act. "

(4) 2022-2 Law Weekly 379 of the Madras High Court in the case of Renuka Subbu Singh /v/ Kannaiyan @ Lakshmi Narayanan and Ors., it is held in paragraph No.38 as follows:

"38.While considering the suspicious circumstances, the Court has to satisfy its own conscience to ensure that the testator really intended to bequeath the property in favour of the beneficiary. While undertaking this exercise, a Judge should not be applying his notions or opinions as to what he considers a conscientious act. A Judge should sit in the armchair of the executor of the Will and satisfy his conscience. There maybe various reasons as to why a Will is written in a particular manner and a share is allotted to one of the daughters and others are not given any shares. While undertaking this exercise, the Court has to only look into the overall



circumstances and arrive at a decision. While applying this test, this Court finds that Ex.A11 Will has been duly proved and the suspicious circumstances raised by the defendants have not been properly established and the suspicious circumstances that were taken into account by the Lower Appellate Court, does not warrant a finding to the extent of discrediting the Will. Such findings rendered by the Lower Appellate Court is therefore held to be perverse and it deserves the interference of this Court. The second substantial question of law is answered accordingly. "

(5) (1995) 4 Supreme Court Cases 459 in the case of Rabindra Nath Mukherjee and Anr. /v/ Panchanan Banerjee (Dead) by LRs. and Ors.,
wherein it is held in paragraph Nos.3 and 4 as follows:

"3.A perusal of the two impugned judgments shows that the following were regarded as suspicious circumstances:

(1)Deprivation of the natural heirs by the testatrix.

(2)Identification of the testatrix before the Sub-registrar by an Advocate of Calcutta who had acted as a lawyer of one of the executors in some cases.



(3)The witnesses to the documents were interested in the appellants.

(4)Active part played by one Subodh, a close relation of Rabindra, one of the executors, in getting execution of the will. He has been described as ubiquitous.

4.As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister; the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the will."

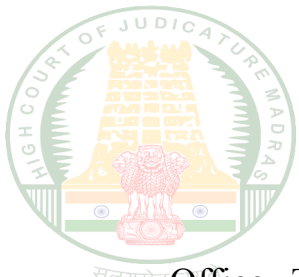
(6) (2002) 1 Supreme Court Cases 630 in the case of S.Sundaresa Pai and Ors. /v/ Sumangala T.Pai and Anr., wherein it is held in paragraph No.6 as follows:

"6.It is significant to note that only the plaintiff has questioned the will. All the defendants



were supporting the will. The High Court also found that in view of the testimony of the attesting witness, the will had been formally proved. Under these circumstances, we fail to understand how the conclusion about the will being unnatural on the basis of uneven distribution of the assets by Indira Bai could be reached. The widowed daughter had not questioned the will. She rather supported it. Therefore, it could not be taken as a circumstance to show that the will was unnatural by observing that she was more deserving. It is a question which lies squarely within the pure discretion of the executant of the will. The finding that the "will is most unnatural" cannot be sustained."

17.Per contra, the learned counsel for the 1st respondent/plaintiff specifically contended that the Ex.B.7 - Will came to be executed under suspicious circumstances and there is testamentary lapse. The testatrix of the Will, namely Janakiammal, was suffering from Aplastic Anemia and she was not in a sound state of mind prior to her death. She was admitted in hospital on 16.12.2004 as an inpatient and discharged only on 23.12.2004 at 10.00 a.m., on the same day at 11.00 a.m. the Ex.B.7 was registered at the Sub-Registrar's



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Office. The Will was reduced to writing on 20.12.2004, while she was in hospital under treatment. After discharge, she was directly taken to the Sub-Registrar's Office for registration. DW.1 and D.W.4 deposed that the Will was written in the mother's house. So, there is a major contradiction about the writing of the Will. Moreover, on the alleged date of the Will, the testator was an inpatient and she was not a free agent. There is no reason for exclusion of the natural heir. The plaintiff is the 1st son and he was excluded in the Will, but there is no reason assigned for that.

18. The learned counsel for the 1st respondent/plaintiff further argued that D.W.4 is an interested person in the suit property as he is also a partner in JVJ Textile. P.W.2 deposed that the patient was discharged by DW4. The Medical records were attested by D.W.1. The doctor who treated Janakiammal was not examined. The defendants have not produced any original medical records, thereby suppressing the truth. So, as per Section 114(g) of the Indian Evidence Act, the defendants have not substantiated their case. The Ex.B.7 - Will is surrounded by suspicious circumstances and the propounder of the Will, the 2nd defendant herein, has not proved that the Will was executed with a free of mind by the testatrix and free from suspicion. The plaintiff purchased the suit



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item Nos.22 and 23 from his own income. Hence, the trial Court has correctly concluded that Ex.B.7 - Will was executed under an unsound state of mind by Janakiammal and correctly passed the judgment. Therefore, the appeal may be dismissed.

19.In support of his arguments, the learned counsel for the 1st respondent/plaintiff relied on the following rulings:

(1) **1958 SCC Online SC 31 in the case of H.Venkatachala Iyengar /v/ B.N.Thimmajamma and Ors.**, in which it is held in paragraph Nos.19 and 20 as follows:

"19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents.

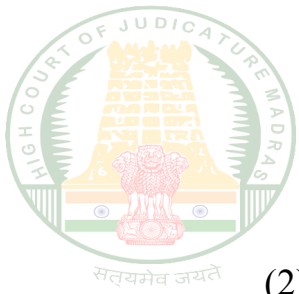


The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator; that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental



capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."



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(2) (2006) 13 Supreme Court Cases 433 in the case of **Niranjan Umeshchandra Joshi /v/ Mrudula Jyoti Rao and Ors.**, wherein it is held in paragraph Nos.22, 33 and 34 as follows:

“22.Both the schedules of the Will were meticulously drafted. Tarabai in her deposition did not say that she or Appellant had furnished all those details to Mahimkar in advance. Except they, in the given situation, no other could do so. An inference can, therefore, be safely drawn that Appellant had a role to play in execution of the Will. Story of the Will being drafted in the cubicle of ICU of the Hospital, thus, cannot be believed. In all probabilities, Will was drafted by Mahimkar in his Chamber. It may also be borne in mind that as the deceased could only sign in English, question of his dictating the Will and at least the term thereof was wholly unlikely. Will has been drafted by a professional. The theory set up by the propounder that he believed that the appellant would carry out his charitable activities is not reflected from the Will. No reason has been assigned as to why he had chosen Appellant alone for taking the entire benefit of the legacy. .

33. The burden of proof that the Will has been validly executed and is a genuine document is



on the propounder. The propounder is also required to prove that the testator has signed the Will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. [See [Madhukar D. Shende v. Tarabai Shedage v. Jayaraja Shetty](#). Subject to above, proof of a Will does not ordinarily differ from that of proving any other document.

34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances :-

(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;*

(iii) *Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.*

(3) (2009) 3 Supreme Court Cases 687 in the case of Bharpur Singh and Ors. /v/ Shamsheer Singh, it is held in paragraph Nos.15, 23 and 24 as follows:

“15. This Court in [H. Venkatachala Iyengar vs. B.N. Thimmajamma](#) opined that the fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. It was also held that (AIR p. 451, para 19) one of the important features which distinguishes Will from other documents is that the Will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and



testament of the departed testator.

23.Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:

i.The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

ii.The condition of the testator's mind may be very feeble and debilitated at the relevant time.

iii.The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

iv. The dispositions may not appear to be the result of the testator's free will and mind.

v. The propounder takes a prominent part in the execution of the Will.

vi. The testator used to sign blank papers.

vii. The Will did not see the light of the day for long.

viii. Incorrect recitals of essential facts.

24.The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a



finding as to whether the execution of the Will had duly been proved or not. It may be true that the Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with.”

(4) 2025 SCC online SC 1466 in the case of Gurdial Singh (Dead) through LR /v/ Jagir Kaur (Dead) and Anr., in which it is held in paragraph Nos.17 and 19 as follows:

"17.It was rightly indicated in [Leela Rajagopal vs. Kamala Menon Cocharan](#)¹¹when unusual features appear in a Will or unnatural circumstances surround its execution, the Court must undertake a close scrutiny and make an overall assessment of the unusual circumstances before accepting the Will.

19.Appellant's case was not only to propound the Will in his favour but even to deny the very status of 1st respondent as Maya Singh's wife. When one reads the contents of the Will, appellant's stand is stark and palpable in its tenor and purport. The Will is a cryptic one where Maya Singh bequests his properties to his nephew i.e. the appellant, as the latter was taking care of him. However, the Will is completely silent with regard



to the existence of his own wife and natural heir, i.e. the 1st respondent, or the reason for her disinheritance. Evidence on record shows 1st respondent was residing with Maya Singh till the latter's death. Nothing has come on record to show the relation between the couple was bitter. As per the appellant, she was nominated by Maya Singh and was entitled to receive his pension which demonstrates the testator's conduct in accepting 1st respondent as his lawfully wedded wife. Further, the Trial Court erroneously observed that non performance of last rites of Maya Singh by 1st respondent hinted at sour relations between the couple. Ordinarily, in a Hindu/Sikh family, last rites are performed by Male Sapinda relations. Given this practice, 1st respondent not performing last rites could not be treated as a contra indicator of indifferent relationship with her husband during the latter's lifetime. In this backdrop, it cannot be said Maya Singh had during his lifetime, denied his marriage with 1st respondent or admitted that their relation was strained, so as to prompt him to erase her very existence in the Will. Such erasure of marital status is the tell-tale insignia of the propounder and not the testator himself. A cumulative assessment of the attending



circumstances including this unusual omission to mention the very existence of his wife in the Will, gives rise to serious doubt that the Will was executed as per the dictates of the appellant and is not the 'free will' of the testator."

20.The learned counsel for the 2nd respondent/1st defendant submitted that he is adopting the arguments advanced by the learned counsel for the 1st respondent/plaintiff.

21.In reply, the learned counsel for the appellant/2nd defendant has submitted that the D.W.4 is not an interested witness though he is a partner in JVJ Textile. The business of JVJ Textile was not fully added as suit property, only the share of Janakiammal was alone added as item No.20. D.W.4 is the maternal uncle of the parties and he married the 1st defendant. Though the suit in respect of item Nos.8 to 20 was dismissed by the trial Court, the plaintiff has not preferred any appeal against that decision. Hence, the judgment regarding the business under JVJ Textiles has attained finality. The item Nos.1 to 7 are immovable properties and do not include JVJ Textile. D.W.4 has no personal stake in them. Hence, DW.4 is not an interested witness.



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22.The learned counsel for 1st respondent/plaintiff argued that there is evidence that the Will was reduced into writing in the house of Janakiammal, but in fact the said Janakiammal was inpatient in the hospital on the date of execution i.e., on 20.12.2004. The Will is shrouded by suspicious circumstances, and the Will is not a valid one. The plaintiff is entitled to share in the suit properties item Nos.1 to 7 as rightly concluded by the trial Court. Hence, the appeal is liable to be dismissed.

23.On perusal of appeal records, Trial Court records and on consideration of arguments advanced by both, it is clear that the item Nos.1 to 7 of suit properties are the absolute properties of the parties mother, Janakiammal. It is the case of the plaintiff that Janakiammal was an Aplastic Anemia patient for two years and also she was admitted as an inpatient in the hospital M/s Ramakrishna Nursing Home on 16.12.2004 and discharged on 23.12.2004. It is also the specific case of the plaintiff that the alleged Ex.B.7 - Will was executed on 20.12.2004 i.e., when Janakiammal was an inpatient in the hospital and the same was registered on 23.12.2004, on which date she was discharged from hospital and she was directly taken to Sub Registrar Office from hospital. Hence, the Ex.B.7 - Will creates suspicion as it



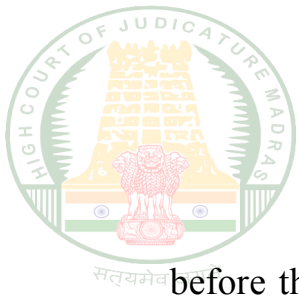
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was not executed under sound state of mind of Janakiammal. It is denied by the 2nd defendant. It is the case of the 2nd defendant that Janakiammal executed Ex.B.7 under sound state of mind and the attesting witnesses D.W.4 cleared deposited about the same and that D.W.1, who was not given any share in the Will, has also clearly deposited about the execution of Will and so, the Ex.B.7 - Will is valid one.

24.Of course, the 2nd defendant has examined the attestor as D.W.4 to prove the execution of the Will as per Section 68 of the Indian Evidence Act. But, the fact remains that Ex.B.7 was executed by Janakiammal when she was under treatment as an inpatient for Aplastic Anemia and Chronic active hepatitis B, which is revealed from evidence of P.W.2 on a conjoined perusal of Ex.X.1 to Ex.X.3 medical records. Hence, it is the duty of the 2nd defendant to prove that the testatrix Janakiammal was in a sound state of mind while executing Ex.B.7 – Will.

25.A perusal of records clearly shows that Ex.B.7 - Will was written on 20.12.2004 and the same was registered on 23.12.2004 by testatrix Janakiammal. It is also clear that Janakiammal died on 29.12.2004. It is admitted that Ex.B.7 was written while Janakiammal was an inpatient in the hospital. So, it is very clear that Ex.B.7 was executed and registered shortly



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before the death of the testatrix. Hence, the beneficiary/propounder under the Will has to strictly prove that Ex.B.7 was executed free of suspicion and under a sound state of mind by the testatrix. In such cases, the propounder/the 2nd defendant has to prove the due execution, testamentary capacity, and without any undue influence. It is also the bounden duty of the 2nd defendant to produce original medical records to show the sound mind of the testatrix. If so, the Court has to examine the diagnosis, mental condition, medication effects, and doctor's notes. In this case, Dr.Dominic, who treated the testatrix Janakiammal, was not examined. The 2nd defendant contended that the plaintiff had failed to examine the treating doctor. However, in a suit for partition, all the parties are deemed to be plaintiffs. When the 2nd defendant claims full right over suit items 1 to 7 through the Will, it is the utmost duty of the 2nd defendant to prove Ex.B.7, which was executed under a sound state of mind by Janakiammal. Hence, the 2nd defendant must examine the treating doctor Dr.Dominic to prove his case, he should not shift the burden on the plaintiff. In this case, the plaintiff has examined the Director of the Hospital where Janakiammal took treatment as P.W.2. P.W.2 deposed about the treatment given to Janakiammal.



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26.The propounder must prove that the testatrix was in a sound state of mind at the time of execution of the Will and demonstrate an understanding of the nature and effect of the Will and that her signature was voluntary. Section 59 of the Indian Succession Act determines who is legally capable of making a Will and establishes that any adult of sound mind can draft a Will, while outlining specific exceptions for age, mental state, and certain physical disabilities. Section 59 of the Indian Succession Act reads as follows:

59. Person capable of making Wills.—

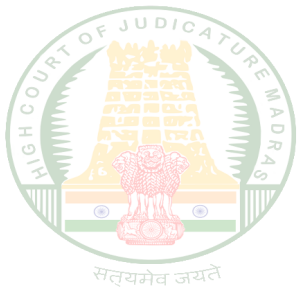
Every person of sound mind not being a minor may dispose of his property by Will.

Explanation 1.—A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a Will during interval in which he is of sound mind.

Explanation 4.—No person can make a Will while he, is in such a state of mind, whether arising from



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intoxication or from illness or from any other cause, that he does not know what he is doing.

27.It is a well-settled position that the burden to prove the execution of the Will is on the propounder(s), and on its discharge the onus would be on the opposing contestant to establish that it is not valid. Certainly, if suspicious circumstances have been pleaded by the contestant opposing the Will and prima facie shown them to be true, then the onus would be shifted to the propounder(s) to dispel the suspicious circumstances to the satisfaction of the Court so as to accept it as genuine.

28.The Honourable Supreme Court in **Bharpur Singh Case supra (2009) 3 Supreme Court Cas 687** relied on by the 1st respondent/plaintiff clearly held that “23.Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:

i.The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

ii.The condition of the testator's mind may be very feeble and debilitated at the relevant time.

iii.The disposition may be unnatural,



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improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

iv. The dispositions may not appear to be the result of the testator's free will and mind.

v. The propounder takes a prominent part in the execution of the Will.

vi. The testator used to sign blank papers.

vii. The Will did not see the light of the day for long.

viii. Incorrect recitals of essential facts."

From the above, it is very clear that the condition of the testator's mind may be very feeble and debilitated at the relevant time.

29. Moreover, Section 12 of the Indian Contract Act, 1872 clarifies the sound state of mind of a person. Section 12 of the Indian Contract Act, 1872 reads as follows:

"12. What is a sound mind for the purposes of contracting.—A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational



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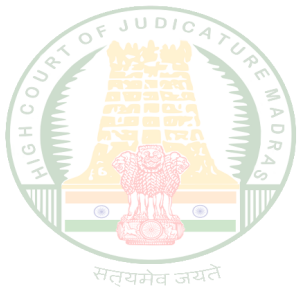
judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. "

From the above section, it is clear that to infer the sound mind of the person, there must be evidence to show his/her capability of understanding the nature of things and being able to make rational judgment about his/her interest.

30.On perusal of the records of this case, it is admitted that the testatrix was admitted in the hospital as an inpatient on 16.12.2004 and discharged on 23.12.2004 at request. The medical records show that the doctor made an observation on 23.12.2004 about the health condition of Janakiammal as follows:

“This lady, who is a known case of severe Aplastic Anemia, was admitted with fever and breathlessness. She was recently treated at CMC Vellore for the same.... She was treated with blood transfusion and



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she remained deeply icteric and her condition progressively worsened. ATT could not be started due to jaundice. She was discharged at request.”

So, it is very clear that Janakiammal was affected by severe Aplastic Anemia and chronic active hepatitis B. The trial Court has correctly observed the same. Admittedly, Dr. Dominic, who treated the said Janakiammal, was not examined. So, her state of mind was not spoken by the Medical Officer, who treated the patient at the relevant time. Further, on the date of discharge, she was taken to the Sub Registrar's Office, that too, when she was discharged at request as her health condition progressively worsened. These facts would clearly prove the prominent role played by 2nd defendant in getting the documents registered.

31.In the nature of this case, the Division Bench of Hon'ble Supreme Court has made verdict in the case of **Dr. Prakash Soni Vs. Deepak Kumar and Another [Civil Appeal No.6388 of 2009]** decided on 15.09.2017 held as follows:

8. The will is surrounded by suspicious circumstances mentioned supra.



Similar observation needs to be made in respect of nomination forms also, which were allegedly executed by the deceased just prior to her death on 18.11.2001, i.e., on 16.11.2001. Admittedly, the deceased was on medical leave. The nomination forms allegedly signed by the deceased were placed before the concerned department by the relatives and other family members of the respondents. Upon comparison of the disputed and other signatures of the deceased Srimati Mooli Swarnkar on Ex. P/4, D/7, D/8 and the alleged will Ex. D/6, the first appellate Court on facts has concluded that the signatures found on Ex. D/6 were totally different.

9. We find from the records that the condition of the testator's mind and body was very feeble and debilitated. The signature of the testator was allegedly taken on the death bed while she was administered drip. The dispositions made in the will may not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial



onus very heavy and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. Since there are many suspicious circumstances narrated above, and as we are satisfied that the dispositions made in the alleged will may not be as a result of testator's free will and mind, the Civil Court as well as the High Court are not justified in coming to the conclusion that the will Ex.D/6 is duly executed by the deceased. The respondents being the propounders of the will have failed to satisfy the judicial conscience of this Court regarding due execution of the will. Since the suspicious circumstances relate to the genuineness of the signatures of the testator, as well as the condition of the testator's mind and the dispositions made in the will being unfair, the judgment of the High Court restoring the judgment of the Civil Court is liable to be set aside."

32.In this case also, the Ex.B.7 - Will was executed by the testatrix while she was under treatment in the hospital as an inpatient and the Will was registered immediately on the date of discharge as she was taken by the propounder to the Sub Registrar Office. There is no medical certificate for



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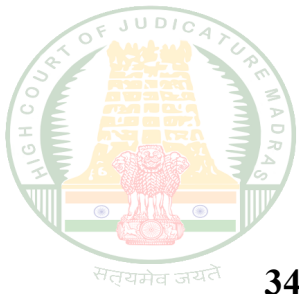
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proving the sound state of mind of testatrix Janakiammal. Moreover, the 1st defendant, who deposed as D.W.1, clearly stated that the will was executed at her mother's house. She said as

“வில் எங்கு வைத்து எழுதப்பட்டது என்றால் என்
அம்மா வீட்டில் வைத்துதான் எழுதப்பட்டது.....”.

Further, the evidences show that the thumb impression of the testatrix was put on the Will in spite of the fact that the testatrix used to put her signature. Hence, there is a clear cloud about the execution of the Will.

33.From the above facts and circumstances and evidences, the trial Court has correctly held that that the said Janakiamml did not execute the Will in a sound state of mind because a cumulative reading of Ex.X.1 to Ex.X.3 which are the case sheets reveals that at the time of treatment, Janakiammal was transfused with blood and because her health condition has worsened she was discharged from the hospital for the reason she could not be further treated and she was discharged at the request of her daughter-in-law. So, it is clear that Janakiammal was discharged without being fully recovered from her illness, as her health condition worsened and further medical treatment was no longer required. It is pertinent to note that after discharge on 23.12.2004, she died on 29.12.2004 and the same is not disputed.

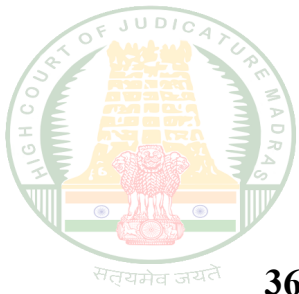


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34.Further, the plaintiff has proved that he purchased the suit item Nos.22 and 23 out of his own income. Though the 2nd defendant has stated that the plaintiff was not an earning member, the evidence produced on both sides makes it clear that he was running a business in the name of "Karuppanna Piece and Cut Piece Centre" and the same is not specifically denied by the 2nd defendant, much less has he disproved the same. Hence, the trial Court has correctly held that item Nos.22 and 23 of the suit properties are absolute properties of the plaintiff and the same does not warrant interference.

35.It is also pertinent to note here that in this appeal, the 2nd respondent (1st defendant in the suit) adopted the arguments of the 1st respondent/plaintiff and did not sail with the 2nd defendant. So, from the above facts and circumstances and considering the citations relied on both sides, this Court is of the considered view that the Ex.B.7 - Will was not proved by the 2nd defendant and thus the plaintiff is entitled 1/4th share in item Nos.1 to 7 covered under Ex.B.7 - Will and hence, the judgment and decree of the trial Court need not be set aside and the same has to be affirmed. Thus, this appeal suit fails. The points are answered accordingly.



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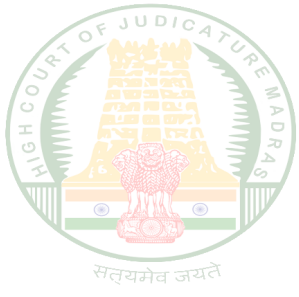
36. In the result, this Appeal Suit is dismissed. The judgment and decree dated 23.12.2016 passed in O.S.No.165 of 2010 on the file of the learned II Additional District Judge, Tiruchirappalli are confirmed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

06.07.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The II Additional District Judge,
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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A.S(MD)No.110 of 2017

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.110 of 2017
and
C.M.P(MD)No.6407 of 2017**

06.07.2026