



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.04.2017

CORAM

The HONOURABLE MR.JUSTICE A.SELVAM  
and  
The HONOURABLE MR.JUSTICE N.AUTHINATHAN

A.S.(MD) .No.122 of 2014  
and  
C.M.P.(MD) .No.12124 of 2016

Amaladoss Stephen

.. Appellant/1<sup>st</sup> Defendant

Vs

1.Srimathi.Seethalakshmi Ammal

... 1<sup>st</sup> Respondent/Plaintiff

2.John Stephen

3.Leslie Stephen

rep. by his power of attorney agent  
A.Gopalakrishnan

4.Violet Stephen

5.Daisy Liese Stephen

6.P.K.Natarajan

7.J.Christopher

8.Pandian

9.The District Secretary,  
AIADMK, Tiruchy District Office,  
At No.1-B and 1-G, Benwels Road,  
Cantonment, Tiruchirappalli-1.

10.Eric Steppen

...Respondents 2 to 10/  
Defendants 2 to 10

Prayer:- First Appeal filed under Section 96 of Civil Procedure Code against the judgment and decree dated 04.09.2013 in O.S.No.299/2004 on the file of the II Additional District Judge, Tiruchirappalli.



For Appellant : Mrs.N.Krishnaveni, Senior Counsel for  
Mr.T.Pon Ramkumar  
For respondents : Mr.G.R.Swaminathan for  
Mr.D.Raj Kumar for R-1  
No appearance for RR-4 and 10  
For respondents 2, 3, 5 to 9:Dispensed with

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**JUDGMENT**

[Judgment of the Court was made by **N.AUTHINATHAN, J.**]

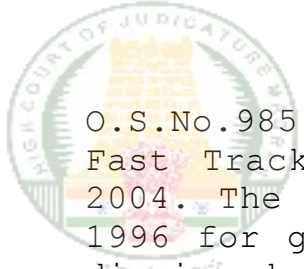
The above first appeal arises out of the judgment and decree, dated 04.09.2013 passed in O.S.No.299/2004 on the file of the II Additional District Judge, Tiruchirappalli.

2. Parties herein are hereinafter referred to as they were arrayed in the original suit.

3. A house site measuring 4,379 sq.ft together with a building thereon bearing door No.1-B and 1-G, Block No.19 Benwels road, Cantonment, Trichirappalli is the suit property. This property originally belonged to Mabel Dhanabakkiam w/o.Rev.G.Stephen having been purchased by her under a sale deed dated 09.03.1964 (Ex.A1). Amaladoss Stephen (D1), John Stephen (D2) and Leslie Stephen (D3) are her sons. Violet Stephen (D4) and Daisy Liese Stephen (D5) are her daughters.

4. The plaintiff claims title to the suit property under a sale deed dated 03.03.2000 (Ex.A.5), executed by Leslie Stephen (D3) through his power agent Gopalakrishnan (P.W.1). Leslie Stephen (D3) claims title to the suit property under a Will (Ex.A.3) dated 22.12.1983 said to have been executed by Mabel Dhanabakkiam. Mabel Dhanabakkiam died on 01.01.1985 (Ex.A.22-Death Extract). Leslie Stephen (D3) filed Succession O.P.No.13/1996 on the file of the Principal Subordinate Judge, Trichirappalli for grant of Letters of Administration to the registered Will (Ex.A.3) and the Court has granted Letters of Administration on 25.04.1997 (Ex.A.2). Amaladoss Stephen (D1) has applied for revocation of the grant of Letters of Administration in I.A.No.100/2000 in S.O.P.No.13/1996. The Principal Subordinate Judge revoked the Letters of Administration by his order dated 05.09.2001(Ex.B4). The third defendant filed C.M.A.No.424/2002 on the file of this Court against the order of revocation. The order of revocation was upheld by this Court.

5. The daughters of Mable Dhanapackiyam filed a suit in O.S.No.97 of 1996 on the file of the Principal District Judge, Trichy for declaration of title of the suit property and for  
<https://hcservices.courts.gov.in/hcservices/> against her brothers. The plaintiff filed the present suit initially before the Subordinate Judge, Trichy in



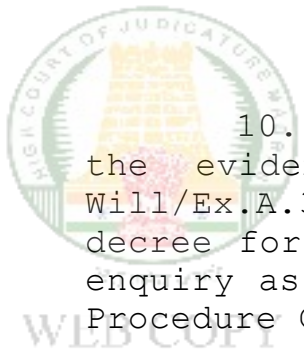
O.S.No.985 of 2001. Subsequently, the suit was transferred to the Fast Track Court, No.I, Trichy and renumbered as O.S.No.299 of 2004. The plaintiff has filed I.A.No.196 of 2005 in O.S.No.97 of 1996 for getting herself impleaded in the suit. However, it was dismissed. The plaintiff preferred C.R.P.(PD).No.1352 of 2007 against the order of dismissal. This Court by an order dated 26.03.2008 dismissed the revision.

6. In pursuance of the observation made in the said order of this Court, the plaintiff herein has filed Tr.O.P.No.43 of 2008 on the file of the Principal District Judge, Trichy, for joint trial of O.S.No.97 of 1996 with O.S.No.299 of 2004 (present suit). The plaintiff has also filed O.S.No.488 of 2001 on the file of the Principal District Munsif, Trichy restraining the defendants 1 to 4 from alienating the suit property in favour of the 8<sup>th</sup> defendant. The Principal District Judge, Trichy passed an order for joint or simultaneous trial of the suits in O.S.No.97 of 1996, 488 of 2001 and 299 of 2004. The suit in O.S.No.97 of 1996 and S.O.P.No.13 of 1996 were allowed to be dismissed for default.

7. The present suit has been filed for declaration of title, recovery of possession and for past and future mesne profits. According to the plaintiff, the 8<sup>th</sup> defendant was allowed by the first defendant to occupy a portion of the property. The ninth defendant was allowed to occupy another portion of the property by 8<sup>th</sup> defendant. The 10<sup>th</sup> defendant, son of the first defendant claimed to be a tenant with respect of a portion of the suit property and he filed O.S.No.10 of 2001 on the file of the District Munsif Court, Trichy for permanent injunction against the plaintiff. The defendants 6 and 7 were tenants. However, they have denied the title of the plaintiff.

8. The 10<sup>th</sup> defendant is the son of the 1<sup>st</sup> defendant. The first and 10<sup>th</sup> defendant contested the suit. They have admitted that the suit property originally belonged to Mabel Dhanabakkiam. However, they have disputed the genuineness and validity of the Will (Ex.A.3). According to them, after the death of Mabel Dhanabakkiam, the suit property was divided by a deed of partition (Ex.B.8) dated 12.08.1986 between the sons and daughters of Mable Dhanapackiyam. Thereafter, the sharers have been enjoying their respective shares. According to them, the plaintiff is not entitled to any relief. They prayed for dismissal of the suit.

9. Before the trial court, the defendants 2 to 9 remained exparte. The plaintiff's power of attorney agent was examined as P.W.1. P.W.2 is said to be one of the attesting witnesses to the Will (Ex.A.3). The first defendant examined himself as D.W.1. The plaintiffs have marked 52 documents (Exs.A.1 to A.52). Ten documents marked on the side of the defendants (Exs. B.1 to B.10).



10. The trial court framed six issues. After considering the evidence, the trial Court upheld the validity of the Will/Ex.A.3 document. Consequently, the trial court granted a decree for declaration and recovery of possession. It directed an enquiry as to mesne profits in terms of Order 20 Rule 12 of Civil Procedure Code.

11. Learned senior counsel appearing for the appellant contends that the Will /Ex.A.3 has not been proved in the manner known to law and the trial court was therefore wrong in coming to the conclusion that the Will has been proved. It is also her contention that the plaintiff has failed to dispel the suspicious circumstances surrounding the Will.

12. Learned counsel appearing for the first respondent/plaintiff contends that the trial court was right in coming to the conclusion that the Will has been proved. His further contention is that the partition deed/Ex.B.8 is a fabricated document and it is not a genuine document.

13. **The points arise for determination** in this appeal are:

I) Whether the plaintiff has not proved the genuineness of the Will/Ex.A.3 dated, 22.12.1983?

ii) Whether the plaintiff is not entitled to the reliefs as prayed for in the plaint?

(iii) Whether the judgment and decree of the trial court are liable to be set aside?"

#### **Points:**

14. Admittedly, the testatrix Mabel Dhanabakkiam, wife of Rev. Stephen is a Christian. It is also an admitted fact that the suit property bearing door No.1-B and 1-G in Block No.19, Benwels Road, Cantonment, Trichirapalli, belonged to Mabel Dhanabakkiam having been purchased by her as per sale deed/Ex.A.1 dated 09.03.1964. The plaintiff is based his title to the property under a sale deed dated 03.03.2000 (Ex.A.5). It was executed by third defendant-Leslie Stephen through his power of attorney agent/Gopalakrishnan. The property was sold for Rs.10 lakhs. However, the Special Deputy Collector of Stamps fixed the value of the property at Rs.24,50,494/- and collected the deficit fees. Ex.A.34 is the power of attorney dated 07.07.1999, executed by the third defendant in favour of Gopala Krishnan. Gopala Krishnan is the son of the plaintiff. The third defendant based his title to the suit property on Ex.A.3/Will. The trial court examined the validity of the Will and held that it was proved to have been executed.

<https://hcservices.ecourts.gov.in/hcservices/> In order to prove the genuineness of the Will, the plaintiff has examined P.W.2, one of the attesting witnesses to



the Will. P.W.2-Moses Xavier stated that the husband of the testatrix has also attested the Will. It is a registered Will and presented for registration on the date of execution. Therefore, the learned counsel for the respondent/plaintiff would submit that the Will has been proved according to Law.

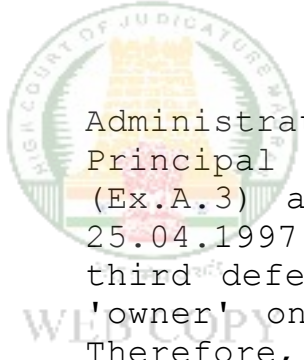
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16. Learned senior counsel appearing for the appellant would submit that P.W.2 is not a disinterested witness, as he has filed a case in O.S.No.304 of 2006 (Ex.B.1 /xerox copy of the plaint) against the appellant and his sons on the file of the District Munsif Court, Lalgudi and that therefore, his evidence alone is not sufficient to come to the conclusion that the Will is genuine. In this regard, the learned senior counsel for the appellant has also cited a decision of this Court in **M.Pattammal Vs. G.Parthasarathy and Another** [(2016) 5 MLJ 689], wherein, it has been pointed out as follows:

"It is a settled principle of law that even though suspicious circumstances have not been taken as a defence on the side of the contesting party, the Court can very well consider the same on the basis of available evidence."

17. It is well-settled that the propounder is bound to explain and dispel suspicions. As the plaintiff sets up title to the property by purchase, it is for her to prove that her vendor had a title in the property sold. Admittedly, the suit property is in a prime location in Trichirappalli City. The testatrix, as per the Will, disinherited her other sons, daughters and her husband. It is not the case of the plaintiff that the relationship between the testatrix and her other children was strained, at the time of execution of the Will. It is submitted by the plaintiff that the testatrix and her husband have executed settlement deeds in favour of the defendants 2 to 5. Copy of the settlement deeds have been marked as Ex.A.45 to 49. However, there is no explanation as to why the other heirs were disinherited. In the normal course, the testatrix as a mother would be the first to be thought of her daughters and sons, while making a Will with respect to her house. The settlement deeds were executed out of love and affection. In the Will, it is stated that she has given her properties at Bodanur Kurichi Village by a registered gift deed to all her children. However, as per the Will, the suit property has been given only to the third defendant. Absence of reasons for denying the benefit to other sons and daughters, who are entitled to inherit the property would cast a cloud of doubt on the genuineness of the Will.

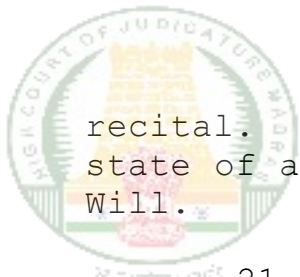
<https://hcservices.ecourts.gov.in/hcservices> also important to note that the Will purports to have been executed on 22.12.1983. Mabel Dhanabakkiam died on 01.01.1985. The third defendant applied for grant of Letters of



Administration in Succession O.P.No.13/1996 on the file of the Principal Subordinate Judge, Trichy to the registered Will (Ex.A.3) and the Court has granted Letters of Administration on 25.04.1997 (Ex.A.2). But nearly after 10 years on 04.03.1996, the third defendant gets his name mutated in the revenue records as 'owner' only on 23.07.1998 (Ex.A.23) on the basis of the Will. Therefore, it is not as if the third defendant has no necessity to produce the Will before any Public Authority. All the documents produced on the side of the plaintiff are subsequent to the Letters of Administration obtained in the year 1996/1997. There is no material to show that the third defendant asserted his right prior to 1996. It is significant to note that the Letters of Administration granted in favour of the third defendant was revoked by the court concerned by an order dated 05.09.2001 (Ex.B.4). The order of revocation was upheld by this Court in C.M.A.No.424 of 2002 (Ex.A.39) by an order dated 26.03.2008.

19. Succession O.P was allowed to be dismissed for default. The learned senior counsel appearing for the appellant has pointed out that Section 213 of Indian Succession Act creates a bar to the establishment of any right under a Will by the executor or legatee unless probate or letters of administration of the Will have been obtained. Section 213 was amended, as per the amendment Act 26 of 2002 with effect from 27.05.2002 and it applies to the pending proceedings relating to the Will executed by a Christian. Section 213 has been made inapplicable to Indian Christians. However, the delay in making the Will public can be taken into account, while examining the genuineness of the Will.

20. It is significant to note that after the death of Mabel Dhanabakkiam, her sons and daughters have partitioned the suit property amongst themselves under an instrument of partition deed (Ex.B.8), dated 12.08.1986. The husband of testatrix was also a party to the partition deed. One daughter and three sons were represented by their father as their agent. A close reading of the document would show that the property in question purchased by testatrix by way of sale deed, dated 09.03.1964 was divided. This document has come into existence long prior to the sale in favour of the plaintiff. There is absolutely no suggestion as to why the father should insert a false recital in Ex.B.8, which came into existence long prior to the Succession O.P.No13/96. It is a registered document and therefore, the Court can presume under Section 114 of the Evidence Act that the partition deed (Ex.B.8) was presented for registration by the executants and registered properly in accordance with law. The presentation of the document for registration was accepted by the authority concerned. There was no challenge to the registration of the document. Ex.B.3 is the encumbrance certificate issued by the Registration Department in relation to this property. Ex.B.8/Partition deed finds a place in the encumbrance certificate. The father of the third defendant had no motive to defraud anybody by including a false



recital. Hence, the recitals in Ex.B.8 cannot be ignored. This state of affairs would only cast a doubt on the genuineness of the Will.

21. It is also important to note that the third defendant has not been examined as a witness to dispel the above mentioned suspicious circumstances surrounding the Will. P.W.1 is only a power of attorney agent. His evidence is not sufficient to dispel the suspicious circumstances. All the above mentioned suspicious circumstances were not dispelled by the propounder of the Will. The registration of the Will by itself is not sufficient to remove the above suspicions.

22. The trial court has not chosen to consider the above suspicious circumstances and arrive at a conclusion with regard to the same. In the circumstances, we hold that the plaintiff has not established genuineness of the Will/Ex.A.3. The genuineness of the Will having been not established, the suit is bound to fail. Therefore, the points are answered against the plaintiff. The judgment and decree of the trial court are liable to be set aside and accordingly are set aside.

23. In the result, the appeal is allowed. The judgement and decree passed by the trial court in O.S.No.299 of 2004, dated 04.09.2013 are set aside. The suit will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Judge,  
Tiruchirappalli.

+2cc's to Mr.T.Pon Ramkumar, Advocate in SR.No:51271  
+1cc to Mr.D.Rajkumar, Advocate in SR.No:51417

vs

AE/KP/SAR2/25.04.2017/7P/5C

**Pre-delivery Judgment made in  
A.S. (MD) .No.122 of 2014  
11.04.2017**