

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.39 of 2013

N.Ravichandran .. Appellant/Defendant No.3

vs.

N.Kirubakaran ... Respondent No.1/Plaintiff

N.Kamalakaran ... Respondent No.2/Defendant No.1

G.Umabai ... Respondent No.3/Defendant No.2

Appeal Suit is filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 21.08.2012 made in O.S. No.54 of 2008 on the file of the learned III Additional District Judge at Puducherry.

For Appellant : Mr.G.Nagarajan

For Respondent No.1 : Mr.V.Raghavachari

For Respondent No.2 : Mr.M.Palanivel

For Respondent No.3 : Mr.D.Baskar

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J U D G M E N T

The appeal suit on hand is preferred against the judgment and decree dated 21.08.2012 passed by the learned III Additional District Judge, Pondicherry in O.S.No.54 of 2008.

2. The third defendant Mr.N.Ravichandran is the appellant before this Court. The first respondent Mr.N.Kirubakaran is the plaintiff and the respondents 2 and 3 Mr.N.Kamalakaran and Smt.G.Umabai respectively are the defendants 1 and 2 before the Trial Court.

3. For the sake of convenience, the ranking of the

parties in the appeal suit would be referred to as per their ranks in the Trial Court.

4. The suit was instituted by the first respondent/plaintiff for partition and for passing a preliminary decree of the entire A,B,C and D schedule mentioned properties into four equal shares and out of which allot one such share to the plaintiff and to pass a final decree in terms of the said preliminary decree to be so passed, for division of the entire suit A, B, C and D schedule mentioned properties by appointing an Advocate Commissioner, directing him to divide the said suit properties into four equal shares by metes and bounds and allot one such share to the plaintiff for his exclusive separate possession and enjoyment, directing the Advocate Commissioner to ascertain the mesne profits (rental income) from the ground floor of the 'A' schedule mentioned property; directing the third defendant to pay 1/4th share of the future mesne profits to the plaintiff from the date of plaint till he recovers his respective possession and share amounts through Court; granting permanent injunction restraining the third defendant, his men, agents or anyone claiming through him from encumbering, altering or transferring possession of the suit properties to anyone in any manner till the final disposal of the suit.

5. The first respondent/plaintiff set out a plaint before the Trial Court that he is the eldest brother of the defendants 1 to 3. In the year 1946, the plaintiff's father Mr.Narasimalu hailing from Arcot in Tirukoilur Taluk in Villupuram District, married one Premavathi of Thirupatheripuliyur, erstwhile South Arcot District (Cuddalore District). During the course of the lawful wedlock, three sons and one daughter were born to them i.e., the plaintiff and the defendants 1 to 3. The father of the plaintiff and the defendants, was working as a Postmaster and retired as such at Pondicherry.

6. The plaintiff has stated that during the year 1963, their father settled in Pondicherry and the plaintiff and the defendants were residing at Pondicherry and their marriages were performed at Pondicherry. The plaintiff and the defendants are now living separately with their respective families and the plaintiff's father sold his share of immovable properties, which he got from partition between himself and his brothers and his wife's property were also sold.

7. The funds were utilised for the purchase of the schedule mentioned properties. These properties were enjoyed by the plaintiff's father, the plaintiff and the defendants 1 and 3 except the second defendant, who is living at Chennai, but used to visit the plaintiff and the defendants 1 and 3 houses

frequently and stay there for some days with the father. The father and mother of the plaintiff and the defendants were residing in the ground floor and the third defendant is residing in the first and second floor of No.44, Bajanai Madam Street, Muthialpet, Pondicherry ('A' schedule mentioned suit property). The first defendant is residing in the ground floor and the plaintiff is using the front portion open terrace sump area and passage including electricity service policy No.06-Z8-0644A and common water service facility at No.104-A, Bharathidasan Street, Muthialpet, Pondicherry ('B' schedule mentioned suit property).

8. The second defendant is being the married sister used to visit the parents regularly and stay with them at No.44, Bajanai Madam Street, Muthialpet, Pondicherry. Since the father was a Postmaster, he used to have accounts and fixed deposits in the Post Office apart from his regular savings in the Banks. The father nominated all his four children for all the accounts and deposits since he showed love and affection equally on them.

9. In the year 1985, the third defendant got married and till then the parents, the plaintiff and the defendants were living together. In the beginning of 1998, the third defendant borrowed a sum of Rs.50,000/- from the father by executing a promissory note and again at the end of 1998 itself, father gave Rs.50,000/- to the third defendant and directed him to utilise the said money and the said loan amount to purchase property in the name of father. But on the contrary, the ulterior motive purchased the properties in Oulgaret Village and Kuruvappan Nayakkan Palayam in his name, which is described more fully as 'C' schedule mentioned suit property.

10. The said fraudulent act of the third defendant caused different of opinion between the parents and the third defendant. Consequently, they separated themselves from the third defendant and started to live in the ground floor separately. During that period, the parents purchased all household articles, including gas cylinder and cylinder goods etc. The third defendant and his family members were not even permitted and allowed to enter the ground floor till the death of the mother i.e., on 08.09.2005. The third defendant was repeatedly renewing the said promissory note till November 2006. Since the 'D' schedule mentioned suit property was purchased from the funds provided by the father, all his children i.e., the plaintiff and the defendants are entitled to equal share.

11. It is stated by the plaintiff that even though he and the first defendant are residing separately, they were regularly taking care of their parents. While-so, on 16.02.2005, father fell down and sustained hip fracture. In spite of treatment, his mobility was curtailed. Taking advantage of his

immobility, the third defendant started receiving the pension from the month of March 2005 onwards and started operating the bank and post office accounts. After death of the mother, father felt more loneliness. The third defendant, being resident of the same building, had easy access to father and taking advantage of his immobility took possession of the 'D' schedule mentioned movable suit properties under the guise of helping the father.

12. On 27.11.2006, the father of the plaintiff and the defendants, suffered fits during night hours and immediately he was taken to Clinic Nallam, Pondicherry, by the plaintiff and the defendants 1 and 3. The father of the plaintiff and the defendants, was admitted into Intensive Care Unit (ICU) and he was diagnosed as in coma stage and was not responding to treatment and his days were counted. The father of the plaintiff and the defendants, was discharged on the next day itself and he never regained his consciousness till his death and he could not even recognise his own children, but the only words he uttered were "e;j khrk; bgd;rd; th';fDk; ngg;gu; bfhL ifbaGj;J nghLfpnwd;" once in two or three days repeated and nothing more than that. He was totally bedridden and immobile and because of the care taken by the plaintiff and the defendants, his demise was delayed.

13. The third defendant under dubious circumstances received a sum of Rs.1,00,000/- on 09.01.2007, being the matured fixed deposit for Rs.50,000/- each and also the pension for the month of January 2007 and misused the same, even without the knowledge of the plaintiff and the defendants 1 and 2. The father of the plaintiff and the defendants, was died on 01.02.2007 in coma stage itself.

14. The father of the plaintiff and the defendants, used to write diaries regularly and used to note down all the important events whether good or bad, including the details of his holdings and money transactions and used to tell his children if his diary is looked into, it will reveal the entire truth. While the father was in the hospital, the third defendant removed the 'D' schedule mentioned properties, including all the original documents and diaries and the amount of father, which he was having in his hand at the time of his death.

15. At the outset, the allegations are set out in the plaint by stating that taking undue advantage of the immobility of the father, the third defendant misused the situation and taken away the movables, documents, diaries etc., which were being maintained by the deceased father.

16. The first respondent filed a written statement, admitting the averments contained in the plaint. The allegations of the third defendant that on 27.01.2007, their father executed

a Will and bequeathed the properties and the same was brought to the knowledge of his children are all specifically denied. The second defendant also prayed for partition of the entire schedule mentioned suit properties into four equal shares and directing the plaintiff and the defendants 1 to 3 to pay future mesne profits at the rate of Rs.750/- per month each by the plaintiff and the first defendant for the enjoyment of the 'B' schedule mentioned suit properties at the rate of Rs.1,500/- per month by the third defendant for the use and enjoyment of the 'A' schedule mentioned suit properties from the date of filing of the suit till she recovers respective possession of the said properties.

17. The third defendant, who contested the suit, filed a written statement, denied the allegations found in the plaint and contended that the 'C' schedule mentioned properties are concerned, as already stated, the same was purchased as vacant land out of the third defendant's own earnings and loan obtained from the Public Servants Cooperative society and also after getting due permission from the Government of Pondicherry. It is contended that the present superstructure was put up after getting the housing loan from the Syndicate bank, Pondicherry and the repayment by monthly instalments was being paid by the third defendant to the Bank even at the time of filing of the written statement. Thus, the said portion of the suit property is an independent self-acquired property of the third defendant.

18. As regards the 'D' schedule mentioned suit properties are concerned, the plaintiff, as admitted by him, had taken away TV and table fan from the 'A' schedule house. The third defendant contended that all the movable properties were taken away by the first defendant and the third defendant is also entitled for a share upon those immovable properties also. The third defendant denied that the father of the plaintiff and the defendants 1 and 2, died intestate. It is contended that the plaintiff willfully suppressed the fact that already Narasimhalu had executed a Will in his life time and had it registered on 27.01.2007 in the presence of attesting witnesses of two respectful gentlemen in the locality and friends of Narasimhalu in and by which he had bequeathed the 'A' and 'B' schedule mentioned suit properties in favour of his four children in sound and free and disposing state of mind. The third defendant has stated that the suit is not maintainable as the facts and circumstances of the case and the presence of a duly registered Will by the propositus the prayer for partition of the properties in the plaint 'A' and 'B' schedules does not arise at all.

19. At the outset, it was contended by the third defendant that there is a Will, which was executed and

registered. Therefore, the question of partition would not arise at all. Thus, the suit for partition is liable to be dismissed.

20. The Trial Court framed the following issues for consideration:-

- "(1) Whether the suit is maintainable ?
- (2) Whether the first defendant is entitled for share of mesne profit ?
- (3) Whether the second defendant is entitled for preliminary decree for partition dividing the entire A, B and D schedule mentioned property ?
- (4) Whether the plaintiff is entitled for preliminary decree for partition dividing the entire suit A, B, C and D schedule mentioned property for four equal shares and out of which allot one such share to the plaintiff ?
- (5) Whether the plaintiff is entitled for mesne profit 1/4th share from the third defendant ?
- (6) Whether the plaintiff is entitled for permanent injunction ?
- (7) Whether the plaintiff is entitled for judgment and decree ?
- (8) To what other relief the plaintiff is entitled ?"

21. The plaintiff examined himself as PW-1 and Exs.A-1 to A-19 were marked as documents and the third defendant examined himself as DW-1 and Exs.B-1 to B-3 were marked as documents. The attestors of the suit Will examined as DW-2 and DW-3 and through them, Exs.B-4 to B-7 were marked as documents. The Manager of the Syndicate Bank was examined as DW-4 and through him, Exs.B-8 to B-11 were marked as documents. The second defendant examined herself as DW-5 and no exhibit was marked as document by her.

22. With reference to issue No.1, the Trial Court found that though there is a pleading on behalf of the third defendant that the suit is not maintainable, the same has not been established before the Trial Court. In view of the fact that the maintainability of the suit though questioned not established, the Trial Court found that the suit is maintainable.

23. With reference to issue Nos.3 and 4, the Trial Court made a finding that the A, B and D schedule properties, whichever in the custody of the third defendant are liable to be partitioned between the parties. Accordingly, the issue nos.3

and 4 are answered.

24. The Trial Court considered the deposition of PW-1 as well as the documents marked in Exs.A1 to A17. Ex.A1 is the birth certificate of the plaintiff, Exs.A2 and A3 are the death certificates of the plaintiff's mother and father. Exs.A4 to A6 are the certified copy of the sale deed relating to A to C Schedule property. Exs.A7 to A11 are the lawyer's notice, acknowledgement card, postal receipt and reply notice. Ex.A12 is the valuation certificate, Ex.A13 is the certified copy of the partition deed, Ex.A14 is the certified copy of the sale deed, Exs.A15 and A16 are the certified copy of the sale deed, Ex.A17 is the discharge summary of the deceased father. The third defendant during his examination marked Exs.A18 and A19- certified copies of the sale deed Ex.B1 is the pension order, Ex.B2 is the Memorandum and Ex.B3 is the Will. The relationship between the plaintiff and the defendants are not disputed.

25. The suit properties contained A to D schedule. 'A' schedule includes three storeyed building situated at Manjini Nagar, Bajanai Madam Street, Muthialpet. 'B' schedule property includes double storeyed building situated at Bharathidasan Street, Muthialpet, Pondicherry. 'C' schedule property includes vacant site 5 kuzhies 5 veesams 3600 sq.ft. A to C schedule properties are immovable properties. 'D' schedule properties are movables i.e., share certificate, fixed deposit receipt, jewelleryes and furnitures. The Trial Court considered the evidence of PW-1 stating that his father sold the ancestral properties to purchase the 'A' and 'B' schedule properties. To establish the same, he has marked Exs.A4 and A5, sale deeds of 'A' and 'B' schedule properties. Ex.A13 is the partition deed in between his father and his brothers in Tamil Nadu, Ex.A19 is the certified copy of the sale deed sold by their mother and this document is marked through the third defendant. The third defendant also admitted that his mother's property sold through Exs.A19 and A18 marked through D3. In Ex.A18, it is stated that his father sold the property in Tamil Nadu due to purchase of lands in Pondicherry. D3 also stated that since the 'A' and 'B' schedule properties are self acquired properties of his father, he executed Will with regard to the A and B schedule properties.

26. From the above documents, the Trial Court arrived at a conclusion that the A schedule property was not purchased by selling the ancestral properties, but the same was purchased prior to the sale of ancestral properties and B schedule property was purchased after retirement by using retirement benefits and hence, the above properties are self acquired properties of the father of the plaintiff and defendants Late.Narasimalu.

27. The main contention of the third defendant was

that their father Mr.Narasimalu, during his life time, had executed a Will dated 03.01.2007 bequeathing to his progenies all his estate. Since the suit A and B schedule properties are the self acquired properties of the deceased Narasimalu, his wishes have to be respected and the suit to partition them into four equal shares is to be rejected. The Trial Court considered the contention of the plaintiff that the third defendant is not willing for partition with some ulterior motive. It is contended by the plaintiff that the alleged Will was not within the knowledge of the plaintiff and the defendants 1 and 2. The Will executed by the father is not at all seen by the plaintiff and the defendants 1 and 2, till the same was filed before the Trial Court on 19.07.2010. The suit was instituted on 23.07.2008. Thus the plaintiff and the defendants 1 and 2 made a submission before the Trial Court that the Will is nothing but a fabricated and fraudulent document created by the third defendant for his personal benefit, taking undue advantage of the age factor as well as the health condition of their father. The plaintiff and the defendants 1 and 2 strenuously denied the genuineness of the Will. It was contended by them that the Will is a suspicious document and at the time of execution of Will, the third defendant, who was the custodian and beneficiary of the said Will, had not taken any tangible steps to prove the said Will by removing the said suspicious circumstances. It is observed that the date of the alleged Will is not all mentioned by the third defendant so far in any of his pleadings including his reply notice marked as Ex.A7 and also in his chief examination affidavit. There is no scribe name and signature in the alleged Will filed before the Trial Court. The DW-2, during his cross examination, has stated that he signed in a stamp paper written Will, but the alleged Will filed before the Trial Court is typed written on green paper. Further, the Will was not registered before the Sub-Registrar Office, but it was registered only in the third defendant's house and therefore, the Will is a suspicious and fabricated document and cannot be considered as a genuine one. In respect of suspicious circumstances, no explanations were furnished by the third defendant either in his reply notice or before the Trial Court. In this regard, the Trial Court considered some judgements and arrived a conclusion in para 29 of the judgment that "it is clear that while proof of execution, attesting witness-Animus attestandi must on his part-Will-proof of genuineness and valid execution of burden of proof-onus proponder-signature of testator alone is not sufficient to prove execution-Will execution of suspicious circumstances. The judgements submitted by the learned counsel for the plaintiff are all applied with reference to the facts and circumstances of the case and further the Trial Court arrived a conclusion that the evidence of DW-1 is clear that the medical expenses of his father met out by the first defendant and was claiming through reimbursement. The

evidence of DW-5 also states that the Will is nothing but fabricated one. In the absence of scribe name in Ex.B3, its create suspicious circumstances for the execution of the Will. The execution of the Will not proved that Will was prepared with the instructions of the testator. Thus the Trial Court came to the conclusion that the plaintiff has proved the case regarding the suspicious nature of the Will alleged to have been executed by the deceased father of the plaintiff and defendants."

28. With reference to issues Nos.2 and 5, the Trial Court found that the third defendant is using the rental income came from ground floor of the 'A' schedule property and for which, he is liable to pay mense profit at the rate of Rs.600/- per month to the plaintiff and the defendants 1 and 2. Thus, the third defendant was directed to pay Rs.600/- as mense profits to the plaintiff and the defendants 1 and 2 from the date of plaint till they recover their respective shares and possession. Accordingly, answered issue Nos.2 and 5.

29. With reference to issue No.6, the permanent injunction was granted in view of the fact that the other issues 1, 2, 3, 4, 5 are decided in favour of the plaintiff.

30. Regarding issue Nos.7 and 8, the Trial Court ordered that the suit A, B and D schedule properties, whichever in the custody of the third defendant are liable to be partitioned between the plaintiff and the defendants 1 to 3 into four equal shares. The 'C' schedule property is not liable to be partitioned since the same is self acquired property of the third defendant. Thus, the third defendant is directed to pay Rs.600/- towards mense profits to the plaintiff and the defendants 1 and 2 from the date of the plaint till they recover their respective shares and possession. The issues 7 and 8 were answered.

31. Considering the entire documents and evidences placed before the Trial Court by the respective parties to the lis on hand, the main contention raised before the Trial Court was that whether the Will was the suspicious one or not. Even during the hearing of the first appeal, the parties to the appeal suit are present before this Court.

32. The learned counsel for the appellant as well as the learned counsel for the respondent made an effort to settle the issues. However, on account of certain differences, they could not able to succeed. Thus, they argued the case on merits.

33. The learned counsel for the appellant mainly relied on the point that the Will is a registered document and the said registration was not disproved and therefore, the suit

for partition itself is not maintainable. The deceased father of the plaintiff and defendants at the time of execution of the Will was aged about 85 years and at that age, the accuracy in signature cannot be verified at all. It is further contended on behalf of the appellant that all along for 23 years, the father was residing with the appellant and therefore, the Will was executed by the father bequeathing more shares to the appellant. The suspicious circumstances raised by the plaintiff as well as the defendants 1 and 2 in the suite were not established with sufficient evidence and in the absence of any clinching evidence, the sanctity and genuinity of the Will registered cannot be questioned by the parties and the Trial Court has committed an error in accepting the contentions of the plaintiff and the defendants 1 and 2 in this regard.

34. Further, it is contended that the attesting witnesses to the Will also deposed before the Trial Court and affirmed the signature of the executor. Therefore, there is no reason whatsoever for the Trial Court to arrive a conclusion that there is a suspicious circumstances in respect of the Will executed.

35. The learned counsel appearing on behalf of the first respondent disputed the contentions raised on behalf of the appellant by stating that the Will was questioned before the Trial Court mainly on the ground of the suspicious nature as well as the manner in which the Will was executed at the instance of the third defendant. The learned counsel for the first defendant strenuously opposed by stating that the Will was not executed in a genuine manner and the same was executed few days before the death of the father of the plaintiff and defendants. To substantiate the said contentions, it is urged before this Court that the date of the Will is 03.01.2007 and the registration of the Will was done on 23.01.2007 and the father of the plaintiff and defendants died on 31.01.2007. In this regard, the attention of this Court is solicited with reference to the finding of the Trial Court that the Will was not registered in the office of the Sub-Registrar, contrarily, the Will was registered in the residence of the third respondent and therefore, the execution itself was suspicious and the Trial Court has rightly arrived a conclusion in this regard. Considering the date of the Will i.e., 03.01.2007 and the registration of the Will was done in the resident of the third defendant on 23.01.2007 and their father died on 31.01.2007 and further, the father of the plaintiff and defendants was at the age of 85 at the time of execution, the Trial Court came to a conclusion that the suspicious circumstances raised by the plaintiff are not disproved by the third defendant. It was found that the deceased father was under the control of the third defendant during his last days and by taking undue

advantage of the same, the bogus Will was executed and therefore, the genuinity itself was not accepted by the Trial Court.

36. This Court is of the considered opinion that whether a particular Will is surrounded by suspicious circumstances or not is a question of fact and it depends upon the facts and circumstances of each case. While the execution of the Will is attended by suspicious circumstances, the propounder has to explain the circumstances and has to remove the suspicion of the Court in order to satisfy the conscious of the Court. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in making of the Will under which, he receives substantial benefits, interventions, arbitrations and alterations in the Will are all in the nature of circumstances, which shows the suspicion about the execution of the Will itself.

37. Considering these principles, this Court has to apply the facts and circumstances placed and established before the Trial Court. The primary facts are that till such time the Will was filed before the Trial Court after institution of the suit, the plaintiff as well as the defendants 1 and 2 were unaware of the facts. The said factum was not disputed by the third defendant before the Trial Court. They were taken by surprise when the Will was introduced by the third respondent to the other heirs of the deceased father. The said circumstances are able to be ascertained with reference to the manner in which the facts were placed before the Trial Court and the pleadings were made in this regard. Careful perusal of the pleadings as well as the documents placed before this Court, this Court is able to ascertain that at the time of execution of the Will by the father, undoubtedly the plaintiff as well as the defendants 1 and 2 were not aware about the execution of any such Will. Secondly, even before this Court the parties to the appeal suit were admitted that there was no dispute or strained relationship between the father and children. The father showered equal love and affection with all the children throughout his life time and, there was no enmity or otherwise. Further, it is contended that all along the sister and other brothers were attending the father by frequently visiting his house. In the absence of any such strained relationship and in normal circumstances, a father would divide his properties equally to all the children and if the position is other wise, it is the bounden duty of the party benefited out of such Will to establish and prove, if the father has taken a contrary view. This Court is of the opinion that when a father, in normal circumstances, is bequeathing property to the advantage of one of the sons, there must be some reason. It is further contended by the other legal heirs of the deceased father that the third defendant at no circumstances had contributed anything to the father except by utilising the

property, which was purchased by the father. The father all along was residing separately in the ground floor till the death of his wife and thereafter, he joined with the third defendant. The father was the retired post master and was receiving a substantial amount of pension, which is sufficient enough to meet out his expenditures. This apart he was receiving a rent from the ground floor also and he was holding some shares and fixed deposits. He derived income from those instruments also. Therefore, at no point of time the third defendant had an occasion to spend money or otherwise to the deceased father.

38. Taking note of all the factual circumstances, what is the necessity for the father to bequeath more property to the third defendant alone. The said factum is not established before the Trial Court. Even before this Court, the parties could not be able to establish any indifference or inference in respect of these facts. Therefore, this Court has no option, but to consider the findings arrived by the Trial Court in this regard.

39. As regards the suspicious circumstances of the Will is concerned, the Will was executed on 03.01.2007, as per the third defendant, which was registered admittedly in the residence of the third defendant on 23.01.2007 and the father of the plaintiff and the defendants died on 31.01.2007. It is admitted by the parties that before the death, the father was undergoing continuous treatment in the hospital for various ailments at the age of 85. The father was discharged from the hospital as the doctors were not hopeful about his revival of health.

40. Taking into these factors, if at all the father, while he was on deathbed, expressed his willingness to execute a Will in favour of his children, he would have called all the children and executed the same, may be one circumstance. If not possible to call all the children and he was not in a position to do so, at least, the third defendant, admittedly, was with the father, would have informed the other legal heirs regarding the proposal of Will said to have been executed on 03.01.2007.

41. Admittedly, the third defendant had not informed about the Will to the other legal heirs at the time of its execution. Peculiarly, even at the time of death of their father and after completion of funeral functions also, the third defendant had not informed about the Will to the other legal heirs. However, the third defendant informed the same at the later point of time, more specifically, after the institution of the civil suit by the plaintiff. All these circumstances leading to the facts reveals that there is a suspicious circumstance regarding the execution of the said Will, from and out of which the third defendant is benefited.

42. There was no strained relationship between the children and the deceased father. There was no other compelling circumstances to hide the fact regarding the execution of the Will. Under those circumstances, this Court is of an opinion that the suspicious circumstance raised by the plaintiff in the suit is to be trusted upon. Beyond the execution of the Will, it is not established before the Trial Court that the contents of the Will was properly explained to the Executor at the time of execution and further, the Executor was fully aware of the contents of the Will and it was his wish. In the absence of establishing these factors, the suspicious circumstance raised is to be relied upon.

43. This Court is of the considered opinion that there is no reason to interfere with these findings as the facts narrated and established are cogent and in consonance with the documents filed and evidences produced. This being the factum, the judgment and decree dated 21.08.2012 passed by the learned III Additional District Judge, Puducherry in O.S.No.54 of 2008 is hereby confirmed and the appeal in A.S.No.39 of 2013 stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Svn/kmi/Svn

To

1.The III Additional District Judge,
III Additional District Court,
Puducherry.

**2. The Section Officer,
V.R. Section, High Court,
Madras.**

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 104692

+1cc to Mr.G.Nagarajan, Advocate, S.R.No. 105132

A.S.No.39 of 2013

RSI (CO)
GN(27/08/2020)