



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2022

PRONOUNCED ON : 16.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A. S.No.652 of 2008

1.Rajammal (Died)
2.Gomathi

...Appellant/plaintiff

Vs.

1.S. Valliammal (Died)
2.Balasubramanian (Died)
3.Jeyaprakash
4.B. Parthiba Ananda Krishnan,
5.H. Alagu Vignesh,
6.B. Kalavathi

...Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated, 31.07.1989, made in OS.No.150 of 1986, by the Subordinate Judge, Udumalpet.

For Appellant : Mr.K.Muthukumaraswamy

For Respondents : Mr.C. Veeraragahaan for R3

Mr.A.E. Ravichandran for R4 & R5

J U D G E M E N T

1. This Appeal Suit has been filed, by the Plaintiff, against the Judgement and Decree, dated, 31.07.1989, made in O.S.No.150 of 1986, passed by the learned Subordinate Judge, Udumalpet.

2. The case of the Plaintiff, as set out, in the plaint is that the 1st defendant is the wife of P.K.Sethu Ramaswamy and the defendants 2 & 3 are their children.



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The 1st plaintiff is the kept mistress of P.K.Sethu Ramasamy. The 1st plaintiff was living with the said P.K.Sethu Ramaswamy ever since 1948 and the 2nd plaintiff born through the 1st plaintiff on 11.09.1964. On 27.03.1977, the said P.K.Sethu Ramasamy executed a Will and the same was kept in a sealed cover in the Sub-Registrar Office, Coimbatore in Cover No.8/1977. The Testator died on 13.03.1982. As per the terms of the Will, the "A" schedule property is to be enjoyed by the 1st plaintiff during her life time without the power of alienation. After her life time, the 2nd plaintiff has to take the property absolutely. The 1st plaintiff is to be the guardian for the 2nd plaintiff during her minority. If however, the 1st plaintiff predeceases, the 2nd plaintiff during her minority, four persons, namely, (1) S. Chinnathambi, B.A. BL., (2) S. Valliammal (1st defendant), (3) Balasubramanian (2nd defendant) and (4) Mylathal have been nominated in the Will to be the guardian for the 2nd plaintiff. The one among the said four persons, who expresses his or her consent, first would be the guardian for the 2nd plaintiff. If, however, the 2nd plaintiff dies without any heirs, the property would go to the defendants 2 and 3. The 2nd plaintiff is also not entitled to encumber the property till she begets legal heirs. The "B" Schedule property has to go to the grandson of late P.K.Sethu Ramaswamy by name Girinathan, who is the son of the 3rd defendant, who has to manage the property without encumbering the same till he attains majority. Since the defendants refused to handover the possession of the suit properties, the plaintiffs have sent a legal notice dated 16.08.1983



and a reply notice dated 02.09.1983 was received. Again on 23.09.1983, the defendants sent a second reply. The plaintiffs issued another notice dated 11.10.1983. Thereafter, on 11.11.1983, the defendants issued a notice to the plaintiffs. The defendants denied the fact that the 2nd plaintiff was not born to .P.K.Sethu Ramaswamy. In such circumstances, the suit has been filed for declaration of title, recovery of possession and for damages in the "A" schedule property.

3. The case of the defendants is that the 1st plaintiff is not the kept mistress of the P.K.Sethu Ramaswamy and she was having illicit intimacy only and the 2nd plaintiff was not born to them. P.K.Sethu Ramaswamy did not execute any Will. The alleged Will is not a genuine one. The attestors to the document are strangers to the family. There was no necessity to exclude the defendants. The recitals in the Will are unnatural and improbable. The defendants are not aware of the Will. The plaintiffs are not the owners of the A-Schedule properties. The plaintiffs have to prove the Will. The defendants are not liable to pay damages and they are not in illegal use and occupation of the suit properties. There is no cause of action. The plaintiffs are not entitled to any of the reliefs. Hence, the suit is liable to be dismissed.
4. On the pleadings of the parties, the following issues were framed by the trial court:-

1. Whether the alleged Will is true and valid?
2. Whether the plaintiffs are entitled for declaration and possession as prayed for?



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3. Whether the plaintiff's are entitled for loss of income?
4. To what other relief the plaintiffs are entitled?
5. Before the Trial Court, on the side of the Plaintiffs, Ex.A1 to Ex.A13 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, Ex.B1 to Ex.B3 were marked and DW.1 and DW.2 were examined. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed.
6. The learned counsel for the appellants/plaintiffs submitted that the Court below has erred in holding that Late. Sethu Ramaswamy has executed Ex.A1-Will under compulsion and at that time, he was not in sound state of mind, without appreciating the relevant evidence on record to prove that he executed Ex.A1 voluntarily in good state of mind with an intention to give the property to the 2nd plaintiff, who was born through Late P.K. Sethu Ramasamy to the 1st plaintiff.
7. It is further submitted by the learned counsel for the appellant that the Court below came to the conclusion against the plaintiffs only on the basis of the assumption and not on the basis of any oral and documentary evidence stating that Ex.A1-Will would not have been executed in the presence of unknown person and the same was executed under compulsion or under undue influence of the 1st plaintiff, which cannot be sustained and the same is not supported by any evidence.
8. The learned counsel for the appellants further submitted that while Ex.A1-Will



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was executed by the deceased P.K. Sethu Ramaswamy on his own volition in good state of mind and health, the Court below held that Ex.A1-Will was executed by him in doubtful situation, which cannot be sustained in law and on facts. Ex.A1-Will was not executed under compulsion when he was unwell which comes to understand from the version of the oral evidence of P.W.1 since the Testator deposited the said Ex-A1-Will in the Sub-Registrar Office, Coimbatore with a sealed cover by traveling from Pollachi. It further shows that Ex.A1-Will was executed by Late Sethu Ramaswamy while he was in good state of mind and health and the same has been deposited in the Sub-Registrar Office, Coimbatore by traveling from Pollachi to Coimbatore. Since Late P.K. Sethu Ramaswamy thought it fit that the plaintiffs may find it difficult to get the documents from the SRO, Coimbatore, he himself got back the documents in the sealed cover and also handed over it to the 1st plaintiff with instruction to open the same after his demise. Accordingly, the 1st plaintiff opened the Will contained in the sealed cover after his demise.

9. It has been further submitted that the Court below has given much importance to the fact that Ex.A12-Will was revoked by the Testator after executing Ex.A13, whereas Ex.A1 might have been revoked by the Testator. It is to be noted that while Ex.A13 is a proof of evidence for cancellation of Ex.A12-Will executed by Late P.K. Sethu Ramaswamy, there is no evidence for cancellation of Ex.A1-Will. Hence, it makes clear that Late P.K. Sethu Ramaswamy never cancelled the said Will. He was only keen in safeguarding



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the interest of the plaintiffs. This will be evident from the recital made in the Will itself. Further, the entire Will was written in his hand and it was executed on his own volition, without any interference and undue influence by the plaintiffs. The Testator was also equally affectionate towards the 2nd plaintiff and she was educated by him. The Will was not a product of undue influence as alleged by the respondents.

10. The learned counsel for the appellants/plaintiffs further submitted that without appreciating the aforesaid contentions made by the learned counsel and averments made in the plaint, the Court below erred in dismissing the suit. Hence, he prays for allowing this appeal.

11. In support of his contentions, the learned counsel for the appellants/plaintiffs has relied on the Judgment of this Court in the case **"K.Velusamy Vs. S. Rajalakshmi reported in 2019-5-L.W.609**, wherein it has been observed as follows:-

“

....

15. The Trial Court has commented upon the disinheritance of the property in favour of the plaintiff by the testator Kandasamy Gounder equally. The Trial Court has also found that Kandasamy Gounder has given reasons in the Will for the disinheritance of the daughter, namely, the plaintiff. When it is found that the plaintiff has been provided with adequate seer at the time of marriage and also subsequently accordingly, it is found that Kandasamy Gounder had chosen to bequeath his properties in favour of his only son, the defendant, in such view of the matter, as rightly put forth by the defendant's counsel also reported in the decision in 2009-4L.W 912=(2009) 7 MLJ 209 (Kamala Menon Cochran Vs. K.P. Ramachandra Menon and others) uneven distribution of assets among children on the part of the testator by itself cannot be taken as suspicious circumstance and accordingly when the reasons for deviating from the normal line of succession are stated in the Will itself, the same should be accepted. Therefore, the mere factor that the plaintiff has been disinherited under the



Will Ex.B.7, cannot be viewed as suspicious circumstance for discrediting the same.

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16. The Trial Court has taken a view that there is no need on the part of the testator to maintain any secrecy about the execution of the Will. The above said reason of the Trial Court stemmed from the fact that inasmuch as Kandasamy Gounder had executed the partition deed and the settlement deed projected in the matter to the knowledge of the plaintiff and the plaintiff has attested the aforesaid documents, opined that Kandasamy Gounder need not maintain any secrecy quo the execution of the Will and therefore, proceeded to hold that if really he had chosen to execute the Will, he would have executed the same to the knowledge of the plaintiff. However, when according to the defendant, the plaintiff was not maintaining a good and cordial relationship with Kandasamy Gounder at the relevant point of time and the partition deed and gift deed had taken place on 18.03.1993, nearly 10 years priors to the execution of the Will in question, whereas the Will in question had been executed on 18.08.2002 and when according to the defendant, the plaintiff was not maintaining a good relationship with the father at the relevant point of time, accordingly, it is found that there is a need on the part of the testator to maintain secrecy in the execution of the Will if he so desires and accordingly, he had expressed the said desire to the attestors concerned, accordingly, it is found that the Will had come to be executed at the place of the scribe. Therefore, in the light of the decision, reported in 2009-4L.W. 912=(2009) 7 MLJ 209 above referred to, it is found that it is the privilege and the right of the testator/testatrix to keep his/her Will secrete, if he/she so desires and the execution of the Will by not disclosing the factum to others cannot be treated as suspicious circumstance in the context of the facts of the particular case. Therefore, in my considered opinion, the mere fact that EX.B7 Will had been executed without the knowledge of the plaintiff in secrecy by the testator and when it is found that the same had been done only as per the wish and at the instance of the testator as clearly spoken to by D.W.2, in such view of the matter, the above said alleged suspicious circumstance attributed to Ex.B7-Will cannot be sustained as such and therefore, the same cannot be put forth for undermining the truth and validity of Ex.B7-Will as such.

....

19. The Trial Court has also commented upon the non-registration of the Will in question. The Will need not be compulsorily registered. Merely because the testator had chosen to execute and the register the partition deed and the settlement deed effected during the year 1993, the same analogy cannot be extended to the Will in question. As above noted, when the testator had chosen to maintain the secrecy in the execution of the Will, accordingly, it is found that he has not chosen to register the same. In such view of the matter, the non-registration of the Will by itself, cannot be



attributed as a factor for disbelieving the case projected by the defendant with reference to Ex.B7-Will.

12. Further, the learned counsel has also relied on the Judgment passed by the Supreme Court in the case “ **Meenakshiammal (Died) through Lrs and others Vs. Chandrasekaran and another** reported in (2005) 1 Supreme Court Cases 280 wherein it has been held by the Apex Court as follows:-

“... 19. In the case of Chinmoyee Saha V. Debendra Lal Saha it has been held that if the propounder takes a prominent part in the execution of the Will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the Will was signed by the Testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same.

....
22. In the present case, the propounder of the Will have proved that the Will was signed by Siva, that at the time of execution of the Will, he had a sound disposing state of mind; and that he had reasons to exclude plaintiffs who did not care for him in his old age. Lastly, as stated above, the onus to prove forgery, undue influence, or collusion was on the plaintiffs who have alleged that Ex.B8 was forged. In the absence of such a plea, the lower appellate Court had erred in holding that the Will was forged.

13. He further has relied on the Judgment of the Supreme Court in the case

“**Mahesh Kumar (Dead) by Lrs Vs. Vinod Kumar and others** reported in (2012) 4 Supreme Court Cases 387 wherein it has been held by the Apex Court as follows:-

“
30. In Jaswant Kaur V. Amrit Kaur, (1977) 1 SCC 369) the Court analysed the ratio in H. Venkatachala Iyengar case (AIR 1959 SC 443) and culled out the following propositions:-

(I) Stated generally, a Will has to be proved like any other document, the



test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.

....

31. In Uma Devi Nambiar Vs. T.C. Sidhan, ((2004) 2 SCC 321) the Court held that active participation of the propounder/beneficiary in the execution of the Will or exclusion of the natural heirs cannot lead to an inference that the Will was not genuine."

14. Further, he has relied on the Judgment of a Division Bench of this Court in the case **"Dr.Lodd Surendardas Vs. Lodd Narendradas and another"**, reported in (2009) (4) CTC 1, wherein it has been held as follows:-

"

11. The Will Ex.P1 is in the handwriting of the Testator-Lodd Balamukundas. One of the Attesting Witness, a practicing lawyer of this Court P.W.3 has categorically deposed that Ex.P1 the testament was executed by the Testator in his presence. It is pertinent to state here that neither the handwriting nor the signature of the Testator is disputed by the defendant. It is settled principle of law that in the case of holographic Will, presumption is all the more greater in favour of the genuineness of the Will. Useful reference can be had to the decision of the Apex Court in the case of Joyce Primrose Prestor V. Vera Narue Vas, 1996 (2) CTC 35 (SC): 1996 (9) SCC 324. In the present case, the whole of the Will is in the handwriting of the Testator. The handwriting of the Testator is clear and firm, though there are certain over writings found in almost all the lines, which cannot be attributed to any other presumption, but to the age of the Testator and definitely not against the genuineness of the Will"

15. Further, he has relied on the Judgment of the Supreme Court in the case "

Shashi Kumar Banerjee and others Vs. Subodh Kumar Banerjee since deceased after him his legal representatives and others, reported in AIR 1964 Supreme Court 529, wherein it has been held as follows:-

"4. the mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by S.63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as



required by Law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to genuineness of the signature of the testator, the condition of the testator's mind, the disposition made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the Testator.

16. On the contrary, the learned counsel for the respondents submitted that the 1st plaintiff was only having illicit intimacy with the deceased P.K. Sethu Ramaswamy and she was not paramour of Late P.K. Sethu Ramaswamy Gounder as claimed by the 1st plaintiff and 2nd plaintiff was not born through him.

17. It has been further submitted by the learned counsel for the respondents that Ex.A12 was a registered Will executed by deceased P.K. Sethu Ramaswamy, which was canceled by Ex.A13, whereas Ex.A1 is an unregistered Will which is said to have been deposited in SRO, Coimbatore. It raises suspicion as to why the Ex.A1-Will had only been deposited instead of registering the same before the SRO, Coimbatore, while Ex.A 12 was registered by the Testator in SRO, Pollachi and thereafter, the same was cancelled by the Testator. Further, Ex.A1 was taken to SRO, Coimbatore for safe custody which is not the concerned SRO, and far away from Pollachi, where Late Sethu Ramaswamy lived and the same was not registered in the SRO, Coimbatore.



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18. The learned counsel for the respondents further submitted that according to P.W.1 statement, there is no chance to write such a huge Will in his own handwriting within a short span of time ie. 1.00 hour when the Testator had nervous problems and other health issues. Further, there are several contradictions in the oral evidence of P.W1 and P.W2, wherein the said Will was said to have been written within one hour as per P.W.1's deposition and in the Cross it is stated as 2-1/2 hours as per the version of P.W.2.
19. It has further been submitted by the learned counsel for the respondents that in Ex.A7-Legal Notice, nothing was mentioned regarding the withdrawal of the Will from the SRO, Coimbatore. He further submitted that P.W.1 has actively participated in execution of the Ex.A1-Will, which has been admitted by P.W.2, who deposed in the cross examination that prior to execution of the Will, both P.W.1 and the Testator were having discussion, which is clear that there is undue influence and lack of free consent in execution of the said Will.
20. It has been further submitted that according to cross examination of P.W.1 a property was also purchased in the name of P.W.1 by the Testator while P.W1 has no source of Income. While that being so, there is no need to bequeath the property to the plaintiffs by way of Ex.A1, since they were provided sufficiently by Late.P.K. Sethu Ramasamy.
21. The learned counsel for the respondents further submitted that the handwriting of the Testator in the Will was not proved in the manner known to law.



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22. The learned counsel for the respondents further submitted that the Court below has passed the impugned Judgment and Decree dated 31.07.1989 having considered the facts and circumstances of the case after Trial and dismissed the prayer of the plaintiff in the plaint. Hence, the Appeal filed by the plaintiffs against the dismissal of the suit by Judgment and Decree dated 31.07.1989 passed by the Trial Court is not sustainable and liable to be dismissed.

23. In support of his contentions, the learned counsel for the respondents relied on the Judgment of this Court in the case "**M. Jeyamary Vs. M. Joseph**" reported in 2020 (1) CTC 406 wherein it has been observed as follows:

"....

23.... a person gets a vested interest in a property at the Testator's death when he acquires a property right in it and the right of enjoyment is only deferred till a future event happens and which is certain to happen. It has also taken note of Section 119 of the Indian Succession Act, which was read along with Section 19 of the Transfer of Property Act. In the case Law that was cited before this Court, it is seen that a similar bequest was made in favour of the person for life and the vested remainder was given died. Therefore, this Court held that the moment the male member to whom the property was given, was born, it vests on him absolutely and on his death, the property will have to come to his legal heir.

24..Further, he relied on the Judgment of the Supreme Court in the case "**V. Prabhakara Vs. Basavaraj K. (Dead) by Lr and another**" reported in (2021)

SCC online SC 896, wherein it has been held by the Apex Court as follows:

"....

28. At the same time, however, the appellate Court is expected, may be bound, to bear in mind a finding recorded by the Trial Court on oral evidence. It should not forget that the Trial Court had an advantage and opportunity of seeing demeanor of witnesses and hence, the trial Court's conclusion should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to



be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the Trial Court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well established principles of law or unreasonable.

25. He further relied on the Judgment of the Supreme Court in the case “

Shivakumar and others Vs. Sharanabasappa and others, reported in (2020) SCC Online SC 385, wherein it has been held as follows:

“

51..... Where however three are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine.

8.. Needless to say that any and every circumstance is not a suspicious circumstance. A circumstance would be suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.

56.... In cases where the execution of a Will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the Court that the Will was duly executed by the Testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.

57..... The case in which the execution of the will is surrounded by suspicious circumstances stands on different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and therefore in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the Testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may



give rise to the doubt or as to whether the Will had indeed been executed by the Testator and/or as to whether the Testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. As put by this Court, the suspicious features must be real, germane and valid and not merely the fantasy of the doubling mind.

7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the Testator; an unfair disposition of property.....

....

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to be offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.

26. He further relied on the Judgment of the Supreme Court in the case “ **Prakash**

Soni Vs. Deepak Kumar and another reported in (2017) 9 Supreme Court

Cases 332, wherein it has been held by the Apex Court as follows:

“ ...

11..... 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 dispositions made in the alleged Will may not be as a result the Testator's free will and mind ...”

27. Further, he also relied on the Judgment of a Division Bench of this Court in the

case “ **Lalitha Mohan and Another Vs. Pratap K. Moturi**” reported in 2020

SCC Online Mad 506, wherein it has been held as follows:-

“ ...

21..... Propounders themselves take a prominent part in the execution of



the Wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of Will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the Will and propounder is required to remove the said suspicion by clear and satisfactory evidence"

22.... If there are any suspicious circumstances surrounding the execution of the Will the propounder must remove the said suspicion from the mind of the Court by cogent and satisfactory evidence.

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 reasons.
- iv. The dispositions may 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.

28. Further, he relied on the Judgment of the Supreme Court in the case "**Bharpur Singh and others Vs. Shamsheer Singh**" reported in (2009) 3 **Supreme Court Cases 687**, wherein it has been held by the Supreme Court as follows:-

"16..... (iii) If a will is challenged and surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

29. He further relied on the Judgment of the Bombay High Court in the case "

Edaiji Dhanjisha Anklesaria Vs. Sorabji Dinshawji Ginwalla" reported in AIR



1948 Bom 304 wherein it has been held as follows:

“...
8. There is further argument which strengthens me in coming to this conclusion and putting this construction upon the expression "deposited". Whether the fact the will in question is or is not deposited with the Registrar can never be effectually determined unless the sealed cover is left with the Registrar and opened after the death of the Testator. If the sealed cover withdrawn and does not remain with the registrar, proof would indeed be very difficult if not impossible as to what were the contents of a sealed cover which was deposited with the Registrar.”

30. The plaintiffs cannot claim "A" schedule property as described in the plaint based on Ex.A1-Will which is said to have been written by Late P.K. Sethu Ramaswamy.

31. Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials available on record.

32. The case of the plaintiffs is that Late P.K. Sethu Ramasamy executed the Ex.A1-Will on his own volition and voluntarily with the sound state of mind and health, having intention to give the suit A schedule property to the 2nd plaintiff, whereas the case of the defendants is that in the year 1977, Late P.K. Sethu Ramasamy was under the influence of P.W1 and at the time of execution of Ex.A1-Will, he was not in a healthy condition and the same was never informed to them. Further, earlier Ex.A12-Will executed by him was cancelled by Ex.A13 and in the same manner, the Ex.A1 might have been revoked by the Testator. The witnesses in Ex.A1-Will were unknown persons to the defendants.

33. On a perusal of Ex.A1-Will, it was mentioned in the Head Line as "bghs;shr;rp P.K.nrJuhkrhkpapd; capy; rhrdk;" whereas it was written by P.K. Sethu



Ramaswamy on his own hand writing. Further, the same was attested by two Witnesses, namely one Mr.Chinnaswamy and another one Mr.Venkatesan.

P.W.1 in her cross deposed that during the period of execution of Ex.A1-Will, Late P.K. Sethu Ramaswamy lived with the 1st plaintiff along with his daughter -the 2nd plaintiff in the same house. Further, the same was confirmed by the deposition of D.W1 and D.W2. Hence, it is confirmed that Late P.K. Sethu Ramasamy had been living with P.W.1 till his death.

34.Further, it has been deposed by the 1st plaintiff in her chief that the Two Witnesses namely, Mr.Chinnaswamy and Mr.Venkatesan and the 1st plaintiff have witnessed when Late P.K. Sethu Ramaswamy had put his signature in the Will in question. At the same time, the 1st plaintiff and Late P.K. Sethu Ramaswamy have witnessed when Mr.Chinnaswamy and Mr.Venkatesan put their signature in the said Will.

35.On a perusal of the evidence on the side of the defendants, D.W1- deposed that the 1st plaintiff was staying in the Garden house where P.W1 had stayed and his father used to go there. In continuation of his deposition, he further states that his father stayed in the Garden house from the month of January, 1977 till his death. At that time, he was under the control of the 1st plaintiff. Further, he deposed that Ex.A1 might have been written by his father under undue influence of the 1st plaintiff. While it was enquired in the Sub-Registrar Office, Coimbatore, it has been stated that Ex.A1 was taken back by P.K. Sethu Ramaswamy for the purpose of cancellation of it wherein D.W.1 has not



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assured that the Ex.A1-Will had not been written by his father ie. Late P.K. Sethu Ramasamy. Further, there is no evidence let in on the side of the respondents about the cancellation of the subsequent Will ie. Ex.A1 even though Ex.A12 was revoked under Ex.A13. Further, D.W.1 has deposed that his father had purchased a vacant land to the extent of 20 cents in favour of the 1st plaintiff and constructed a house on his own funds and he had given 40 sovereign of Gold Jewellery for the marriage expenses of the 2nd plaintiff. Hence, it is confirmed that the Testator had taken care to the interest of the plaintiffs.

36. A perusal of Ex.A1 reveals that on 27.03.1977, the deceased P.K. Sethu Ramasamy executed a Will, which was written by his own hand writing and the same was kept in a sealed cover at the Sub-Registrar Office, Coimbatore as Cover No.8/1977 traveling from Pollachi to the S.R.O. Coimbatore . After 5 years, the deceased P.K. Sethu Ramasamy handed over the said Ex.A1-Will to P.W.1 stating that it has to be opened after his demise. The Will was attested by two witnesses namely Mr.Venkatesan who is P.W.2 and Mr. Chinnasamy. It makes it clear that only if the Testator was in a healthy condition, he had traveled all along from Pollachi to Coimbatore for depositing the Ex.A1-Will in the S.R.O. Coimbatore. Hence, it is clearly proved that he was in good health condition when Ex.A1 was executed by Late P.K. Sethu Ramasamy. In this regard, the defendants have not been examined to disprove the same. However, the defendants have failed to prove that the



deceased P.K. Sethu Ramasamy was not in good a condition. Furthermore, P.W2 has never stated in his deposition that P.W.1 influenced or coerced the Testator to execute the Ex.A1-Will. Hence, it makes it clear that Ex.A1 was executed by P.K. Sethu Ramasamy on his own volition and voluntarily and not



in undue influence of P.W.1.

37. In this case, P.W.2-Venkatesan, one of the witnesses in the Will, deposed that Late Sethu Ramasamy executed a Will in favour of P.W.1. He was called upon by him to the Garden house along with Chinnasamy. Both of them have attested the Will Ex.A1 as witnesses.

38. In view of the aforesaid observations and discussion, it is clear that Ex.A1- Will was executed by the deceased P.K. Sethu Ramaswamy on his own volition without any compulsion or undue influence after getting signature of the two Witnesses and further it was deposited in the Sub-Registrar Office, Coimbatore with the sealed cover with an intention to hand over the property to the 2nd plaintiff as per the terms of the said Will.

39. The decisions of the Apex Court relied on by the learned counsel for the plaintiffs/appellants herein laid down on the following propositions:-

(i) If the propounder takes a prominent part in the execution of the Will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the Will was signed by the Testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same".

(ii) A Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.



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(iii) active participation of the propounder/beneficiary in the execution of the Will or exclusion of the natural heirs cannot lead to an inference that the Will was not genuine.

(iv) The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by S.63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by Law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to genuineness of the signature of the testator, the condition of the testator's mind, the disposition made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the Testator."

40. The decisions relied on by the learned counsel for the plaintiffs/appellants herein are squarely applicable to the facts of present case and that the decisions relied on by the learned counsel for the defendants/respondents herein are distinguishable on facts. Hence, this appeal suit is liable to be allowed.

41. In the result, the First Appeal is allowed. The judgement and decree, dated, 31.07.1989, made in OS.No.150 of 1986, by the Subordinate Judge, Udumalpet is set aside. The suit is decreed as prayed for. No costs.

16.06.2022



Index:Yes/No

Web:Yes/No

Speaking/Non Speaking order

Lbm

To

1. The Sub Judge, Udumalpet.

2. The Record Keeper, VR Section, Madras High Court



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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
A. S.No.652 of 2008

16.06.2022