



T.O.S.No.52 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :	03.11.2022
Pronounced On:	112122

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

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1.B.Karthikeyan

2.B.Mohanakrishnan (Minor represented by father and natural guardian V.Balasubramanian the first respondent)
(Second plaintiff is declared as a major in Appln No.618/2016 and V.Balasubramanian is discharged from guardianship by Appln 617/2016 by orders dated 10.02.2016 and time extended on 01.04.2016) ...Plaintiffs

Vs.

R.Saroja

...Defendant

PRAYER: This is a suit filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 for the grant of Letters of Administration.

For Plaintiffs : Mr.A.K.Sriram for

M/s.A.S.Kailasam and Associates

For Defendant : Mr.J.R.K.Bhavanantham



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JUDGMENT

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This suit is filed for the grant of Letters of Administration with Will annexed in respect of the Will of testatrix deceased K.V.Patammal.

2.The case of the plaintiffs is that the first respondent in O.P.No.778 of 1999, V.Balasubramanian was the son of K.V.Vijayaranga Mudaliar. Second respondent is his sister. Deceased K.V.Patammal is their mother. She had executed her last Will and testament on 21.03.1996 in the presence of witnesses. She died on 12.05.1998. Plaintiffs are the grand sons of deceased K.V.Patammal and the beneficiaries under the Will. The assets likely to come to the plaintiffs will not exceed a sum of Rs.1,47,420/-. Plaintiffs undertake to duly administer the property and credits of deceased K.V.Patammal. Therefore this suit is filed.

3.The case of the defendant R.Saroja is that she is not aware of the impugned Will alleged to have been executed by deceased K.V.Patammal. She came to know about the impugned Will when the



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plaintiff caused reply notice dated 30.10.1998. No copy of the Will was furnished to the defendant. The Will is not true and genuine. Her brother should have been instrumental in fabricating the Will. Deceased K.V.Patammal was bed ridden during 1996 and thereafter she suffered lapse of memory even to identify her own kith and kin. She was not in sound disposing state of mind. She was in poor state of health, stressed and was disoriented. She could not have executed the impugned Will.

4.The entire vacant land measuring 2400 sq.ft., in old No.2848, New No.1818/2, C.C.No.736, Mylapore Village, Chennai – 600 004, was purchased in the joint names of K.V.Patammal and K.V.Shenbagavalli. Sale consideration was paid by deceased K.Vijayaranga Mudaliar, the husband of deceased K.V.Patammal. After the death of K.Vijayaranga Mudaliar in March 1940, K.V.Patammal along with her sister K.V.Shenbagavalli jointly put up construction of a house in the said land by raising funds by mortgaging the property with Mylapore Hindu Permanent Funds and by utilizing joint family fund and ancestral nucleus. Both of them lived jointly along with their family members.



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Thereafter, in a family partition entered into and registered as a deed of partition on 30.03.1995, the ground floor portion of the property was jointly allotted to 1)deceased K.V.Patammal, 2)V.Balasubramanian and the defendant. First floor was allotted to 1)Shenbagavalli and her daughter namely, 2)Shantha, 3)Padma and 4)Susila. After partition the respective parties have been enjoying their respective portions. The partition deed was presented by defendant's brother V.Balasubramanian before the Sub-Registrar for registration. V.Balasubramanian was living with mother deceased K.V.Patammal. K.V.Patammal died on 12.05.1998, leaving the defendant and her brother V.Balasubramanian as her legal heirs. K.V.Patammal, the defendant and V.Balasubramanian are each entitled to 1/3 undivided share in the ground floor portion.

5.Since, V.Balasubramanian failed and neglected to give half share in the rental income of the ground floor portion, this defendant sent a legal notice dated 01.09.1998, calling upon the tenants of ground floor to pay rent to her. V.Balasubramanian sent a reply dated 30.10.1998 alleging that deceased K.V.Patammal executed a Will dated 21.03.1996.



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Therefore, defendant filed a suit in O.S.No.7324 of 1998 on the file of learned XIV Assistant City Civil Court for partition and separate possession and for other reliefs. Preliminary decree was passed on 15.02.2002. V.Balasubramanian filed A.S.No.184 of 2002 against the judgment on the file of VI Additional City Civil Court, Chennai. Appeal was dismissed and the trial Court judgment was confirmed on 22.03.2004. Then, he filed Second Appeal in S.A.No.186 of 2006 and that was also dismissed for non prosecution on 08.03.2006. Defendant filed application for passing final decree in I.A.No.18671 of 2002 and final decree was passed on 23.11.2005. Appeal against the final decree in A.S.No.457 of 2006 on the file of VI Additional Judge/City Civil Court, Chennai was also dismissed on 18.07.2007. The Second Appeal in S.A.No.186 of 2006 had been restored without serving notice on the defendant. Defendant filed Execution Petition in E.P.No.2064 of 2006 on the file of learned X Assistant Judge, City Civil Court, Chennai and it is pending.

6.Deceased K.V.Patammal had no right to execute the Will in



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respect of the entire property. Her direct legal heirs namely defendant and V.Balasubramanian are not provided for in the Will. She was aged 82 years, deaf and not having sound and disposing state of mind. Her brother V.Balasubramanian exercised undue influence on the deceased K.V.Patammal. The signature in the impugned Will is not that of deceased K.V.Patammal. Deceased K.V.Patammal does not know English but the impugned Will is in English language. It is purported to have been attested by her brother V.Balasubramanian and it shows that he fabricated the impugned Will by setting his own sons as legatees. Second attester is a fictitious person. The Will is surrounded by the aforesaid suspicious circumstances. Therefore, this suit has to be dismissed.

7.On the basis of these pleadings, the following issues are framed for trial:-

i)Whether the plaintiffs are entitled to get an order of Letters of Administration in respect of the Will dated 21.03.1996 alleged to have been executed by late K.V.Patammal as prayed for?



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ii)Whether the suit is maintainable?

iii)Whether the impugned Will is fabricated and surrounded by suspicious circumstances as alleged in the Written statement?

iv)Whether the impugned Will dated 21.03.1996 is true and genuine?

v)Whether the deceased Patammal was in sound disposing state of mind at the time of execution of the impugned Will?

vi)Whether the impugned Will is unnatural under Section 30 of Hindu Succession Act?

vii)To what relief, the plaintiffs are entitled?

8.Originally this suit was instituted as Original Petition under Order 25 Rule 5 of the Original Side Rules read with Section 232 and 276 of Indian Succession Act. Plaintiffs had shown their father V.Balasubramanian and the defendant R.Saroja as respondents. It appears that V.Balasubramanian had not filed any Caveat, only the second defendant filed the Caveat. Therefore, the Original Petition was converted as Testamentary Original Suit and trial conducted.



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9.During the trial, PW1 was examined and Ex.P1 to P4 were marked on the side of the plaintiffs. DW1 was examined and Ex.D1 to D9 were marked on the side of the defendant.

10.The learned counsel for the plaintiffs submitted that the defendant had set up several pleas mentioned above with regard to the execution of impugned Will by deceased K.V.Patammal. The pleas are mutually contradictory. She claimed that Will is forged and fabricated and on the same breadth, it was also alleged that the Will was executed exercising undue influence on the deceased K.V.Patammal. If the allegation that Will was executed by exercising undue influence, obviously, defendant cannot take the plea of forgery and fabrication of Will. Other claim that deceased K.V.Patammal was 82 years, she was suffering from lapse of memory, difficulty in identifying her own kith and kin, not in sound and disposing state of mind are all not true for the reason that D.W.1 had herself admitted that deceased K.V.Patammal was in a sound and disposing state of mind, but she was suffering only from



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memory lapse. The allegation that the plaintiffs and their father had actively participated in execution of the Will cannot also stand the scrutiny of this Court for the reason that, it was plaintiff's father V.Balasubramanian who had been taking care of deceased K.V.Patammal. Defendant had not cared to visit or to take care of the deceased K.V.Patammal. Naturally, it was the plaintiffs and their father who were helping the deceased K.V.Patammal. Out of two attestors, one of the attestors P.Arulraj was dead. His death certificate is produced as Ex.P4. Other attestor V.Balasubramanian was also dead. P.W.1 had identified the signature of the attestor in the Will. The claim that the suit is bad for non-joinder of said V.Balasubramanian is also not correct for the reason that he was impleaded as first respondent in the Original Petition No.778 of 1999. Since, he had not filed Caveat, he was not shown as defendant in the suit.

11.The submission of the learned counsel for the defendant that testatrix is not the absolute owner of the ground floor is not an issue to be decided in this suit. This issue is outside the scope of the suit for the



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reason that the only issue to be decided is whether the deceased K.V.Patammal had executed the impugned Will. Original Petition was filed within five months from the date of knowing existence of the Will. The fact that the son and daughter were excluded in the Will is not a ground for suspecting the genuineness of the Will. Will is executed only to upset the natural line of succession. There is no pleading or evidence and not even a suggestion was made to P.W.1 with regard to the undue influence exercised on the deceased K.V.Patammal. Second Appeal in S.A.No.186 of 2006 is now pending. The defendant was about 58 years in 1996 and that is the reason why deceased K.V.Patammal preferred her grand sons in preference to defendant for bequeathing her property in favour of the plaintiffs. Defendant is now in the care and custody of her husband's brother's son. Defendant is instigated by her husband's brother's son to defend this suit. Plaintiffs have proved the execution of the impugned Will by the deceased K.V.Patammal as per law and therefore he prayed that suit be decreed.

12.The learned counsel for the plaintiffs relied on the following



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judgment with regard to the proof of Will:-

Judgement reported in *[2005 1 L.W. 455]* in *Janaki Devi Vs.*

R.Vasanthi and six others, it is observed that,

28. *In Corra Vedachalam Chetty v. G. Janakiraman*, 2001 (3) CTC 283, a Division Bench of this Court had considered the aspect of failure to produce Will for probate immediately after the demise of testator and its effect, wherein it is held as follows, which is squarely applicable to the present case also:

"The fact that the Will was not produced immediately after the demise of the testator for the purpose of probate, does not by itself render the Will fraudulent or untrue. So also the fact that the Will came from the custody of the daughter, beneficiary does not render the Will untrue when the evidence exists to show that the Will was in fact, the last Will of the testator."

29. For the reasons which we are going to assign hereunder, the execution of the Will is duly proved and therefore, on the ground of the delay in filing the petition for probate alone or letters of administration, entertaining indelible suspicion, a doubt could not be entertained, as if the Will was



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fabricated by the plaintiff. Hence, this defence deserves rejection.

30. Ex.P.1 is a registered Will and it should have its solemnity, under [Section 60](#) of the Registration Act, though it will not relieve the propounder from proving the execution of the Will, by examining the attesor as contemplated under [Section 68](#) of the Indian Evidence Act. When the plaintiff/first respondent has pleaded regarding the attestation of the Will, naming the two attestors, it was not challenged either by the appellant or by other contesting respondents in the written statements specifically. Further, when the plaintiff has pleaded that the attestors are dead, not challenged. Therefore, it should be taken as an admitted fact that none of the attesting witnesses is alive, to comply with the mandatory provisions of [Section 68](#) of the Indian Evidence Act.

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34. The submission of the learned counsel for the appellant, that Lakshmi Bai used to sign in Tamil, whereas Ex.A1 does contain the signature in English and this circumstance should be taken as one of the



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suspicious circumstances, to doubt about the genuineness of the Will, has no base for its acceptance, considering the plea in the written statement itself. In paragraph-2 of the written statement, the appellant has stated, while referring the Wills dated 26.3.1941 and 19.10.1955, that in the first Will, Lakshmi Bai is said to have signed in Tamil, while in the second Will in English, thereby showing that Lakshmi Bai was in the habit of signing her name not only in Tamil, but also in English. Therefore, the fact that Ex.A1 does contain the signature of Lakshmi Bai in English or in many documents, she had signed in Tamil, cannot be a ground to doubt about the genuineness of Ex.A1, considering the fact, its execution is well proved, as indicated by us, as well as correctly by the learned Judge also.

38.The above view is further strengthened by a Division Bench of the Privy Council in [Gopal Das v. Sri Thakurji](#), AIR 1943 PC 43, wherein Their Lordships have held that the endorsement showing presentation and execution, admitted by the testator before the Registrar are sufficient to certain extent to



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prove the execution of the Will itself, provided it is not shown that the testator, who had admitted the execution of the document, is not an impostor.

13.Per contra, the learned counsel for the defendant submitted that there is no reason given in the Will for excluding the defendant. As already pleaded, deceased K.V.Patammal had no right to execute a Will in respect of the entire ground floor portion of the property. As per the partition deed dated 30.03.1995, she has only 1/3 share. The suit filed by the defendant seeking partition of possession of 1/3 share in the ground floor portion was decreed. Final decree passed by the trial Court was also confirmed by the Appellate Court. Merely because Second Appeal had been restored behind the back of the defendant, plaintiffs cannot say that they are entitled for the entire ground floor property. V.Balasubramanian had only presented the partition deed for registration. Therefore, plaintiffs cannot dispute Ex.D1 partition deed. The defendant filed caveat in the suit, but that was not placed before the Court resulting in grant of Letters of Administration. On the revocation petition filed by the defendant, the Letters of Administration granted was revoked and the suit was



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numbered. There are corrections in the Will. Those corrections were not properly attested by the attesting witnesses as required under Form 56.

The recitals to the Will are very artificial and would not have come from the mouth of the deceased K.V.Patammal. It is a brain work of V.Balasubramanian for the creation of this Will. Plaintiffs and their father had actively participated in the execution of Will. As already stated deceased K.V.Patammal was aged 82 years old, she was short of hearing and eye sight, suffering from ill-health and also she was not in sound and disposing state of mind. Signature in the Will is not that of deceased K.V.Patammal. It is a fabricated Will. Undue influence was exercised. These suspicious circumstances have not been cleared by the plaintiffs. The Will is not proved in accordance with law. Therefore, the learned counsel for the defendant prayed for the dismissal of the suit.

14.The learned counsel for the defendant relied on the following judgments as to the factors that are to be considered in the proof of Will when fraud, undue influence and unnatural disposition are alleged:-



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i) ***AIR 1977 Supreme Court 74 [Jaswant Kaur Vs. Amrit Kaur and other respondents]***, it is observed that,

9. 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.

.....

.....

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere



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assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

.....

6. If a caveator alleges fraud, undue influence, coercion etc. 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 raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

ii) (2008) 15 Supreme Court Cases 365 [Lalitaben Jayantilal

Popat Vs. Pragnaben Jamnadas Kataria], it is observed that,

21. Reliance has also been placed by Mr.



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Priyadarshi on a decision of this Court in Ramabai Padmakar Patil (Dead) through LRs. & Ors. v. Rukminibai Vishnu Vekhande & Ors. [(2003) 8 SCC 537]. In that case itself, this Court held :

5"Before we advert to the submissions made by the learned counsel for the parties, it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. [Section 63](#) of the Indian Succession Act deals with execution of unprivileged Wills. It lays down that the testator shall sign or shall affix his mark to the Will or it shall be signed by some other person in his presence and by his direction. It further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and on the direction of the testator and each of the witnesses shall sign the Will in the presence of the testator. [Section 68](#) of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not."

It was furthermore held :

8"In [P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar](#) it has been held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid



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suspicious features and not fantasy of the doubting mind."

The said decision, therefore, is of no assistance to us.

iii) **2007 (2) CTC 172 (SC) [Niranjan Umeshchandra Joshi Vs.**

Mridula Jyoti Roa and others], it is observed that,

33. 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.

15. Issues Nos.3 – 6:-

Considered rival submissions and perused the records.



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16.Deceased K.V.Patammal is the mother of the defendant R.Saroja and her brother V.Balasubramanian. Plaintiffs are the sons of V.Balasubramanian, who is no more. There is no dispute regarding the relationship between the parties. From the paragraphs 5 and 6 of the written statement filed by the defendant, it is seen that the land measuring 2400 sqft., in old Survey No.2848, New Survey No.1818/2, C.C.No.736, Mylapore Village, was purchased by deceased K.V.Patammal and K.V.Shenbagavalli on 29.05.1937. It is also the case of the defendant that deceased K.V.Patammal and K.V.Shenbagavalli had jointly put up a construction of an house in the said land using Mylapore Hindu Permanent Fund, joint family fund and ancestral nucleus. Thereafter, there was a partition between K.V.Patammal and Shenbagavalli and their family members on 30.03.1995. In the said partition, it is alleged by the defendant that ground floor portion was allotted to K.V.Patammal, V.Balasubramanian and defendant and the first floor portion was allotted to Shenbagavalli and daughters i)Shantha, ii)Padma and iii)Susila. The plaintiffs had not filed any reply statement denying the averments with regard to the trace of title to the property



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concerned in this Will. Even in the proof affidavit nothing is stated about these aspects.

17.The claim of the learned counsel for the plaintiffs that these aspects are not necessary in a testamentary suit cannot be accepted for the reason that the very right of deceased K.V.Patammal to execute a Will in respect of the entire extent of ground floor portion is challenged, when that be the case, it is absolutely necessary to find out whether deceased K.V.Patammal has a right to execute the Will in respect of the entire extent of ground floor? As said above, the plaintiffs have not filed any written statement or given any explanation, even in the proof affidavit with regard to the averment made in paragraph Nos.5 and 6 of the written statement. However, this Court finds from the recitals in the Will and the pleadings made in the partition suit filed by the defendant that the averments made in paragraph Nos.5 and 6 of the written statement of the defendant are true.

18.The certified copy of registered partition deed dated



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30.03.1995 is produced as Ex.D1. The reading of this partition deed shows that it was executed among i)K.V.Patammal, ii)V.Balasubramanian, iii)Saroja, iv)K.V.Shenbagavalli, v)Shantha, vi)Padma & vii)Susila. It is recited that Vijaya Mudaliar namely, the husband of K.V.Patammal and Nataraja Mudaliar namely, the husband of Shenbagavalli acquired the property concerned in the partition deed through ancestral and self acquired means. The properties are kept in common among the parties and enjoyed. It is claimed that the house bearing No.42 at Rakiappa Mudali Street, Mylapore, is common to all the parties to the partition. It is divided as 'A' and 'B' schedule properties. 'A' schedule property was allotted to K.V.Patammal, V.Balasubramanian and Saroja and 'B' schedule property was allotted to K.V.Shenbagavalli, Shantha, Padma and Susila. Thus, it is made clear from Ex.D1 that the house property bearing door No.42, consisting of ground and first floor was treated as joint family property by the parties. Under Ex.D1 partition deed, the ground floor portion was allotted to K.V.Patammal, defendant and V.Balasubramanian and the first floor portion was allotted to K.V.Shenbagavalli and her daughters.



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19. Even, in Ex.P1 Will, it is recited that the property bearing door No.42 was purchased by deceased K.V.Patammal and K.V.Shenbagavalli and they were jointly enjoying the property. In a partition deed dated 30.03.1995, 'A' schedule property in ground floor was allotted to deceased K.V.Patammal and first floor was allotted to K.V.Shenbagavalli. It is shown in the partition deed that children of deceased K.V.Patammal and K.V.Shenbagavalli had also right in the property, but it is not correct for the reason that the property was neither ancestral nor self acquired property of K.V.Patammal's husband or his brother Nataraj Mudaliar. It was acquired by K.V.Patammal and K.V.Shenbagavalli. The recitals that K.V.Patammal, her husband and his brother treated the property as joint family property had been introduced fraudulently and it will not bind her.

20. Whether the recitals in Ex.D1 partition deed binds deceased K.V.Patammal or not ? is one aspect, but the fact remains that the recitals in Ex.P1 Will confirms and proves the execution of Ex.D1 partition deed among family members of K.V.Patammal and K.V.Shenbagavalli. Ex.D1



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partition deed is registered document and therefore deceased K.V.Patammal is precluded from denying the contents of this document. As per Ex.D1 partition deed, the property in dispute was treated as joint family property by the family members and the partition was effected.

21.Defendant had filed suit in O.S.No.7324 of 1998 seeking partition of her share as per the partition deed dated 30.03.1995. This suit was decreed and the Appeal filed against the judgment was dismissed. The certified copies of the judgment and decree in O.S.No.7324 of 1998 are produced as Ex.D2 and Ex.D3. Certified copies of judgment and decree in A.S.No.184 of 2002 are produced as Ex.D4 and Ex.D5. The certified copy of the judgment and decree, and final decree proceedings in I.A.No.18671 of 2002 in O.S.No.7324 of 1998 are produced as Ex.D6 and Ex.D7. The certified copies of judgment and decree in A.S.No.457 of 2006 against the judgment and decree in I.A.No.18671 of 2002 are produced as Ex.D8 and Ex.D9.

22.It is seen from the judgment in O.S.No.7324 of 1998 that the



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trial Court confirmed the right of the defendant as per Ex.D1 partition deed to claim 1/3 share in the suit property and accordingly decreed the suit for 1/3 share. In respect of 1/3 share of deceased K.V.Patammal, it was observed that it has to be decided after the disposal of the probate proceedings pending before this Court, namely, the suit in T.O.S.No.52 of 2002. The reading of the judgment shows that Ex.A10 notice in that suit was sent by V.Balasubramanian to K.V.Shenbagavalli and her legal heirs. It is claimed in this notice that “My client states that a house site in Rakiappa Mudali Street was purchased in the name of his mother and the first of you by utilising and making use of joint family funds and income and the construction was put up therein from and out of the income derived from the joint family property and joint family funds and therefore it is also a joint family property. Though it stands in the name of my client's mother (K.V.Patammal) and the first of you (K.V.Shanbagavalli)”. Thus it is clear from this Ex.A10 notice marked in O.S.No.7324 of 1998 that plaintiffs' father V.Balasubramanian recognized that the property in dispute is a joint family property. He is the one who presented Ex.D1 partition deed before the Sub-Registrar for



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registration. Thus, it is clearly established from the pleadings and evidence produced by the defendant that the property in dispute namely the ground floor portion in Door No.42, Old.No.26 of Rakiappa Mudali street, Mylapore is joint family property of K.V.Patammal, the defendant and V.Balasubramanian. Thus, deceased K.V.Patammal, in the considered view of this Court, cannot execute the Will in respect of the entire ground floor portion. At best, she can execute the Will only in respect of her 1/3 share in the property.

23.Coming to the question of execution of Will by the deceased K.V.Patammal and the challenge made to the Will by the defendants on various grounds mentioned above, this Court on going through the oral and documentary evidence produced in this case finds that the defendant had taken all the defence available in a case based on Will.

i)It is alleged that the signature in the Will is not that of deceased K.V.Patammal

ii)it is fabricated.

iii)she was suffering from illness, like lapse of memory



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- iv)not in sound and disposing state of mind
- v)she did not understand English
- vi)undue influence was exercised on her.
- vii)she was deaf and dumb
- viii)there was an active participation by V.Balasubramanian and the plaintiffs in the execution of the Will.

24.As rightly pointed by the learned counsel for the plaintiff that if it is alleged that the plaintiffs had exercised undue influence on the deceased K.V.Patammal in the execution of Will, the allegation that the signature in the Will is not that of deceased K.V.Patammal and the Will is fabricated may not be true. It is not in dispute that deceased K.V.Patammal was taken care of by her son V.Balasubramanian and the plaintiffs. She was 82 years old. Therefore, the participation / assistance of V.Balasubramanian and her sons while executing the Will cannot be avoided. She was totally dependant on her son and her grand sons for her food, clothing and shelter. Mere participation will not result in creating doubt in the genuineness of the Will. The reading of evidence of P.W.1



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shows that when the Sub-Registrar enquired the deceased K.V.Patammal about the execution of Will, she answered that she was going to execute the Will. He accompanied her in the car for preparation of Will in the Advocate's office, his father and other attester Arul Raj had also accompanied the deceased K.V.Patammal. He reiterated that deceased K.V.Patammal was mentally sound and only on her instruction the Will was prepared. He stated that he is not sure about who had written the letters "st" after the date 21. He stated that due to age, deceased K.V.Patammal's hands' were shaking. He admitted that the details like wife of K.V.Vijayarangam in the first page of the Will was written by him. It is also admitted that there is no mention in the Will that a contents of the Will was read over and explained to the testatrix.

25.The reading of evidence of D.W.1 shows that she had not seen Ex.P1 Will at all. When she was asked whether K.V.Patammal had any health problem at the time of execution of Ex.P1 Will, she answered that she had some problem in her hands due to which the hands kept shivering. She has not stated that K.V.Patammal was having other



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problems like physical and mental illness as stated in the written statement. She admitted that she is living in her brother-in-laws' sons' house and he is taking care of her. When she was asked as to whether she stated in her written statement or proof affidavit that deceased K.V.Patammal was not mentally alright, she answered that she had not mentioned. She continued to answer that deceased K.V.Patammal was mentally fine, but she had slight lapses in memory. When she was asked as to when did she saw deceased K.V.Patammal finally, before her death, she answered that after 1984, she did not see K.V.Patammal too often. K.V.Patammal came to see her when her husband passed away in 1997 to offer condolence. After her husband's death, she was not going out too much and therefore she did not see K.V.Patammal often. Evidence of D.W.1, defendant shows that deceased K.V.Patammal was mentally fine, but had only lapses of memory and hands were shivering. Not only that she was not in the habit of seeing deceased K.V.Patammal quite often and she visited deceased K.V.Patammal very rarely.

26.It is the case of the plaintiffs that deceased K.V.Patammal was



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taken care of by plaintiffs and their father. There is no denial of this fact that when plaintiffs and their father had taken care of deceased K.V.Patammal's requirements namely food, clothing, shelter etc., there is nothing to wonder that deceased K.V.Patammal had chosen to execute the Will in favour of the plaintiffs, who were taking care of her along with their father. It cannot be said that the Will came to be executed in favour of the plaintiffs due to undue influence exercised by them on the deceased K.V.Patammal. When the defendant had not shown interest in taking care of her mother and when her mother was taken care by the plaintiffs, their accompanying her when the Will was prepared, registered cannot be considered as their active participation in the execution of the Will. Of course, there are certain discrepancies as pointed out by the learned counsel for the defendant in the execution of Will. These discrepancies do happen. In the considered view of this Court, the discrepancies pointed out by the learned counsel for the defendant are only minor discrepancies. Taking into account, the over all background and the evidence produced in this case, this Court comes to the conclusion that deceased K.V.Patammal had chosen to execute the Will in



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favour of her grand sons, for the reason that they along with their father were taking care of her for a long time. Therefore, this Court finds that deceased K.V.Patammal had executed the impugned Will while she was in a sound and disposing state of mind and it is true and genuine Will for the issue Nos.4 and 5. This claim of the defendant that the Will is a fabricated and came into existence under suspicious circumstances are not true for issue No.3. The Will is not an unnatural disposition for issue No.6. This Court also finds that the judgment relied by the learned counsel for the defendant are not helpful to the defendant's case.

27.For issue Nos.1 and 2:-

This Court already found that the deceased K.V.Patammal can execute Will only in respect of her 1/3 share in the property. Therefore, the Letter of Administration can be granted only in respect of 1/3 share in the property in dispute. In view of the findings arrived at for issue Nos.3 to 6, this Court finds that this suit is maintainable for issue No.2 and that plaintiffs are entitled for the grant of Letters of Administration in respect of 1/3 share of the deceased K.V.Patammal in the property covered in the



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Will of testatrix deceased K.V.Patammal with a Will annexed having effect limited to State of Tamil Nadu.

28.For issue No.7:-

In view of the findings arrived at issue Nos.1 to 6, the suit is decreed in part. Letters of Administration is granted in favour of the plaintiffs only in respect of 1/3 share of deceased K.V.Patammal in the property covered in the Will of testatrix deceased K.V.Patammal, with Will dated 21.03.1996 annexed having effect limited to the State of Tamil Nadu. The parties are directed to bear their own costs.

29.The plaintiffs shall execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of the Assistant Registrar (O.S-H), High Court, Madras.

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Index:Yes/No

Speaking Order: Yes/No

List of Witnesses examined on the side of the plaintiffs:-



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1)Mr.B.Karthikeyan (PW1)

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List of Exhibits marked on the side of the plaintiffs:-

Exhibit	Dated	Description
Ex.P1	21.03.1996	Copy of registered Will executed by P.W.1's late grand mother K.V.Patammal
Ex.P2	14.03.2017	Death Certificate of K.V.Patammal issued by Corporation of Chennai (certified copy)
Ex.P3	14.03.2017	Death certificate of V.Balasubramanian issued by Corporation of Chennai (certified copy)
Ex.P4	14.03.2017	Death certificate of the 2 nd attesting witnesses viz., P.Arulraj issued by Corporation of Chennai.(certified copy)

List of Witnesses examined on the side of the Defendant:-

1)Mrs.R.Saroja (D.W.1)

List of Exhibits marked on the side of the defendant:-

Exhibit	Dated	Description
Ex.D1	30.03.1995	The registered partition deed (Marked during cross of P.W.1. (certified copy)
Ex.D2	15.02.2002	The judgment in preliminary decree in O.S.No.7324 of 1998 on the file of XIV Assistant Judge, City Civil Court, Chennai. (certified copy)
Ex.D3	15.02.2002	Decree in Preliminary decree in O.S.No.7324 of 1998, on the file of XIV Assistant Judge, City Civil Court, Chennai.(certified copy)



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Ex.D4	22.03.2004	Judgment in A.S.No.184 of 2002 on the file of VI Additional Judge, City Civil Court, Chennai. (certified copy)
Ex.D5	22.03.2004	Decree in A.S.No.184 of 2002 on the file of VI Additional Judge, City Civil Court, Chennai. (certified copy)
Ex.D6	23.11.2005	Judgment in final decree proceedings in I.A.No.18671 of 2002 in O.S.No.7324 of 1998 on the file of XIV Assistant Judge, City Civil Court, Chennai.(certified copy)
Ex.D7	23.11.2005	Final decree in I.A.No.18671 of 2002 in O.S.No.7324 of 1998 on the file of XIV Assistant Judge, City Civil Court, Chennai. (certified copy)
Ex.D8	18.07.2007	Judgment in A.S.No.457 of 2006 on the file of VI Additional Judge, City Civil Court, Chennai. (certified copy)
Ex.D9	18.07.2007	Decree in A.S.No.457 of 2006 on the file of VI Additional Judge, City Civil Court, Chennai. (certified copy)

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Index:Yes/No

Speaking Order: Yes/No

G.CHANDRASEKHARAN.J.,



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To
The Section Officer,
VR Section,
High Court of Madras.

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