



T.O.S.No.14 of 2009,
C.S.No.563 of 2009
and Tr.C.S.No.737 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 09.11.2022	Judgment Pronounced on 01.12.2022
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CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

T.O.S.No.14 of 2009, C.S.No.563 of 2009 and Tr.C.S.No.737 of 2010

T.O.S.No.14 of 2009:

S.Gunasekaran

... Plaintiff

..VS..

1. K.Kamala
2. S.Chandrasekaran (died)
3. B.Rajeswari
4. C.Nagarathinam
5. V.Rajeswari
6. M.Subbulakshmi
7. P.Priya
8. N.Sangeetha

... Defendants

(Second defendant's legal representatives
are brought on record as per order dated
18.04.2018 in A.No.5874 of 2017)



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The plaintiff, as the petitioner, has filed a Original Petition in O.P.No.233 of 2008 under Sections 232, 255 and 276 of the Indian Succession Act 1925 and Order XXV Rule of Original Side Rules, for the grant of Letters of Administration with the Will annexed to the petitioner as one of the son/one of the legatee under the Will of the deceased P.Somasundaram, having effect limited to the State of Tamil Nadu and limited to the property mentioned in the affidavit of assets.

Since, Caveat was filed in this O.P, the same was ordered to be converted into Testamentary Original Petition and numbered as T.O.S.No.14 of 2009.

For Plaintiff	: M/s.Sarvabhauman Associates
For Defendants 1 & 3	: Mr.P.Sam Japa Singh
For Defendants 4 to 8	: Mr.S.Annamalai



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C.S.No.563 of 2009

1. Kamala
 2. S.Chandrasekaran (deceased)
 3. Rajeswari
- ... Plaintiffs

..VS..

1. S.Gunasekaran
 2. C.Nagarathinam
 3. V.Rajeswari
 4. M.Subbulakshmi
 5. P.Priya
 6. N.Sangeetha
- ... Defendants

(Second Plaintiff's legal representatives
are brought on record as defendants 2 to 6
as per order dated 18.04.2018 in
A.No.781 of 2018)

This Civil Suit No.563 of 2009 is filed under Order IV Rule 1 of the
Original Side Rules read with Order VII Rule 1 of CPC praying to pass the
judgment and decree,

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(i) For partition of the schedule properties into 4 equal shares by metes and bounds and allotment of 1/4 share to each of the plaintiffs herein and to put the plaintiffs in possession of the same.

(i-a) “by declaring that Will dated 09.11.2006 alleged to have been executed by Somasundaram Reddiar is forged one and is null and void”

(Amended as per order dated 12.03.2013 in A.No.5183/2012 and time extended as per order dated 17.06.2013 in A.No.1915/2013)

(ii) For directions to the defendant to disclose all movable assets/properties including bank deposit left by deceased Somasundaram Reddiar and render account and for payment of 1/4 share out of the total value of the movable properties to the plaintiffs herein.

and

(iii) direct the defendants to pay the costs of the suit.

For Plaintiffs : Mr.P.Sam Japa Singh

For Defendant-1 : M/s.Sarvabhauman Associates

For Defendants 2 to 6 : Mr.S.Annamalai



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Tr.C.S.No.737 of 2010 (O.S.No.342 of 2008):

S.Gunasekaran

... Plaintiff

..VS..

1. S.Chandrasekaran (deceased)
2. K.Kamala
3. B.Rajeswari
4. Manoj Kumar Agarwal
5. C.Nagarathinam
6. V.Rajeswari
7. M.Subbulakshmi
8. P.Priya
9. N.Sangeetha

... Defendants

(Defendants 5 to 9 are brought on record as legal representatives of deceased first defendant as per order dated 18.04.2018 in A.No.5875 of 2017)

Suit in Tr.C.S.No.737 of 2010 (initially filed under Order VII Rule 1 of CPC before the Sub Court, Tirumangalam, Madurai District in O.S.No.342 of 2008 and then transferred to this Court) was filed praying to pass a judgment



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(a) and a preliminary decree for partition and separate possession by metes and bounds and allot 1/4 share in the suit 'A' schedule property and 5/12 share in the 'B' schedule property to the plaintiff.

(b) and a decree declaring that the sale deed dated 03.04.2008 registered as Doc. No.811/08 on the file of the SRO, Peraiyur is not valid and binding upon the plaintiff and for a consequential injunction restraining the defendants, their men, agents or any person claiming under them from in any manner interfering with the plaintiff's peaceful possession and enjoyment of plaintiff's share in the suit schedule properties;

and

(c) pay costs of the plaintiff.

For Plaintiff : M/s.Sarvabhauman Associates

For Defendants 2 & 3 : Mr.P.Sam Japa Singh

For Defendants 5 to 9 : Mr.S.Annamalai

COMMON JUDGMENT



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T.O.S.No.14 of 2009 (O.P.No.233 of 2008):

The plaintiff, as the petitioner, has filed a Original Petition in O.P.No.233 of 2008 under Sections 232, 255 and 276 of the Indian Succession Act XXXIX of 1925, for the grant of Letters of Administration in the matter of last Will and Testament of the deceased P.Somasundaram, father of the petitioner and respondents 1 to 3.

2. Against this petition, a Caveat was filed by the Caveators on 09.06.2008 and order was passed by this Court on 24.07.2009 to convert this O.P.No.233 of 2008 into Testamentary Original Suit. Accordingly, this O.P. was converted into Testamentary Original Suit and numbered as T.O.S.No.14 of 2009.

3. The brief facts of the case of the plaintiff in T.O.S.No.14 of 2009 (earlier petitioner in O.P.No.233 of 2008) are as follows:-

Plaintiff and the defendants 1 to 3 are siblings and they are the children of deceased P.Somasundaram and deceased Subbulakshmi. Their



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mother Subbulakshmi predeceased their father. Their father P.Somasundaram died on 19.07.2007 leaving the plaintiff and defendants as his surviving legal heirs. Their father executed a Will dated 09.11.2006, at his residence at No.101, 1st Avenue, Indira Nagar, Adyar, Chennai-20, in the presence of attesting witnesses. Under the said Will dated 09.11.2006, the deceased P.Somasundaram had bequeathed his self acquired immovable properties at Chennai and Madurai and movable properties to the plaintiff and defendants equally. This suit is filed for the grant of Letters of Administration in respect of the Will dated 09.11.2006 of late P.Somasundaram only with respect to his immovable property at Chennai. All the next of kin and other interested persons are impleaded as parties. The plaintiff, therefore, prays for Letters of Administration in the matter of last Will and Testament of the deceased P.Somasundaram.

4. The case of the the first defendant, as narrated in her Written Statement, is as follows:-



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First defendant filed this Written Statement for herself and on behalf of second and third defendants. First defendant denied all the allegations stated in the plaint as false, baseless and untrue. Their father never executed any Will dated 09.11.2006. The Will is a forged and fraudulent document created by the plaintiff to defraud the defendants. Their father used to say that after his death, the properties need to be shared equally, then only his soul will rest in peace. After the death of their father, first defendant asked the plaintiff to share the properties equally. The plaintiff refused for the same. Hence the first defendant sent a legal notice dated 03.12.2007. The plaintiff sent a reply notice dated 18.12.2007, from which for the first time, first defendant came to know that her father had executed a Will on 09.11.2006. Immediately, she filed a suit for partition in C.S.No.563 of 2009 before this Court and the same is pending. The plaintiff filed a suit in O.S.No.342 of 2008 before the II Additional Sub Court, Thirumangalam, Madurai District.

5. First defendant further averred that the extent of Adyar,



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Chennai property is 2 grounds 181 sq.ft. But it is stated in the Will as 2 ¼ grounds, which itself proves that the Will was created by the plaintiff. Her father handed over a sum of Rs.25,00,000/- to the plaintiff for the purpose of starting business. All the movable and immovable properties, deposits, jewels, money transactions with third persons, bank details, cash transactions and cash are not included in the Will. Whatever the plaintiff required was written by him in the Will. Since the plaintiff did not know the remaining transactions of her father, he failed to mention them in the Will. Their father died intestate on 19.07.2007. The plaintiff applied to the Tahsildar, Mylapore, Triplicane Taluk, Chennai-28 and got his name transferred in the revenue records of Adyar property, through illegal means. The first defendant on 14.12.2009 moved a petition before the District Collector, Chennai for taking necessary legal action against the concerned Tahsildar.

6. First defendant further averred that their father was sick between the years 2004 and 2007 and he was admitted in various hospitals and he was not capable of executing the alleged Will as claimed by the



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plaintiff. Their father was in the custody of plaintiff. The two attesting witnesses mentioned in the Will are the close friends of plaintiff. There is no executor. The Will is an unregistered and forged one. The alleged signature of the father is forged and fabricated by the plaintiff. The main purpose of doing so by the plaintiff is for grabbing the properties worth of more than ten crores. False statements are made in the Will. No such amount is available in State Bank of Travancore as stated in the Will. First defendant and her married daughter Mrs.Kannagi are living separately and they are paying separate rents. The plaintiff has not come to Court with clean hands and has chose to suppress the material facts. Everything had been done behind her back and there are suspicious circumstances in the execution of the Will. The alleged Will does not comply with the provisions of the Indian Succession Act and the Evidence Act. Hence, she prayed for dismissal of the T.O.S. with exemplary costs.

7. On the basis of the above pleadings, the following issues were framed for consideration in T.O.S. :-



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1. Whether the Will dated 09.11.2006 propounded by the plaintiff to be the last Will of late Somasundaram is true, genuine and valid ?
2. Whether the suit Will dated 09.11.2006 is a forged one ?
3. Whether the plaintiff is entitled to the grant of Letters of Administration with Will annexed as prayed for ?
4. To what other relief, the plaintiff, is entitled ?

C.S.No.563 of 2009:

8. This suit is filed for the relief of partition, declaration that the Will dated 09.11.2006 is forged, null and void and for costs of the suit.

9. First and third plaintiffs are the daughters and the second plaintiff and defendant are the sons of late Somasundaram Reddiar and Subbulakshmi, his wife. Late Somasundaram Reddiar died intestate on 19.07.2007 leaving behind the plaintiffs and defendant as his legal heirs. He purchased two immovable properties, one at Chennai and another at Madurai. He also earned lot of money and invested his savings in various banks. His



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pension amount was being deposited in State Bank of Travancore at Indira Nagar Branch. Plaintiffs and defendant have also got their ancestral punja and nanja lands in Silaimalaipatti village, Sattaneri Village and Kadaneri Village at Madurai District. Their mother Subbulakshmi owned punja lands in Modhagam Village at Madurai District. They have shown as item Nos.4 to 8 in the schedule of properties. The deceased Somasundaram Reddiar was residing in the ground floor at Door No.101, Old No.48, I Avenue, Indira Nagar, Adayar, Chennai and he died there. Defendant was residing in the same house with his family in the first floor. Daughters were residing with their family in their matrimonial home. Late Somasundaram Reddiar deposited his savings in banks and had given loan to several persons including the defendant. Defendant borrowed a sum of Rs.25,00,000/- for his business from late Somasundaram Reddiar. The total amount of loan given to other persons may not be less than Rs,10,00,000/-. The interest accrued from loan and other deposits were distributed by Somasundaram Reddiar to all his children in equal shares periodically. Late Somasundaram Reddiar had assured that all his children will get equal share in the movables and



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immovables owned by him.

10. During July 2007, late Somasundaram Reddiar was admitted in Apollo Hospital, Chennai for treatment. Defendant took advantage of the situation, secretly removed all the valuables and documents from the possession of late Somasundaram Reddiar. Late Somasundaram Reddiar died on 19.07.2007 in Apollo Hospital. Defendant's attitude changed after the death of their father and he would not even entertain them properly in the house. He refused to disclose the details of the assets/deposits of their father. Later, plaintiffs came to know that the defendant had committed fraud and obtained a false legal heir certificate as if he is the sole legal heir of the deceased Somasundaram Reddiar. Changes were made in the revenue records on the basis of the false information furnished by the defendant. Plaintiffs applied for legal heir certificate with correct details and requested the Tahsildar to correct the revenue records. On 03.12.2007, plaintiffs 1 and 3 issued legal notice to the second plaintiff and defendant seeking partition of all the properties. Defendant sent a reply on 8.12.2007 informing for the first



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time that their father had executed a Will on 09.11.2006. He claimed that as per the Will, there is no share in item-1 property in Chennai to the plaintiffs 1 to 3 and the property at Madurai goes to the legal heirs of the second plaintiff. The Will is forged and fraudulent document created by the defendant to defraud the plaintiffs. Therefore, this suit is for the aforesaid reliefs.

11. The case of the defendant is that the suit is filed as a counter-blast to the Testamentary Original Suit filed by the defendant. Father late Somasundaram Reddiar was in Government Service and retired as Special Officer, Revenue Department in Government of Tamil Nadu. He purchased the suit properties from his own earnings. He had also invested amounts in Fixed Deposits, Provident Fund Account, Post Office Savings Schemes and bank Accounts. Mother Subbulakshmi died on 09.07.2002. Plaintiffs and defendant are the only children of their parents. Father Somasundaram Reddiar had executed a Will on 09.11.2006 in a sound and disposing state of mind, wherein he bequeathed the first item of the suit schedule properties to the defendant and the second item to the second



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plaintiff. First item of item No.3 of the suit schedule properties is available for partition. Defendant informed the plaintiffs that the amount would be handed over in due course. Late Somasundaram Reddiar nominated the defendant as nominee in respect of S/B Account bearing No.57001357880-4. On the demise of their father, defendant had withdrawn the entire balance of Rs.2,29,911.66 and the plaintiffs and defendant are entitled to equal share in this amount. The second item of item No.3 of the schedule properties is only Rs.4,00,000/-. The proceedings under Section 142 of Negotiable Instruments Act is pending in C.C.No.3702 of 2007 on the file of XIII Metropolitan Magistrate, Chennai, in respect of this amount. The third item of the suit schedule item No.3 has been bequeathed to the defendant in the Will dated 09.11.2006. Their father had made provision for plaintiffs in some of his investments.

12. The Will is in the own handwriting of their father. Defendant came across this Will on the 13th day ceremony of late father and brought it to the notice of his siblings. On 14th day, the Will was shown to the



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plaintiffs. After going through the Will, first plaintiff throw the Will and walked out. Plaintiffs managed to open the bank locker without informing the defendant and took away the jewelleryes and other valuables kept in the locker on 22.08.2007. After securing the amount that was due to the plaintiffs under the Will, plaintiffs issued a legal notice dated 03.12.2007, that was suitably replied. Father had joint account with the first and third plaintiffs in State Bank of Travancore. They have withdrawn the amount from the bank. The allegation that the defendant borrowed Rs.25,00,000/- from his father is false. The allegation that his father used to distribute interest periodically to all his children is also false. Father Somasundaram Reddiar was in sound state of mind till his last, though he underwent certain surgeries. The defendant was taking care of his father. Second plaintiff was leading a wayward life. On the request of the father, defendant had been sending a sum of Rs.5,000/- every month for 15 years to the second plaintiff for his maintenance. The allegation that the Will dated 09.11.2006 is forged, fabricated and false document is false and incorrect statement. Plaintiffs, who had taken away the properties bequeathed to them, cannot come forward with



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this case. The suit is bad for partial partition for the reason that they have not included certain amounts stood in the name of father.

13. In the Additional Written Statement, defendant contended as follows:-

Defendant filed O.S.No.342 of 2008 on the file of Sub Court, Tirumangalam seeking partition of ancestral properties at Madurai. Thereafter, plaintiffs filed Application No.145 of 2010 for adding item Nos.4 to 8 of the properties in the suit. O.S.No.342 of 2008 is transferred to this Court and numbered as Tr.C.S.No.737 of 2010. Punja lands in S.No.412/22 and Nanja lands in S.No.416/1A in Silaimalaipatti Village, Peraiyur Taluk, Madurai District are not included. The lands measuring 0.10.5 acres in S.No.411/3 (now S.No.411/3B) is transferred to Ganapathiswami @ Kayilainathan Aalayam. Court fee is not properly paid for the reason that the plaintiffs are out of possession. Defendant has no objection for partitioning items 7 and 8 of the suit properties.



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14. On the basis of the above pleadings, the following issues

were framed for consideration in C.S.No.563 of 2009 :-

1. Whether the Will dated 09.11.2006 was executed by deceased Somasundaram in a sound disposing state of mind?
2. Whether the Will dated 09.11.2006 has been acted upon by the defendant?
3. Whether the plaintiffs are entitled to a decree for partition in respect of the suit 1st item of property ?
4. Whether the plaintiffs are entitled to a decree for partition ?
5. Whether the suit has been properly valued and Court Fees rightly paid?
6. Whether the plaintiffs are entitled to the relief of partition of the schedule properties into four equal shares by metes and bounds and allotments of one fourth share to each of the plaintiffs and to put the plaintiffs in possession of the same ?
7. Whether the defendant failed to disclose all the movable assets/properties including bank deposit left by the deceased Somasundaram Reddiar and render the account and for the payment of



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8. To what relief the parties are entitled to ?

Tr.C.S.No.737 of 2010 (O.S.No.342 of 2008 on the file of Sub Court, Tirumangalam, Madurai District):-

15. The defendant in C.S.No.563 of 2009 (plaintiff in T.O.S.No.14 of 2009) filed a suit in O.S.No.342 of 2008 on the file of Sub Court, Tirumangalam, Madurai District, for the relief of partition and for the relief of declaration that the sale deed dated 03.04.2008 registered in Document No.811/2008 on the file of Sub Registrar Office, Peraiyur is not valid and binding upon the plaintiff and for costs of the suit. This suit was subsequently transferred to this Court and numbered as Tr.C.S.No.737 of 2010.

16. The brief averments made by the plaintiff in this suit are, the defendants 1 to 3 are his siblings. Mother Subbulakshmi Ammal owned

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lands in Modhagam village, Peraiyur Taluk, Madurai District, described as Items 1 to 4 in 'A' schedule. She died intestate. Father executed a Will dated 09.11.2006 in respect of his properties. However, he has not made provision in the Will with regard to his share in the ancestral property at Sattaneri Village, Peraiyur Taluk, Madurai District, which is shown as 'B' schedule property. There is also no provision made in the Will with regard to his share in the 'A' schedule property on the death of his wife Subbulakshmi Ammal. Plaintiff's father owned a house in Thirunagar and first defendant is in possession of this house. It was made clear to him that all the children are entitled for share in 'A' and 'B' schedule properties. Later, plaintiff came to learn that the first defendant sold the entire extent of second item of the 'A' schedule property to the fourth defendant through his power of attorney Mr.Anand Agarwal. The sale is not binding on the plaintiff and other defendants. Plaintiff and defendants 1 to 3 are entitled to 1/4 share each in the 'A' schedule property and plaintiff is entitled to 5/12 share in 'B' schedule property. Therefore, this suit is for the aforesaid relief.



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17. Learned counsel for the defendants 2 and 3 had written in the top of the Written Statement filed by 2nd defendant that third defendant adopts the written statement of 2nd defendant. It is also noted in the docket order of O.S.No.348 of 2009 by the learned Judge that third defendant adopts the written statement of second defendant. Therefore, the case of the defendants 2 and 3 is that their mother died intestate without making any provision with reference to her properties. Father owned properties at Chennai and Madurai. The averments that he executed a Will dated 09.11.2006 in respect of immovable property at Chennai, some of the properties at Madurai, certain movables deposited in banks and Post Offices etc. are denied as false. Other than 'B' schedule properties, father owned many self-acquired properties. Plaintiff suppressed the existence of number of movable and immovable properties in the name of their father. All the properties are not included and therefore, the suit is bad for partial partition. The defendants are entitled to 1/4 share in all the properties. It is true that the first defendant sold second item of 'A' schedule property to 4th defendant. The properties, details of which are given in para-6 of the written statement,

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are not included in the suit and therefore, the suit is liable to be dismissed for partial partition.

18. On the basis of the above pleadings, the following issues were framed for consideration in Tr.C.S.No.737 of 2010 :-

1. Whether the plaintiff is entitled to a decree for partition in respect of the suit schedule properties ?
2. Whether the Will dated 09.11.2006 was executed by late Somasundaram in a sound disposing state of mind ?
3. Whether the Will dated 09.11.2006 was obtained by undue influence ?
4. To what relief the plaintiff is entitled to ?

19. In the joint trial of these cases, PW.1 to PW.4 were examined and Exs.P1 to P30 were marked. DW.1 and DW.2 were examined and Exs.D1 to D3 were marked. CW.1 and CW.2 were also examined and Exs.C1 and C2 were marked.



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20. For the easy understanding, the word 'plaintiff' used in this judgment would refer the plaintiff in T.O.S.No.14 of 2009, plaintiff in Tr.C.S.No.737 of 2010 and defendant in C.S.No.563 of 2009, viz., S.Gunasekaran. The word 'defendants' would refer to the defendants in T.O.S.No.14 of 2009, defendants in Tr.C.S.No.737 of 2010 and plaintiffs in C.S.No.563 of 2009, viz., K.Kamala, S.Chandrasekaran and B.Rajeswari and their legal heirs and 4th defendant in Tr.C.S.No.737 of 2010.

21. **Issue Nos.1 and 2 in T.O.S.No.14 of 2009,**
Issue Nos.1 and 2 in C.S.No.563 of 2009 and
Issue Nos.2 and 3 in Tr.C.S.No.737 of 2010:

Learned counsel for the plaintiff submitted that late Somasundaram Reddiar was holding a good position in Government Service in Government of Tamil Nadu and owned immovable properties, bank deposits and cash balance in bank account, apart from owning ancestral properties. His wife late Subbulakshmi also owned ancestral properties. The plaintiff and



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defendants are children of late Somasundaram Reddiar and late Subbulakshmi. Late Somasundaram Reddiar had executed a Will dated 09.11.2006 bequeathing his properties among his children. It is a holographic Will. Before writing a fair Will, he prepared a draft and then only, he prepared the Will and a copy of the Will. The Will was executed in the presence of PW.1 and PW.2 attestors. PW.1 and PW.2 attestors had given clear, cogent and convincing evidence with regard to the execution of the Will by late Somasundaram Reddiar. Plaintiff had also taken steps to subject the Will for opinion of the handwriting expert. PW.3-handwriting expert had compared the handwriting and signatures in the Will with the admitted handwriting and signatures of late Somasundaram Reddiar and gave a report that the handwriting and signatures in Ex.P1-Will are that of late Somasundaram Reddiar. Thus, the Will was proved in the manner known to law.

22. After the death of the father and on the 13th day ceremony, the existence of the Will was intimated to the other siblings and



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they were also given copies of the Will. On the basis of the Will, they had withdrawn the amounts available in the bank. However, they are now disputing and challenging the Will stating that the Will is a fraudulent Will. Plaintiff was taking care of his father and mother and that was the reason why he was given the house at Adayar. Though the defendants had disputed the execution of the Will by the father and his handwriting/signature in the Will, they have not taken any steps for sending the Will to the handwriting expert for opinion. In respect of the properties not covered under the Will, all of them are entitled to share in those properties. Thus, he prayed for granting letters of administration in respect of the Will dated 09.11.2006 and for partition of the properties not covered under the Will.

23. Learned counsel for the defendants submitted that late Somasundaram Reddiar was suffering from health issues and was not in a sound and disposing state of mind at the time of the alleged execution of the Will. The Will is a forged and fabricated document. Plaintiff had withdrawn 10½ lakhs within 22 days of the death of his father. This amount was not



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included in the probate O.P. It is not known what happened to the cash, jewelleryes, valuable items and documents etc., Plaintiff removed all these items. Plaintiff had taken contrary position with regard to the handing over the copy of the Will in his written statement filed in C.S.No.563 of 2009 and in his evidence. Defendants came to know about the Will only after the receipt of reply from the plaintiff. Plaintiff had also mischievously transferred patta in respect of the property in his favour and on the application filed by the defendants, it was cancelled by the DRO. In this regard, Writ Petition had also been filed. There is a discrepancy in the extent of Adyar property in the Will and what is available on ground. There is also discrepancy with regard to the amounts mentioned in the Will and available in the bank. The details in the Will are not correct and it suggests that the Will is a created Will. PWs.1 and 2 are closely known to the plaintiff and therefore, they are giving false evidence. The Will had been created with the help of PWs.1 and 2.

24. He further submitted that the plaintiff had not taken steps



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to examine the Will by the handwriting expert through Court. He, on his own, approached the handwriting expert and got the report in his favour. It is not known how the documents in the custody of Adyar Tamil Sangam and addressed to bank and other authorities were produced for comparison by the expert. How the plaintiff came to possess those documents - there is no explanation. All the documents relied for comparison are not produced before the Court. No one was examined to prove the third party documents, especially the documents from Adyar Tamil Sangam. Ex.P23 (series) documents are written by Secretary and therefore, the signatures therein are not the signatures of late Somasundaram Reddiar. Some of the documents were produced only after the examination of the handwriting expert. Those documents were not available when PW.1 to PW.3 were cross examined. Before cross-examination of PW.3 – handwriting expert, he was dead and therefore, defendants lost the opportunity of cross-examining him. Attestors and handwriting expert were examined ahead of plaintiff and no permission from this Court was obtained for that. The documents marked through PW.4, namely, plaintiff was marked subject to objection.



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25. Continuing his submissions, he stated that the report of the handwriting expert is a biased report and it cannot be relied, especially when the defendants are not given the opportunity of cross examining his evidence. PW.1 and PW.2 contradict in their evidence with regard to the execution and attestation of the Will. The testator signed in Tamil in the documents written by him in Tamil and in English in the documents written by him in English. However, in Ex.P1, the contents are written in Tamil, but the signature is in English. PW.1 and PW.2 have not stated about the draft Will. PW.4 – Plaintiff had evaded giving answers to many questions. He said, 'he did not know' or did not remember' for many questions. Rs.5,00,000/- given to plaintiff's two sons is not mentioned in Ex.P1-Will. The MIG Flat mentioned in Ex.P1 was purchased by Rajeswari and not by the testator. There are some spelling mistakes. All these circumstances cumulatively taken into consideration, create a strong suspicion as to the execution of the Will by late Somasundaram Reddiar and it leads to the conclusion that Ex.P1 Will is a fabricated Will.

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26. Similar submissions were made by the learned counsel appearing for other contesting defendants.

27. In reply, learned counsel for the plaintiff submitted that only on the basis of the Will, defendants had withdrawn money from the bank, taken possession of cash and other articles kept in the bank locker. The inconsistency, if any, in the contents of the Will can be explained only by the testator. Plaintiff cannot answer the inconsistency in the Will. Defendants were informed about the Will on the 13th day after the death of their father. Defendants have deliberately failed to cross examine the handwriting expert. They filed a petition to recall PW.3 after a long time and in the mean while, PW.3-handwriting expert was dead. Plaintiff cannot be faulted for the non cross-examination of PW.3. Defendants have not taken any steps for subjecting the Will for examination by another expert, if they genuinely feel that the Will is a forged and fabricated Will. The Will was sufficiently proved. In support of his submissions, learned counsel for the plaintiff relied



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on the following judgments for these legal propositions:-

1. All the unusual features and suspicious circumstances should be taken together and not a single feature that may be found in a Will, as a singular circumstance, to decide the genuineness of the Will.
2. Participation in the execution and registration of the Will cannot be said to be a circumstance that would warrant an adverse conclusion.
3. The presumption in favour of a holographic Will is a greater presumption.
4. The onus of proving the execution of the Will and undue influence is upon the person making the allegation.
5. Uneven distribution of assets among the children by itself cannot be taken as a circumstance causing suspicion surrounding the execution of the Will.
6. Once propounder establishes the competence of the



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testator to make the Will, his onus is discharged.

7. It is for the opposing party to produce evidence in respect of his case.

8. Every circumstance is not the suspicious circumstance. When it comes to proof of a Will, each case must be determined in the fact situation obtained therein.

(i) In ***(2014) 15 Supreme Court Cases 570 (Leela Rajagopal and others ..vs.. Kamala Menon Cocharan and others)***, it is observed as follows:-

13.A Will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a Will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the Court on the basis of such scrutiny; the cumulative effect of the unusual features



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and circumstances which would weigh with the Court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.

14. In the present case, a close reading of the Will indicates its clear language, and its unambiguous purport and effect. The mind of the testator is clearly discernible and the reasons for exclusion of the sons is apparent from the Will itself. Insofar as the place of execution is concerned, the inconsistency appearing in the verification filed along with the application for probate by PW-3 and the oral evidence of the said witness tendered in Court is capable of being understood in the light of the fact that the verification is in a standard form (Form No. 55) prescribed by the



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Madras High Court on the Original Side, as already noticed. Besides, in the facts of the present case the participation of the first respondent in the execution and registration of the Will cannot be said to be a circumstance that would warrant an adverse conclusion.”

(ii) *In (1996) 9 Supreme Court Cases 324 (Joyce primrose prestor (Mrs.) (Nee Vas) ..vs.. Vera Marie Vas (Ms) and others), it is observed as follows:-*

15. *While the presumption in the case of ordinary Wills is as stated above, in the case of "holograph Wills", the presumption is all the more - a greater presumption. Ex.P-1 is a "holograph will". It is one which is wholly in the handwriting of the testator. The Calcutta High Court in [Ajit Chandra Majumdar v. Akhil Chandra Majumdar](#) (AIR 1960 Cal. 551 at P. 552) stated about such a Will, thus:-*

"The whole of this Will was written in the hand by the testator himself in English. The handwriting is clear and firm. The law makes a



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great presumption in favour of the genuineness of holograph will for the very good reason that the mind of the testator in physically writing out his own will is more apparent in holograph will than where his signature alone appears to either a typed script or to a script written by somebody else."

(emphasis supplied)

The writing of the Will and signature of the testator are admitted. There is also due and proper attestation in accordance with the relevant statutory provisions. No suspicious circumstance appears on the face of the document, Ex.P-1. The Will appears to be moderate and rational. Viewed from the above angle, there is a great presumption - even bordering on actual proof of the due execution and attestation of the Will."

.....

.....

18. *In applying the above general principles to*



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particular cases the nature of the Will, the pleadings of the parties in the case, facts admitted or proved and the presumptions available in law, will have to be carefully given effect to. The case of a "holograph Will" which is admittedly in the handwriting of the testator, is a special case which will require a different approach in considering the evidence in the case, to find whether the Will has been duly executed and attested. The approach to be made in such cases has been stated by the Constitution Bench in Shashikumar Banerjee's case, (supra) at page 532 paragraph (5). In that case, the court referred to certain undisputed preliminary facts as follows: The testator, a well-known wealthy lawyer, who died at the age of 97, had executed a Will when he has 93 years old. He had made provision for his heirs by executing a number of documents, and the Will referred to the remaining property. The Will was witnessed by two persons. The entire Will was in the handwriting of the testator, corrected in various places and corrections were initialled by him. It was in the handwriting of the testator, corrected in various places and corrections were initialled by him. It was admitted that the signature at the bottom of the Will was of the testator. The



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dispositions were very clear and detailed and it could not be said to be an unnatural document. There was no evidence to show that the propounders took any part in the execution of the Will. After stating these preliminary facts, the court stated the approach to be made in the case of a 'holograph Will', thus :

"Further the fact that the will is holograph will and admittedly in the hand of the testator and in the last paragraph of the will the testator had stated that he and signed the will in the presence of the witnesses and the witnesses had and had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. On these facts there is hardly any suspicious circumstance attached to this will and it will in our opinion require very little evidence to prove due execution and attestation of the will. There is no doubt about the genuineness or the signature of the testator, for it is admitted that the signature at the foot of the will is his. The condition of the testator's mind is also not in doubt and he apparently had full testamentary capacity



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right upto March 1947, even though he was an old man of about 97 when he died on April 1, 1947.....There is nothing to show that the dispositions were not the result of the free will and mind of the testator. Further, the propounders (namely, the appellants) had nothing to do with the execution of the will and thus there are really no suspicious circumstances at all in this case. All that was required was to formally prove it, though the signature of the testator was admitted and it was also admitted that the whole will was in his handwriting. It is in the background of these circumstances that we have to consider the evidence of the two attesting witnesses....."

(emphasis supplied)

(iii) In ILR 2005 KAR 467 (B.Manjunatha Prabhu and others ..vs.. C.G.Srinivas and others), it is observed as follows:-

12.

..... Nothing substantial has been brought out in the cross-examination to discredit his evidence.



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The Will Exhibit P16, admittedly, is a holograph Will of late C.G. Sastry. The Supreme Court in the case of JOYCE PRIMROSE PRESTOR (Mrs.) (NEE VAS), regarding Holograph Will, has observed as follows:-

"18In that case, the Court referred to certain undisputed preliminary facts as follows: The testator, a well-known wealthy lawyer, who died at the age of 97, had executed a Will when he was 93 years' old. He had made provision for his heirs by executing a number of documents, and the will referred to the remaining property. The Will was witnessed by two persons. The entire Will was in the handwriting of the testator, corrected in various places and the corrections were initialled by him. It was admitted that the signature of at the bottom of the Will was of the testator. The dispositions were very clear and detailed and it could not be said to be an unnatural document. There was no evidence to show that the propounders took any part in the execution of the Will. After stating these preliminary facts,



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the Court stated the approach to be made in the case of "holograph Will", thus:

"Further the fact that the Will is a holograph Will and admittedly in the hand of the testator and in the last paragraph of the Will the testator had stated that he had signed the Will in the presence of the witnesses and the witnesses had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. On these facts there is hardly any suspicious circumstance attached to this Will and it will in our opinion require very little evidence to prove due execution and attestation of the Will. There is no doubt about the genuineness of the signature of the testator, for it is admitted that the signature at the foot of the Will is his. The condition of the testator's mind is also not in doubt and he apparently had full testamentary capacity right up to March 1947, even though he was an old man of about 97 when he died on 1-4-1947. There is nothing to show that the dispositions were not the result



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of the free will and mind of the testator. Further, the propounders (namely, the appellants) had nothing to do with the execution of the Will and thus there are really no suspicious circumstances at all in this case. All that was required was to formally prove it, though the signature of the testator was admitted and it was also admitted that the whole Will was in his handwriting. It is in the background of these circumstances that we have to consider the evidence of the two attesting witnesses (emphasis supplied)"

Therefore, from the law enunciated by the Supreme Court in the case referred to above, it is clear that in the case of holograph will, which is wholly in the handwriting of the testator, there is a greater presumption and the approach to be made by the Court while considering the evidence in a holograph will is different. In the light of the evidence of PW-2 referred to above and also in the light of the details set out in the Will Exhibit P16, we are satisfied that the execution and genuineness of



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the said will cannot be doubted in any manner and the plaintiff has successfully proved due execution and genuineness of the said will.

(iv) In (2005) 1 Supreme Court Cases 280 (Meenakshiammal (dead) through Lrs. And others ..vs.. Chandrasekaran and another), it is observed as follows:-

19. In the case of *Sm. Chinmoyee Saha v. Debendra Lal Saha & others* reported in [AIR 1985 Calcutta 349], 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 of 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



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of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same.

20. In the case of *Ryali Kameswara Rao v. Bendapudi Suryaprakasarao & others* reported in [AIR 1962 AP 178] this Court while discussing the provisions of *section 63* of the Succession Act, 1925, has held that the suspicion alleged must be one inherent in the transaction itself and not the doubt that may arise from conflict of testimony which becomes apparent on an investigation of the transaction. That suspicious circumstances cannot be defined precisely. They cannot be enumerated exhaustively. They must depend upon the facts of each case. When a question arises as to whether a will is genuine or forged, normally the fact that nothing can be said against the reasonable nature of its provisions will be a strong and material element in favour of the probabilities of the will. Whether a will has been executed by the testator in a sound and disposing state of mind is purely a question of fact, which will have to be decided in each case on the circumstances disclosed



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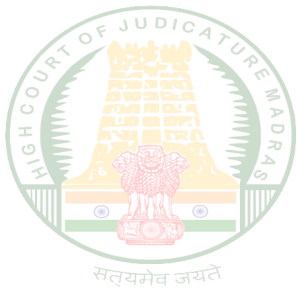


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and the nature and quality of the evidence adduced. When the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation and mere presence of motive and opportunity are not enough.

21.

9. It is well-settled that one who propounds a Will must establish the competence of the testator to make the Will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the Will in the manner contemplated by law. The contestant opposing the Will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the Court affirmatively that the testator did know well the contents of the Will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience,



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as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance."

(v) In (2002) 1 Supreme Court Cases 630 (**S.Sundaresa Pai and others ..vs.. Sumangala T.Pai (Mrs) and another**), it is observed as follows:-

7. Learned counsel for plaintiff/respondent no.1, supporting the impugned judgment also laid strong emphasis on uneven distribution of the assets which, according to him, shows the suspicious circumstances in respect of the execution of the will. The uneven distribution of assets amongst children, by itself, cannot be taken



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as a circumstance causing suspicion surrounding the execution of the will. One son was given bulk of immovable properties; another none; another half share in one immovable property; other half being given to the plaintiff and another daughter and husband were given nothing. It is also not in dispute that some properties were given in gift to the plaintiff by her mother during her life time. There was nothing unnatural.

(vi) In (2002) 2 Supreme Court Cases 85 (Madhukar

D.Shende ..vs.. Tarabai Aba Shedage), it is observed as follows:-

9. It is well-settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus



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would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance.

(vii) In (2005) 8 Supreme Court Cases 67 (*Pentakota Satyanarayana and others ..vs.. Pentakota Seetharatnam and others*), it is observed as follows:-

25. *It is settled by a catena of decisions that any and every circumstance is not a*



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suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the view taken by this Court in [Sridevi & Ors vs. Jayaraja Shetty & Ors](#), (2005) 2 SCC 784. In the said case, it has been held that the onus to prove 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 proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case.



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26. Mr. Narsimha, learned counsel for the respondents, submitted that the natural heirs were excluded and legally wedded wife was given a lesser share and, therefore, it has to be held to be a suspicious circumstance. We are unable to countenance the said submission. The circumstances of depriving the natural heirs should not raise any suspicion because the whole idea behind the execution of the will is to be interfered in the normal line of succession and so natural heirs would be debarred in every case of the Will. It may be that in some cases they are fully debarred and some cases partly.

(viii) In (2009) 3 Supreme Court Cases 687 (*Bharpur Singh and others ..vs.. Shamsher Singh*), it is observed as follows:-

15. This Court in *H. Venkatachala Iyengar vs. B.N. Thimmajamma* [AIR 1959 SC 443] opined that the fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. It was also held that one



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of the important features which distinguishes Will from other documents is that the Will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator.

16. It was also held that the propounder of will must prove:

- (i) that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and*
- (ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder, and*



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(iii) If a Will is challenged as 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.

17. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. [See *Madhukar D. Shende v. Tarabai Shedage* (2002) 2 SCC 85 and *Sridevi and Ors. v. Jayaraja Shetty and Ors.* (2005) 8 SCC 784]. Subject to above, proof of a Will does not ordinarily differ from that of proving any other document.

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



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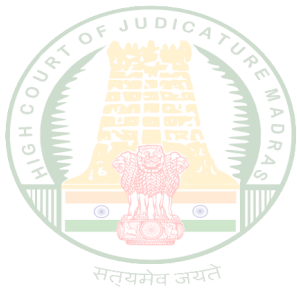
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- (i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will;*
- (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;*
- (iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.*

(ix) In **(2008) 7 Supreme Court Cases 695 (Anil Kak ..vs..**

Kumari Sharada Raje and others), it is observed as follows:-

37. The testator's intention is collected from a consideration of the whole Will and not from a part of it. If two parts of the same Will are wholly irreconcilable, the court of law would not be in a position to come to a finding that the Will dated 4.11.1992 could be given effect to irrespective of the appendices. In construing a Will, no doubt all possible contingencies are required to be taken into consideration. Even if a part is invalid, the entire



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document need not be invalidated, only if it forms a severable part. [See [Bajrang Factory Ltd. and Another v. University of Calcutta and Others](#) (2007) 7 SCC 183

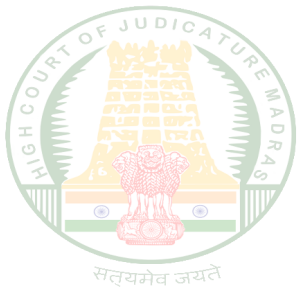
53. *As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.*

54. *It may be true that deprivation of a due share by the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a Will.*

55. *Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.*

56. *In [Benga Behera & Anr. v. Braja Kishore Nanda & Ors.](#) [2007 (7) SCALE 228], this Court held:*

"46. Existence of suspicious circumstances itself may be held to be sufficient



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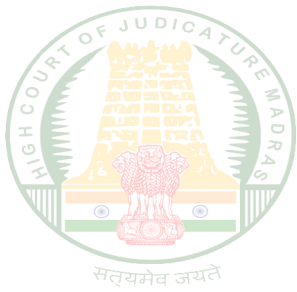
to arrive at a conclusion that execution of the Will has not duly been proved."

57. *In B. Venkatamuni v. C.J. Ayodhya Ram Singh & Ors.* [2006 (11) SCALE 148], it was stated:

"22. However, having regard to the fact that the Will was registered one and the propounder had discharged the onus, it was held that in such circumstances, the onus shifts to the contestant opposing the Will to bring material on record meeting such prima facie case in which event the onus shifts back on the propounder to satisfy the court affirmatively that the testator did not know well the contents of the Will and in sound disposing capacity executed the same.

23. Each case, however, must be determined in the fact situation obtaining therein."

28. In reply to this reply, learned counsel for the defendants submitted that the Will was not properly proved. The handwriting expert has

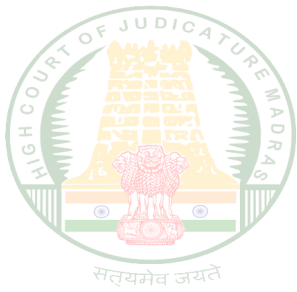


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not examined the original Will, but he examined only the xerox copy. There are material contradictions and that are not properly explained. It is for the plaintiff to prove the Will and not for the defendants to disprove the Will. In support of his submission, learned counsel for the defendants pressed into service the following judgments for the following propositions:-

- (a) When there are suspicious circumstances regarding the execution of the Will, the onus is on the propounder to explain them to the satisfaction of the Court. Only when such responsibility is discharged, the Court would accept the Will as genuine.
- (b) Propounder has to show that the Will was signed by the testator; that he was at the relevant point of time in a sound disposing state of mind; that he understood the nature and effect of dispossession, that he put his signature with his own free will in the presence of two witnesses.
- (c) Unnatural and unequal distribution of the properties



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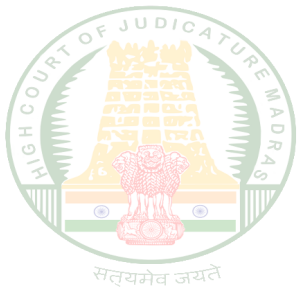
would be one of the suspicious circumstance.

- (d) Shaky signature, feeble mind, unfair and unjust disposition of property, propounder taking a lead part in the making of the Will, create suspicion about the execution of the Will.
- (e) This Court is not bound by the opinion of the Expert.
- (f) Unless the party, which sets up the Will, offers cogent and convincing evidence about the suspicious circumstances surrounding the making of the Will, it is impossible to reach a satisfactory finding:-

(i) In **(2009) 1 SCC 354 (K.Laxmanan ..vs.. Thekkayil**

Padmini and others), it is observed as follows:-

18. *Strong reliance was placed on this provision also by the learned counsel appearing for the parties. A bare reading of the aforesaid provision will make it crystal clear that so far as a Deed of Will is concerned, the position in*



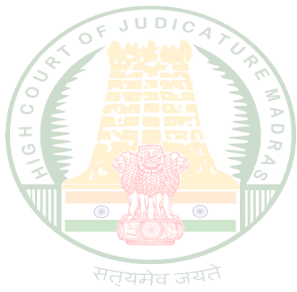
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law is no longer in doubt for the onus of proving the Will is on the propounder. The propounder has to prove the legality of the execution and genuineness of the said Will by proving absence of suspicious circumstances surrounding the said Will and also by proving the testamentary capacity and the signature of the testator. Once the same is proved, it could be said that the propounder has discharged the onus.

19. *When there are suspicious circumstances regarding the execution of the Will, the onus is also on the propounder to explain them to the satisfaction of the Court and only when such responsibility is discharged, the Court would accept the Will as genuine. Even where there are no such pleas, but circumstances give rise to doubt, it is on the propounder to satisfy the conscience of the Court. Suspicious circumstances arise due to several reasons such as with regard to genuineness of the signature of the testator, the conditions of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other*



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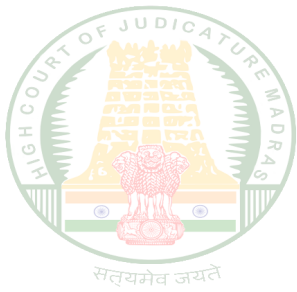
indications in the Will to show that the testator's mind was not free. In such a case, the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator.

(ii) In (2006) 13 Supreme Court Cases 449

(B.Venkatamuni .. C..Ayodya Ram Singh and others), it is observed as follows:-

15. *It is, however, well settled that compliance of statutory requirements itself is not sufficient as would appear from the discussions hereinafter made.*

16. *The approach of the Division Bench of the High Court did not address itself the right question. It took an erroneous approach to the issue as would appear from the decision of this Court in [Surendra Pal & Ors. vs. Dr. \(Mrs.\) Saraswati Arora & Anr.](#) [(1974) 2 SCC 600], whereupon again Mr. V.*



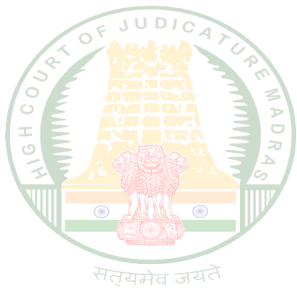
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Balachandran himself placed reliance, wherein the law was stated in the following terms :

"7. The propounder has to show 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 of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator's free will



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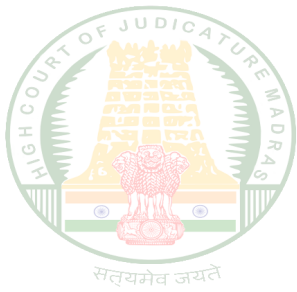
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and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and qualify of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in relevant circumstances of the case, entertain."

18. *In Smt. Guro vs. Atma Singh &*

Ors. [(1992) 2 SCR 30], this Court has opined :

"With regard to proof of a will, the law is well-settled that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement

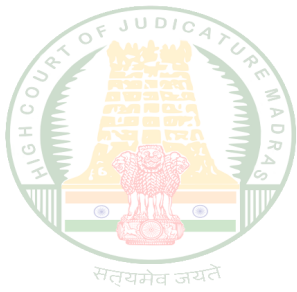


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prescribed in the case of a will by [section 63](#) of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leader part in the making of the will under which he receives a substantial benefit. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last will of the testator."



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(iii) In (2006) 13 Supreme Court Cases 433 (Niranjan

Umeshchandra Joshi ..vs.. Mrudula Jyoti Rao and others), it is observed as follows:-

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



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of the legacy.

(iv) In **Supreme Court Judgment in Civil Appeal No.9683 of 2019 (Raj Kumari and others ..vs.. Surinder Pal Sharma)**, it is observed as follows:-

13. Therefore, the propounder to succeed and prove the Will is required to prove by satisfactory evidence that (i) the Will was signed by the testator; (ii) the testator at the time was in a sound and disposing state of mind; (iii) the testator understood the nature and effect of the dispositions; and (iv) that the testator had put his signature on the document of his own free will. Ordinarily, when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of mind of the testator and his signature as required by law, courts would be justified in making a finding in favour of the propounder. Such evidence would discharge the onus on the propounder to prove the essential facts. At the



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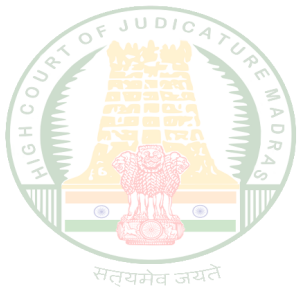


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same time, this Court observed that it is necessary to remove suspicious circumstances surrounding the execution of the Will and therefore no hard and fast or inflexible rules can be laid down for the appreciation of the evidence to this effect.

14. In [Jaswant Kaur v. Amrit Kaur and Others](#)³, it was held that suspicion generated by disinheritance is not removed by mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in sound and disposing state of mind when the Will disinherits those like the wife and children of the testator who would have normally received their due share in the estate. At the same time, the testator may have his own reasons for excluding them. Therefore, it is obligatory for the propounder to remove all the legitimate suspicions before a Will is accepted as a valid last Will of the testator.

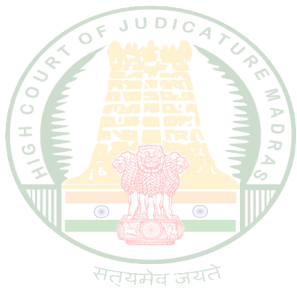
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(4) *Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the 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 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*



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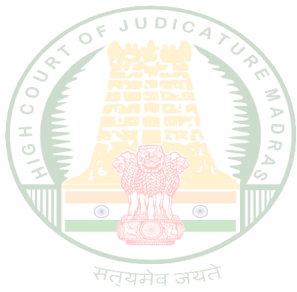
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propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(v) In ***AIR 1994 KERALA 308 (Law society of India ..vs..***

Fertilizers and Chemicals Travancore Ltd., and others), it is observed as follows:-

185. *We have to be informed of the norm that on an examination by the court the materials placed before the court whether they are by the scientists or by the experts, if the court finds that the conclusions reached by the experts are unsatisfactory, the court is not bound to accept the reports saying with folded hands that after all the report is that of a committee of experts and the court has no expertise on the matter enquired into by the experts. In this case, viz. (1988) 2 SCC 115: (AIR 1988 SC 952), it is very pertinently said that the High Court did not find any defect disclosed in the material which has been placed before the court in the manner of testing. Certainly it indicates that*



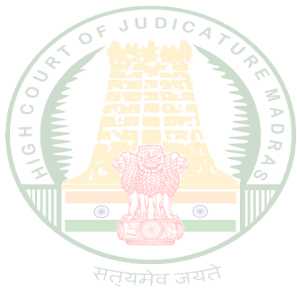
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if the court is not satisfied with the manner of examination or investigation, the court is not bound to act on the experts' opinion. We do not think that we are bound to follow blindly the opinion of the experts. In this context, we may say that counsel for the first respondent has attacked the report of the expert --Dr. Campbell -- a commission appointed by this Court and wanted us not to rely on the report of the Commissioner, though he sub-mitted in regard to the reports of the other experts, viz., M/s. Cremer and Warner, T.U.V. I.I.T. that the reports are the opinion of experts and that we should accept it without reservation. We cannot fully agree with the submissions made by counsel for the first respondent.

186. *It has to be borne in mind when assessing the opinion of experts that "clearly it is not the province of the expert to act as Judge or Jury", All questions calling for the opinion of the experts are questions on which the ultimate decision has to be made by the Judge. Expert opinion gets its weight and authority when the expert puts before*



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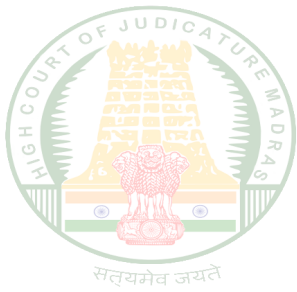
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the court all the materials which induce him to come to the conclusions so that the court, although not an expert, may form its own opinion on those materials, (vide [Ajitrai v. Vasumati](#)) Titli v Jones, 1934 All ER 273). Opinions must be supported by reasons and it is the reason find not blank finding that is important.

(vi) In ***AIR 1965 Supreme Court 354 (Ramchandra Rambux ..vs.. Champabai and others)***, it is observed as follows:-

(vii) In ***(1977) 1 Supreme Court Cases 369 (Jaswant Kaur ..vs.. Amrit Kaur and others)***, it is observed as follows:-

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



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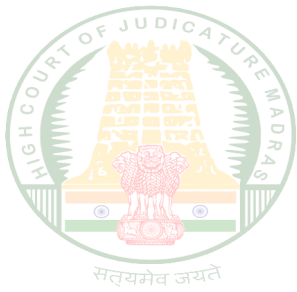
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by the pro- pounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a 'cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.

(viii) (2012) 8 MLJ 213 (Nachiammal (deceased) and others ..vs.. Kuppulakshmi and others)

(ix) In 1959 Supp (1) SCR 426 : AIR 1959 SC 443 (H.Venkatachalam Iyengar ..vs.. B.N.Thimmajamma and others, it is observed as follows:-

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. ProPounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the

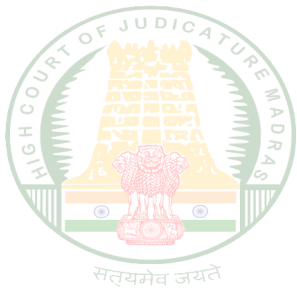


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propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word 'conscience' in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

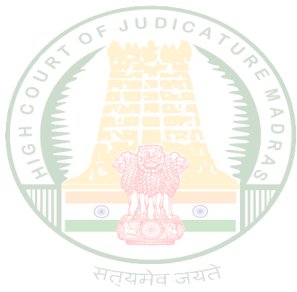


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22. *It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* (1) "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth ". It would sound platitudinous to say so, but it is nevertheless true that in discovering*



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*truth even in such cases the judicial mind must always
be open though vigilant, cautious and circumspect.*

29. Plaintiff S.Gunasekaran and defendants K.Kamala, S.Chandrasekaran and B.Rajeswari are the children born to Somasundaram Reddiar and Mrs.Subbulakshmi. The relationship between the parties is admitted by both the parties. TOS No.14 of 2009 is filed for seeking letters of administration of the Will dated 09.11.2006 alleged to have been executed by the deceased father Somasundaram Reddiar. Plaintiff has also filed the suit in Tr.C.S.No.737 of 2010 for the relief of partition. Plaintiff's siblings, viz., K.Kamala, S.Chandrasekaran and B.Rajeswari have also filed the suit in C.S.No.563 of 2009 for the relief of partition. During the pendency of these proceedings, Mr.S.Chandrasekaran died and therefore, his legal heirs were impleaded as defendants.

30. In the absence of the Will, it is no doubt that the plaintiff and defendants are entitled for share in the suit properties. However, there is



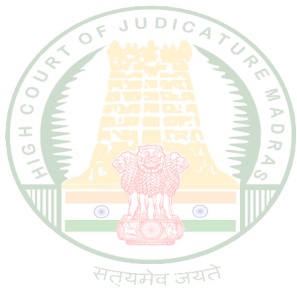
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a Will alleged to have been executed by the deceased father Somasundaram Reddiar, which is marked as Ex.P1. This Will is seriously disputed by the defendants on the ground that father had never executed the Will and it is a forged and fabricated Will and surrounded by various suspicious circumstances. The primordial issue that has to be decided is whether Ex.P1 Will was executed by deceased father Somasundaram Reddiar in a sound disposing state of mind? As stated above, plaintiff examined the two attestors of the Will as PW.1 and PW.2. He had also examined PW.3 – Handwriting Expert to prove that Ex.P1 Will was written by deceased Somasundaram Reddiar with his own handwriting and the signatures in the Will are that of deceased Somasundaram Reddiar. Report of PW.3 – handwriting expert came under severe criticism and attack by the defendants on the following grounds:-

(i) Disputed Will along with admitted handwriting and signatures of the deceased Somasundaram Reddiar were not sent through Court for the examination by the handwriting expert.

(ii) There is no explanation by the plaintiff as to how, he



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secured the documents relied by the handwriting expert for comparison.

(iii) Original Will was not produced for the purpose of comparison by the handwriting expert.

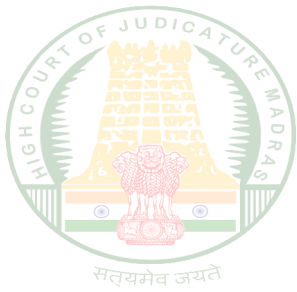
(iv) All the documents produced before the handwriting expert for the purpose of comparison are not produced before the Court by the plaintiff.

(v) The documents produced in this case were not produced when PW.3 – handwriting expert was examined, but produced later when PW.4 was examined. It deprived the opportunity of cross examining the handwriting expert on the documents relied by him for the purpose of comparison.

31. Apart from assailing the Will on these grounds, the other grounds taken for assailing the Will are that,

(a) PW.1 and 2 have not spoken anything about the draft Will.

(b) Testator used to sign in Tamil in the documents written in



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Tamil and in English in the documents written in English. However, in Ex.P1

Will the contents are written in Tamil, but the signatures are made in English.

- (c) There are some spelling mistakes in the Will.
- (d) PW.1 and 2 contradict on material aspects with regard to the execution of the Will.

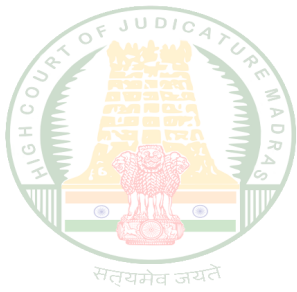
32. Section 63 of Indian Succession Act, 1925 deals with the execution of unprivileged Wills, which reads as follows:-

63. Execution of unprivileged wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:—

(a) 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.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was



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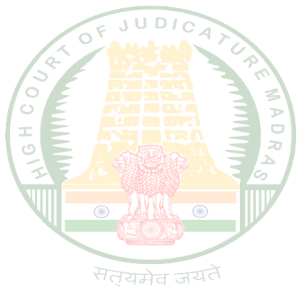
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intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

As per this Section, the Will should be attested by two or more witnesses.

33. Section 68 of Indian Evidence Act, deals with the proof of execution of documents required by law to be attested. This section is extracted hereunder:-



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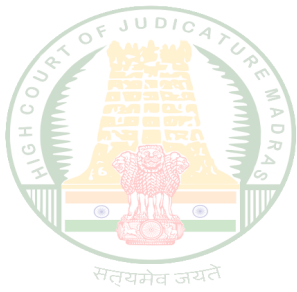
68. Proof of execution of document
required by law to be attested.—

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

As per this Section, the documents required by law to be attested shall not be used as evidence until one attesting witness atleast shall be called for for the purpose of proving its execution.

34. The combined reading of the above said provisions makes it clear that a Will shall have to be necessarily attested by, not less

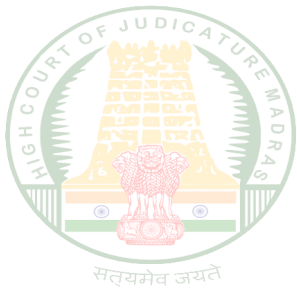


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than, two witnesses and atleast one of the attesting witnesses, if alive, should have been examined for proving the execution.

35. In the case before hand, plaintiff had examined both the attesting witnesses as PW.1 and PW.2, apart from examining PW.3 – handwriting expert. There is no legal requirement that the handwriting expert should be examined in proof of the execution of the Will. However, in the case before hand, the handwriting expert was also examined. The main grievance of the defendants is that all the documents used by the handwriting expert were not produced before the Court and even the documents that were produced before the Court were not produced at the time of examination of PW.3, but were produced at later point of time only when PW.4 was examined. Those documents were marked subject to objections. Subsequently, when defendants filed A.No.6838 of 2019 for further cross examination of PW.3 on the documents sought to be produced through PW.4, this application had to be closed for the reason that PW.3 Prof. Dr.P.Chandrasekaran had passed away on 11.07.2017.

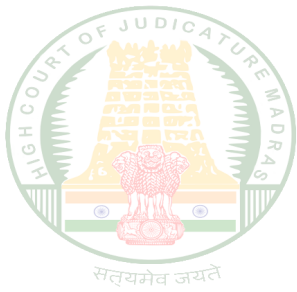


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36. Perusal of the evidences and documents shows that Exs.P9 to P28 documents had been marked only through PW.4 after the completion of examination of the handwriting expert–PW.3. It is not as though the handwriting expert – PW.3 was not at all cross-examined. He was examined in chief on 07.06.2011 and his report was marked as Ex.P2. Thereafter he was cross examined on 14.06.2011, on his Ex.P2-report. It is seen from his evidence that the plaintiff had forwarded the copy of holographic Will. Plaintiff had also produced totally 47 documents for the purpose of comparison. On the basis of comparison of the handwriting and signatures in the disputed Will with that of the documents produced for the purpose of comparison, PW.3 opined that the deceased Somasundaram Reddiar had, in fact, written the holographic Will dated 09.11.2006 and subscribed his signatures in all the seven pages of the instrument.

37. It is seen from his evidence that only a copy of the Will was produced and the original Will was not produced for the purpose of



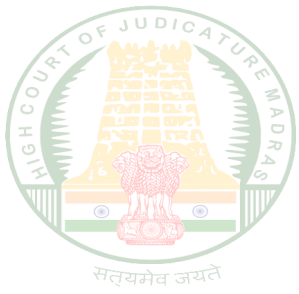
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comparison. Copy of the Will along with the documents were not produced to him through Court, but were produced directly by the plaintiff. No doubt that PW.3-Prof. Dr.P.Chandrasekaran is a renowned forensic expert. There is no question of disputing/doubting his credentials. However, this Court found from the evidence produced that though he analysed 47 documents for the purpose of comparison of disputed handwriting and signatures in Ex.P1–Will, only Exs.P9 to P28 have alone been produced before this Court, that too not through PW.3 – handwriting expert, but through PW.4 - plaintiff. The documents used for comparison of the handwriting and signatures in the impugned Will are to be discussed now.

i) Ex.P10 - It is claimed by the plaintiff that Ex.P10 is the draft Will prepared by the deceased Somasundaram Reddiar before actually writing the Will. This Will was also used for comparing the handwriting and signatures in Ex.P1 – Will. The execution of this draft Will is disputed by the defendants.

ii) Ex.P11 is an original mortgage deed executed by the deceased Somasundaram Reddiar in favour of the President, Tamil Nadu



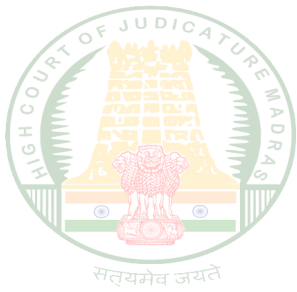
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Khadi, Village and Industries Board. This is a typed document. There is no challenge with regard to the genuineness of this document. This document contains the signature of the deceased Somasundaram Reddiar and these signatures were also used for comparison of disputed signatures in Ex.P1 – Will.

iii) Ex.P12 is an original sale deed in respect of the property at South Madras Neighbourhood Plot No.407 W T.S.No.9 (Part) Block No.50, Kalikundram Village, Madras City measuring 2 Grounds 181 sq.ft. This document is produced to show that the deceased Somasundaram Reddiar is the owner of this property. There is no dispute in this regard.

iv) Ex.P13 is a letter dated 03.04.2016 to the Manager, State Bank of Travancore by the deceased Somasundaram Reddiar requesting the Manager to issue a certificate with regard to his income from April 2005 to March 2006 for the purpose of filing his Income Tax Return. A bare perusal of this letter shows that it appears to be the original letter. There is no mention in this document that it is an office copy or copy. It is not known how the letter addressed to the Manager, State Bank of Travancore, had come



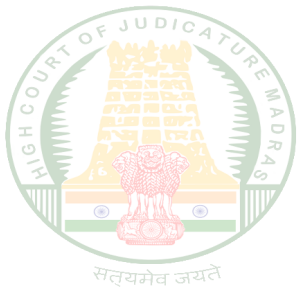
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to the hands of plaintiff for comparison by the expert. The concerned bank Manager was not examined to prove as to whether he handed over this letter to the plaintiff.

v) Similar letter (Ex.P.26) dated 03.04.2017 was written by deceased Somasundaram Reddiar to the Manager, State Bank of Travancore seeking a certificate with regard to his income for the period from April 2006 to March 2007 for the purpose of filing his Income Tax Return. There is no explanation given as to how the plaintiff came to possess this document. This document appears to be the original. The concerned bank Manager was not examined to prove as to whether he handed over this letter to the plaintiff.

vi) Exs.P14, P15 and P16 are the letters addressed by deceased Somasundaram Reddiar to the Pension Pay Officer, Pension Pay Office, Chennai. All these documents appears to be the original documents. There is no indication that these documents are copies of the original. Here again, there is no explanation given by the plaintiff as to how he came to possess these documents and sent them to the handwriting expert for the purpose of comparison. The Pension Pay Officer was not examined to say



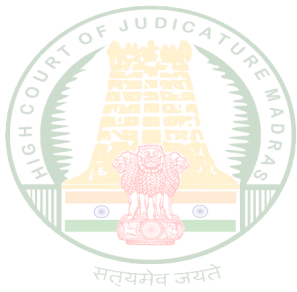
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whether he handed over these documents to the plaintiff.

vii) Exs.P18 and P19 are the letters written by deceased Somasundaram Reddiar to ARO, Zone – 10, Chennai Corporation, Royapettah. There is no signature affixed in Ex.P18. These letters appear to be the original. There is no indication that these letters are copies. It is not known how these documents landed at the hands of the plaintiff for sending them to handwriting expert for comparison. The concerned ARO was not examined to speak as to whether he handed over these letters to the plaintiff.

viii) Ex.P17 is resignation letter sent by deceased Somasundaram Reddiar to the Secretary, Adyar Tamil Sangam. Ex.P23 (series) are the Attendance Registers of Adyar Tamil Sangam. These documents are produced by the plaintiff for the purpose of comparison of handwriting and signatures in the disputed Will. He claimed that the deceased Somasundaram Reddiar was acting as the President of Adyar Tamil Sangam and some of the documents are in the house and some documents are secured from Adyar Tamil Sangam. However, he has not examined any one from Adyar Tamil Sangam to prove what are the documents that were secured



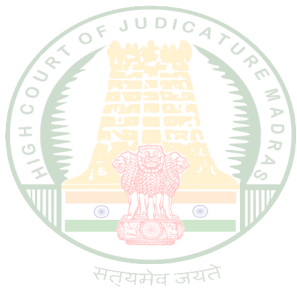
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from Adyar Tamil Sangam.

ix) Ex.P24 is a copy of the letter of reference about his previous assistant (helper) D.Vajravel by the deceased Somasundaram Reddiar. It appears to be a xerox copy. A xerox copy is used for the purpose of comparing the handwriting and signatures in the xerox copy of the Will.

38. Learned counsel for the defendants relied on the judgment reported in ***AIR 2006 AP 314 (Bheri Nageswara Rao ..vs.. Mavuri Veerabhadra Rao and Others)*** for the proposition that the xerox copy of a document cannot be used for the purpose of comparing the handwriting and signature. It is observed as follows:-

“4. Section 45 of the Act enables the Court to obtain the opinion of an expert on various aspects, including the one relating to the comparison of disputed signatures. An expert would be in a position to render his opinion, only when the original of the document containing the disputed signature is forwarded to him. Further, there can be effective comparison and verification of the signatures, if only another document



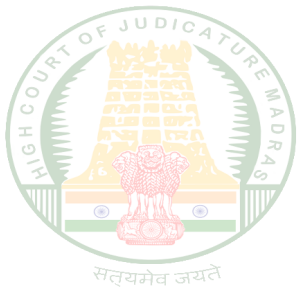
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containing the undisputed signatures of the contemporary period are made available to the expert. In the instant case, respondents 1 to 3 filed Exs.B.13 and B.15, which are, admittedly, the Xerox copies of general power of attorney, dated 21-12-1988 and khararnama, dated 21-12-1988. It is rather incomprehensible that an expert would be able to undertake analysis of the imprint of a signature, on a Xerox copy.

5. The opinion of a hand writing expert involves the analysis of the slant, which a person uses in the matter of putting his signature, and in some cases, the point of time, at which it may have been subscribed. These analyses would become possible only vis-a-vis an original signature; and the signature mark: on a Xerox copy of a document can never constitute the basis.”

39. It is also useful to refer the judgment of Punjab & Haryana High Court reported in ***AIR 2019 P & H 66 (Gurdial Singh ..vs.. Dalveer Kaur) (in RSA No.1122 of 2014 (O & M)***, wherein it is observed as

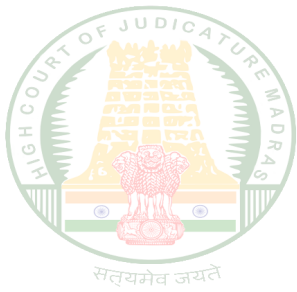


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“16. Another reason for non-suiting of the plaintiff was that though the plaintiff had examined a document expert but since he had compared the alleged signatures of the defendant from the photostat copy with the standard signatures, the same could not be done. The relevant authorities in that regard cited by learned counsel for the parties have been discussed. The First Appellate Court has rightly observed that no reliance can be placed upon the report of document expert since the signatures could not be compared from the photostat copy.

17. Furthermore, it needs to be mentioned here that under Order 7, Rule 14 of the Code of civil Procedure, the original documents in possession of the plaintiff ought to have been attached along with the plaint. However, strangely enough only photostat copies thereof were filed. The plaintiff would have been on better footing if the pronote and receipt were scribed by a regular Deed Writer with



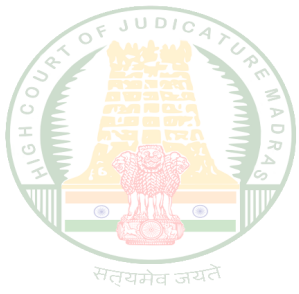
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an entry being there in his register in the ordinary course of business containing signatures of the parties and those of attesting witnesses, then the chances of the pronote and receipt having been forged/fabricated would have been minimized but it is not so in the present case. There could be a possibility of the documents being fabricated, the signatures of defendant being lifted from any document containing his admitted signatures and placed on other documents by superimposition as has been observed in authority by a Co-ordinate Bench of this Court i.e. Sh. Surjit Rai v. Sh. Prem Kumar Khara, 1995 (2) PLR 140 and then suit filed on the basis thereof stating that the original had been lost. ”

40. Learned counsel for the plaintiff has not produced any precedent on this subject contrary to the ratio laid down in the aforesaid judgments. Therefore, the legal proposition is that a xerox copy of the document is inadmissible in evidence, unless sufficient and acceptable reasons are given for the non-production of primary evidence, namely, the

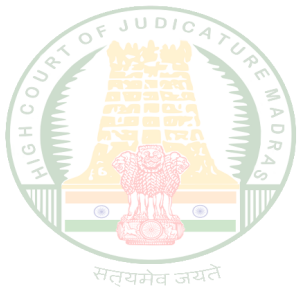


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original. In the case before hand, the plaintiff was in possession of the original Will, however, he has not produced the original Will for comparison by PW.3 – handwriting expert. When the very production of xerox copy of the document is impermissible, unless it is approved by the Court, the production of xerox copy of the Will for the purpose of comparison and the report given on the basis of comparison made with the help of xerox copy of the Will, in the considered view of this Court, is not permissible and acceptable in law. Not only that, it is seen from the report of PW.3 – handwriting expert that he had examined about 47 documents for comparing the handwriting and signatures of the deceased Somasundaram Reddiar in the disputed Will. However, we could see that all the documents produced for comparison are not produced before this Court. Even the documents produced were not produced when PW.3- handwriting expert was examined, but were produced only through PW.4-plaintiff.

41. It is claimed by the learned counsel for the plaintiff that when the plaintiff made an attempt to mark these documents through PW.3,

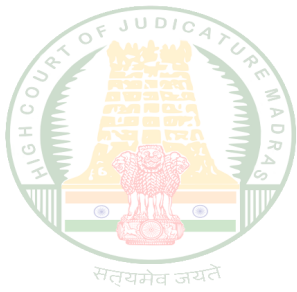


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that was objected by the defendants and therefore, the documents could not be produced through PW.3. This Court finds no such observation made in the deposition of PW.3. But the fact remains that though PW.3's evidence was completed on 14.06.2011 and PW.4 's evidence was completed on 14.11.2014, the defendants had filed the petition to recall PW.3 – handwriting expert only on 14.08.2019. In the mean while, handwriting expert – PW.3 Prof. DR.P.Chandrasekaran passed away on 11.07.2017 and therefore, Application No.6838 of 2019 filed for recalling PW.3 was closed. Defendants should have taken immediate steps for recalling PW.3 on the completion of evidence of PW.4, that was not done in this case.

42. One more submission made by the learned counsel for the defendants is that without seeking permission from the Court, plaintiff was examined as a last witness and other witnesses were examined ahead of him. It is seen that only after examination of PW.3, plaintiff was examined as PW.4. It is not known whether the plaintiff had obtained permission to examine the witnesses ahead of him under Order XVIII Rule 3-A of CPC.

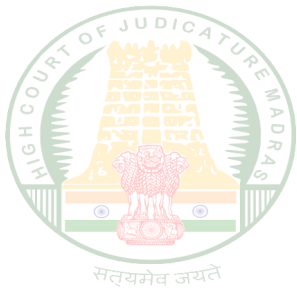


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However, it is too late now to make a challenge on this aspect after the trial proceedings were over.

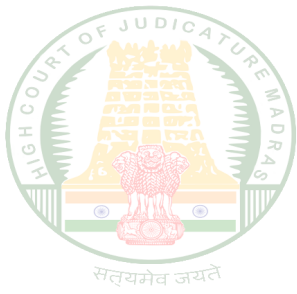
43. Coming back to the handwriting expert's report and its usefulness in this case, we have seen that the plaintiff had produced documents which were addressed to Bank, Pension Payment Office, Corporation Authorities and documents related to Adyar Tamil Sangam for the purpose of comparison. It was also found that plaintiff has failed to explain how he came to possess custody of these documents for sending them to handwriting expert for the purpose of comparison. In the absence of proper explanation and in the absence of examination of concerned witnesses to prove that they had handed over those documents to the plaintiff and then, he sent them to the handwriting expert for the purpose of comparison, the report given on the basis of comparison of handwriting and signatures in these documents cannot be accepted. Thus, this Court finds that, may be that PW.3— handwriting expert is a worldwide renowned forensic expert not only in the filed of handwriting, but also in other fields as well, this Court rejects



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1. Original will was not used for the purpose of comparing the handwriting and signatures in the disputed Will, but only xerox copy was used.
2. There is no explanation given by the plaintiff as to how he came to possess the custody of the documents, which were submitted for the purpose of comparison by handwriting expert.
3. The handwriting and signatures in the disputed Will should be compared with the handwriting and signatures found in admitted documents, which had come into existence during the contemporaneous period.
4. Since plaintiff had not approached this Court for the purpose of using the services of handwriting expert and acted on his own, there was no occasion for the defendants to admit or deny the handwriting and



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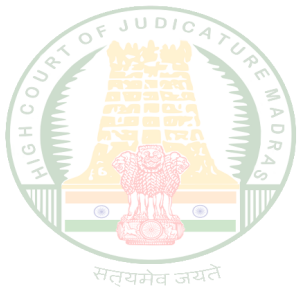
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signatures found in the documents used for comparison.

Therefore, it cannot be claimed that the documents used by the expert for the purpose of comparing the handwriting and signatures in Ex.P1 contain the admitted handwriting and signatures of the deceased Somasundaram Reddiar.

44. For the aforesaid reasons, this Court finds that this Court cannot accept Ex.P2-Report and use it for the purpose of deciding as to whether Ex.P1-Will is a true and genuine Will executed by the deceased Somasundaram Reddiar.

45. We have seen that to prove the execution of a Will, the examination of one of the attestors of the Will is enough in case the attesting witnesses are alive. In the case before hand, there are two attesting witnesses and both of them had been examined as PW.1 and PW.2. Before discussing their evidence, it is relevant to record that though the defendants had seriously

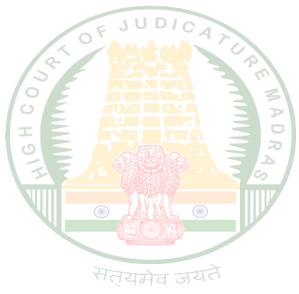


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disputed the handwriting and signatures in Ex.P1-Will as not that of the deceased Somasundaram Reddiar and when PW.4 had used the services of PW.3—handwriting expert and produced Ex.P2—Report, the defendants have not taken any steps to avail the services of handwriting expert to show that the handwriting and signatures in Ex.P1- Will are not that of the deceased Somasundaram Reddiar. It is claimed by the defendants that it is for the plaintiff to prove the Will and not for the defendants to disprove the Will. May be it is true, if plaintiff has failed to discharge his initial burden. As already stated in this case, plaintiff has discharged his initial burden of proving the execution of Ex.P1 – Will by examining PW.1 and PW.2.

46. Reading of the evidence of PW.1 and PW.2 shows that they got acquainted with the deceased Somasundaram Reddiar through Adyar Tamil Sangam. PW.1 stated that he became well acquainted with the deceased Somasundaram Reddiar from the year 1978, when they formed Adyar Tamil Sangam. The evidence of PW.2 is that he knew the deceased Somasundaram Reddiar from the year 1991 as both were the members of

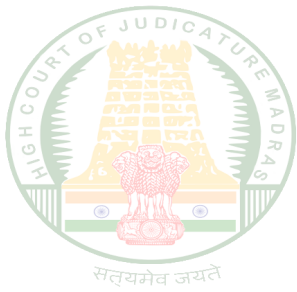


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Adyar Tamil Sangam. Both have filed the proof affidavits as to the manner in which Ex.P1-Will was executed. Both claimed that the Will was written by Somasundaram Reddiar with his own handwriting. After writing the Will, deceased Somasundaram Reddiar affixed his signature at the foot of every page, then PW.1 and PW.2 affixed their signatures in every page. They had seen the deceased Somasundaram Reddiar affixing his signature in every page and the deceased Somasundaram Reddiar had seen PW.1 and PW.2 affixing their signatures in every page. The witnesses had seen each other affixing their signatures. Both the witnesses had been cross-examined at length by the defendants. However, this Court finds from the careful reading and appreciation of the evidence, the defendants were not able to succeed in their attempt to discredit/dislodge the evidence of these witnesses, with regard to the execution of Ex.P1-Will by the deceased Somasundaram Reddiar.

47. It is brought to the notice of this Court that PW.2 stated in the proof affidavit that the witnesses had written their names and addresses at every page in the Will, however, the addresses of the witnesses are not

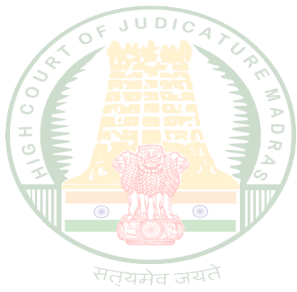


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written in every page of the Will. It is also claimed that the contents of the Will were written in Tamil, but the signatures of the deceased Somasundaram Reddiar is found in English, which is unusual and not the practice of deceased Somasundaram Reddiar. There are some spelling mistakes. Considering the entire evidence of PW.1 and PW.2, this Court can only say that the aforesaid discrepancies are only minor in nature and they would not create any doubt as to the execution of Ex.P1- Will by the deceased Somasundaram Reddiar. Ex.P1-Will shows that the names and addresses of the witnesses are written in first page and in last page and not in intermediate pages. During the course of cross examination, PW.2 deposed that he did not remember the fact that whether he signed and written his address in all the pages. It cannot be considered as a serious material discrepancy.

48. The deceased Somasundaram Reddiar is not an uneducated or rustic person. He was an educated person and held an important position in the Government of Tamil Nadu. He had not straightaway written the Will. He prepared Ex.P10 - draft Will before writing

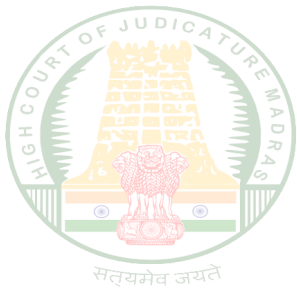


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the Will. Copy of the Will was also taken and marked as Ex.P25.

49. Reading of the Will shows that Ex.P1 Will is a holographic Will of the deceased Somasundaram Reddiar ie., content of the Will was written by himself. He mentioned about his sons Chandrasekaran and Gunasekaran and daughters Kamala and Rajeswari and stated that he had written this Will with good intention, conscious mind and with devotion to God. He mentioned that he retired from service on 30.09.1984. The date of death of his wife Subbulakshmi was mentioned as 09.07.2002. He claimed that he executed this Will to bequeath his self acquired properties to his legal heirs to avoid any controversy. He detailed six items of properties as his self acquired properties. First two properties are house properties at Chennai and Madurai, next three items are Fixed Deposits at Pension Pay Office, Post Office and bank deposits. Last item is the cash on hand. He mentioned that he and his wife were living in the ground floor of Chennai house and after his wife's death, he was living alone in the ground floor. His youngest son, viz., Gunasekaran is residing in the first floor with his family. He is taking care of



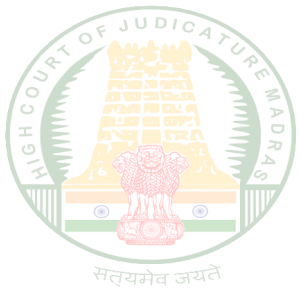
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him with food, medical and other requirements and helping him in all aspects.

50. He claimed that his eldest son Chandrasekaran is living in the house at Madurai with his family members. He had not shaped his life properly and he has four daughters. Testator conducted the marriage of three daughters by providing 40 sovereigns to each of them and spending several lakhs of Rupees. He had also provided 40 sovereigns gold jewels to the fourth daughter. He repaid Rs.10,00,000/- loan obtained by Chandrasekaran. He spent a huge sum from his savings to Chandrasekaran and his family members. He gave the house property at Madurai to Chandrasekaran for his enjoyment throughout his life and after his death, his legal heirs have to get this house. There is a joint account in Account No.6850 in Corporation Bank, Indira Nagar, Chennai and he deposited money in that account. Chandrasekaran can take this amount. After the death of the testator, he is also entitled for 1/3rd in the cash possessed by the testator.

51. With regard to disposition of the property to his second

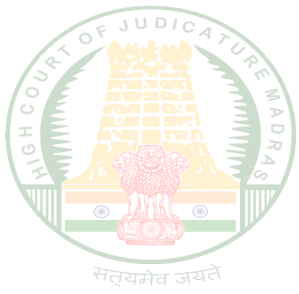


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son Gunasekaran - the plaintiff herein, testator mentioned that Gunasekaran is living in the first floor portion of the house at Chennai with his family. He is taking care of all the comforts and provide assistance to the testator. He spent several lakhs of Rupees towards medical expenses of his wife. Gunasekaran has one daughter and one son. Son Sathyanarayanan is the only male legal heir of the family. Gunasekaran is living in the first floor portion only with a view to help the testator. He is also sending money to his eldest brother Chandrasekaran every month to help him. He spent Rs.12,00,000/- for renovating and constructing a new temple in the Samadhi of grandfather. He is maintaining it and meeting the expenses for daily poojas. Therefore, the testator bequeathed the house at Indira Nagar, Chennai entirely to his son Gunasekaran. He was also given Rs.10½ lakhs available in PPF.

52. His daughter Kamala is residing at Chennai. She is living with her daughter Kannagi. She did not have her own house. She required a lot of help. Her husband is also not good and her two sons are also not properly helping. He deposited Rs.3,00,000/- in Tiruvanmiyur Post Office

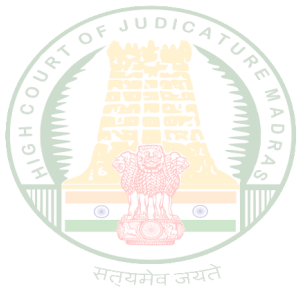


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and another Rs.3,00,000/- in Indira Nagar Post Office MIS Scheme. He was also paying her monthly house rent. He gave Rs.10,00,000/- to her two sons for business purpose. He deposited some lakhs of Rupees in joint Account No.12374 at Corporation Bank, Indira Nagar. He had also deposited money in joint account at State Bank of Travancore, Indira Nagar branch. She can take all these amounts. She is also entitled for 1/3rd of cash balance.

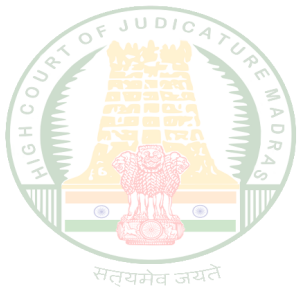
53. He bought 2BHK MIG flat near his house at Indira Nagar in 1987 to his daughter Rajeswari. Her husband is holding a high position at Government service. She has two sons. Elder son is a software engineer and working in America and he was married. Second son is studying final year B.E. Engineering, he would get good employment. Third daughter is living comfortably and she is also helping the testator. He deposited Rs.1,50,000/- at Indira Nagar Post Office MIS scheme in her name. He had deposited Rs.3,00,000/- in MIS Scheme in his name. There is also a joint account in Corporation Bank in Account No.391 and State Bank of Travancore and these accounts have some lakhs. All these amounts are given to her. She can



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take these amounts. That apart, she is also entitled to 1/3rd in the cash available. Finally, it is recited that this Will come into force after his death and he has the powers to cancel or change the Will.

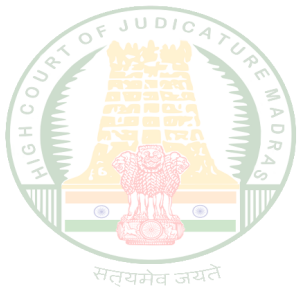
54. The entire reading of this Will shows that it cannot be construed as an unnatural Will. Of the two immovable properties, one is at Chennai and another is at Madurai. The house at Chennai was bequeathed to one son/plaintiff Gunasekaran and the house at Madurai was bequeathed to another son Chandrasekaran with life interest and absolutely to his legal heirs. Daughters are provided with the amounts available in savings deposits, joint accounts and cash on hand. May be the claim of the defendants that the house property at Adyar, Chennai worth several crores of Rupees and other properties are not that equivalent in value is true however, the testator deceased Somasundaram Reddiar, who was an educated and retired Government employee had given clear, convincing and cogent reasons as to the manner in which he chose to dispose his properties. As far as the plaintiff is concerned, it is repeatedly stated that he was taking care of testator's food



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and medical expenses and providing all the other assistance. Plaintiff had also taken care of medical expenses of his mother running into several lakhs of Rupees; he is helping his elder brother by sending money every month; he spent Rs.12,00,000/- for renovating and constructing the temple at grandfather's Samadhi and meeting the daily pooja expenses and maintenance expenses. For first son's four daughters, testator provided 40 sovereigns of gold jewels each and celebrated the marriage of three daughters by spending several lakhs of Rupees and he repaid Rs.10,00,000/- loan obtained by the first son Chandrasekaran. To the third daughter, he claimed that he bought two bedrooms flat at Indira Nagar and she is well of and in fact, she was helping the testator. Though he claimed that his daughter Kamala required help, he provided her with the amounts available in bank deposits and Post Office savings accounts. She is also entitled for 1/3rd share in the cash available. He also claimed that he gave Rs.10,00,000/- to her two sons for their business. Every necessary and justifiable reasons are given for preferring the plaintiff to give the house at Madras to him. Therefore, this Will cannot be considered as a Will with unnatural disposition of properties

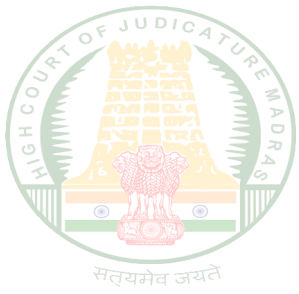


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55. With regard to other suspicious circumstances claimed by the learned counsel for the defendants that there is contradictory statement with regard to the existence of the Will in the written statement in C.S.No.563 of 2009 and in his evidence; that the plaintiff withdrew Rs.10,50,000/- within 22 days from the death of his father, there is discrepancy in the extent of Adyar property in the Will, discrepancy in the amount mentioned in the Will and available in the bank, plaintiff was evasive in his answers with regard to the Will, this Court finds from the evidence produced in this case that immediately after the death of the father, both the plaintiff and defendants made attempts to take the amounts available in bank deposits, joint bank accounts and other deposits, effect name change in the revenue records etc., and most of them succeeded in their attempts.

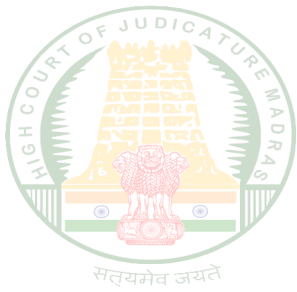
56. It is pertinent to refer the evidence of witnesses in this



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regard. The reading of the evidence of PW.4 shows that Somasundaram Reddiar had ancestral properties at Madurai District and Tr.C.S.No.737 of 2010 is filed for partition of those properties. He admitted that Rs.5,00,000/- each had been gifted to the sons and daughters. When asked why these payments are not mentioned in the Will, he answered that he did not know the answer and it is for the testator to answer. He stated that he had not given any amount voluntarily to his sisters and brother after the demise of his father. He stated that on the next day after the 13th day ceremony, he had given copies of the Will to his sisters and brother. He had also stated that he stated at para-3 of Ex.P28 that the copy of the Will has been given to the defendants when they come for their father's obsequies. It may be on 13th day or next day. He admitted that his father was admitted in three hospitals in connection with Appendicitis surgery, Hernia surgery and Prostate Surgery. The medical records of the treatment were produced as Exs.C1 and C2. He died at Apollo Hospital. When he was asked about the Income Tax Returns of his father, he stated that he did not know about the details. When he was asked why Exs.P9 to P28 were not filed when PW.3 was examined, he answered that

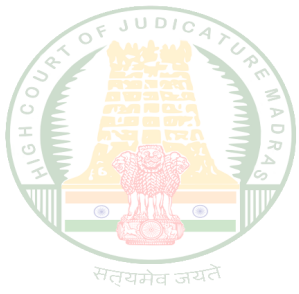


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that has to be answered by his Advocate. However this answer is not correct for the reason that he has to get instructions from his Advocate as to why these documents were not marked when PW.3 was examined. It shows that there is miscommunication between him and his Advocate and he was not aware of the documents marked and that he did not properly follow the trial proceedings. However, this Court already found that the Report is not useful to the case of the plaintiff and therefore, these answers have no relevance.

57. The evidence of DW.1 shows that she had a joint account with her father in Corporation Bank in which, there was a sum of Rs.2.75 lakhs and this amount was not included in C.S.No.563 of 2009. She has also admitted that her father had Post Office Account (MIS Scheme) in Indira Nagar Post Office and MIS Account in Thiruvannamiyur Post Office, but these amounts were not included in C.S.No.563 of 2009. She admitted that she had withdrawn these amounts within a month or two after their father's death, after obtaining legal heir certificate and death certificate. She admitted that Rs.3,00,000/- available in MIS account in Indira Nagar Post Office and

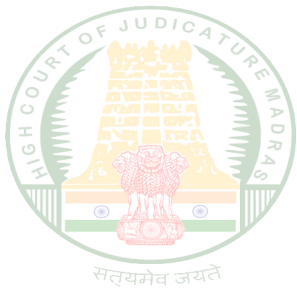


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Rs.3,00,000/- available in MIS account in Thiruvanniyur Post Office and she withdrew these two amounts and retained the amounts with her. Though she had Passbooks relating to this account, she has not produced the Passbooks. These amounts were paid to her along with the amount in savings bank account in Corporation Bank, through cheques. She opened another account in Thiruvanniyur Post Office and collected these amounts by depositing the cheques in this account. A sum of Rs.25,000/- was available with the State Bank of Travancore at Thiruvanniyur and she withdrew the amount and closed the account. She admitted that she had not shared the amount withdrawn by her either with the plaintiff or with other defendants. When she was asked about break open of the locker by her and sister, she stated that she did not do it.

58. DW.2 stated that the MIG flat was purchased by her husband and she had no idea about the value of the flat. She admitted that she had joint account with her father at State Bank of Travancore, Thiruvanniyur and Corporation Bank at Indira Nagar Branch and she closed

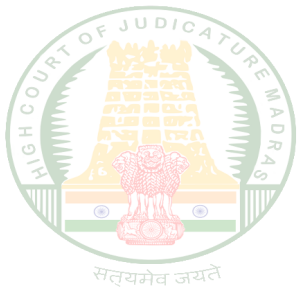


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these accounts after her father's demise. When she was asked about whether she broke open the locker and took away the jewels along with Kannagi, she answered that key was misplaced and after informing the bank, the key was received and opened as per the procedure. When she was asked whether she distributed the jewels and cash available in the locker with her siblings, she answered in negative stating that the jewels and cash belonged to her. She answered in affirmative that the deposits in the State Bank of Travancore was encashed and distributed by Gunasekar among the legal heirs equally through the cheque. She admitted signing Ex.P29-indemnity bond. Similarly, DW.3 had also admitted signing the indemnity bond.

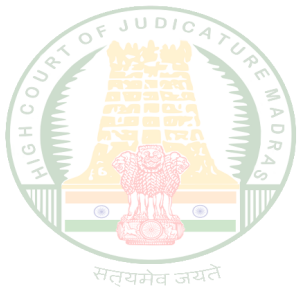
59. Reading of the evidence of these witnesses shows that the deposit amounts in the Banks and Post Offices had been withdrawn by the plaintiff and defendants after the demise of their father Somasundaram Reddiar. It is also seen from Ex.D2 that revenue records were changed in the name of the plaintiff after the death of their father and that was cancelled by DRO on the objection made by the defendants. Ex.P29 shows that in some of



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the Registers, the name of the deceased Somasundaram Reddiar was written in Tamil, but his signature is in English. Ex.D3-Passbook shows that there was a sum of Rs.5,336/- alone available as on 26.02.2010. It is admitted that their father Somasundaram Reddiar died on 19.07.2007, but this Passbook shows that even after his death, there were transactions in the bank accounts with deposits and withdrawals. The evidence makes it clear that the legal heirs of the deceased Somasundaram Reddiar grabbed to themselves whatever the amounts they could lay their hands on in the bank deposits, Post Office savings scheme deposits etc. Therefore, we cannot find fault with the plaintiff alone. What we have to consider is that whether the acts of commissions and omissions by the plaintiff and the defendants will any way create strong doubt in the execution and genuineness of this Will. The answer to this question from this Court is an emphatic 'No'. The reason was already given that the testator Somasundaram Reddiar had given elaborate reasons as to why and how he chose to dispose his properties among his children through the Will. This is a holographic Will. PW.1 and PW.2 vouch for the execution of this Will by the deceased Somasundaram in a sound disposing



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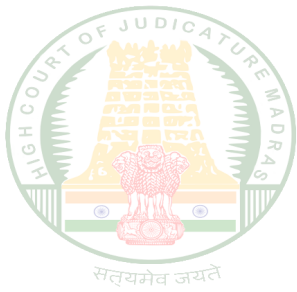
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state of mind. Holographic Will stands on the better footing than other Will.

That has been highlighted in the judgments reported in ***(1996) 9 Supreme Court Cases 324 (Joyce primrose prestor (Mrs.) (Nee Vas) ..vs.. Vera Marie Vas (Ms) and others) ILR 2005 KAR 467 (B.Manjunatha Prabhu and others ..vs.. C.G.Srinivas and others)*** referred supra.

60. It is the duty of the Court to separate grains from chaff.

Old age is a unique life space characterised by various health cognitive, emotional, social and financial changes. Physical decline and ill health are the biggest problems experienced by aged people. Chronic illness may limit or cause a loss of independence and lead to dependence. They tend to lean to whomsoever, who lends helping, supporting hands to take care of the basic needs and comforts like food, shelter, medical needs, especially when independence is not practical, they require additional care. There comes the role of the family members in caregiving. In the case before hand, it was the plaintiff and his family members had acted as caregivers and have given the requisite care to the testator deceased Somasundaram Reddiar during his old

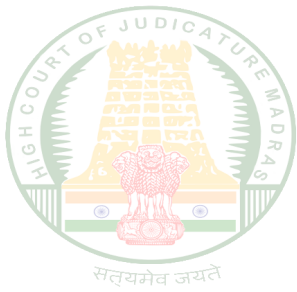


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age. That may also be one of the reasons as we found from his Will for bequeathing the valuable property at Chennai in favour of plaintiff.

61. Plaintiff had discharged the initial burden of proving the execution of the Will. However the doubt created in the genuineness of the Will, especially the handwriting and signatures found in the Will was not disproved by the defendants. If the defendants genuinely doubted that the handwriting and signatures in Ex.P1 will are not that of the testator deceased Somasundaram, they should have sought the assistance of handwriting expert in support of their case. That was not done. Therefore, this Court finds that the execution of Ex.P1-Will stands proved and this Will is a true, genuine and valid Will. This Will was executed by the deceased Somasundaram Reddiar in a sound, disposing state of mind and it is not executed or obtained by coercion and undue influence on him. The Will dated 09.11.2006 has been acted upon by the defendants as well as plaintiff for withdrawing the amounts in bank deposits, post office deposits etc., and also making name change in the revenue records in the name of plaintiff. This Court finds that the



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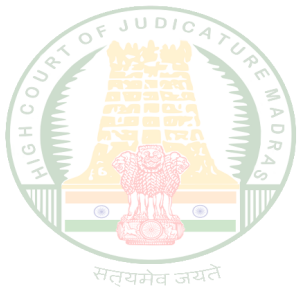
judgments relied by the learned counsel for the defendants 1 and 3 are not useful to the case of the defendants 1 and 3. Thus, the aforesaid issues are answered in favour of the plaintiff and against the defendants.

62. **Issue No.3 in TOS No. 14 of 2009:-**

In view of the finding arrived at in the aforesaid issues, this Court finds that the plaintiff is entitled to Letters of Administration of the Will as annexed in TOS.No.14 of 2009.

63. **Issue Nos.3, 4 and 6 in C.S.No.563 of 2009 and Issue No.1 in Tr.C.S.No.737 of 2010:**

In C.S.No.563 of 2009, there are eight items of schedule of properties. Item Nos.1 and 2 are the house properties at Chennai and Madurai. They are covered in Ex.P1-Will. Item No.3 is Deposits and Savings Bank Balances in State Bank of Travancore, Indira Nagar, Chennai, loan given to Indira Nagar Petrol Bunk owner to the tune of Rs.5,00,000/-, a sum of Rs.15,00,000/- in PPFO Account. The Will shows only

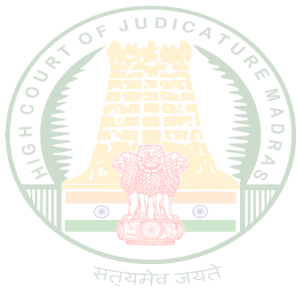


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Rs.10,50,000/- in PPFO Account. There is no mention about the quantum of amounts available in bank accounts. However, we had seen that both the plaintiff and defendants had withdrawn amount from the PPFO Account and Bank and Post Office Savings Bank Accounts. Since items 1 to 3 in C.S.No.563 of 2009 were covered under the Will and Letters of Administration in respect of these items is granted in favour of the plaintiff, the suit in respect of these items 1 to 3 of the suit properties has to fail and therefore, the suit has to be dismissed in respect of item Nos.1 to 3.

64. Item Nos.4,5,6,7 and 8 are the immovable properties. There is no mention about the location of item No.4 of the suit properties, though several survey numbers are given. Item No.5 of the suit properties is said to be located at Silaimalaipatti Village, Peraiyur Taluk, Madurai District. Item No.6 of the suit properties is said to be located at Kadaneri Village, Peraiyur Taluk, Madurai District. Item No.7 of the suit properties is said to be located at Modhagam Village, Peraiyur Taluk, Madurai District and Item No.8 of the suit properties is said to be located at Sattaneri Village, Peraiyur

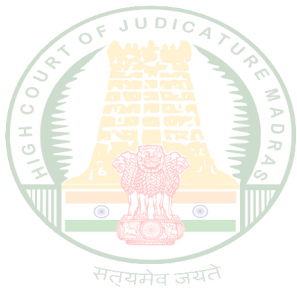


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Taluk, Madurai District. Similarly, schedule of properties in Tr.C.S.No.737 of 2010 shows that these properties are located at Modhagam Village, Peraiyur Taluk, Madurai District and Sattaneri Village, Peraiyur Taluk, Madurai District. However, both the plaintiff and defendants have not produced any single piece of paper to show that the aforesaid properties are the properties of their father or mother or whether they are ancestral properties of their father or mother or the self acquired properties of their father or mother. Not even a kist receipt is produced in respect of all these properties. In the absence of any records to show that these properties belong to their father or mother and they are in possession and enjoyment – physical or constructive, the claim for the partition of these properties cannot be entertained. Therefore, both the suits for partition are liable to be dismissed and accordingly dismissed and the plaintiff(s) and defendant(s) in both the suits are not entitled for any relief on the basis of claim of partition. Thus, these issues are answered accordingly.

65. **Issue No.7 in C.S.No.563 of 2009:**



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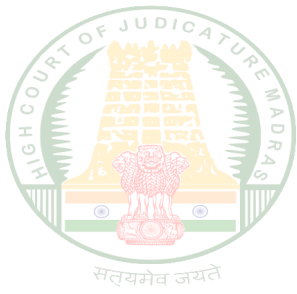
It was found that except for the property at Chennai and Passbook (Ex.D2) both the parties have not produced any document to show the availability of movable assets/immovable properties including bank deposits left by the deceased Somasundaram Reddiar. In the absence of any evidence in respect of the movable/immovable properties, this issue cannot be answered.

66. **Issue No.5 in C.S.No.563 of 2009:**

Plaintiffs have filed the suit claiming to be in joint and constructive possession of the suit properties as co-owners. Therefore, Court Fees paid by the plaintiffs under Section 37(2) of Tamil Nadu Court Fees and Suits Valuation Act, 1955 is correct.

67. **Issue Nos.4 in TOS No.14 of 2009, Issue No.8 in C.S.No.563 of 2009 and Issue No.4 in Tr.C.S.No.737 of 2010:**

In view of the findings arrived at in the aforesaid issues, these issues are answered in favour of the plaintiff that the plaintiff is entitled for



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the grant of letters of administration of the Will executed by Somasundaram Reddiar in respect of the immovable property at Indira Nagar, Adyar, Chennai. and the defendants are not entitled for the relief of partition in respect of the suit properties mentioned in the suit schedule and for any other relief.

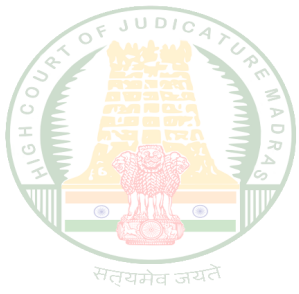
68. In the result,

(a) **Insofar as TOS No.14 of 2009 is concerned,**

(i) TOS No.14 of 2009 is allowed and the plaintiff S.Gunasekaran is entitled to grant of Letters of Administration with the Will annexed to the plaint as the legatee under the Will of the deceased P.Somasundaram.

(ii) The letters of administration, having effect throughout the State of Tamil Nadu shall be issued in favour of the plaintiff in respect of the Will executed on 09.11.2006 by late Somasundaram in favour of the plaintiff.

(iii) The plaintiff is directed to duly administer the estate of the deceased as mentioned in the suit schedule in TOS No.14 of 2009.



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(iv) The plaintiff shall execute a security bond for a sum of Rs.1,00,000/- (Rupees one lakh only) in favour of the Assistant Registrar (O.S.-II), High Court, Madras.

(v) The plaintiff is further directed to render true and correct account in a year.

(vi) Considering the relationship of parties, the parties are directed to bear their own costs.

(b) **Insofar as C.S.No.563 of 2009 is concerned,**

(i) The suit in C.S.No.563 of 2009 is dismissed.

(ii) Considering the relationship of parties, the parties are directed to bear their own costs.

(c) **Insofar as Tr.C.S.No.737 of 2010 is concerned,**

(i) The suit in Tr.C.S.No.737 of 2010 is dismissed.

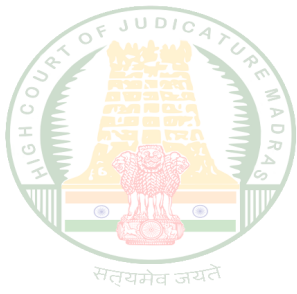
(ii) Considering the relationship of parties, the parties are directed to bear their own costs.

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List of Witnesses examined on the side of the plaintiff:

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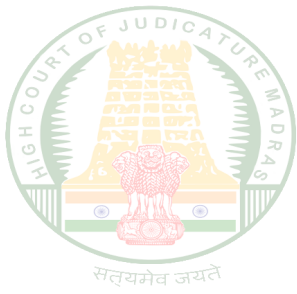
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PW.1 - Mr.P.Krishnamurthy
PW.2 - Mr.A.Manavalan
PW.3 - Prof. D_R.P.Chandrasekaran
PW.4 - S.Gunasekaran

List of Exhibits marked on the side of the plaintiff:

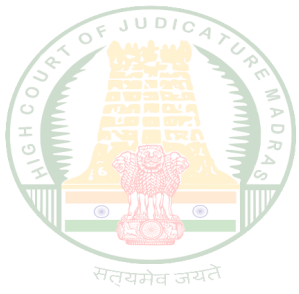
<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Document</i>
Ex.P1	09.11.2006	Original Will executed Mr.Somasundaram
Ex.P2		Forensic Science Report prepared by PW.3 Prof. D _R .P.Chandrasekaran
Ex.P3	03.12.2007	Legal Notice issued by counsel for Kamala to S.Gunasekaran and S.Chandrasekaran
Ex.P4	18.12.2007	Copy of Reply notice sent by the counsel for S.Gunasekaran to the counsel for Kamala.
Ex.P5	15.09.2007	Affidavit of S.Gunasekaran
Ex.P6	19.08.2008	Paper publication in English Daily 'Trinity Mirror'
Ex.P7	29.08.2008	Paper publication in Tamil Daily 'Makkal Kural'
Ex.P8	15.09.2007	Affidavit of attesting witness Mr.P.Krishnamoorthy
Ex.P9	07.06.2010	Original Letter by Prof.D _R .P.Chandrasekaran to Gunasekaran
Ex.P10	09.11.2006	Original Draft Will written by Mr.Somasundaram
Ex.P11	30.08.1975	Original mortgage deed executed by Somasundaram in favour of President, Tamil Nadu Khadi and Village



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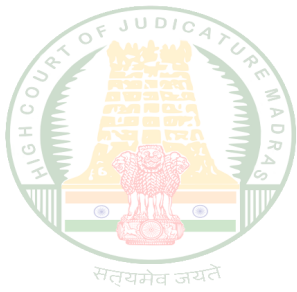
<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Document</i>
		Industries Board.
Ex.P12	11.07.1983	Original sale deed executed by Tamil Nadu Housing Board in favour of late P.Somasundaram.
Ex.P13	03.04.2006	Original written letter by late Somasundaram to the Manager, State Bank of Travancore, Adyar.
Ex.P14	18.06.2001	Original written letter by late Somasundaram to the Pension Pay Officer, Pension Pay Office, Chennai seeking yearwise arrears from 1984-85.
Ex.P15	-	Original written letter by late Somasundaram to the Pension Pay Officer, Chennai authorising his son S.Gunasekaran to receive the amount payable for conducting last rites after his demise.
Ex.P16	07.01.2002	Original written letter by late Somasundaram to the Pension Pay Officer, Chennai seeking payment of pension withheld for non-production of life certificate.
Ex.P17	27.02.2006	Original resignation letter by late P.Somasundaram addressed to Adyar Tamil Sangam.
Ex.P18	30.03.2000	Original written letter by late Somasundaram to ARO, Zone-10, Chennai Corporation, Royapettah.
Ex.P19	03.09.1998	Original written letter by late Somasundaram to ARO, Zone-10, Chennai Corporation, Royapettah.



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<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Document</i>
Ex.P20 (series)	04.02.1997	Original letter from Association of Senior Citizen's Resorts, Muttukadu post, addressed to late P.Somasundaram along with original cheque dated 05.01.1997.
Ex.P21		Original Service Register of late P.Somasundaram
Ex.P22 (series)		Income tax returns filed by late P.Somasundaram for the period from 1985-86 to 2007-08.
Ex.P23 (series)		Attendance Register of Adyar Tamil Sangam Book No.1 to 8
Ex.P24		Original written letter by late Somasundaram mentioning the name of Mr.D.Vajravel, his Assistant.
Ex.P25 (series)	09.11.2006	Copy of the Will written by late P.Somasundaram and signed by witnesses.
Ex.P26	03.04.2007	Original written letter by late Somasundaram to the Manager, State Bank of Travancore, Adyar
Ex.P27	03.12.2007	Photocopy of the legal notice issued by the counsel for Kamala and another to S.Gunasekaran and another.
Ex.P28	18.12.2007	Copy of the reply notice by S.Gunasekaran to the counsel for Kamala and another.
Ex.P29	-	Signature of Rajeswari in true copy of the indemnity agreement dated 25.07.2007.



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<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Document</i>
Ex.P30	-	Signature of Kannagi in true copy of the indemnity agreement dated 25.07.2007.

List of Witnesses examined on the side of defendants:

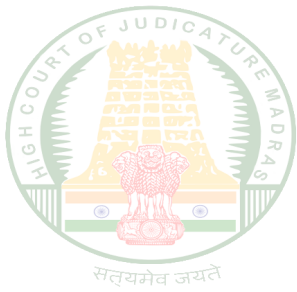
DW.1 - Mrs.K.Kamala
DW.2 - Mrs.B.Rajeswari
DW.3 - Mrs.R.Kannaki

List of Exhibits marked on the side of defendants:

<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Document</i>
Ex.D1	28.01.2008	Copy of letter by S.Gunasekaran to the Tahsildar, Mylapore-Triplicane Taluk, Chennai, requesting to issue patta.
Ex.D2	19.08.2010	Proceedings of District Revenue Officer, Chennai, cancelling the patta dated 29.02..2008 issued in the name of S.Gunasekaran.
Ex.D3	-	State Bank of Travancore Savings Bank Joint Account Passbook bearing SB Account No.5700136387-9.

List of Court Witnesses:

CW.1 - Mr.M.Sankar



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CW.2 - Mr.K.Harikrishnan

List of Court Exhibits:

<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Document</i>
Ex.C1 (series)	-	Original documents relating to late P.Somasundaram while he was taking treatment in Apollo Hospital from 2005 to 2007.
Ex.C2	-	Original documents relating to late P.Somasundaram while he was taking treatment in Fortis Malar Hospital, Adyar, from 2002 to 2003.

Mra

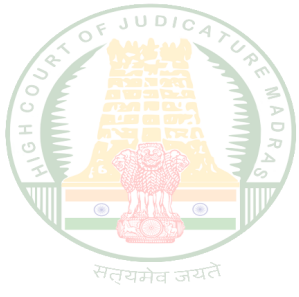
01.12.2022

Internet: Yes

Index : Yes

Speaking/Non speaking order

G.CHANDRASEKHARAN, J.,



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T.O.S.No.14 of 2009,
C.S.No.563 of 2009
and Tr.C.S.No.737 of 2010

mra

Common Judgment
in
T.O.S.No.14 of 2009,
C.S.No.563 of 2009
and
Tr.C.S.No.737 of 2010

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