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T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.11.2023

Pronounced on : 30.11.2023

CORAM : JUSTICE N.SESHASAYEE

T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

T.O.S.No.32 of 2003 :

- 1.R.V.Natarajan (deceased)
- 2.N.Mahalakshmi Natarajan
- 3.N.Rakesh Balaji
- 4.N.Suresh Balaji

[Plaintiffs 2 to 4 are brought on record as per order dated 23.08.2006 in Appln.No.2880 of 2006 as legal heirs of the deceased first plaintiff and amendment carried out as per order dated 04.4.2013 in Appln.No.1617/2013]

... Plaintiffs

Vs

N.Sakunthala

... Defendant

Tr.C.S.No.696 of 2003 :

N.Sakunthala

... Plaintiff

Vs

- 1.R.V.Natarajan (deceased)
- 2.R.V.Ravirajan
- 3.K.Kasturi
- 4.Mahalakshmi Natarajan
- 5.N.Rakesh Balaji
- 6.N.Suresh Balaji

... Defendants



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

[Defendants 4 to 6 are brought on record as legal heirs
of the deceased first defendant as per order dated
08.10.2013 in Appln.No.4642/2013]

Prayer in TOS.No.32 of 2003 : Petition filed under Section 222 & 276 of the Indian Succession Act XXXIX of 1925 for the grant of probate.

Prayer in Tr.C.S.No.696 of 2003: Civil Suit filed under Order VII Rule 1 of CPC., praying for a judgment and decree against the defendant :

- (a) for passing a preliminary decree for partition and separate possession of plaintiff's one fourth share;
- (b) directing the defendants to allot the plaintiff's one fourth share by passing a final decree to that effect;
- (c) directing the defendants to pay the cost of the suit and thus render justice.

In T.O.S.No.32 of 2003 :

For Plaintiffs : Mr.M.K.Kabir, Senior Counsel
for Ms.C.Rekha Kumari

For Defendant : Mr.A.Palaniappan

In Tr.C.S.No.696 of 2003 :

For Plaintiff: Mr.A.Palaniappan

For Defendants : Mr.M.K.Kabir, Senior Counsel
for Ms.C.Rekha Kumari for D2



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

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COMMON JUDGMENT

A certain Veluchamy has left a residential property in a prime locality of the city and had passed away on 17.12.1999. Close to four years prior to his demise, Velusamy is said to have executed a registered Will dated 31.01.1996. His wife Panchavarnam had predeceased him in 1986. He had four children, of whom, two are his sons. They are Natarajan and Ravirajan, and two others are his daughters and they are Kasthuri and Sakunthala. Under his Will, Veluchamy had bequeathed his immovable property that he had in favour of his sons Natarajan and Ravirajan, to the entire exclusion of his two daughters. Natarajan was also appointed as the executor of the Will.

2. Natarajan has laid O.P.No.400 of 2000 citing his brothers and sisters as respondents, for the probate of the Will of Velusamy. Of them only Sakunthala had entered caveat, consequent to which the Original Petition was converted into a testamentary Original Suit in T.O.S.No.32 of 2003. Sakunthala has filed her written statement too.

3. Meanwhile, Sakunthala, for her part, has filed C.S.No.696 of 2003 for



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

partition against her two brothers and her lone sister Kasthuri. As in the testamentary suit, even in the civil suit Kasthuri chose to remain *ex parte*, and it is being contested by defendants 1 and 2, the legatees under the Will of Velusamy.

4. Sakunthala, as stated earlier, not only contested the Will but also laid her independent suit for partition. Her pleadings are:

- a) Velusamy was running a printing presses (item No:2 and 3 in the plaint) at Triplicane, and out of the income from his business, he had purchased a residential property in Anna Nagar West (Item No:1 in the plaint)
- b) After the demise of the mother of the parties herein, Velusamy became irresponsible, took to alcohol and also developed intimacy with a certain Vijayalakshmi of Pallavaram. The said mistress of Velusamy began extracting substantial amounts from Velusamy, which eventually drained the profits of the businesses. The first and second defendants, the two sons of Velusamy (the brother of Shakuntala) who were also engaged in the said business along with Velusamy discovered the reasons for the loss and this culminated in a family meeting and



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

WEB COPY

resulted in the making of a family arrangement, dated 17.04.1995, in which the properties which Velusamy possessed were divided among all his heirs, which included his two daughters as well. The document was attested by witnesses as well.

- c) Turning to the alleged Will dated 31.01.1996, it is procured by undue influence and coercion, more specifically of the first defendant's wife. She got it registered secretly. The Will goes against the tenor of the family arrangement. The aforesaid Will is not a product of Velusamy's free will.
- d) In the meantime, the family arrangement was acted upon, and the second defendant, who was allotted the business in item 2 of the plaint schedule, discharged certain loan liabilities which he was required to discharge in terms of the family arrangement.
- e) Both under the family arrangement and dehors the family arrangement dated 17.04.1995, the plaintiff is entitled to $\frac{1}{4}$ share in the suit properties.

A suit for partition is for $\frac{1}{4}$ share of the plaintiff is accordingly laid.

5. Defendants 1 and 2 in Tr.C.S.No.696 of 2003 (legatees under the Will



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

dated 31.01.1996) in their written statement alleged:

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- a) After the demise of the mother of the parties, Velusamy's life style was along the lines of indiscipline. Indeed he was caught red-handed once. Hence, due to the compulsion of the family, coercion of the family friends, the family arrangement document came to be executed. This deed was never given any effect, since it was procured under compulsion.
- b) But after the incident that led to the execution of the family arrangement, Velusamy transformed himself and ran his businesses with considerable responsibility. Velusamy lived with the first defendant, and acted as per his will.
- c) So far as the settlement of loan by the second defendant is concerned, Velusamy opened the item 2 business which the second defendant was looking after. It ran into losses and has since been closed, and the second defendant settled all the debts.
- d) Velusamy was a free and a happy man. It is in this backdrop, he executed a Will dated 31.01.1996. The Will was duly registered which itself is an indication that Velusamy had executed it out of his free will and volition. And, it nowhere whispers about the family arrangement



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

dated 17.04.1994. Since the family arrangement was not given effect to, and since the suit properties are Velusamy's self acquisitions, he has the power to execute the Will dated 31.01.1996.

- e) The plaintiff had not disclosed all the material facts, and here the suit is not maintainable.

6. On the above pleadings, the following common issues were framed in both the suits and they are :

- (1) Whether the family arrangement dated 17.4.1995 executed by the plaintiff's father is true, valid and binding on the parties?*
- (2) Whether the Will dated 31.1.1996 is true, valid and genuine?*
- (3) Whether the testator had any right to bequeath the property after the execution of the family arrangement dated 17.04.1995?*
- (4) Whether the plaintiff is entitled to partition of 1/4th share?*
- (5) Whether the plaintiff is entitled for grant of probate as prayed for?*
- (6) To what other reliefs the parties are entitled to?*

7. During the pendency of these suits, Natarajan, the plaintiff in the



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

testamentary suit (and the first defendant in the suit for partition) passed away, and his wife and children were brought on record as plaintiffs 2 to 4 in the testamentary suit and defendants 4 to 6 in the partition suit.

8. The suits were tried jointly and evidence was recorded in T.O.S.No.32 of 2003. The 2nd plaintiff, the widow of the legatee cum executor of the Will, was examined as PW1. So far as proving the Will through the attestors are concerned, according to the plaintiff, one of the witnesses could not be traced, while the other was partly examined as PW2, but further examination was given up essentially because according to the plaintiff he was down with dementia. To compensate it, the plaintiff has examined the Sub Registrar, who registered the Will as PW3. For the defendant, she examined herself as DW1. While the plaintiff has produced Exts.P1 to P6, the defendant has produced Exts.D1 to D5.

9. The learned senior counsel appearing for the plaintiffs in the testamentary suit in TOS.No.32 of 2003 made the following submissions:

(a) Velusamy, the father of the testators, in all had executed three Wills.

The earliest of the Will is dated 30.03.1988, and the second Will is



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T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

dated 09.03.1992, the copies of which are marked as Ext.D2 & Ext.D3. In both these Wills, Velusamy had excluded his daughters Kasthuri and Sakunthala, the sole defendant in the testamentary suit. And it is in this background, Velusamy had come out with his final Will dated 03.01.1996, marked as Ext.P6 (a photocopy of which is marked as Ext.P3). Even in this Will, his daughters were excluded. It might be true that the daughters of Velusamy are his natural heirs, but their exclusion from inheriting a legacy under Ext.P6 cannot be considered as creating a cloud on the genuineness of Ext.P6 Will, since what Velusamy had done is repeat performance of what he had done earlier in 1988 and 1992, vide Ext.D2 and Ext.D3. There is also a reason for excluding his daughters in the Will, which even the plaintiff concedes. When the executor under Ext.P6 Will, laid O.P.No.400 of 2000 for probating the said Will, the first defendant Sakunthala had laid Caveat OP.No.205/2000, wherein she had contended that since she had married outside the caste, and that she was not treated well. Therefore, there is reason for Velusamy to exclude Sakunthala. When Velusamy had reasons to exclude Sakunthala even as per her



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T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

statement, then the Court cannot sit in judgment over the same.

Reliance was placed on the ratio in ***Renuka Subbu Singh Vs Kannaiyan @ Lakshmi Narayanan & Others*** [2022-2-L.W.379].

(b) Turning to proving the Will, the two attestors to Ext.P6 Will are one Dakshinamurthy and another Baskarapandian. The whereabouts of Dakshinamurthy was not known. Therefore, the plaintiff/petitioner examined Baskarapandian through commissioner. The Advocate Commissioner has filed his interim report wherein he had recorded his observation that the witness could not comprehend the questions put to him. Indeed the witness was down with alzheimer's disease. Now, when the whereabouts of one of the attesting witness is not known and that the other witness is down with alzheimer, the plaintiff was constrained to examine the Sub-Registrar who registered Ext.P6 Will as P.W.3, and he speaks to the factum of execution of the Will. When the plaintiff's ability to examine the best witness to prove the due execution of the Will, it is necessary for the Court to act on the testimony of P.W.3. Reliance was made to the dictum in ***Janaki Devi Vs R.Vasanthi and others*** [2005 (1) CTC 11].



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T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

(c) The defendant relies on Ext.D1, a document recording family arrangement dated 17.04.1995. This is a sham document and never took effect. Velusamy was in an extra marital or non-marital relationship with a certain Vijayalakshmi. Execution of Ext.D1 was considered as a strategy to ensure that Velusamy does not transfer any of his properties to her. Secondly, what is produced is an unregistered photostat copy of the document and it cannot be relied on by the Court.

(d) The defendant (plaintiff in C.S.No.696 of 2003) does not challenge the execution of Ext.P6 Will, but merely impugns it on the ground of physical infirmity, coercion and undue influence. When the defendant had chosen not to dispute the execution of the Will, but only alleges the grounds directed against free mental disposition of the testator, then the burden of proving these vitiating factors is on the defendant. The defendant however has not chosen to establish them.

10. Per contra, the learned counsel for the defendant (plaintiff in C.S.696 of 2003) argued:



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- a) It is not in dispute that a family arrangement as evidenced by Ex.D1 came to be executed, as Velusamy was leading an immoral life. However, Ex.P6 - Will came to be executed after a family arrangement document was executed, ignoring the said document. When the family arrangement had taken place, Velusamy no more had any right of interest in the properties allotted to his children for him to bequeath through the Will.
- b) Turning to the proof of Ex.P6 - Will, the plaintiff intended to examine a certain Baskara Pandian, who is one of the attestors of the said Will. The plaintiff took out an application in A. No.2003 of 2016 for appointing a Commissioner. In the affidavit filed in support of the said application, the plaintiff had alleged that the said witness was suffering from arthritis. This application was allowed and this court appointed an Advocate - Commissioner for recording the evidence of the said witness. On 28.08.2016, the Commissioner had examined Baskara Pandian. The plaintiff posed five questions to PW2 and he answered them cogently. Subsequently, the matter was adjourned for continuation of examination to 03.09.2016. While things stood thus, the plaintiffs came out with an application in A. No.4921 of 2016 to



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

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eschew the evidence of PW2 on the ground that the witness was bedridden; that he could not recollect or comprehend anything. This application came to be dismissed by this court on 28.11.2016. This court has noted that in the application (A.No:2003 of 2016) for appointing the Commissioner, the plaintiff has alleged that PW2 was suffering from arthritis but when this witness began to answer five questions post to him by the plaintiff to the discomfort of the latter, the plaintiff had come out with a case that the witness was suffering from alzheimer and dementia.

- c) The effect of the order passed in A. No.4921 of 2016 is that this court at an earlier point of time has indicated its intent not to believe the theory of the plaintiff that PW2 was suffering from alzheimer or dementia and his failure to examine PW2 further would go to indicate that the plaintiff has not chosen to prove Ext.P6 - Will in terms of Section 68 of the Indian Evidence Act, 1872. The plaintiff wants to rely on the testimony of PW3, the Sub Registrar who had registered the Will. The Sub Registrar is competent to speak only about the factum of the registration and not about the mental state of the executant. In other words, the Registering Authority cannot play the role of an attesor as



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

contemplated in Section 63 of the Indian Succession Act r/w Section 68
of the Indian Evidence Act.

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He placed reliance on the ratio in *Ramesh Verma Vs Lajesh Saxena* [(2017) 1 SCC 257], *S.R.Srinivasa and others Vs S.Padmavathamma* [(2010) 5 SCC 274]; *Janki Narayan Bhor Vs Narayan Namdeo Kadam* [(2003) 2 SCC 91]; *Babu Singh and others Vs Ram Sahai* [(2008) 14 SCC 754], *Bhagwan Kaur Vs Kartar Kaur* [(1994) 5 SCC 135], *Kalyan Singh Vs Smt.Chhoti* [(1990) 1 SCC 266], *Malliga Vs P.Kumara* [(2022) 3 MLJ 29]; *Sakunthala Narayanan Vs Malabalakrishnan* [(2019) 2 CTC 58], *Premavathi Vs Sundararajan* [2009 (3) CTC 801], *Sivasamy Vs Poomalai* [2008 (5) CTC 294], *Robert Prabhakar Vs David Ebenezer* [2006 (5) CTC 351], *Kannammal Vs Chinnaponnammal* [1997(1) CTC 222] and *Doraiswami Vs Rettinammal and others* [(1978) 91 LW 28].

Of Discussion & Decision:

11. A testamentary suit for probating Ext.P6 Will of Velusamy dated 31.01.1996 is resisted by a suit for partition in C.S.693/2003. The pleadings show that the execution of the Will propounded by the plaintiff in the testamentary suit is not disputed, but not the mental disposition of the



testator. The contesting defendant (the plaintiff in the partition suit) contends:

- a) that the testator was residing with the propounder/ the plaintiff in the suit (which he concedes in his written statement to C.S.696 of 2003), that he was unduly influenced by him, and more by his wife, now the second plaintiff in the suit (P.W.1), into executing Ext.P6 Will.
- b) That barely a few months prior to the execution of Ext.P6, there took place a family arrangement as evidenced by Ext.D1, dated 17.04.1994, wherein the daughters of the testator were given shares, but Ext.P6 ignores the daughters of Velusamy from inheriting a share in the legacy.

12. The plaintiff's response to the same is pointed:

- a) So far as the suspicious circumstances alleged to be affecting the Will is concerned, the burden is on the defendant, but she has not discharged it. And, the Will has been proved to the extent possible within the meaning of Sec.71 of the Evidence Act through P.W.3.
- b) Velusamy's daughters are denied a share in Ext.P6. But that has always been the intent of the testator even earlier. The defendant



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

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herself has produced Exts. D2 and D3 Wills executed in 1988 and 1992 respectively, wherein the daughters have been excluded, and therefore, defendant cannot complain that the testator was coerced into executing these two Wills at that distant point of time. And, what the testator had done when he executed Ext.P6 vis a vis the choice of his legatees was that which he had always done in 1988 and 1992. Therefore exclusion of daughters in 1996 when Ext.P6 was executed was not a new phenomenon.

- c) So far as Ext.D1 family arrangement is concerned, it came to be executed to meet a certain exigency to address an apprehension that Velusamy might part with his properties in favour of a woman with whom he had an affair, and that it never took effect. At any rate Ext.D1 is a mere photostat copy and it cannot be admitted in evidence as it was not registered.

The findings to the issues framed have to be now made on the basis of the stated positions of the parties.

Issues No: 1 and 3

13. Whether Ext.D1 is validly executed? It has been admitted in the



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

pleadings that it was executed. Here a distinction must be made regarding its admissibility for want of registration of the document, or its reliability because it was not a primary evidence but a photocopy. Therefore, the first part of Issue 1 has to be decided affirmatively. But turning to the second part – its binding nature on the parties are concerned, it depends on the proof of the document. If the fact that Ext.D1 is a photostat copy aside, it is seen that a division of properties takes place under the document and not a recording of an oral family arrangement which had taken place earlier. Necessarily it required to be registered and it was not done. Therefore, this Court cannot take cognizance of the contents of Ext.D1, and consequently it has to be held that this document cannot be considered as binding the parties. The second part of Issue 1 is decided against the defendants.

14. Turning to Issue 3, since it is found that Ext.D1 cannot bind the parties, it necessarily follows that Velusamy had all his rights over his properties in tact for him to bequeath the same under a Will. Issue 3 is decided in favour of the plaintiff.



Issue No:2

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15. This issue relates to the all critical question, whether Ext.P6 is genuine?

As rightly contended by the plaintiff that the execution of the Will is not denied by the defendant. Both sides relied on several authorities vis-a-vis the proof of the Will. They essentially reiterate the proposition that a Will must be proved like any other document, and hence one of the attesting witness has to be examined in terms of Sec 68 of the Evidence Act. Now, whether a Will was held to be proved is essentially a question of fact which is decided on the quality of evidence made available in each of these cases.

16. But the plaintiffs are required to be reminded that this Court is the conscience-keeper of the testator, and since the Will is posthumously tested for the genuineness of its execution by the testator, it is not a fact that will automatically fall within Sec.68 of the Evidence Act for this Court to accept its execution without a formal proof. The other question was whether an admitted Will must be proved. Here the law has been bit oscillating, but it is settled now that even if the execution of the Will is not denied, it is required to be proved by examining at least one attesting witnesses vide ratio in **Ramesh Verma Vs Lajesh Saxena**, [(2017) 1 SCC 257], and **Malliga Vs P.**



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

Kumaran, [2022 SCC OnLine Mad 1289].

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17. This now directly takes this Court to address if Ext.P6 Will was duly proved. A Will being a document that requires to be attested in law, at least one attesting witness needs to be examined. Of the two attesting witnesses to the Will, according to the plaintiff, the whereabouts of one is not known and this fact was not found to be seriously contested. The second witness was a certain Bhaskarapandian. He was examined as P.W.2, but his examination was aborted even midway through his chief examination. This will be addressed in detail later in this judgement. To substitute it, the plaintiff had examined P.W3, the Sub-Registrar who registered the Will. And, the plaintiff seeks acceptability to his evidence under Sec.71 of the Evidence Act.

18. Before dealing with the permissibility of invoking Sec.71 of the Evidence Act, it is necessary to know how P.W.2 had performed. The plaintiff had taken out an application in A. No.2003 of 2016 for appointing a Commissioner for examination of P.W.2 on the ground that he is immobile due to arthritis. On 20.08.2016, P.W.2 was examined by the Commissioner. And he had barely recorded five questions in chief examination. They read



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

as below:

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1) *What is your age?*

Answer : 75 years.

2) *Do you know Velusamy Nadar?*

Answer : Yes, I know.

3) *Have you gone to Sub-Registrar Office along with Mr.Velusamy Nadar?*

Answer : Yes.

4) *Why you had gone to Sub-Registrar Office?*

Answer : To put signature.

5) *What was the document sought to be registered?*

Answer : That does not relate to this case but for some other purpose.

6) *The photo copy of the Will dated 31.1.96 was shown to the witness by the counsel for the plaintiff (objected by defence counsel) to identify the signature of the witness?*

Answer : Since the original Will was not available, the present question is being withdrawn by the counsel for the plaintiff for time being.

Now, the examination of the witness was stopped because original Will (Ext.P6) was not there, but only its copy (Ext.P3) was with the Commissioner. But very strangely, the Commissioner had filed his interim report wherein he has recorded that P.W.2 could not comprehend any questions. If that is so, then he should have asked few preliminary questions and recorded what he had observed. To back it, the plaintiffs have filed A.No.4921 of 2016 for eschewing their own witness P.W.2, perhaps the only



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

attesting witness available to prove the genuineness of Ext.P6 Will. And in the affidavit that was filed in support of the same, it is averred that the witness is suffering from alzheimer's and dementia. The quality of answers given by P.W.2 to the questions posed to him prima facie does not indicate that he could not understand the questions, nor do they, prima facie indicate that he was suffering from any of the illness which the plaintiffs claim later.

19. P.W.2 admittedly is the best witness, and if his evidence must be eschewed for accommodating any evidence under Sec.71 of the Evidence Act, then it must be established that he is suffering from alzheimer's and dementia through medical evidence. There must be some independent material before the Court to come to the conclusion. But to the discomfort of the plaintiffs, A.No.4921 of 2016 was dismissed by this Court. This implies that this Court cannot ignore whatever evidence that P.W.2 had tended before the Commissioner.

20. The next point is can the Court act on the testimony of P.W.3 under Section 71 of the Evidence Act. It reads:

Sec.71. Proof when attesting witness denies the execution – If the attesting witness denies or does not recollect the execution of the



document, its execution may be proved by other evidence.

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Relying on ***Janki Narayan Bhoir Vs Narayan Namdeo Kadam*** [(2003) 2 SCC 91] *and* in ***M.B. Ramesh Vs. K.M. Veeraje*** [2013 (7) SCC 490] that Sec.71 of the Evidence Act is an enabling provision to prove the Will where it could not be proved otherwise. It does not relieve the propounder of the Will to prove it as mandated under Sec.68 of the Evidence Act. In other words, Sec. 71 is residuary provision to enable proof of a document which the law requires to be attested but could not be proved either in terms of Sec.68 or 69 of the Evidence Act. And, the precondition for invoking Sec.71 is that either the attesting witness denying the execution, or forgetting the factum of execution of the document.

21. Contextually, unless it is established that P.W.2 either denied the execution or proved to have forgotten about the execution of Ext.P6, the Court cannot and need not look for substitution through other means of proving it.

22. The testimony of P.W.2 again comes under the focus. He neither had denied the execution of Ext.P6 nor it had established that he had forgotten it. Indeed, even before that stage arrived the plaintiff had made a hasty retreat



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

and stopped examining P.W.2. In fitness of things, the plaintiff should have shown Ext.P6 to P.W.2, and waited till the latter makes a statement on it.

Even if he had denied execution or attestation, the plaintiffs could have declared him hostile and cross examined him. And, at least after the dismissal of A.No.4921 of 2016, the plaintiffs could have sought the leave of the Court to continue the examination of P.W.2. That too was not done. The plaintiff needs to realise that Sec.71 of the Evidence Act is not a panacea for a party to escape the burden of proving the due execution of the document in terms of Sec.68. This Court therefore, cannot consider the evidence of P.W.3 since the plaintiff has not established any one of the twin condition necessary for invoking it.

23. This apart, a Sub Registrar is competent to speak about the factum of registration but not about the genuineness of the Will. Proof genuineness of the Will has two components: (a) Proof of the factum of execution of the Will, and (b) proof on the mental disposition of the Will. As held in ***Bhagwan Kaur Vs Kartar Kaur*** [(1994) 5 SCC 135], an endorsement in the Will contemporaneously made by the Sub Registrar at the time of registering a Will is not a substitute for proof of a Will by examining at least one of the



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

attesting witness. In the present case, P.W.2 is available, and inasmuch as his physical incompetency to speak about the execution of the Will is not established, it is he who should be examined, and P.W.3 can never be a substitute for him. At any rate, he may not be able to speak to the mental disposition of the testator.

24. This Court, with least hesitation holds that Ext.P6 Will is not proved. Turning to the alleged suspicious circumstance, failure to prove them by the defendant loses its sheen, essentially due to the failure of the plaintiff to prove the due execution of the Will.

Issue Nos.4 to 6 :

25. So far as Issue No.5 is concerned, in view of the finding that Ext.P6 Will is not proved, the testamentary suit in TOS.No.32 of 2003 is liable to be dismissed. And, so far as Issue No.4 is concerned, when once the Will has failed, necessarily, the plaintiff can sustain a suit for partition. There are three properties described in the schedule to the plaint. In the written statements filed by defendants 1 and 2, the II item of property is stated to have been closed, and it is admitted on both sides that it is the second defendant who



T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

was managing this property. Neither the second defendant entered the box nor P.W.1 produced any documents to establish that the business described as II item business was closed. Since the existence of this business goes as an admitted fact, and since the contra is not established, this Court is constrained to hold that the business in the II item of property is available for partition. This now follows that the plaintiff would be entitled to 1/4th share in all the items of suit properties.

26. In conclusion, TOS.No.32 of 2003 is dismissed, and C.S.No.696 of 2003 is decreed. The plaintiff's 1/4th share in all the items of suit properties is hereby declared. No costs. Consequently, connected miscellaneous petitions if any, shall stand closed.

.11.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
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T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

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APPENDIX

I. Witnesses :

Plaintiff :	
PW1	Mahalakshmi
PW2	Bhaskarapandian (through Commissioner)
PW3	Senthil Nathan
Defendant :	
DW1	N.Sakunthala
DW2	T.Ramachandran
DW3	B.Nakarajan

II. Exhibits :

Plaintiffs :		
Ex.P1	04012000	Original Death Certificate of R.Velusamy Nadar
Ex.P2	06012000	Original Legal Heirship Certificate
Ex.P3	31/01/1996	Photocopy of Will of R.Velusamy
Ex.P4	05022000	Affidavit of Mr.Baskara Pandian in OP.No.400/2000
Ex.P5	05022000	Consent Affidavit of Mr.R.V.Ravirajan in OP.No.400/2000
Ex.P6	31/01/1996	True copy of Original Will of R.Velusamy

Defendant :		
Ex.D1	04171995	Family Arrangement signed by Velusamy and family members
Ex.D2	03301988	True Copy of first Will of Velusamy
Ex.D3	09/03/1992	True Copy of second Will of Velusamy
Ex.D4	01232004	Original order copy in Appln.No.4647 of 2003
Ex.D5	09092016	Interim report of the Advocate Commissioner

30.11.2023



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T.O.S.No.32 of 2003 & Tr.C.S.No.696 of 2003

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
T.O.S.No.32 of 2003 & C.S.No.696 of 2003

30.11.2023