



S.A.No.628 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

S.A.No.628 of 2011

1.Ramasamy (Deceased)

2.Kamatchi

3.Lakshmi

4.Muthulakshmi

...Appellants

[A2 to A4 brought on record as LR's of the deceased sole appellant
vide Court order dated 16.12.2016 made in M.P.Nos.1 to 3 of 2015]

Vs.

1.Meenkashi

2.D.A.Marudhapillai (died)

3.Natesan

4.Jayamani

[R4, recorded as legal heir of the deceased R5 (the minor respondent)
vide court order dated 22.08.2017]

5.Minor Sekar (deceased)

6.Minor Senthilkumar

7.Prakash

...Respondents

[R7 brought on record as LR of the deceased R2 vide order dated 10.03.2023
made in C.M.P.Nos.21732, 21734 & 21735 of 2022]

PRAYER: Second Appeal filed under Section 100 of the Code of Civil



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Procedure, against the judgment and decree dated 21.07.2009 made in A.S.No.44 of 2006 on the file of the Subordinate Court, Namakkal District confirming the judgment and decree dated 26.10.2005 made in O.S.No.419 of 1999 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.V.Perumal
for M/s.T.Dhanyakumar

For R1 & R2 : Mr.N.Umapathi

For R3, R4 to R6 : No appearance

J U D G M E N T

The deceased 1st appellant is the 1st defendant. The appellants 2 to 4 are the legal heirs of the sole appellant. The respondents 1 and 2 are the plaintiffs 2 and 3 before the Trial Court. Respondents 3 to 6 are the defendants 3 to 6 before the Trial Court. Respondent 7 is the legal heir of the deceased 2nd respondent. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

2. The plaint in brief:-

The plaintiffs 1 and 2 are the sisters, and both of them have married the third plaintiff. The defendants 1 to 3 are the brothers of the plaintiffs 1 and 2. According to the plaintiffs 1 and 2, the suit property originally



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belonged to their father viz., Periyanna Gounder, and he has executed a registered Will on 02.01.1990 in favour of the plaintiff. The plaintiff further submits that after the demise of Periyanna Gounder during 1992, the property devolved upon the plaintiffs by virtue of Will dated 02.01.1990. Hence, they are the absolute owners of the suit property. It is the further submission of the plaintiffs that, after the demise of Periyanna Gounder, the possession of the property was forcefully taken by the defendants. When the plaintiffs requested the defendants to handover the possession, they have refused to handover the same. Therefore, the plaintiffs have come forward with the Suit for the relief of declaration and for recovery of possession.

3. *Written statement in brief:-*

The defendants disputes the very execution of the Will. However, the defendants admits that the suit property originally belonged to Periyanna Gounder. According to these defendants, the alleged Will dated 02.01.1990 is a fabricated one and that the thumb impression found in the said Will is not that of the testator Periyanna Gounder. The defendants also submits that, the testator was not hale and healthy and he was bed ridden. Taking advantage of the bad health conditions of the said Periyanna Gounder, the plaintiffs



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have created a Will. Therefore, these defendants submit that the plaintiffs cannot have any relief for declaration. Apart from that, these defendants further submit that, the said Periyanna Gounder had executed a Will in their favour vide Will dated 15.10.1988 and prayed to dismiss the Suit.

4. Evidence, Documents & findings of the both the Court below:-

a) Before the Trial Court, on behalf of the plaintiffs, 3 witnesses were examined as P.W-1 to P.W-3. On behalf of the defendants, 3 witnesses were examined as D.W-1 to D.W-3. The plaintiffs marked 4 documents as Ex.A1 to Ex.A4, and on behalf of the defendants, 1 document was marked as Ex.B1. As a Court document, the report of the fingerprint expert was marked as Ex.C1.

b) The Trial Court, after hearing either side and after considering the documents and material on records, found that the Will executed in favour of the plaintiffs is found to be true and ultimately granted relief of declaration and possession. Aggrieved with the said findings, when the defendants preferred an appeal in A.S.No.44 of 2006, the First Appellate Court concurred with the findings of the Trial Court and ultimately dismissed the



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appeal. Aggrieved with the said findings, the defendants are before this Court.

5. Substantial question of law:-

At the time of admission, the following substantial questions of law were framed:-

a) Whether the findings of the Courts below are vitiated in holding that Ex.A1-Will is proved in accordance with law?

b) Whether the oral evidence of P.W-2, one of the attestors is sufficient to prove E.A1-Will without examining the other attestor and the persons connected with the execution of Ex.A1 Will?

6. Submissions of either side counsels:-

The learned counsel for the defendants / appellants would vehemently submit that their reliance of Ex.C1 viz., the report of the fingerprint expert cannot be equated as a proof in accordance with Section 63 of the Indian Succession Act, and Section 68 of the Indian Evidence Act. The learned counsel for the appellants would also further submits that, the evidence of the attestor would exemplify the fabrication over the Ex.A1-Will. It is the further



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submission of the Appellant that, non-examination of the other attestors would vitiate the findings that were recorded by the Court below. The learned counsel would invite the attention of various suspicious circumstances in Ex.A1-Will and would further contend that the propounder of the Will has not dispelled all those suspicious circumstances. Hence, he would submit that the very Ex.A1-Will is a fabricated one. Thus, prayed to allow the Second Appeal.

7. Per contra, the learned counsel for the plaintiffs would vehemently submits that the Will has been proved in the manner known to law and in due compliance with Section 63 of the Indian Succession Act, and Section 68 of the Indian Evidence Act. It is also the submission of the learned counsel for the petitioner that, all those suspicions circumstances have been dispelled by them and even the disinheritance has also been explained in the Ex.A1-Will. Therefore, the learned counsel for the petitioner would contend that there are no suspicious circumstances and that they have proved the Will to the hilt. Hence prayed to dismiss the appeal.

8. The learned counsel for the plaintiffs also relied on the following



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judgments in support of this case:-

- (i) ***Dhanpat -vs- Sheo Ram***, [(2020) 16 SCC 209];
- (ii) ***Ramabai Padmakar Patil & Others -vs- Rukminibai Vishnu Vekhande & others***, [(2003) 8 SCC 537];
- (iii) ***Sumitra Devi Kochhar -vs- State***, AIR 1999 Del 226;
- (iv) ***Gurudev Kaur & others -vs- Kaki & others***, [(2007) 1 SCC 546];
- (v) ***Devayammal -vs- Poosappan & Others***, [(2020) 1 LW 298];
- (vi) ***Dhanalakshmi -vs- Karuppasamy & Others***, [(2019) 3 LW 115]
- (vii) ***T.Sudaresa Pai & others -vs- Sumangala T.Pai & another***,
AIR 2002 SC 317;
- (viii) ***Pentakota Sathyanarayana & Others -vs- Pentakota Seetharatnam & Others***, [(2005) 8 SCC 67];
- (ix) ***K. Andi Reddiar -vs- Ovu Ammal***, [(2000) 2 CTC 184];
- (x) ***Daulat Ram and others -vs- Sodha & others***, 2005(1) SCC P40;
- (xi) ***Ganesan -vs- Kalanjiam & Others***, Supreme Court; and
- (xii) ***Rukmani -vs- Rengammal & Others*** in S.A.No.132 of 2021 dated
09.03.2022.

9. Analysis of the submissions:-

This Court has carefully gone through the judgments of the First



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Appellate Court as well as the Trial Court. Both the First Appellate Court and the Trial Court have relied upon the evidence of P.W-2 viz., the attesor. One of the main factor to accept the Ex.A1-Will, and very much relied by the Trial Court is the report of the fingerprint expert, Ex.C1. It is the submission of the defendants that Ex.A1-Will is the resultant product of the fabrication and forgery. However, the said factum was disproved by the plaintiffs by voluntarily sending the Will before the fingerprint expert. The fingerprint expert has given a finding in Ex.C1 that the thumb impression found in the Will is that of the Testator, Periyanna Gounder. Therefore, the very contention put forth by the defendants that the Will was forged one is evidently falsified.

10. Apart from examination of the P.W-2 attesor, the plaintiffs have complied with the conditions stipulated under Section 63 of the Indian Succession Act, and 68 of the Indian Evidence Act. It is true that in Ex.A1-Will, there is a disinheritance of the defendant viz., the son of the Testator. However, the said disinheritance was explained in the said Will itself and the testator has stated that since the defendants have been allotted some other property no share was given in the Suit property.



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11. In order to understand various suspicious circumstances and also some legal aspects in respect of proof of Will, though the respondents / plaintiffs have relied various judgments, the judgment of a three-Judge Bench of the Hon'ble Supreme Court in the case of ***Shivakumar and others Vs. Sharanabasappa and others*** reported in [(2021) 11 SCC 277] would answer all those positions dealt in the judgment relied by the plaintiffs. Therefore, this Court inspite of discussing all those judgments deem it appropriate to refer to the relevant portion of the above judgment. The same is extracted hereunder:-

“12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:

12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the



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Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

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



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will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

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

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



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legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the



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execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will.”

12. In view of the above judgment of the Hon'ble Supreme Court of India, the suspicion, which has been put forth by the defendants against the Ex.A1-Will do not appear to be suspicious circumstances for ordinary prudent man. It is also relevant to mention that the defendants has also set up another Will dated 15.10.1988 under Ex.B1. But the said Will is an unregistered and has been disbelieved by both the Court below on the ground that the said Ex.B1-Will has been prepared by the scribe P.W-3 on the instruction of the 1st defendant. Therefore, this Court is of the view that the findings of facts recorded by both the Court below that the Ex.A1-Will is true and valid is well merited. Further to prove the Will, atleast one attesor has to be examined. Hence, as per the statutory requirement one attesor was examined and his evidence was believed by both the Court below. Therefore, both the substantial questions of law are answered in favour of the respondents. Further, there are no grounds available to deviate from the findings of both the Court below.



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13. In the result, the Second Appeal stands dismissed. No costs.

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Index :Yes/No

Speaking order/Non Speaking order

Neutral Citation :Yes/No

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