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T.O.S.No.23 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2023

PRONOUNCED ON : 25.08.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

T.O.S.No.23 of 2017

1.R.Saroja Ammal (Deceased)

2.R.Kalavathi

3.D.V.Malarvizhi

4.R.Senthilnathan

... Plaintiffs / Petitioners

(Plaintiffs 2 to 4 are impleaded as legal
representatives of Late R.Saroja
Ammal, vide order dated 16.08.2018
in A.No.6140/2018)

Vs.

R.Karunakaran

... Defendant/Respondent

PRAYER: Testamentary Original Suit has been filed under Sections 232 and 276 of the Indian Succession Act-1925 and Order XXV Rule 5 of the Original Side Rules-1956 for the grant of Letters of Administration of Will of Late N.Ratnasabapathy Mudaliar, who is the husband of the first plaintiff. As per order of this Court dated 05.07.2017 in O.P.No.802 of 2010, the Original Petition has been converted into Testamentary Original Suit No.23 of 2017.

For Plaintiffs : Mr.S.Udayakumar for M/s.S.Nambirajan

For Defendant : M/s.M.Arvind Subramanian
Senior Counsel
for M/s.S.Bhavani



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T.O.S.No.23 of 2020

JUDGMENT

This Testamentary Original Suit has been filed seeking for the grant of Letters of Administration of the Will of Late N.Ratnasabapathy Mudaliar, who is the husband of the 1st petitioner.

2.The brief averments of the plaint are as follows:

The 1st plaintiff is the wife of one late Rathinasabapathy Mudaliar who is the testator of the suit Will dated 07.03.1996. The suit property has been allotted to late Rathinasabapathy Mudaliar by virtue of a partition deed dated 01.11.1968. The parents of the Rathinasabapathy Mudaliar predeceased him. During his life time, Rathinasabapathy Mudaliar executed a Will dated 07.03.1996 by bequeathing the suit property in favour of the first plaintiff, who is his wife. Rathinasabapathy Mudaliar died on 01.06.1999 and hence the Will came into effect. After the death of the Testator, the first plaintiff had filed this Original Petition in OP.No.802 of 2010 for the grant of Letters of Administration. The Original Petition filed by the 1st plaintiff in O.P.No.802 of 2010 was allowed on 12.03.2013 and the Letters of Administration was granted. However, the defendant had filed an Interlocutory Application to revoke the Letters of Administration in



O.A.No.5289/2013 and that was allowed. After revocation due to the caveat filed by the defendant, the Original Petition got converted into TOS.No.23 of 2017. During the pendency of the proceedings the 1st plaintiff died and hence, plaintiffs 2 to 4 have been added as legal heirs of the deceased 1st plaintiff.

3. The written statement of the defendant in brief are as follows:

The defendant is the elder son of late Rathinasabapathy Mudaliar and the plaintiffs 2 to 4 are the brother and sisters of the defendant. The suit property was allotted to the share of Rathinasabapathy Mudaliar by virtue of a partition deed between himself and his father; the said properties are joint family properties and hence the defendant has a share in the joint family properties. In fact Rathinasabapathy Mudaliar wanted to bequeath the said property absolutely in favour of the defendant; but due to undue influence of his late mother the property was bequeathed in her favour. Initially, the first defendant has filed a suit in OS.No. 3775 of 2006 before the learned XII City Civil Judge, Chennai for the relief of partition of 1/5th share and in which a preliminary decree was also passed on 31.03.2009; subsequently the final decree application was filed in IA.No.9468/2013. Before the final decree was passed the first plaintiff executed a settlement deed dated



09.09.2009 in favour of her other children by excluding the defendant and hence the execution of the settlement deed should be declared as null and void.

3.1 The deceased 1st plaintiff had filed the Original Petition in O.P.No.802/2010 by suppressing the preliminary decree and the settlement deed. Without proper notice to the defendant the Letters of Administration was granted on 12.03.2013. Later an application was filed by the defendant to revoke the grant of Letters of Administration and the same was allowed on 05.07.2017. The plaintiff challenged the above order in OSA.No.80/2018 and that has also been dismissed. Since Saroja Ammal had waived her right under the Will and filed a suit for partition in OS.No.3775/2006, she cannot now seek the Letters of Administration in respect of the Will.

3.2. Further the properties are ancestral properties which belonged to Natesa Mudaliyar who is the grandfather of the defendant. Being fully aware that all the sons of the late Rathinasabapathy Mudaliar have got equal rights over the ancestral property, the 1st plaintiff has filed a suit for partition. Hence, the suit should be dismissed.

4. On the basis of the above pleadings, on 07.02.2019 this Court had



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framed the following issues for trial:-

“(i) Whether the Will executed by Late N.Rathnasabapathy Mudaliar dated 07.03.1996 and registered as Document No.30 of 1996 before the Sub Registrar Office, Saidapet is true, valid and genuine ?

(ii) Whether the attesting witness, namely L.Gnanasundari was a major at the time of attestation of the Will by her and whether her signature is genuine?

(iii) Whether the suit is barred by limitation?”

5. During the course of the trial on the side of the plaintiffs two witnesses were examined as PW.1 & PW.2 and Ex.P1 to Ex.P3 were marked. On the side of the defendant DW.1 has been examined and Ex.D1 to Ex.D6 were marked.

6. Heard the submissions made by both sides learned counsels and perused the materials available on record.

7. It is submitted by the learned counsel for the plaintiffs that despite all the legal heirs of Rathinasabapathy Mudaliar did not raise any objection in respect of the Will executed by the father in favour of their mother, who is the 1st plaintiff herein, it is only the defendant who is objecting; the Will has been duly proved by examining the attesor of the Will. The attesor has clearly deposed that she stood as one of the attesting witnesses of



Ex.P1-Will. The cross examination of the attesting witness did not bring anything suspicious. Once the propounder establishes that the Will was signed by the testator when he was in a sound and disposing state of mind in the presence of two witnesses that is sufficient under the Indian Evidence Act to prove the genuineness of the Will. The defendant cannot expect the Testamentary Court to decide on the title. The Testamentary Court can decide only if the Will is genuine or not and whether it has been proved in a manner known to law. Disinheritance of any of the legal heirs cannot be the reason to suspect the genuineness of the Will.

7.1. The delay in filing the Original Petition seeking for Letters of Administration after the death of the testator cannot be the sole reason to doubt about the genuineness of the Will, if sufficient reasons are stated to prove the genuineness of the Will. Hence in all probabilities the 1st petitioner has proved the Will and hence, the suit should be allowed.

7.2. In support of the above contention made by the plaintiffs, the learned counsel relied the following judgments:

Sl. No	Citations submitted by the learned counsel for plaintiffs	Reported in
1	Surendra Pal and others Vs. Dr.(MRS) Saraswathi Arora and another	(1974) 2 Supreme Court Cases 600
2	Pasupati Nath Das (dead) Vs. Chanchal Kumar Das (dead) by Legal representative and others	(2018) 18 Supreme Court Cases 547



Sl. No	Citations submitted by the learned counsel for plaintiffs	Reported in
3	Thangam @ Chellammal and another Vs. Sivakami and others	2016(4) CTC 702
4	G.Lakshmiand Ors Vs. U.Saraswathi	MANU/TN/2253/2023

8. The learned counsel for the defendant submitted that the Will is a fabricated one and even in the order of revocation of the Letters of Administration it is observed that there are reasons to revoke the Letters of Administration already granted. The Original Petition was filed by the 1st petitioner who is the mother of the defendant by suppressing the earlier partition suit filed by her in OS.No.3775 of 2006. The 1st petitioner has taken dual stand in the partition suit and in the petition filed to probate the Will. Despite the testator died in the year 1999 the Original Petition has been filed in the year 2010. The delay itself would show the reason for doubting the genuineness of the Will.

8.1. PW.2's evidence is unreliable. The 2nd petitioner was examined as PW.1 and he has suppressed the earlier suit in OS.No.3775/2006, in which the preliminary decree for partition was passed. The petitioners have failed to prove that the testator who is the father of the defendant was in a sound and disposing state of mind at the time of execution of the Will. Since 1996 the testator was bedridden and it is not possible for him to have the Will



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written in the year 1996. The attester is not a close relative or a known person to the testator but he is an unknown person. The cross examination of PW.2 who is the attesting witness would show that she did not know anything about the preparation of the Will. The totality of her cross examination would show that her evidence is unreliable. There is typographical difference in the Will between the top and the bottom portion and that is admitted by PW.2 herself in her evidence. There is no reason to exclude the defendant from inheriting all the properties from his father and his father always wanted to bequeath the majority share of the property in his favour. The plaintiffs have not proved the Will in accordance with law. And the Will is surrounded by suspicious circumstances and hence the suit is liable to be dismissed.

8.2. In support of the arguments put forth by the defendant he cited the following decisions:

Sl. No	Citations submitted by the defendant's counsel	Reported in
1	Senthilkumar Vs.nallammal and Ors	MANU/TN/0413/2023
2	Jaswant Kaur Vs, Amrit Kaur and Ors	AIR1977SC74

Discussion



9. The relationship between the parties was not in dispute. The 1st petitioner is the wife of the testator who had acquired the property involved in the Will by virtue of a family partition dated 01.11.1968. The suit Will dated 07.03.1996 is said to have been executed by the testator by bequeathing the above property in favour of his wife who is the 1st plaintiff herein. The contention of the defendant is that the suit property which was acquired by his father is a joint and ancestral property and in which the testator cannot have any exclusive right to execute a Will in favour of the first plaintiff and to give the same entirely in favour of the 1st petitioner.

10. It is further submitted that the first plaintiff herself has filed an Original Suit in OS.No.3775/2006 for seeking partition of the very same property and obtained a preliminary decree for partition. The judgment passed in OS.No.3775/2006 is marked as Ex.D1. In Ex.D1 it is seen that the 1st plaintiff who is the mother of the defendant had impleaded all her children as defendants and sought 1/5th share in the suit property and the same was decreed and the preliminary decree was passed. Even though the final decree petition was filed later the same was withdrawn by the 1st plaintiff.

11. The property involved in the testamentary suit as well as above



partition suit is one and the same. Even in the partition suit the said fact was not denied by the plaintiffs. But the contention of the first plaintiff is that the Original Will was lost and hence the 1st plaintiff had filed a suit for partition. After the preliminary decree was passed, the Original Will was traced out. Thereafter, she withdrew her application filed for final decree and continued this proceedings. Even though the Original Petition has been taken on file in the year 2010, the Original Petition as it appears from the seal affixed seems to have been first presented in the year 2007. Even during that time the petitioner had presented the Original Will. It seems the said Petition had been returned and not represented for long and it caused further delay. But those things can only be attributable to the counsel for the first plaintiff.

12. The suit Will was of the year 07.03.1996. The testator Rathinasabapathy, who is the executant of the Will died on 01.06.1999. However, it took 8 years for the 1st plaintiff to file a petition seeking Letters of Administration. Further, when the Testamentary Original Suit was pending, the partition suit was also pending. The first plaintiff continued to conduct the partition suit and allowed the Court to determine the entitlement of her share in the suit property and obtained a preliminary decree for



partition. However, she did not choose to go for final decree proceedings.

Further, the first plaintiff has stated that she did not have the legal knowledge, as she is only a home maker. The said fact should also be considered while condoning the delay in taking out this Petition and for conducting the partition suit even after presenting this petition. Obviously, she could have acted only in accordance with the advice given by her counsels. If the Will could be proved otherwise genuine, the delay can not be the only factor which should weigh against the first plaintiff.

13. In this regard the attention of this Court was drawn to the decision of the Madras High Court held in *G.Lakshmi and another Vs. Saraswarthy* reported in **2023 (3) CTC 30**, wherein it is held that if the Original Petition seeking Letters of Administration has been filed for the first time after a lapse of 3 years from the date of the death of the deceased, it is sufficient to explain the reasons for the delay alone. The delay cannot be the sole reason to disallow the Original Petition, though it could create suspicion. It is worthwhile to extract the relevant portion of the judgment for a better understanding:

“59. However, the practice of this Court is governed by a separate set of rules styled as the Original Side Rules. Order 25 of the Original Side



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Rules relates to testamentary proceedings. Rule 9 of the Order 25 runs thus:

In any case where probate or letters of administration is for first time applied for after the lapse of three years from the death of the deceased, the reason for the delay shall be explained in the petition.

60. The departure from general law has been discussed in great detail by a Division Bench of this Court in S.Vatsala Vs. K.S.Mohan and Ors, reported in 2016 1 CTC 257, held that the difference between testamentary proceedings conducted before a chartered High court governed by Original Side Rules and in other Courts which are not governed by any special set of rules like the Original Side Rules has been discussed thread bare. The Division Bench finally found that Or.25 of the Original Side Rules would prevail over Art.137 of the Limitation Act and it was sufficient if the delay was properly explained. In the instant case, as already discussed the appellants have clearly mentioned that non availability of the original Will was the reason for delay in filing the application seeking Letters of Administration. This pleading has gone uncontroverted in cross examination. This Court, therefore, does not find any good cause or justifiable reason to hold that the petition is belated. One further circumstance that would also go against the respondent is that if really the Will had been fabricated as contended by respondent, the appellants would not have slept over the matter and would have hurried to obtain orders in their favour. Therefore, on any count whatsoever, this Court is unable to find that the delay occasioned in approaching the Court, seeking Letters of Administration cannot be held to be either a suspicious circumstances or for that matter a circumstance to invalidate Ex.P1-Will. ”

14. The Will is a registered one. However, the categorical contention



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of the defendant is that the father was not in a sound and disposing state of mind at the time of execution of the Will. The executant of the Will died on 01.06.1999 shortly after three years from the date of the execution of the Will. Having decided to work out the remedy in respect of the title of the 1st plaintiff in the suit property, by way of filing partition suit, in the year 2006, once again the 1st plaintiff had filed the Original Petition seeking Letter of Administration also. The 1st plaintiff did not state anything about the Will in the partition suit filed by her. Even at that point of time it is alleged that the defendant was exhibiting hostile attitude and that had prompted the 1st plaintiff to file the suit. So it is claimed by the defendant that his mother had chosen to waive her right in the Will and hence the Letters of Administration cannot be granted in favour of the plaintiffs.

15. The second plaintiff who was examined as PW1 had also participated in the partition suit proceedings in O.S.No.3775/2006. However, in her evidence she denied her knowledge about the partition suit. PW.1 has further stated in her evidence that at the time of the execution of the Will his father was in a sound and disposing state of mind, though he needed assistance for mobilization.

16. It was suggested by the defendant that at the time of execution of



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the Will the father was suffering from spinal-cord issues. PW.1 has also stated that the father was not well and he was not able to move on his own.

The plaintiffs have established that the signature in the Will was affixed by the testator and he was present at the registration office for the purpose of registering the Will and the attesting witnesses have also given their evidence by identifying the signature of the testator and about the fact that the attesting witnesses have attested the Will. Hence, now it is for the defendant to prove that the testator was not in a sound and disposing state of mind at the time of execution of the Will.

17. The defendant did not deny the signature of his father affixed in the Will. His only contention is that the father was not in a sound and disposing state of mind at the time of execution of the Will. No medical records have been produced to substantiate the fact that the father of the defendant was not well or that he suffered from serious health conditions that would stop him from making any sound decision as to the execution of the Will and thereby bequeathing the property in favour of the first plaintiff or that he was under the undue influence of the first plaintiff.

18. In this regard it is relevant to refer to the judgment of the Supreme



Court held in ***Surendra Pal and others Vs. Dr.(Mrs) Saraswathi Arora and another*** reported in (1974) 2 Supreme Court Cases 600, wherein the

Hon'ble Supreme Court has held as under:

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 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 quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain. See H. Venkatachala Iyengar v. B. N. Thimmajamma & Ors;(1) and Rani Purnima Devi and Anr v. Kumar Khagendra Narayan Dep & Another. In the latter case this Court, after referring to the principles stated in the former case emphasised that where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same. It has been further pointed out that the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in*



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the will which may be unnatural or unfair or improbable when considered in the light of the relevant circumstances. If the caveator does not discharge the burden which rests upon him in establishing the circumstances which show that the Will had been obtained by fraud or undue influence, a probate of the Will must necessarily be granted if it is established that the testator had fulfilled the testamentary capacity and had in fact executed it validly with a free will and mind. The observations of the Privy Council in Motibai Hormusjee Kanga V.Jamsetjee Hormusjee Kanga" support the above proposition. (1) [1959] Supp. 1 S.C.R. 426. Mr. Ammer Ali observed at p. 33

"It is quite clear that the onus of establishing capacity lay on the petitioner. It is also clear that if the caveator impugned the will on the ground that it was obtained by the exercise of undue influences, excessive persuasion or moral coercion, it lay upon him to establish that case."

In the light of what has been stated if the various requirements of a valid will are established, then as observed by the Privy Council in Motibai Hormusjee Kanga's came at p. 33

'A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition.' "

19. The next contention of the defendant is that the attesting witnesses L.Gnana Soundari (PW.2) and Jamuna Purushothaman were the staff of Advocate Mr.Chander Rao and hence the Will is shrouded with doubts. The attesting witnesses are not disqualified to act as witnesses in view of their age or understanding. They are just said to be the staff of an advocate office. Nothing in law prohibits the staff of an advocate office from standing as witnesses to any documents. Many times, they might happen to be the immediately available choices to attest a document in the absence of any other witnesses brought by the parties. As they could be aware of the



content of the document they could have chosen to stand as witnesses. The role played by the staff of an Advocate's office as attestors to any document *per se* is not questionable, unless any objectionable handwork on their part is established.

20. The defendant did not bring out anything contrary to the essential facts proved by the plaintiff in connection with the execution of the Will and its genuineness. Neither could he prove that his father was not in a sound disposing state of mind at the time when the Will was executed. With the evidence on record the plaintiffs could successfully prove that the Will has been executed in terms of Sec.63(c) and its genuineness has also been proved in terms of Sec.69 of the Evidence Act. Since the plaintiffs have proved the genuineness of the Will, the preliminary decree for partition passed in the partition suit cannot be considered as a bar for granting the Letters of Administration. Hence **issues 1 to 3 are answered in favour of the plaintiffs.**

In the result,

- (i) The suit in TOS.No.23 of 2017 is **allowed and decreed** the Letters of Administration, having effect throughout Tamil Nadu, shall be issued in favour of the plaintiffs 2 to 4 in respect of the



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Will dated 07.03.1996 executed by late Rathinasabapathi
Mudaliar.

- (ii) The plaintiffs 2 to 4 are directed to duly administer the estate of the deceased as mentioned in the suit schedule.
- (iii) The plaintiffs 2 to 4 shall execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of the Assistant Registrar (O.S-II), High Court, Madras.
- (iv) The plaintiffs 2 to 4 are further directed to render true and correct accounts once in a year.
- (v) No costs.

25.08.2023

Index : Yes/No
Speaking Order : Yes / No
Internet: Yes/No
jrs

**APPENDIX****List of witnesses examined on the side of plaintiffs-**

- 1.R.Kalavathi - PW1
- 2.L.Gnana Soundari - PW2

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

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	P1	Original registered Will dated 07.03.1996 (Doc.No.3/1996 at SRO T.Nagar) of N.Rathnasabapathy Mudaliar)
2	P2	Certified copy of the order dated 11.02.2015 passed in I.A.No.9468/2013 in O.S.No.3775/2006 on the file of the learned XII Assistant Judge, City Civil Court, Chennai.

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

R.Karunakaran - DW1

List of exhibits adduced on the side of the Defendant:-

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	D1	Certified copy of Preliminary Decree passed in the Partition Suit in O.S.No.3775/2006 dated 31.03.2009.
2	D2	Certified copy of Settlement Deed bearing Doc.No.1692/2009 dated 10.09.2009.
3	D3	Certified copy of Settlement Deed bearing Doc.No.1693/2009 dated 10.09.2009.



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S.No.	Exhibits	Description of documents
4	D4	Certified copy of Settlement Deed bearing Doc.No.1694/2009 dated 10.09.2009.
5	D5	Original copy of Revocation Order in O.P.No.802/2010 in A.No.5289/2013 passed by this Court dated 05.07.2017 .
6	D6	Certified copy of the judgment passed in O.S.A.No.80 of 2018 and C.M.P.No.4778/2018 confirming the judgment in O.P.No.802 of 2010.

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T.O.S.No.23 of 2017

R.N.MANJULA, J.,

jrs

Pre-Delivery Judgment made in
T.O.S.No.23 of 2017

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