



S.A.(MD).Nos.17, 18 and 19 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 23.06.2023

Pronounced on : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD).Nos.17, 18 and 19 of 2017

and

C.M.P.(MD).Nos. 359, 360 and 361 of 2017

S.A.(MD).No.17 of 2017:

1.K.K.Selvam (Died)

2.S.Parameswari

3.K.S.Reshika

4.K.S.Janani

... Appellants

(A2 to A4 are brought on record as LRS of deceased sole appellant vide Court order dated 20.12.2019 made in C.M.P.(MD).Nos.8559, 8757 and 8758 of 2019 in S.A.(MD).No.17 of 2017)

Vs.

1.Rajarajeswari

2.R.Ajitha Vinodhkumari

3.K.Narayanasamy

...1 to 3 Respondents/

1, 3 & 4 Respondents/

Plaintiff and 3 & 4 defendants

4.N.Sadhasivam



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5.S.Abinaya

... 4 & 5 Respondents/5 & 6 Respondents
impleaded in the first appeal as legal heirs of the
deceased 2nd Respondent and 2nd Defendant.

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment in A.S.No.17 of 2012 dated 29.04.2016 on the file of 1st Additional District and Sessions Judge (P.C.R), Thanjavur, confirming the decree and judgment in O.S.No.251 of 2010 dated 31.10.2011 on the file of Additional Subordinate Judge, Thanjavur.

For Appellants : Mr.H.Arumugam

For Respondents : Mr.S.Alagarsamy for R1
Mr.A.Kannan for R2
Mr.G.Karnan for R4 and R5
R3 – Batta due

S.A.(MD).No.18 of 2017:

1.K.K.Selvam (Died)

2.S.Parameswari

3.K.S.Reshika

4.K.S.Janani

... Appellants

(A2 to A4 are brought on record as LRS of deceased sole appellant vide Court order dated 20.12.2019 made in C.M.P.(MD).Nos.8759, 8761 and 8762 of 2019 in S.A.(MD).No.18 of 2017)

Vs.

1.Tamil Nadu Electricity Board,
Thanjavur,
Represented by its Executive Engineer,
Power House, Cutchery Road,
Thanjavur Town and Munsifi.



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2.Rajarajaeswari

...Respondents 1 & 2/Respondents 1 & 3/
Defendants 1 & 3

3.N.Sadhasivam

4.S.Abinaya

... Respondents 3 & 4/Respondents 4 & 5

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree in A.S.No.18 of 2012 dated 29.04.2016 on the file of 1st Additional District and Sessions Judge (P.C.R), Thanjavur, confirming the decree and judgment in O.S.No.249 of 2010 dated 31.10.2011 on the file of Additional Subordinate Judge, Thanjavur.

For Appellants : Mr.H.Arumugam

For Respondents : Mr.S.Alagarsamy for R1
R2 to R4 – Batta due

S.A.(MD).No.19 of 2017:

1.K.K.Selvam (Died)

2.S.Parameswari

3.K.S.Reshika

4.K.S.Janani

... Appellants

(A2 to A4 are brought on record as LRS of deceased sole appellant vide Court order dated 20.12.2019 made in C.M.P.(MD).Nos.8765 to 8767 of 2019 in S.A.(MD).No.19 of 2017)

Vs.

Rajarajeswari

... Defendant/Respondent



S.A.(MD).Nos.17, 18 and 19 of 2017

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree in A.S.No.19 of 2012 dated 29.04.2016 on the file of 1st Additional District and Sessions Judge (P.C.R), Thanjavur, confirming the decree and judgment in O.S.No.250 of 2010 dated 31.10.2011 on the file of Additional Subordinate Judge, Thanjavur.

For Appellants : Mr.H.Arumugam

For Respondent : Mr.S.Alagarsamy

COMMON JUDGMENT

These three Second Appeals have been filed challenging the concurrent findings of the Courts below.

2. S.A.(MD).No.17 of 2017 has been filed by the first appellant challenging the judgment and decree dated 29.04.2016 passed by the I Additional District and Sessions Court (PCR), Thanjavur in A.S.No.17 of 2012, which has confirmed the judgment and decree dated 31.10.2011 passed by the Additional Sub Court, Thanjavur in O.S.No.251 of 2010. The suit O.S.No.251 of 2010 was filed by Rajarajeswari seeking for partition claiming 1/4th share in the suit schedule property. The suit for partition of 1/4th share was partly decreed in favour of Rajarajeswari and the first appeal filed by K.K.Selvam, the first defendant in the suit, also came to be dismissed by the Lower Appellate Court in A.S.No.17 of 2012.



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3. S.A.(MD).No.18 of 2017 has been filed by K.K.Selvam challenging the judgment and decree dated 29.04.2016 passed in A.S.No.18 of 2012 confirming the judgment and decree dated 31.10.2011 passed by the Additional Sub Court, Thanjavur in O.S.No.249 of 2010. The suit O.S.No.249 of 2010 was filed by K.K.Selvam for permanent injunction to restrain the Electricity Board from cancelling the earlier order changing the electricity connection in his name. The suit was dismissed by the Trial Court, which was also confirmed by the Lower Appellate Court.

4. S.A.(MD).No.19 of 2017 has been filed by K.K.Selvam challenging the judgment and decree dated 29.04.2016 passed in A.S.No.19 of 2012 confirming the judgment and decree dated 31.10.2011 passed by the Additional Sub Court, Thanjavur in O.S.No.250 of 2010 dismissing the suit filed by K.K.Selvam to declare the sale deed and the settlement deed executed in favour of Rajarajeswari, the plaintiff in the partition suit O.S.No.251 of 2010, as null and void and for consequential permanent injunction.

5. K.K.Selvam died during the pendency of these Second Appeals and his legal representatives, namely, the appellants 2 to 4 have been brought on record by this Court by its order dated 20.12.2019.



6. The case of Rajarajeswari, who has sought for relief of partition of her

1/4th share in her suit O.S.No.251 of 2010, are as follows:

a) The first defendant, K.K.Selvam is her brother and the second and third defendants, Chandra and Ajitha Vinodhkumari are her sisters.

b) Originally, the suit schedule properties belonged to the parents of Rajarajeswari and the defendants, namely, Karuppusamy and Kamala Karuppusamy. Excepting for Item Nos.34 to 39 in the A schedule property, all the other properties are joint family properties belonging to Rajarajeswari and her three siblings, namely, K.K.Selvam, Chandra and Ajitha Vinodhkumari.

c) B schedule property is measuring 10,800 square feet. The vacant site was purchased in the name of Kamala Karuppusamy in the year 1953. The ground floor construction was made in the year 1960 out of the income of the father of Rajarajeswari and her three siblings, namely, Karuppusamy, by obtaining loan from a Society. According to Rajarajeswari, she alone discharged all the loans.

d) C schedule property was built out of the joint family funds and the loans were secured by K.K.Selvam.

e) Rajarajeswari's marriage was held in the year 1979 and her husband was employed in Saudi Arabia. Hence, the plaintiff was constrained to live with her parents.



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f) Due to family debts, Item No.39 in the A schedule property was mortgaged to one Elangovan, which was later discharged by Rajarajeswari.

g) The first defendant (K.K.Selvam) did not help the family and he built a separate house in the C schedule property and was living there. At the time of marriage of the second defendant, a portion of the B schedule property was sold to the plaintiff (Rajarajeswari) and the remaining portion was settled in her favour by their parents. The plaintiff (Rajarajeswari) thereafter put up construction from her own funds.

h) The father of the plaintiff (Rajarajeswari) died in the year 1996 and the mother, who was sick and admitted in the hospital due to heart attack, died on 26.12.1999. The plaintiff (Rajarajeswari) came to know that the first defendant (K.K.Selvam) had obtained a Will dated 21.10.1999 when her mother was not in a sound state of mind. Rajarajeswari (plaintiff) contends that the Will dated 21.10.1999 is a fabricated Will and is not binding on her. Hence, she claims that she is entitled for 1/4th share in the suit schedule properties.

7.a) However, as seen from the written statement of the first defendant (K.K.Selvam), he claims that he is the absolute owner in respect of Item Nos.35 to 39 of A schedule and the entire B schedule property by virtue of the Will dated 21.10.1999 executed by his mother Kamala Karuppusamy.



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b) The sale deed and settlement deed executed in favour of Rajarajeswari (plaintiff) by her mother Kamala Karuppusamy are sham and nominal documents. Hence, Rajarajeswari (plaintiff) cannot claim any exclusive right over the properties. The suit in O.S.No.250 of 2010 was filed by K.K.Selvam to declare the sale deed and settlement deed executed in favour of Rajarajeswari (plaintiff) in respect of B schedule property as sham and nominal.

c) The Will dated 21.10.1999 executed by his mother Kamala Karuppusamy was executed in a sound state of mind and there are no suspicious circumstances surrounding it. Hence, it is a valid Will.

d) C schedule property is a self-acquired property of the first defendant (K.K.Selvam). Therefore, no other person is entitled to claim title over it.

e) The alleged mortgage executed to one Elangovan is denied.

8. The second defendant Chandra, who is the sister of the plaintiff (Rajarajeswari), in her written statement has also denied the existence of a Will dated 21.10.1999 in favour of K.K.Selvam. The second defendant (Chandra) claims that her mother Kamala Karuppusamy has only executed a Will in her favour dated 22.12.1999 in respect of the house in Door No.3 and other properties. According to the second defendant (Chandra), her brother K.K.Selvam (first defendant) attempted to dispossess her. Hence, she was



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constrained to file a suit in O.S.No.196 of 2000 seeking for permanent injunction against her brother K.K.Selvam. According to the second defendant (Chandra), the alleged Will dated 21.10.1999 in favour of K.K.Selvam is a forged and a fabricated one and was never executed by her mother, Kamala in favour of K.K.Selvam.

9. Based upon her alleged Will, Chandra (second defendant) attempted to change the electricity connection. Hence, K.K.Selvam filed a suit in O.S.No.249 of 2010 for permanent injunction to restrain the Electricity Board from cancelling the earlier order changing the electricity connection from his name. The second defendant (Chandra) claimed that K.K.Selvam and Rajarajeswari were in collusion and were attempting to defeat her right over the property.

10. Based on the pleadings of the respective parties, the Trial Court, namely, the Additional Sub Court, Thanjavur framed issues in common with respect to the validity of the Will dated 21.10.1999 executed in favour of K.K.Selvam and another Will dated 22.12.1999 executed in favour of Chandra.



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11. Before the Trial Court, Rajarajeswari (plaintiff) filed 41 documents

which were marked as exhibits A1 to A41 and the details are as follows:

Exhibits	Date	Details
Ex.A1	07.10.1996	Death Certificate of Karuppusamy – Original
Ex.A2	27.12.1999	Death Certificate of Kamala – Original
Ex.A3	09.04.2000	True copy of Legal Heirship Certificate
Ex.A4	18.10.2000	True copy of Chitta
Ex.A5	17.01.1953	-
Ex.A6	23.12.1989	Sale deed executed by Kamala Karuppusamy in favour of Rajarajeswari – Original
Ex.A7	20.03.1991	Dhana Settlement deed executed by Kamala Karuppusamy in favour of Rajarajeswari – Original
Ex.A8	06.02.1992	Order issued by Thanjavur Municipality
Ex.A9	-	Xerox copy of Family Card.
Ex.A10	-	True copy of Advocate Notice sent by plaintiff to Thanjavur Municipality
Ex.A11	04.09.2000	True copy of Order issued by Thanjavur Municipality
Ex.A12	21.10.1999	Xerox copy of Will executed by Kamala Ammal to the 1 st defendant
Ex.A13	22.12.1999	Xerox copy of Will executed by Kamala Ammal to the 2 nd defendant
Ex.A14	20.10.1999	Discharge summary of Kamala issued by Dr.Moorthy
Ex.A15	16.03.2000	House tax receipt – Original
Ex.A16	-	Certified copy of plaint in O.S.No.196/2000 on the file of District Munsif Court, Thanjavur



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Ex.A17	-	Certified copy of plaint in O.S.No.236/2000 on the file of District Munsif Court, Thanjavur
Ex.A18	09.05.2000	Certified copy of order issued by Thanjavur Municipality to the 1 st defendant.
Ex.A19	02.06.2000	Certified copy of order issued by Tamil Nadu Electricity Board to the 1 st defendant
Ex.A20	20.10.1999	Xerox E.C.G. Report of Kamala Ammal
Ex.A21	21.10.1999	Xerox E.C.G. Report of Kamala Ammal
Ex.A22	22.10.1999	Xerox E.C.G. Report of Kamala Ammal
Ex.A23	03.03.2009	Certified copy of order issued by District Revenue Officer
Ex.A24	-	True copy of building plan
Ex.A25	-	Order issued by Thanjavur Municipality to Kamala Ammal – Original
Ex.A26	25.03.1994	Order issued by Thanjavur Municipality to Kamala Ammal – Original
Ex.A27	23.05.1980	Mortgage deed executed by Kamala Ammal in favour of Elangovan – Original
Ex.A28	19.06.1989	Endorsement in Mortgage deed executed by Kamala Ammal in favour of Elangovan – Original
Ex.A29	28.05.1983	Mortgage deed executed by Kamala Ammal in favour of Elangovan – Original
Ex.A30	-	Endorsement in Mortgage deed executed by Kamala Ammal in favour of Elangovan – Original
Ex.A31	-	Original Passport in the name of Subramanian
Ex.A32	-	Original Passport in the name of Subramanian
Ex.A33	-	Original Pass Book of Indian Overseas Bank in the name of Subramanian
Ex.A34	-	Original Pass Book of Canara Bank in the name of Subramanian



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Ex.A35	-	Original Pass Book of Indian Overseas Bank in the name of Subramanian
Ex.A36	-	Original Pass Book of Indian Bank in the name of Subramanian
Ex.A37	20.06.2002	Certified copy of Decreetal order in I.A.No. 655/200 in O.S.No.196/2000 on the file of District Munsif Court, Thanjavur
Ex.A38	20.06.2002	Certified copy of Decreetal order in I.A.No. 656/200 in O.S.No.196/2000 on the file of District Munsif Court, Thanjavur
Ex.A39	21.04.1992	Order issued by Thanjavur Municipality
Ex.A40	-	Building plan – original
Ex.A41	-	Property tax (10 numbers) series

On the side of Rajarajeswari (plaintiff), two witnesses were examined, namely, Rajarajeswari herself as P.W.1 and Subramanian as P.W.2. On the side of the defendants, 17 documents were filed which were marked as exhibits B1 to B17 and they are as follows:

Exhibits	Date	Details
Ex.B1	30.05.1975	Sale deed executed by Duraiayya, Sundarraj and Tamilselvan in favour of Kamala Ammal
Ex.B2	15.09.1999	Telephone bill
Ex.B3	21.10.1999	Will executed by Kamala Ammal to the 1 st defendant – Original
Ex.B4	27.12.1999	Certified copy of death certificate of Kamala Ammal
Ex.B5	09.05.2000	Order issued by Thanjavur Municipality
Ex.B6	-	Electricity bill (4 numbers)
Ex.B7	10.05.2000	Property tax receipt



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Ex.B8	21.06.2000	Letter sent by Electricity Board to the first defendant
Ex.B9	07.06.2000	Petition given by the 1 st defendant to Electricity Board
Ex.B10	25.12.1986	Dinamalar Paper publication – Original
Ex.B11	23.11.1990	Certified copy of sale deed executed by 1 st defendant to Subramanian
Ex.B12	-	Loan sanction order
Ex.B13	15.05.1997	Xerox copy of affidavit
Ex.B14	-	Certified copy of Commissioner's report
Ex.B15	07.10.1997	Licence original
Ex.B16	-	Letterpad of Rajaraja Finance and All India Yogasana College
Ex.B17	-	House tax receipt (4 numbers)

On the side of the defendants, seven witnesses were examined, namely, D.W.1 to D.W.7. Selvam was examined as D.W.1 and Ajitha Vinodhkumari, the sister of the plaintiff, was examined as D.W.3. The Advocate Commissioner's report in O.S.No.132 of 2003 and attached plan was marked as Ex.C1 by the Trial Court.

12. Based on the oral and documentary evidence, the Trial Court by its common judgment and decree dated 31.10.2011 passed in O.S.Nos.251 of 2010, 249 of 2010 and 250 of 2010, partly decreed the suit for partition in favour of Rajarajeswari (plaintiff) by granting her 1/4th share in suit schedule A



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and B properties and dismissed the remaining two suits filed by K.K.Selvam in O.S.No.249 of 2010 and O.S.No.250 of 2010 by giving the following findings:

a) The Will dated 21.10.1999 executed in favour of K.K.Selvam by Kamala Karuppusamy and the Will dated 22.12.1999 executed in favour of Chandra by Kamala Karuppusamy are rejected as both the Wills are surrounded by suspicious circumstances.

b) The testatrix (Kamala Karuppusamy) was suffering from heart ailment and admitted in the hospital in ICU and therefore, both the Wills dated 21.10.1999 and 22.12.1999 alleged to have been executed by her while she was in the hospital in ICU are surrounded by suspicious circumstances.

c) The first defendant K.K.Selvam is bound to dispel the suspicious circumstances and prove the mental condition of the testatrix by examining the doctor as a witness. But he chose not to do so.

d) D.W.2 is the colleague of K.K.Selvam. When the second defendant's husband, a lawyer is available, he was not called upon by the testatrix to draft the Will especially when his wife (second defendant Chandra) was one of the attesting witnesses in the Will. The testatrix instead of getting assistance of a colleague of the first defendant could have got the assistance of her own son-in-law, a lawyer.



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e) The second defendant Chandra having acted as an attesting witness, she could have asked her husband to prepare the Will, but a third party was asked to draft the Will which is suspicious.

f) The second defendant (Chandra) in fact obtained a Will in Ex.A13 in her favour which is also a suspicious one, but in her deposition, she has not insisted that the Will executed in her favour is a genuine Will, but instead has accepted to get partition of her 1/4th share along with the plaintiff (Rajarajeswari) and hence, the issue whether the Will executed in favour of Chandra (Ex.A13) is a genuine Will or not need not be considered.

g) Though the validity of the sale deed and the settlement deed executed in favour of Rajarajeswari was challenged, K.K.Selvam did not speak about the same when he got the first opportunity on 03.07.2000 when he filed the earlier suit in O.S.No.249 of 2010 against the Electricity Board.

h) The relief of declaration with regard to the aforementioned documents was sought by K.K.Selvam only after a suit for partition was filed by Rajarajeswari. During the lifetime of the mother of the parties, namely, Kamala Karuppusamy, no body raised any finger regarding the validity of the sale deed and settlement deed standing in the name of Rajarajeswari. The mother had also not cancelled those documents during her lifetime. Hence, the plea projected by K.K.Selvam that the sale deed and the settlement deed standing in



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the name of Rajarajeswari are sham and nominal documents cannot be accepted.

i) Excepting for the oral evidence of Rajarajeswari, she has not let in any other evidence, she has not examined any other witness and has not produced documentary evidence to prove that she had the means to invest five lakhs of rupees for construction of the first floor building.

j) C schedule property is a self acquired property of K.K.Selvam and he constructed the building by obtaining loan. No contra evidence was produced on the side of Rajarajeswari (plaintiff) against Ex.B12 loan sanction letter in favour of the first defendant (K.K.Selvam). Hence, C schedule property is the absolute property of the first defendant (K.K.Selvam).

13. By giving the aforesaid findings, the suit filed by Rajarajeswari in O.S.No.251 of 2010 was decreed in her favour by holding that she is entitled for 1/4th share in the A and B schedule properties including the first floor of the B schedule property. However, the suit filed by her in respect of the C schedule property was dismissed. In view of the findings rendered in favour of Rajarajeswari, the other two suits filed by K.K.Selvam were dismissed under the common judgment and decree dated 31.10.2011 passed by the Trial Court in O.S.No.249 of 2010 and O.S.No.250 of 2010.



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14. K.K.Selvam, the first defendant in the partition suit in O.S.No.251 of 2010 filed three first appeals aggrieved by the granting of a preliminary decree for partition in respect of Rajarajeswari's 1/4th share and by the dismissal of his suits O.S.No.249 of 2010 and O.S.No.250 of 2010. The corresponding appeal filed before the I Additional District and Sessions Court (PCR), Thanjavur in respect of the partition suit is A.S.No.17 of 2012 and the corresponding appeals in respect of the injunction suit filed against the Electricity Board and the suit for declaration to declare the sale deed and settlement deed executed in favour of Rajarajeswari as null and void and for consequential permanent injunction are A.S.No.18 of 2012 and A.S.No.19 of 2012 respectively. All the three first appeals filed by K.K.Selvam were heard together by the Lower Appellate Court, namely, the I Additional District and Sessions Court (PCR), Thanjavur. By a common judgment and decree dated 29.04.2016 in A.S.Nos.17 of 2012, 18 of 2012 and 19 of 2012, the Lower Appellate Court confirmed the findings of the Trial Court by dismissing the three first appeals filed by K.K.Selvam. Aggrieved by the concurrent findings of the Courts below, these three Second Appeals have been filed by K.K.Selvam.

Submissions of the learned counsels:

15. The learned counsel for the appellants drew the attention of this Court to the deposition of K.K.Selvam (D.W.1), Ravindran, the alleged



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attesting witness (D.W.2), Ajitha Vinothkumari, the alleged attesting witness (D.W.3) as well as to the disputed Will of the Testatrix (Kamala) dated 21.10.1999 (Exs.A12 = B3) and he would submit as follows based on those documents:

a) The plaintiff (Rajarajeswari) did not include the first floor building of the 2nd schedule of property in her partition suit, as she has claimed that the first floor building is her exclusive property. Both the Courts below have negated the plaintiff's claim that the first floor building in the 2nd schedule is her absolute property. Thus, it is clear that the said property is not included in the partition suit and therefore, the partition suit is liable to be dismissed as it is not maintainable on account of partial partition;

b) As seen from the Will, it is clear that only out of her own will and in sound and disposing state of mind and out of natural love and affection towards her only son (K.K.Selvam), Kamala has executed the Will dated 21.10.1999. It is also clear from the Will that K.K.Selvam's sisters were happily married and they were sufficiently provided for at the time of their marriage;

c) The execution of the Will dated 21.10.1999 by Kamala is not surrounded by any suspicious circumstance. The attesting witness to the said Will (D.W.2) has also deposed that Kamala (testatrix) was in a sound and disposing state of mind at the time of execution of the Will and only out of



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natural love and affection towards her son, she has executed the Will and only in his presence, Kamala had signed the Will. The conduct of the testatrix (Kamala) and the attesting witnesses to the Will namely, D.W.2 and D.W.3 make it clear that the Will is not surrounded by suspicious circumstances;

d) The execution of the Will and attestation has been proved by K.K.Selvam as required under *Section 63* of the *Indian Succession Act* and *Section 68* of the *Indian Evidence Act*. The execution of the Will and attestation are proved as required under law, by examining the attesting witnesses viz., D.W.2 and D.W.3, who is one of the daughters of the Testatrix. Both D.W.2 and D.W.3 had deposed that the Will was executed only in their presence and that the Testatrix (Kamala) had signed the Will only in their presence in a sound and disposing state of mind. They have also deposed that they had signed the Will only in the presence of the testatrix (Kamala). Therefore, there are no suspicious circumstance surrounding the subject Will;

e) K.K.Selvam is the only son of the testatrix. The other legal heirs of the deceased testatrix are his sisters. They are all married and they are residing with their respective families. It is not in dispute, as seen from the deposition, that all the three daughters of the testatrix were also provided with sufficient gold jewels and other items at the time of their marriage, by Kamala (testatrix). They were also provided with residential accommodation along with their husband.



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K.K.Selvam, being the only son of the testatrix, the testatrix naturally has bequeathed the property mentioned in the subject Will to him absolutely, out of natural love and affection towards him. There cannot be any suspicion over the same and there is nothing wrong in the disposition under the Will;

f) The conduct of Chandra, one of the daughters of the testatrix is despicable. Her husband is an Advocate. Chandra is also one of the attesting witnesses to the subject Will. But, in her written statement, she has pleaded that her mother (testatrix) has executed another Will in her favour and she has attempted to change the electricity connection which stood in the name of K.K.Selvam by using her fabricated Will. In such circumstances, K.K.Selvam, the son had filed a suit against Chandra and the Electricity Board in O.S.No.249 of 2010;

g) It can be assumed that it is not Chandra, who had filed the suit voluntarily, but, her husband, who is an Advocate, is the master mind in the preparation of the alleged Will dated 22.12.1999, which is falsely projected by Chandra;

h) The conduct of Chandra is despicable. Even though, in the suit for partition filed by Rajarajeswari, her sister, she has projected that there is a Will executed in her favour by the Testatrix (Kamala), but she chose not to enter into the witness box and she has also not pressed her claim based upon the Will



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allegedly executed in her favour and has consented for a decree for partition as prayed for by Rajarajeswari in her partition suit. Therefore, it is clear that Chandra never had the intention of denying the Will dated 21.10.1999 executed in favour of K.K.Selvam. Even though, Chandra had filed her written statement relying upon a Will dated 22.12.1999 alleged to have been executed in her favour by the testatrix (Kamala), she chose to not examine herself as a witness and Rajarajeswari has also not examined Chandra as a witness. Only, if Chandra was examined as a witness, the truth regarding the defence of the sisters that, there was no Will dated 21.10.1999 executed in favour of K.K.Selvam, can be believed. Having not examined Chandra as a witness, K.K.Selvam has proved through his oral and documentary evidence that a Will dated 21.10.1999 was executed in his favour by his mother (Kamala) in a sound and disposing state of mind;

i) The written statement of Chandra alleges collusion between Rajarajeswari and K.K.Selvam, whereas the fact remains that the collusion was between Rajarajeswari and Chandra alone and their attempt was to defeat the rights of K.K.Selvam based upon the Will dated 21.10.1999. Infact, the original Will dated 22.12.1999 alleged to have been executed by the testatrix (Kamala) in favour of Chandra was never produced and a xerox copy of the same was produced only by Rajarajeswari, which has been marked as an exhibit.



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Chandra's husband (Advocate) was also not examined;

j) K.K.Selvam has discharged his burden of proving that the Will dated 21.10.1999 executed in his favour by the testatrix (Kamala) is a genuine Will, based on his oral and documentary evidence. Having pleaded that the said Will is a forged Will and that too when K.K.Selvam has discharged his initial burden of proving the genuineness of the Will, the burden has been shifted to the sisters to disprove the said Will and they have miserably failed to discharge their burden;

k) It is also to be noted that the testatrix (Kamala) chose not to request her son-in-law, an advocate, who is the husband of Chandra to act as a scribe, as she did not have confidence in him, as she was aware of his illegal design of grabbing the properties of the testatrix (Kamala);

l) The Will is a solemn and secret act and the execution itself with an intention to give benefit to the beneficiary and avoid problem between the successors viz., the legal heirs. Therefore, one who intends to execute the Will would do it secretly in the presence of those who act in accordance with the wishes of the testatrix. The findings of the Courts below are perverse findings. The findings that the Will could have been drafted through Chandra's husband (an Advocate) is totally perverse. This Advocate is a man with evil intention of grabbing the properties of Kamala (testatrix) and create chaos in the family;



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m) Chandra has not even produced the Will dated 22.12.1999, where she is the beneficiary. She has also not pressed her claim based upon the Will dated 22.12.1999 alleged to have been executed by the Testatrix (Kamala) in her favour. Thus, the suit for permanent injunction filed against the Electricity Board ought to have been decreed in favour of K.K.Selvam, as the cause of action for the said suit has been proved by K.K.Selvam. But, erroneously, both the Courts below have dismissed the said suit also;

n) The sale deed and settlement deed executed in favour of Rajarajeswari, the plaintiff in the partition suit are sham and nominal documents. However, erroneously based on no evidence, both the Courts below held that both the sale deed and settlement deed standing in the name of Rajarajeswari are valid documents.

16. The learned counsel for the appellants drew the attention of this Court to the following Authorities to substantiate his contention that substantial questions of law are involved and therefore, the two Appeals are maintainable and also for his contention that the Will dated 21.10.1999 has been duly proved by K.K.Selvam and the said Will is not surrounded by suspicious circumstances:

a) Decision of the Honourable Supreme Court in the case of *Nazir*



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Mohamed Vs. J.Kamala and Others reported in **2020 (19) SCC 57;**

b) Decision of the Honourable Supreme Court in the case of ***Daulat Ram and Others Vs. Sodha and Others*** reported in **2005 (1) SCC 40;**

c) Decision of the Honourable Supreme Court in the case of ***Madhukar D.Shende Vs. Tarabai Aba Shedage*** reported in **2002 (2) SCC 85;**

d) Decision of the Honourable Supreme Court in the case of ***V.Prabhakara Vs. Basavaraj K. (Dead) by Legal Representatives and Another*** reported in **2022 (1) SCC 115;**

e) Decision of this Court in the case of ***P.Saraswathi Ammal Vs. Lakshmi Ammal alias Lakshmi Kantam*** reported in **AIR 1978 MADRAS 361.**

17. On the other hand, Mr.S.Alagarsamy, learned counsel for the first respondent / plaintiff (Rajarajeswari) drew the attention of this Court to the impugned judgment and decree of the Courts below as well as to the pleadings and the oral and documentary evidence available on record and would submit as follows:

a) There are no substantial questions of law involved in this Second Appeals. All the issues raised by the first appellant (K.K.Selvam) have been correctly considered by the Courts below by rejecting K.K.Selvam's claim. The concurrent findings of fact given by the Courts below, which is based on the



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oral and documentary evidence available on record, has been challenged by the appellants and the same cannot be interfered with by this Court under Section 100 of CPC;

b) The first appellant (K.K.Selvam) filed two suits simultaneously in O.S.Nos.249 and 250 of 2010, staking his claim based on the Will dated 21.10.1999. Simultaneously his sister Chandra also filed a suit in O.S.No.196 of 2000, staking her claim based upon a Will dated 22.12.1999, alleged to have been executed in her favour by Kamala (testatrix);

c) Both the Wills, one in favour of K.K.Selvam dated 21.10.1999 and the other in favour of Chandra dated 22.12.1999 have been rightly held by the Courts below to be fabricated Wills, as they are surrounded by suspicious circumstances as seen from the evidence available on record;

d) The testatrix (Kamala) was hospitalized in the Government Medical College Hospital, Thanjavur in a deteriorating medical condition on 20.10.1999, when the first appellant (K.K.Selvam) has fabricated a Will dated 21.10.1999 in which he is the sole beneficiary. The testatrix (Kamala) was admitted for heart ailment, which is proved by Rajarajeswari through exhibits A20, A21 and A22, dated between 20.10.1999 and 22.10.1999. The discharge summary of the Testatrix (Kamala) is marked as Ex.A14, which would also reveal that Kamala was hospitalised in the Government Medical College



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Hospital, Thanjavur on 20.10.1999 in a serious medical condition;

WEB COPY e) Kamala (testatrix) was hospitalised on 20.10.1999 in a serious medical condition and she was kept in the Intensive Care Unit (I.C.U.). Hence, it is impossible for her to have executed a Will dated 21.10.1999 in favour of K.K.Selvam. She could not have been in a sound and disposing state of mind to execute a Will, as claimed by K.K.Selvam. As seen from the alleged Will dated 21.10.1999, the address of the two sisters is missing. Even though, K.K.Selvam claims that they have had signed the document as attesting witnesses, it has been categorically denied by Chandra in her written statement, who has claimed that a Will dated 22.12.1999 has been executed in her favour by Kamala (testatrix). The first Will is said to have been executed on 21.10.1999 in favour of the first appellant (K.K.Selvam), when Kamala was hospitalised and the second Will is dated 22.10.1999 in which Chandra is the beneficiary and the said Will was executed four days prior to the death of Kamala. Only based on the oral and documentary evidence available on record, the Courts below have rightly held that the first appellant (K.K.Selvam) has not proved the genuineness of the Will dated 21.10.1999 and similarly, Chandra has also not proved the genuineness of the Will dated 22.12.1999 executed in her favour, as both the Wills are surrounded by suspicious circumstances;



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f) The propounder, who is the first appellant (K.K.Selvam) has not proved the genuineness of the Will dated 21.10.1999. Therefore, the two suits filed by the first appellant (K.K.Selvam) have been rightly dismissed by the Courts below and the suit filed by Rajarajeswari for partition has been rightly partly decreed in her favour, by granting the relief of partition in respect of 1/4th share in respect of A and B schedule properties including the first floor of the B schedule property;

g) The relief of partition sought for by Rajarajeswari in respect of C schedule property was rejected by the courts below on the ground that C schedule property is a self acquired property of K.K.Selvam;

h) In so far as the sale deed dated 23.12.1989 and the settlement deed dated 20.03.1991, standing in the name of Rajarajeswari is concerned, the challenge made to the said documents by K.K.Selvam has been rightly rejected by the Courts below as they are valid documents as no challenge was made by Kamala during her life time or immediately thereafter, by any of her legal heirs. Only after Rajarajeswari filed the suit for partition, the challenge has been made to the sale deed dated 23.12.1989 and the settlement deed dated 20.03.1991 standing in the name of Rajarajeswari, by K.K.Selvam. Hence, the Courts below, only based on oral and documentary evidence available on record, have rejected the claim of K.K.Selvam for cancellation of the sale deed dated



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23.12.1989 and the settlement deed dated 20.03.1991 standing in the name of
Rajarajeswari;

i) The learned counsel for the first respondent (Rajarajeswari) in support of his submissions relied upon the following authorities:

(i) Decision of the Honourable Supreme Court in the case of ***H.Venkatachala Iyengar Vs. B.N.Thimmajamma and Others*** reported in ***AIR 1959 Supreme Court 443***;

(ii) Decision of the Honourable Supreme Court in the case of ***Ahmed Sahed (D) by LRS and Others Vs. Sayed Ismail*** reported in ***2012 (4) LW 331***;

(iii) Decision of the Madras High Court in the case of ***Johrilala Chowdhary (Dead) and Others, etc., Vs. D.Shankar Chettiyar*** reported in ***2021 (3) T.N.C.J.5 (MAD)***;

(iv) Decision of the Honourable Supreme Court in the case of ***Balasubramanian and Another Vs. M.Arogyasamy (Dead) through legal representatives*** reported in ***2021 (12) SCC 529***;

(v) Decision of the Honourable Supreme Court in the case of ***V.Prabhakara Vs. Basavaraj K. (Dead) by LR and Another*** reported in ***2021 (3) T.N.C.J.863 (SC)***;

(vi) Decision of the Honourable Supreme Court in the case of ***Murthy and Others Vs. C.Saradambal and Others*** reported in ***2022 (1) MLJ 374 (SC)***.



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18. Mr.G.Karnan, learned counsel appearing for the respondent Nos.4

and 5 would submit as follows:

a) The plea of partial partition was never pleaded by K.K.Selvam in his pleadings before the Trial Court. Hence, the question of framing additional question of law with regard to partial partition sought for by the first appellant will not arise;

b) The appellants have not proved the Will dated 21.10.1999 in the manner known to law. Since the executor of the Will viz., (Kamala) was admitted in ICU ward of the Government Medical College Hospital, Thanjavur on 20.10.1999. Being, in the ICU and in a serious medical condition, it is not possible to execute a Will on 21.10.1999;

c) The first appellant originally filed a suit for injunction in O.S.No.236 of 2000 in which he has not pleaded anything regarding the Will. But only after filing of the suit for partition by Rajarajeswari, he has revealed the alleged execution of a Will in his favour. Therefore, it can be inferred that the said Will is a fabricated Will;

d) There is no collusion between Rajarajeswari and Chandra and the alleged collusion has also not been proved by the appellants;

e) The evidence of D.W.1, D.W.2 and D.W.3 show that the Will was executed by Kamala while she was in ICU ward in the Government Medical



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College Hospital, Thanjavur. However, the said details are not found in the Will. The execution of the Will in the hospital was also not pleaded in his suits;

f) In the Will dated 21.10.1999, as seen from its recitals, the hospitalisation of the testatrix (Kamala) and her fear of death has not been mentioned. Whereas in the deposition of D.W.2, the scribe and the alleged attesting witness to the Will, he has deposed that Kamala was hospitalised when she requested him to write the Will and the Will was prepared as Kamala was having the fear of death;

g) In Ex.B3 (Will) dated 21.10.1999, serial number of the attesting witnesses have been typed as Nos.1 and 2. The alleged Will has been signed by four attesting witnesses. Normally, a Will is signed by two witnesses. The reason, why four witnesses have signed the Will, has not been explained by K.K.Selvam;

h) As seen from the medical records, it is found that pain relievers had been administered on Kamala during her course of treatment and pain relievers are sedative in nature and so, at the time of execution of the Will dated 21.10.1999, Kamala was not in a sound and disposing state of mind;

i) Only based on the oral and documentary evidence available on record, the Courts below have rightly held that the Will dated 21.10.1999 is surrounded by suspicious circumstances and is a fabricated Will;



Discussion:

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19. The “Armchair rule” is one of the main rule the Courts will use while interpreting whether a Will is a genuine Will or not. Under the Armchair rule, the Court tries to put itself in the “armchair” of the testator so it can see the Will and understand its wording through the testator's eyes. The judgments relied upon by the learned counsel for the appellants referred to supra as well as the recent judgment of the Hon'ble Supreme Court in the case of ***Kavita Kanwar Vs. Pamela Mehta*** reported in **2021 (11) SCC 209** lays down the following principles which govern the adjudicatory process concerning the proof of Wills:

a) Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of a prudent mind and proof of mathematical accuracy is not to be insisted upon;

b) Since as per Section 63 of the Indian 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;

c) 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



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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 the proof of the essential facts which go into the making of the Will;

d) However, 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 Will of the testator;

e) If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion etc., in regard to the execution of the Will, such pleas have to be proved, 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;

f) 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’. The suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’;



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g) 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 legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder etc., 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 circumstance 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;

h) 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?;



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i) In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which accepts a Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.

20. Before deciding the issue as to whether the Will dated 21.10.1999 (Ex.A12=Ex.B3) allegedly executed by Kamala Karuppusamy (testatrix) in favour of K.K.Selvam is a genuine Will or not, the following undisputed facts will have to be noted:

a) Rajarajeswari, K.K.Selvam, Chandra and Ajitha Vinodhkumari are siblings. Kamala Karuppusamy, the deceased is their mother.

b) The disputed Will dated 21.10.1999 (Ex.A12=Ex.B3) executed in favour of K.K.Selvam was brought to the knowledge of Rajarajeswari by K.K.Selvam only through his suits in O.S.No.249 of 2010 and O.S.No.250 of 2010 and through his written statement filed in O.S.No.251 of 2010 even though the disputed Will is dated 21.10.1999 and Kamala Karuppusamy, the testatrix died as early as on 26.12.1999. The father of Rajarajeswari, K.K.Selvam, Chandra and Ajitha Vinodhkumari died in the year 1996 and their mother Kamala Karuppusamy, who was sick and admitted in the hospital, died on 26.12.1999. The Will dated 21.10.1999 in which K.K.Selvam is the



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beneficiary is alleged to have been executed a little more than two months prior to the death of Kamala Karuppusamy, who died on 26.12.1999. The Will dated 22.12.1999 alleged to have been executed by Kamala Karuppusamy in favour of her daughter Chandra is said to have been executed just four days prior to the death of Kamala Karuppusamy.

c) The testatrix (Kamala Karuppusamy) was suffering from heart ailment and was admitted in the hospital in ICU. Only when she was in the ICU, she is said to have executed her Will dated 21.10.1999 (Ex.A12=Ex.B3) under which K.K.Selvam is alleged to be the beneficiary as admitted by D.W.1, D.W.2 and D.W.3 in their deposition. However, the Will dated 21.10.1999 (Ex.A12=Ex.B3), does not reveal that the Will was executed by the testatrix in the hospital.

d) Only after the suit was filed by Rajarajeswari in O.S.No.251 of 2010 seeking for partition claiming her 1/4th share in the suit schedule properties, K.K.Selvam, her brother had filed two suits, namely, O.S.No.249 of 2010 for permanent injunction to restrain the Electricity Board from cancelling the earlier order changing the electricity connection standing in his name and O.S.No.250 of 2010 seeking for a declaration to declare that the sale deed (Ex.A6) and settlement deed (Ex.A7) executed in favour of Rajarajeswari is null and void.



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e) In the Will dated 21.10.1999 (Ex.A12=Ex.B3) in which K.K.Selvam is the beneficiary, the alleged testatrix (Kamala Karuppusamy) has stated that all her daughters, namely, Rajarajeswari, Chandra and Ajitha Vinodhkumari are happily married, but has not disclosed the properties provided to them by her in lieu of the properties bequeathed to K.K.Selvam under the Will dated 21.10.1999.

f) K.K.Selvam has not produced any documentary evidence to show that his mother Kamala Karuppusamy was taken care of by him when she was hospitalised and admitted to the ICU and till her death.

g) There are four attesting witnesses to the Will dated 21.10.1999 (Ex.A12=Ex.B3). The addresses of two of the siblings of K.K.Selvam, namely, Chandra Sadhasivam and K.Ajitha Vinodhkumari are surprisingly omitted to be disclosed, whereas, the addresses of the remaining two third party attesting witnesses, namely, R.Ravindran and S.Purushothaman are disclosed.

h) D.W.2, namely, Ravindran, one of the alleged attesting witnesses to the Will dated 21.10.1999 (Ex.A12=Ex.B3) is a colleague of K.K.Selvam in his place of employment. No explanation is given by K.K.Selvam as to why the Will was drafted by Ravindran (D.W.2) as Ravindran himself admits that he had gone to the hospital only to visit Kamala Karuppusamy, who was sick and admitted in the ICU.



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i) The registered sale deed executed by Kamala Karuppusamy in favour of Rajarajeswari is dated 23.12.1989 (Ex.A6) and the settlement deed executed by Kamala Karuppusamy in favour of Rajarajeswari is dated 20.03.1991 (Ex.A7). Both the aforesaid documents are the subject matter of challenge by K.K.Selvam in O.S.No.250 of 2010. Kamala Karuppusamy died on 26.12.1999. While she was alive, she has not challenged both the aforesaid documents standing in the name of Rajarajeswari. Only in the year 2010, that too after the filing of the suit for partition by Rajarajeswari in O.S.No.251 of 2010, K.K.Selvam had filed a suit in O.S.No.250 of 2010 to declare the sale deed dated 23.12.1989 (Ex.A6) and the settlement deed dated 20.03.1991 (Ex.A7) standing in the name of Rajarajeswari as null and void.

j) Chandra, the other sibling has decided to ignore the Will dated 22.12.1999 (Ex.A13) allegedly executed by Kamala Karuppusamy in her favour, but instead has agreed to get partition of her 1/4th share along with Rajarajeswari and other siblings, namely, K.K.Selvam and Ajitha Vinodhkumari.

21. Even from the undisputed facts which have been enumerated supra, it is clear that there are several suspicious circumstances surrounding the Will dated 21.10.1999 (Ex.A12=Ex.B3). Apart from the suspicious circumstances



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surrounding the Will, whether the testatrix Kamala Karuppusamy was in a sound and disposing state of mind while executing the alleged Will dated 21.10.1999 is also questionable. The question of sound mind is a dominant question to decide whether the Will dated 21.10.1999 (Ex.A12=Ex.B3) is a genuine Will or not. Admittedly, the testatrix Kamala Karuppusamy was hospitalised and was in the ICU (Intensive Care Unit). A patient is admitted to the Intensive Care Unit only in case of serious illness. Intensive Care Units in a hospital are kept to provide treatment and monitor patients when they are very ill. They are staffed with specially trained health care professionals and contain sophisticated monitoring equipment. Numerous decisions and high authorities have laid down from time to time tests by which to judge a sound disposing state of mind. The test of a sound disposing mind is in law a workable test. It means in plain language an appreciation of the fact that the man is making a Will, an appreciation of the contents of that Will and an appreciation of the nature of disposition that he is making having regard to the claims of affection and family relationship and claims of the society or community to which he belongs. It is not a hypothetical nor an impractical test. Some idea of what this sound disposing state of mind is in testamentary law can be gathered from Section 59 of the Indian Succession Act and the statutory explanations found thereunder. In explanation 4 to Section 59 of the Indian Succession Act, it is



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stated that no person can make a Will while he is in such a state of mind whether arisen from intoxication or from illness or from any other cause that he does not know what he is doing. As per the said explanation, it is clear that a person in serious illness, who does not know what he is doing and is facing anxiety due to his serious illness, cannot be considered to be in a sound state of mind. In the case on hand, it is an admitted fact that Kamala Karuppusamy, the testatrix was admitted to the Intensive Care Unit of a hospital on account of a serious heart ailment. The admission to the hospital was also a sudden development due to her sudden health setbacks. The entry of even the close family members to an Intensive Care Unit is restricted. While that be so, that too when Kamala Karuppusamy (testatrix) is suffering from serious illness and is admitted to the Intensive Care Unit, it is not possible for her to execute a Will. Rajarajeswari, the plaintiff in O.S.No.251 of 2010, who is seeking for partition and is the daughter of Kamala Karuppusamy, has also produced medical records in the form of discharge summary which has been marked as Ex.A14 to prove that Kamala Karuppusamy was admitted to the hospital all of a sudden due to her serious illness. Both the Courts below have taken into consideration all the aforementioned factors including the undisputed facts which had been enumerated by this Court in the earlier paragraphs and only thereafter, have come to the right conclusion that the Will dated 21.10.1999



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(Ex.A12=Ex.B3) is a fabricated Will.

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22. The plea of partial partition was never pleaded by K.K.Selvam in his pleadings before the Trial Court. Therefore, there was no necessity for the Courts below to consider that issue. The said plea cannot now be raised by K.K.Selvam in the Second Appeal stage without any iota of evidence in support of his contention.

23. The witnesses examined by K.K.Selvam in support of his contention that Kamala Karuppusamy had executed a Will dated 21.10.1999 in his favour are all not independent witnesses. Considering the circumstances under which the alleged Will dated 21.10.1999 is said to have been executed by Kamala Karuppusamy, necessarily independent witnesses ought to have been examined on the side of K.K.Selvam. Admittedly, the Will is alleged to have been executed while Kamala Karuppusamy was in a hospital in its Intensive Care Unit. As a patient in the Intensive Care Unit, she would have been surrounded by doctors, nurses and other support medical staff and normally, a visitor is not allowed to enter the Intensive Care Unit and even if he is allowed to enter, he is allowed to remain with the patient only for a very short time. In those circumstances, it is highly improbable for the execution of a Will by Kamala



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Karuppusamy. As rightly held by the Courts below, K.K.Selvam ought to have examined on his side independent witnesses like doctors and support medical staff who took care of his mother Kamala Karuppusamy (testatrix) while she was in the Intensive Care Unit of the hospital suffering from serious medical ailments on account of a serious medical illness. The medical records which have been marked as exhibits also reveal that pain relievers were administered on Kamala Karuppusamy during the course of her treatment at the hospital. It is therefore clear that Kamala Karuppusamy (testatrix) was not in a sound and disposing state of mind on 21.10.1999 when the alleged Will dated 21.10.1999 (Ex.A12=Ex.B3) is said to have been executed by her. It is also clear that the Will dated 21.10.1999 is surrounded by several suspicious circumstances. Both the Courts below only based on the oral and documentary evidence available on record have come to the right conclusion that the Will dated 21.10.1999 (Ex.A12=Ex.B3) is a fabricated Will. The initial onus to prove a will lies on the propounder. 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 Will of the testator. A circumstance is “suspicious” when it is not normal or is not normally expected in a normal situation or is not



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expected of a normal person. The propounder K.K.Selvam of the Will dated 21.10.1999 (Ex.A12=Ex.B3) has miserably failed to remove all the legitimate suspicions in the Will as he has not examined independent witnesses like doctors and support medical staff who were present in the Intensive Care Unit when the alleged Will is said to have been executed by Kamala Karuppusamy. The suspicions surrounding the Will which have been enumerated by this Court in the earlier paragraphs are 'real, germane and valid' suspicions, which have not been dispelled by the propounder, namely, K.K.Selvam through the examination of independent witnesses.

24. Insofar as the sale deed dated 23.12.1989 and the settlement deed dated 20.03.1991 standing in the name of Rajarajeswari is concerned, the challenge made to the said documents has also been rightly rejected by the Courts below as they are valid documents and no challenge was made by Kamala Karuppusamy during her life time or immediately thereafter by any of her legal heirs. Only after Rajarajeswari filed the suit for partition, the challenge has been made by K.K.Selvam to the sale deed dated 23.12.1989 and the settlement deed dated 20.03.1991 standing in the name of Rajarajeswari. Hence, the Courts below only based on the oral and documentary evidence available on record have rightly rejected the claim of K.K.Selvam seeking for



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cancellation of the sale deed dated 23.12.1989 and the settlement deed dated 20.03.1991 standing in the name of Rajarajeswari. The appellants have also not seriously contested the findings rendered by the Courts below that the sale deed dated 23.12.1989 and the settlement deed dated 20.03.1991 are valid documents.

25. This Court while admitting these Second Appeals formulated the following substantial questions of law:

(a) Whether the reasoning of the Courts below for rejecting the genuineness of exhibit B3 Will without any specific pleading and evidence contracting the sound and disposing nature of mind of the testator is against well settled proposition of law under Sections 63 and 71 of the evidence Act?

(b) Whether the finding of the Courts below about the suspicious circumstances surrounding the Will is based on no pleadings and evidence but on mere surmises?

(c) Whether the Courts below are right in overlooking the natural circumstances under which the mother in anticipation of uncertainty of her life executed the Will in favour of her only son who was taking care of her?

(d) Whether the suit is hit by partial partition when admittedly the first floor building in the 2nd schedule property was not included by the plaintiff with a specific plea that it



exclusively belongs to her but the courts below have negated the claim?

(e) Whether the Courts below are right in rejecting the suit relief for injunction against TNEB for change of Electricity Connections without framing any specific issue in this regard and without holding any discussion on the issue and without any adverse finding for rejecting the suit relief?

(f) Whether the finding of the Courts below that the sale deed and the settlement deed executed by the mother in favour of the daughter/defendant is true and valid is based on sufficient evidence and supported by proper reasoning?

(g) Whether the reasoning of the Courts below that non passing of sale consideration cannot be ground to challenge the validity of sale deed is perverse and against the well settled proposition of law?

26. For the foregoing reasons, the substantial questions of law are answered against the appellants by holding that only based on the oral and documentary evidence available on record, the Courts below have come to the right conclusion that the Will dated 21.10.1999 (Ex.A12=Ex.B3) is not a genuine Will as the said Will is surrounded by suspicious circumstances and the testatrix (Kamala Karuppusamy) was not in a sound and disposing state of mind when the alleged Will is said to have been executed. The sale deed and the settlement deed executed by Kamala Karuppusamy in favour of



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Rajarajeswari, which are also subject matter of challenge, are valid documents as seen from the evidence available on record and the appellants have also not seriously contested the validity of those documents before this Court. No iota of evidence has also been produced by the appellants for the purpose of proving that the sale deed and the settlement deed standing in the name of Rajarajeswari are invalid documents. In the result, there is no merit in these Second Appeals. Accordingly, these Second Appeals are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The I Additional District and Sessions Court (P.C.R),
Thanjavur.
- 2.The Additional Subordinate Court,
Thanjavur.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).Nos.17, 18 and 19 of 2017

ABDUL QUDDHOSE, J.

Lm

Judgment made in
S.A.(MD).Nos.17, 18 and 19 of 2017

30.06.2023