



A.S.No.733 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :11.11.2024

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.733 of 2006

- 1.Prema
- 2.Uma
- 3.Rajam

... Appellants / Plaintiffs & 1st defendant

Versus

- 1.Murali
- 2.Minor Ananda Balaji
- 3.Minor Sandhya
- 4.The District Registrar, Cuddalore.
- 5.The Sub-Registrar, Cuddalore.
- 6.Ramalingam
- 7.Joseph
- 8.Murugan
- 9.Ashokan
- 10.Kumar
- 11.Kumaran
- 12.Kasi
- 13.Chokalingam
- 14.Syed
- 15.Ganesan
- 16.Sabitha
- 17.Dowlath Nisha
- 18.Kannan
- 19.Ramalingam
- 20.Dhandapani
- 21.Kasinathan
- 22.Murugan
- 23.Dhanavel



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24.Sekar

25.Chinnaponnu

26.Krishnamurthi

... Respondents / Defendants 2 to 27

RR2 & RR3 declared as major vide Court order dated 15.09.2021 made in CMP.No.7364/2017 in A.S.No.733/2006. (PTAJ).

Respondents 6 to 26 are unnecessary parties, vide memo dated 14.11.2022 recorded and vide order of Court dated 03.08.2023 made in A.S.No.733/2006. (TVTSJ).

R2 and R3 declared as major on 15.09.2021 and mother discharged from guardianship, vide order of Court dated 03.08.2023 made in CMP.No.7365 / 2017 in A.S.No.733/2006 (TVTSJ).

Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 15.12.2004 made in O.S.No.6 of 2004 on the file of the Additional District Court, Fast Tract-II, Cuddalore.

For A1	:	Mr. G.K.Muthukumar for M/s.G.M.S. Law Association
For A2 & A3	:	Mr.E.Sampath Kumar
For R2 & R3	:	Mr. R.Yashod Vardhan, Senior counsel for Mr.R.Sunil Kumar
For R1	:	No appearance
For R4 & R5	:	Mr.T.Chandrasekaran, Special Government Pleader
For R6 to R26	:	Unnecessary parties.



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ORDER

The appellants have filed this appeal to set aside the judgment and decree in O.S.No.6 of 2004, on the file of the Additional District Court, Fast Track-II, Cuddalore, dated 15.12.2004.

2. For convenience, the parties herein are referred to as they were ranked in the suit.

3. The appellants are the plaintiffs 1 and 2 and the 1st defendant in the suit, O.S.No.6 of 2004, on the file of the Additional District Court, Fast Track-II, Cuddalore. In the trial court, the appellants filed a suit for partition, claiming a half share in the suit property—one-fourth each—against their mother (D1) and their brother (D2). D3 and D4 are the minor children of D2, represented by their guardian, their mother. D5 and D6 are government officials/formal parties, and D7 to D17 are tenants of the suit properties. Except for D3 and D4, all defendants remained ex parte.

4. The plaintiffs' case is that the B-Schedule suit properties belonged to their father, Muthu Krishna Naidu, who inherited the properties from his



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father, Narayanasamy Nadar, and his grandmother, Rukmaniammal, with some properties being self-acquired by him. Thus, the entire property is deemed to be the self-acquired property of their father. He died intestate, leaving two daughters, one son, and his wife, each entitled to a one-fourth share. The second defendant (their brother) stated that their father executed a registered will on 04.03.1994 in favor of his grandson (D3), the son of D2.

5. Besides this, their father executed a settlement deed on 10.03.1994 in favor of the plaintiffs. Therefore, D2, the brother of the plaintiffs, denied the plaintiffs' claim. Consequently, the plaintiffs filed a suit for partition, arguing that their father did not execute the alleged will and that it was never acted upon, so they are entitled to half of the suit properties. Hence, they proceeded with the suit. D1 and D2 remained ex parte, while D3 and D4 contested the suit. The beneficiary of the will, D3, was a minor at the time of the suit, represented by his guardian, his mother, who was examined as D.W.1.

6. According to D3, the relationship between the parties is acknowledged, but the plaintiffs' claim for half the share is disputed. D3

<https://www.mhc.tn.gov.in> submitted that Item Nos.1 to 18 belonged to the plaintiffs' father, Muthu



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Krishna Naidu, through a will executed by his grandmother, Rukmaniammal, dated 26.01.1973, which was marked as Ex.B6. Some properties were purchased by Muthu Krishna Naidu, while others were derived from his father, Narayanasamy, as his self-acquired property. During his lifetime, their father executed a will with a sound mind in favor of D3 (minor Ananda Balaji) on 04.03.1994, and he passed away in 1996. Based on this will, D3 claimed absolute ownership of Item Nos.1 to 18. Additionally, Item Nos.19 to 21 do not belong to their family, Item Nos.22 to 24 are ancestral properties, and Item No.23 and Item No.3 of the suit properties are identical. Moreover, there is a settlement deed executed by the plaintiffs' father on 10.03.1994, through which he allocated 25 cents to each daughter, as they had already received sufficient “sreethanas” (gifts) during their marriages. Therefore, according to the will, D3 claimed he is the absolute owner of the suit Item Nos.1 to 18.

7. Before the trial court, both parties presented oral and documentary evidence. On the plaintiffs' side, Ex.P.1 to Ex.P.8 were marked as exhibits, and the 1st plaintiff was examined as P.W.1. The attester of the will and settlement deed was examined as P.W.2. On the defendants' side, the mother of the minor children was examined as D.W.1, and Ex.B.1 to Ex.B.13



documents were adduced.

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8. After considering the oral and documentary evidence, the learned trial judge framed five issues. The foremost issue was whether the will relied on by D3 was true and valid, while the other two issues pertained to the validity and effect of the settlement deed executed in favor of the plaintiffs on 10.03.1994. The 1st plaintiff, examined as P.W.1, testified that the entire suit properties were the self-acquired properties of their father, entitling each of the plaintiffs to a one-fourth share. However, the 3rd defendant contested the suit, claiming rights in Item Nos.1 to 18 based on the will allegedly executed by the plaintiffs' father, marked as Ex.B1, dated 04.03.1994. To support the will, one of its attestors was examined as P.W.2, who was also an attestor to the settlement deed executed by the plaintiffs' father, marked as Ex.P3 and Ex.P4.

9. It is undisputed that the suit property devolved upon the plaintiffs' father, Muthu Krishna Nadar, as some of the properties came through a Will executed by his grandmother, Rukmaniammal, some were inherited from his father, Narayanasamy, and some were purchased by him. The documents relied upon by the defendants, marked as Exhibits B3 to B6 and B8 to B12,



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establish that the properties included those acquired from his grandmother, Rukmaniammal. This evidence was considered by the learned trial judge, who ultimately found that, through the testimony of P.W.2, the execution of the Will was proven beyond reasonable doubt. The properties covered under the Will were shown to belong to the testator, Muthu Krishna Naidu, as self-acquired, not ancestral property. Thus, D3 is deemed the original owner of properties listed as Item Nos. 1 to 18, in which the plaintiffs have no share.

10. The settlement deed in favor of the plaintiffs, executed by their father, was also validated through the attestation by a witness, establishing that the properties in the settlement deed were not ancestral, as alleged by the contesting defendants. Accordingly, the learned trial judge held that the Will executed by the plaintiffs' father, Muthu Krishna Naidu, in favour of his grandson, D3, is valid. Consequently, the settlement deed executed by the plaintiffs' father in favor of the plaintiffs is also valid, as he had the right to execute both the Will and the settlement deed at his own discretion. Since the suit properties are neither joint family properties nor ancestral properties, but rather separate properties, thus the suit was dismissed. Challenging this finding, the appellants have now filed the present appeal.



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11. The learned counsel for the appellants argued that the learned trial judge did not properly evaluate the oral and documentary evidence submitted by the appellants/plaintiffs and urged to overturn the trial court's findings on the following grounds:

"i. The lower court failed to consider that a prior suit notice was issued, and a reply notice was provided.

ii. The lower court overlooked the plaintiffs' contention in the notice that the suit properties were ancestral, while the defendants asserted that the properties were the separate property of Muthu Krishna.

iii. The lower court did not consider that the Will (Exhibit B1) is not genuine.

iv. The lower court failed to recognize that a registered Will is not presumed to be true by default.

v. The lower court failed to see that the burden of proof lies with the propounder of the Will.

vi. The lower court did not address the highly suspicious nature of the Will.

vii. The lower court failed to see that disinheritance of heirs of equal standing raises strong suspicion regarding the Will's authenticity.

viii. The lower court did not consider that, within seven days of executing the Will (Exhibit B1), Muthukrishnan executed two settlement



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deeds (Exhibits B2 and B3), indicating that he had no intent to disinherit the plaintiffs.

ix. The lower court did not note that the attester of the Will was not examined, and therefore the attestation of Exhibit B1 was not proven.

x. The lower court erred in upholding the Will without addressing its unusual nature.

xi. The lower court incorrectly stated that the genuineness and validity of the Will executed by Rukmaniammal was not questioned.

xii. The lower court did not consider that no one connected with Exhibit B6 was examined.

xiii. The lower court did not note that the 2nd defendant, the son of the deceased, deliberately avoided testifying.

xiv. The lower court overlooked that the 1st defendant, Muthukrishnan's wife, was also disinherited.

xv. The lower court failed to recognize that the dismissal of O.S.No.40/2000 would bind the defendants in asserting the two Wills in the suit."

Based on the above grounds, the appellants pray to set aside the findings of the trial court.

12. In response, the counsel for the 2nd and 3rd respondents argued that the suit properties were indeed the separate properties of the testator, Muthu Krishna Naidu. This was substantiated by the documents marked as

Exhibits B2 to B12, demonstrating that Muthu Krishna Naidu was the



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absolute owner of the suit properties and entitled to execute a Will in favor of the 2nd respondent / 3rd defendant. The Will was proven through the attestation of P.W.2, as well as the existence of a valid settlement deed in favor of the plaintiffs. Given this documentary and oral evidence, the learned trial judge rightly dismissed the plaintiffs' claims, and there is no need for intervention. Therefore, the respondents request that the appeal be dismissed for lack of merit.

13. The primary issues in contention are: (i) Whether the suit properties were the separate properties of Muthu Krishna Naidu, the father of the plaintiffs. (ii) Whether the Will, allegedly executed by Muthu Krishna Naidu on March 4, 1994, in favor of D3, is authentic and valid or if it was executed under suspicious circumstances.

14. The plaintiffs and the 2nd defendant are siblings, born to Muthu Krishna Naidu and his wife, D1/Rajam, is an admitted fact. According to the A-Schedule genealogy, Narayanansamy and Dhanalakshmiammal had one son, Muthu Krishna Naidu, and a daughter, Kamsala. Narayanasamy's mother was Rukmaniammal. Muthu Krishna Naidu had two daughters, the 1st and 2nd plaintiffs, and one son, D2. D3 and D4 are the children of D2.



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WEB COPY 15. According to the plaintiffs, the suit properties are the separate properties of Muthu Krishna Naidu. Upon his death, intestate, he held a 1/2 share, with each sibling entitled to a 1/4 share. As D2 was not amenable to an amicable partition, a suit for partition was filed. Prior to filing the suit, the plaintiffs issued a notice, to which D2 replied, stating that their father had executed a Will in favor of his grandson (D3) during his lifetime. Thus, the plaintiffs were not entitled to any share in the suit properties (Item Nos. 1 to 18).

16. To prove the nature of the properties derived by Muthu Krishna Naidu, the defendants relied on documents Ex.B2 to Ex.B12. It is an undisputed fact that Muthu Krishna Naidu's grandmother, Rukmaniammal, executed a Will in his favor (Ex.B6, dated 20.01.1973). Some of the properties purchased by Muthu Krishna's father, Narayanasamy, also devolved upon him after his father's death, while some items were purchased by Muthu Krishna himself. Therefore, the defendants established that the suit properties, along with other properties, are separate properties of Muthu Krishna Naidu. Although the plaintiffs raised objections, they did not produce any contradictory evidence. As a result, the learned trial judge



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rightly held that the suit properties are separate properties of Muthu Krishna Naidu, entitling him to deal with them as he wishes since they are not ancestral joint properties.

17. However, the plaintiffs argued that the Will (Ex.B6) said to be executed by Rukmaniammal in favor of Muthu Krishna has not been proven by the contesting defendant, D3. In their pleadings, the plaintiffs incorrectly claimed that Rukmaniammal was Muthu Krishna's mother, whereas, in fact, she was his grandmother. Nevertheless, in Paragraph No.4 of the pleadings, the plaintiffs themselves admitted that some of Rukmaniammal's properties were given to their father, Muthu Krishna, and that some properties were purchased by him, and in toto they admits that B-Schedule properties are separate properties of their father. Therefore, the plaintiffs' objection regarding the lack of witness testimony proving the Will executed by Rukmaniammal (marked as Ex.B6) is unsustainable, as the plaintiffs have not disputed the devolution of properties through Rukmaniammal.

18. As per the contention of R2 / D3, their grandfather, Muthu Krishna, executed a Will in his favor, which was marked as Ex.B1 on 04.03.1994. The plaintiffs denied the authenticity of this Will, arguing that their mother was



not granted any share, nor was any explanation given for this exclusion.

Furthermore, the entire property was bequeathed to the grandson, without assigning reasons for excluding the daughters, i.e., the plaintiffs.

19. Summing up all the facts, the counsel for the appellants argued that the Will is shrouded in suspicious circumstances, which were not dispelled by sufficient evidence. The learned trial judge, however, accepted the Will and dismissed the plaintiffs' claim, which the appellants contend is erroneous and liable to be set aside. To support his arguments, the counsel cited various legal precedents.

i. **(2021) 14 Supreme Court Cases 500, in the case of Raj Kumari and others vs. Surinder Pal Sharma**, in which stated as follows:

"16.

(4). Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a lending part in the making of the Will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. that suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally received their due share in his estate were disinherited because the testator might have had his own reasons for



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excluding them. The presence of suspicious circumstances attendant upon the execution of the Will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with Wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasis that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is called upon to decide a Solemn question and by reason of suspicious circumstances the Court has to be satisfied fully that the Will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion, ect., 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 raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

ii. (2010) 5 Supreme Court Cases 274, in the case of **S.R.Srinivasa and others vs. S.Padmavathamma**, in which stated as follows:

"60. The High Court ought to have taken great care to satisfy its judicial conscience that the execution of the Will was not surrounded by suspicious circumstances. the appellate court had pointed out so many suspicious circumstances which could not have been brushed aside as being conjectural. The findings were based on documentary evidence. It was necessary for defendant 1 to answer a number of pertinent questions relating to the execution of the Will. It was also necessary for the High Court to exercise care and caution to ensure that the propounder of the Will has removed all legitimate suspicion.

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64. *In our opinion, the High Court failed to exercise proper care and caution by not thoroughly examining the evidence led by the party, especially when it was not in agreement with the reasons recorded by the first appellate Court."*

iii. **MANU/SC/0450/2020, in the case of Kavita Kanwar vs. Pamela Mehta and others**, in which stated as follows:

"35. In our view, though the High Court has rightly observed that even if this third page is assumed to be existing, it does not remove the suspicious circumstances but the High Court has stopped short of going a little further and has not noticed that volte-face of the Appellant regarding this third page tilts the preponderance of probabilities heavily, rather conclusively, against her. Noteworthy it is that the said third page compels us to examine several of the possibilities concerning other assets of the testatrix.

.....
37. The discussion foregoing is sufficient to find that thick clouds of suspicious circumstances are hovering over the Will in question which have not been cleared; rather every suspicious circumstance is confounded by another and the curious case of the alleged third page of the Will effectively and completely demolishes the case of the appellant. Put differently, it is difficult to be satisfied that what is literally coming out of the document in question had been the last wish and desire of the testatrix as regards succession of her estate. On the contrary, we find enough and cogent reasons to affirm the material findings of the Trial Court and the High Court that it cannot be said that the testatrix executed and signed the document in question as her will after having understood the meaning, effect and purport of the contents."

iv. **(1977) 1 Supreme Court Cases 369, in the case of Jaswant Kaur vs. Amrit Kaur and others**, in which stated as follows:



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"Will - Burden of Proof -Extent of - Suspicious Circumstances - Held, evidence adduced must satisfy the Courts conscience - Extent of burden of proof on the propounder explained - Tests laid down in Iyengar's case affirmed - On facts, held, will not duly proved - Indian Succession Act, 1925, Section 63".

20. Considering these submissions, the following point to be decided:

"Whether the Will is surrounded by suspicious circumstances as alleged by the appellants/plaintiffs?"

21. Admittedly, the contesting defendant, D3, is the grandson of the testator and the son of D2. During the trial, D2 remained ex-parte, and minor D3 was represented by his mother and guardian, who was examined as D.W.1. She is, admittedly, the daughter-in-law of the testator. To prove the Will, Eswaran, one of the attesters, was examined as P.W.2. He attested not only to the Will executed by the plaintiffs' father but also to the settlement deed executed by him in favor of the plaintiffs. P.W.2, as an attester, was cross-examined by the defendants regarding both the Will and the settlement deeds.

22. D.W.2 testified regarding the execution of the Will, stating that he worked with Muthu Krishna Naidu at Vadalur Ceramic Company and knew



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the family's affairs. According to his testimony, during his lifetime, Muthu Krishna arranged his daughter's marriage in a grand manner and provided sufficient property for her to live in her husband's house. D.W.2 also attested to signing three documents for the Muthu Krishna family: the Will and two settlement deeds. He testified that the Will was dictated by Muthu Krishnan, drafted by writer Elangovan, typed by Bharathi, and duly signed by all parties, including the testator in a sound state of mind. D.W.2 also identified the testator's thumb impression.

23. Additionally, D.W.2 testified that he also signed the settlement deed as a witness. He stated that, during the execution of the settlement deeds, the plaintiffs were aware of the existence of the Will made by their father in favor of D3.

24. The evidence provided by P.W.2 regarding the execution of the Will, as required under Section 68 of the Evidence Act, is cogent and satisfies the court that the testator executed the Will (Ex.B1) while in a sound state of mind without any coercion. The recitals in the Will clearly indicate the reason for not giving properties to his daughters. However, the testator did not bequeath any property to his wife or his son, Murali. The first



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defendant, being the wife of the testator, raised no objections, nor did she enter the witness box. Her silence implies her lack of objection to her husband's decision to execute the Will in favor of D3.

25. After a thorough analysis of the evidence on record, the plaintiffs did not present valuable contradictions from P.W.2's testimony regarding the alleged suspicious circumstances. As discussed above, P.W.2's testimony, as an attester, is satisfactory and cogent. Accordingly, the Will is proven beyond reasonable doubt. After the execution of the Will, two settlement deeds were executed in favor of the plaintiffs. Though D3 contended that the properties covered under the settlement deed are ancestral and the settlor had no right to execute those documents, the properties, as discussed, are the separate properties of the settlor, Muthu Krishna, who was therefore entitled to execute the settlement deeds, and their execution is substantiated by P.W.2's evidence.

26. Therefore, the Will is not shrouded in suspicious circumstances, as alleged by the plaintiffs, and the trial court's conclusion requires no interference. Through the evidence of P.W.2, the contesting defendants proved that the Will is true and valid, executed by the testator with a sound



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state of mind. The properties covered under Ex.B1 Will are listed as suit properties, which, according to Ex.B1, belong to D3 as the beneficiary.

Consequently, the plaintiffs have no right to claim a share in the B-Schedule properties, accordingly issue No: 1 and 2 answered.

27. The other items that do not belong to the family were not challenged by the plaintiffs, and thus the trial court rightly concluded that the plaintiffs are not entitled to a share in these properties. The authorities cited by the appellants do not apply to the present case, though it is agreeable.

28. Accordingly, this appeal suit is dismissed as devoid of merit, and the findings of the learned trial judge are confirmed. No costs.

11.11.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1.The Additional District Judge, Fast Tract-II, Cuddalore.

2.The Section Officer,



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VR-Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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