



T.O.S. No. 6 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024

PRONOUNCED ON : 21.06.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

T.O.S. No. 6 of 2021

Miss.S.Aparajitha @ Ammu

...Plaintiff

Vs

Mr.Murugabarathi

...Defendant

Prayer: Prayer:- This Testamentary Original Suit has been filed, under Sections 232 and 276 of the Indian Succession Act and Order 25 Rule 5 of the Original Side Rules, for the relief as stated therein.

For Plaintiff : Mr.K.V.Babu

For Defendant: Mr.V.G.Sureshkumar

J U D G M E N T

This Testamentary Original Suit has been filed, under Sections 232 and 276 of the Indian Succession Act and Order 25 Rule 5 of the Original Side Rules, to grant of Probate.

2.The case of the Plaintiff, as set out, in the plaint is as



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follows:-

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(i)Mr.S.Subramaniam son of P.A.Sinnappan Chettiar, died on 21.06.2020 at Sri Ramakrishna Hospital, Coimbatore and ordinarily resided at No.3, Kannammal National School Premises, Tiruppur Road, Palladam 641 664, Tiruppur District and possessed of property within the State of Tamil Nadu. This Hon'ble Court has therefore jurisdiction to grant the prayer in this petition.

(ii).That the writing hereunto annexed and now shown to the Petitioner and marked with Letter "A", is the Last Will and Testament of the deceased S.Subramaniam, and was duly executed by him at his residence at Kannammal National School Premises, No.3, Tiruppur Road, Palladam - 641 664, Tiruppur District, on the 3rd day of February, 2020, in the presence of witnesses whose names appear at the foot thereof.

(iii).That by the said WILL, the deceased has appointed the above named plaintiff namely, S.Aparajitha @ Ammu, who is the granddaughter of the Testator as the Executor. Hence, the plaintiff in her capacity as the Executor of the said Will, has filed the present Original Petition for the grant of probate.



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(iv).The amount of assets which is likely to come to the plaintiff's hand does not exceed in the aggregate a sum of Rs.64,59,64,910/- and the net amount of the said assets after deducting all items which the plaintiff is by law allowed to deduct is only of the value of Rs.64,59,44,910/-.

(v).The plaintiff has impleaded all the next of kin or other persons interested party/respondents. The wife of the Testator namely Mrs.S.Rajalakshmi predeceased the Testator on 27.07.2009 and the 1st defendant is the Son, the 2nd defendant is the Daughter of the said S.Subramaniam and the 3rd defendant is the daughter of the first defendant and granddaughter of Late.S.Subramaniam and Late.S.Rajalakshmi. There is no next of kin or other persons interested to be impleaded.

(vi).That no application has been made to any District Court or Delegate or to any other High Court for probate of any Will of the said Deceased or Letters of Administration with or without Will annexed of his properties and credits.

(vii). That the plaintiff hereby undertakes to duly administer the property and credits of the said Late S.Subramaniam, deceased, in any way concerning his Will by first paying his debts and then the legacies therein



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bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in this regard within six months from the date of grant of probate to the plaintiff herein, and also to render to this Hon'ble Court a true account of the said property and credits within one year from the said date. Thus, the plaintiff seeks relief as prayed for.

3.The case of the defendant, as set out, in the written statement is as follows:-

(i)The defendant denies all the allegations and averments set out in the petition filed praying for grant of probate of the Will dated 03.02.2020, alleged to have been executed by Mr.S.Subramaniam. This defendant denies the various averments set out in the petition, which has now been converted into a suit, praying for grant of probate.

(ii.)This defendant states that he is the son of the deceased, Mr.S.Subramaniam. Mr.S.Subramaniam was married to Mrs.S.Rajalakshmi and blessed with one son, namely this defendant and one daughter, Mrs.S.Vatsala, the mother of the plaintiff herein. Mrs.S. Rajalakshmi pre-deceased Mr.S.Subramaniam and died on 27.07.2019. Mr.S.Subramaniam



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died on 21.6.2020, just four months after the date of the alleged Will.

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(iii). This defendant hereby denies the due execution and valid attestation of the alleged Will dated 03.02.2020. This defendant further states that Mr.S.Subramaniam was not in a sound disposing state of mind prior to his death and he was suffering from various age-related ailments. He had suffered brain strokes and had been on very strong dose of medication till his death. His mental status was greatly impaired and he was affected by infirmity and weakened cognitive abilities, as a result of which he was unable to appreciate and understand the implications of his actions. He had no clarity in thought for the past over three years by reason of his deteriorating mental condition. He was a permanent resident of Palladam where he had founded a Trust, of which he was the Trustee. The said Trust is running a School. The acts of mismanagement and mal-administration of the said Trust and the School speaks volumes about the mental ability of the Testator at the time of the alleged execution of the Will propounded by the Plaintiff.

(iv).It is relevant to point out that all the immovable properties owned



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by Mr.S.Subramaniam are under orders of attachment by the Economic Offences Wing of the Police Department. He was the Chairman of the Royapettah Benefit Fund (RBF) Limited and in relation to the affairs of the said RBF criminal action was initiated by the Economic Offences Wing. in which Mr.S.Subramaniam was arrayed as an Accused. By reason of the said criminal proceedings, all the immovable properties owned by him are attached by the Order of the Hon'ble Chief Court of Small Causes, Chennai, made in O.P.No.3 of 2001 under Criminal Law (Amendment) Act. This defendant states that besides the said attachment, by reason of the claim of the Income Tax Department, towards taxes stated to be due by Mr.S.Subramaniam to the department, the Income Tax Department has also attached all the immovable properties.

(v). This defendant states that the plaintiff herein, the granddaughter of the deceased, was residing along with Mr.S.Subramaniam. She had been enjoying the moneys belonging to Mr.S.Subramaniam and had been spending the same lavishly. In fact, she had been squandering away the moneys of the Trust, Kannammal Memorial Charities, which is running the School at Palladam, namely Kannammal National School. Both



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Mr.S.Subramaniam and the plaintiff herein were the Trustees of the Trust.

The plaintiff herein, taking advantage of her close proximity and relationship with her grand-father, namely the Testator and his deteriorating mental capabilities and dependence on the plaintiff to manage his day to day affairs, made him withdraw huge moneys from the Trust for her own personal gains resulting in various acts of mismanagement in relation to the affairs of the Trust. The plaintiff, over the years, has purchased very many innumerable immovable properties in her name, without any known source of income.

(vi). This defendant states that the plaintiff has manipulated and maneuvered to secure the alleged Will dated 3.2.2020, bequeathing all the properties owned by him and properties not even owned by him, to the plaintiff and her sister. Here it is relevant to point out that the conduct of Mr.S.Subramaniam prior to his demise would clearly expose the fact that he was not in a sound disposing state of mind.

(vii). This defendant states that a mere reading of the said Will would itself indicate that Mr.S.Subramaniam was not in a sound disposing state of mind. There are various discrepancies, errors, incorrect statement of facts and suspicious circumstances, surrounding the execution of the alleged



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medical needs of his father during his life time. This defendant states that the statement made in paragraph-16 of the Will that the Testator had allegedly denounced this defendant is false and frivolous. It has been alleged only to explain the disinheritance of the only son of the Testator, which is false and could never have been the intention of the Testator.

(x). This defendant states that in fact, many assets were purchased by Mr.S.Subramaniam and this defendant jointly and title to the adjacent portions in the same property stands in the name of Mr.S.Subramaniam as well as this defendant. It is relevant to point out that in respect of the properties detailed as Items G to K in the Schedule to the Will, the properties are not properly described therein. This is because the said properties were not owned by the deceased and he had no right in these properties. The plaintiff herein was not aware of the details regarding the said properties. The plaintiff herein, by reason of her avariciousness, has attempted to include not only properties which were not at all owned by the deceased but also properties owned by the Company Mani and Money Ltd., in which the deceased was holding around 5% share, to be bequeathed in her favour. Strangely, the property owned by a Company is sought to be



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bequeathed under a Will, by a minority share holder.

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(xi). This defendant states that the fact that Mr.S.Subramaniam is alleged to have dealt with the affairs of the Trust, Kannammal Memorial Charities, under the Will is an indication that the entire document was prepared by the plaintiff who has inserted clauses therein convenient to her, to enable her to have absolute control of the School being run under the auspices of the Trust, which School was and is being mismanaged by her. The functioning of the Trust is to be managed by the Board of Trustees and directions in this regard cannot have been given in a Will. The plaintiff had in fact withdrawn huge moneys from the Trust for her own benefits, necessitating removal of the plaintiff from the Trusteeship of the said Trust by other Trustees. However, the plaintiff, by lodging a false complaint, has managed to continue in administration of the school and a suit has also been filed by the Trustees before the District Court, Tiruppur in this regard pointing out the various acts of commission and omission of the plaintiff herein in the managing the affairs of the Trust.

(xii). This defendant further states that the statement made in para 21 (iii), that this defendant owes Mr. Subramaniam a sum of

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Rs.4,00,00,000/- is incorrect and denied. There are no documents to support such a contention. The transaction in the manner as stated therein cannot also have been done as it would be in total violation of Law. The source for such money has to be explained, which cannot be done. The details regarding the alleged transaction are also not stated.

(xiii) This defendant further states that the Will is not a true and genuine document and is not executed by Mr.S.Subramaniam in a sound disposing state of mind. There are a lot of suspicious circumstances surrounding the execution of the said alleged Will. Hence, the present suit is liable to be dismissed with costs.

4. On the pleadings of the parties, the following issues were framed:-

1. Whether the deceased Mr.S.Subramaniam was in a sound disposing state of mind when the alleged Will dated 3.2.2020 executed?

2. Whether the alleged Will dated 3.2.2020 was duly executed and validly attested?

3. Whether the alleged Will dated 3.2.2020 which purports to deal with the properties described as Items G to K



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in the Schedule to the Will, legal and valid?

4. Whether the alleged Will dated 3.2.2020 in so far as it deals with the affairs of the Public Charitable Trust, Kannammal Memorial Charities, legal and valid?

5. Whether the alleged Will dated 3.2.2020 is vitiated by suspicious circumstances surrounding the alleged execution and attestation of the Will?"

5. On the side of the Plaintiffs, PW.1 and PW.2 were examined and Ex.P1 to Ex.P9 were marked and on the side of the Defendant, D.W.1 was examined and Ex.D1 to Ex.PD23 were marked.

6. This Court heard the submissions of the learned counsel on either side and perused the materials available on record.

7. The learned counsel for the plaintiff submits that the plaintiff is the grand daughter of the Testator. The Plaintiff was living with the Testator and taking care of him till his death. To prove the Will dated 03.02.2020 executed by the Testator, the plaintiff has filed the documents



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under Ex.P1 to Ex.P9 including affidavit of attesting witness of Mrs. Reena

Christy who was present at the time of execution of Will. Moreover, she was examined as PW.2 to prove the signature and state of mind of the Testator and memory and understanding condition of the Testator at the time of the execution of the said Will. In support his argument, he has relied upon the Judgment in the case of "*Ishwardeo Narain Singh Vs. Kamta Devi and Ors. reported in MANU/SC/0125/1953 and " Savithri and Ors. Vs. Karthyayani Amma and Ors. in MANU/SC/8061/2007.*

8.It has been further submitted by the learned counsel for the plaintiff that even the properties are said to have been attached by the Income Tax Department and Economic offences Wing and in so far as the title of the properties is concerned, the same has nothing to do with the present suit since the Probate Court has no jurisdiction to adjudicate the same. Further, the suit properties stand in the name of defendant are purchased only by the Testator having paid the entire consideration. In support of his argument, he relied upon the Judgment in the case of " *Krishna Kumar Birla Vs. Rajendra Singh Lodha (2008) 4 SCC 300.* Hence, he prays this Court to grant Probate



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in favour of the Plaintiff as stated in the suit.

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9. Per contra, the learned counsel for the defendant would submit that the suit properties were purchased by the Testator and the defendant jointly and title to the adjacent portions in the property stands in both names. Further, while the properties of the Testator are under attachment of some form or other and the properties in items G to K were not owned by the Testator, he had no right to bequeath these properties in favour of the plaintiff under Will dated 03.02.2020.

10. It has been further submitted by the learned counsel for the defendant that while the Testator's Name is Subramanian, in the Will dated 03.02.2020, the name of the Testator has been mentioned as Subramaniam. In support of his argument, he relied upon the Judgment in the case of "*Jaswant Kaur Vs. Amrit Kaur and others reported in 1977-1SCC-369*". Hence it creates suspicion in executing the Will by the defendant's father. Further, 2nd witness to the Will is none else than the Principal of the School,



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who is nothing but a puppet in the hands of the plaintiff.

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11.The learned counsel for the defendant would further submit that while the Testator left his son and daughter and the properties stand in the name of the defendant and Trust, he has bequeathed all the properties in favour of his grand daughter only. Hence, it indicates that Mr.S.Subramaniam was not in a sound disposing state of mind while executing the said Will dated 03.02.2020 and the same has not been executed by the Testator under the provision of Law. In support of his argument, he relied upon the Judgment in the case of "*H.Venkatachala Iyengar Vs. B.N. Thimmajamma and others reported in air 1959 SC-443* and "*Shanti Bhushan Sen Gupta Vs.Bibhuti Bhushan Sen Gupta & Ors. reported in 1997 SCC Online Pat 316*. Hence, he prays to dismiss the suit.

Issue Nos.1 and 2:

12. On perusal of the evidence of D.W.1, it is seen that the defendant has not attended even in the funeral of his mother and father to perform last rites to his parents being a son. Even though the defendant has stated that he has taken care of his father and taken great effort to have his



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father to undergo Heart Surgery in Singapore, no materials are placed to establish the same. Further, to prove the cordial relationship with the Testator, the defendant has failed to examine any relative and independent witnesses to prove the same. It would show that the defendant had strained relationship with his father. Further, the Written Statement itself reveals that the plaintiff was residing along with the Testator and had cordial relationship with him. It would show that the Testator was taken care by the plaintiff at his old age and the last rites for the Testator has been performed by the Plaintiff. While being so, the Testator has the right to bequeath his properties to any one who has taken care of him at his old age. Even the properties are said to have been attached by the Income Tax Department and Economic offences Wing, the same has nothing to do with the present suit since the Probate Court has no jurisdiction to adjudicate the same. Further, even though the learned counsel for the defendant has contended with regard to the name of the Testator, as Subramanian and not Subramaniam, it is seen from Ex.P8 (Death Summary of the Testator), the name of the Testator has been mentioned as Subramaniyam. Hence, the change of one letter in the name is not a major discrepancy. In support of this, the learned counsel for



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the plaintiff has relied upon the Judgment reported in *2021 SCC Online Tri*

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162. Further, the defendant has not raised any dispute with regard to signature of the Testator in the Will. It is also contended by the defendant that the said Will was executed in Chennai not in Palladam. But, P.W.2, one of the witnesses deposed in her evidence that the Will was executed at Palladam.

13. Hence, it is proved on perusal of affidavit and evidence of PW.2, that she was present on the day of execution of the Will on 03.02.2020 and yet another witness namely Mr.Muthusamy, was also present and they saw the testator, putting his signature in the Will and the testator saw them putting their signatures as witnesses and thereby he has also spoken about the attestation of the document, in accordance with law. The evidence of P.W.2 would also go to show that the testator was in a sound and disposing state of mind and was memory and understanding condition at the time of execution of Ex.P4- Will. The said evidence of PW2 would prove the attestation, execution of the Will and also the sound and disposing state of mind of the testator at the time of execution of Ex.P1 Will.



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In so far as the health condition of the Testator, in the cross examination, no question has been raised. Hence, the Issue Nos.1 and 2 are answered in favour of the plaintiff.

Issue No.5:

14. Even though the contentions on the side of the defendant with regard to the suspicious circumstances in execution of the Will, relying upon various the Judgment, the defendant has not proved the same by way of oral and documentary evidence. Considering the oral and documentary evidence placed by the plaintiff and Issue Nos.1 and 2 are in favour of the plaintiff, suspicious circumstances in execution of the Will does not arise. Hence, the said Will is proved by the plaintiff. Hence, the Issue No.5 is answered in favour of the plaintiff and against the defendant.

Issue No.3 and 4:

15. Testamentary jurisdiction is invoked only for the purpose of deciding the proof of the Will in order to grant Probate. Hence, this Court is not inclined to interfere with the Title of the properties since the probate Court has no power to go into the question of the Title of the Testator. However, the disputes relating to the Issue Nos.3 and 4 has to be decided



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before the Competent Court. Accordingly, Issue Nos.3 and 4 are answered in favour of the plaintiff. Therefore, this Court is inclined to issue Probate in favour of the plaintiff.

16. In the result, the Testamentary Original Suit is allowed. No Costs.

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Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Lbm/skn

1. List of Witnesses examined on the side of the Plaintiff:-

1. PW.1 – Mrs.S.Aparajitha @ Ammu

2. PW.2 - Mrs.Reena Christy

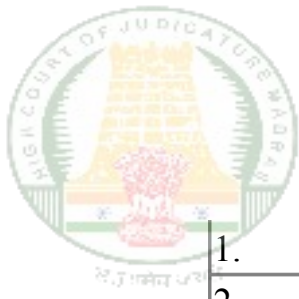
2. List of Witnesses examined on the side of the Defendants:-

DW.1 – Mr.S.Muruga Bharathi

3. Exhibits produced on the side of the plaintiff and defendants:

S. No.	Exhibits	Description of Documents	Date
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1.	Ex. P1	Death Certificate of S.Subramaniam	21.06.2020
2.	Ex. P2	Legal heir certificate of S. Subramaniam issued by the Tahsildhar.	18.08.2020
3.	Ex. P3	Death certificate of S. Rajalakshmi issued by Greater Chennai Corporation.	27.07.2019
4.	Ex. P4	Original Will Executed by Sri.S. Subramaniam	03.02.2020
5.	Ex. P5	Affidavit of Assets	10.11.2020
6.	Ex. P6	Photographs taken during Kannammal National School International Karate Championship.	2018
7.	Ex. P7	Photographs taken during Kannammal National School International Karate Championship.	2020
8.	Ex. P8	Death Summary of the Testator	--
9.	Ex. P9	Affidavit of Attesting Witness of Mrs. Reena Christy	10.11.2020
10.	Ex. D1	Letter	25.06.2020
11.	Ex. D2	Lease Deed executed by Late S. Subramaniam in favour of Mr. Adam Bawa.	25.07.2019
12.	Ex. D3	Minutes of the meeting.	26.08.2020
13.	Ex. D4	Pendrive	--
14.	Ex. D5	Certified Copy of Order in Crl. O.P. No. 2/2003 on the file of chief Judge Court of small causes, Chennai.	22.12.2004
15.	Ex. D6	Online copy of certified copy of sale deed registered as Doc. No. 2426/1995 in the office of the SRO, kodaikanal.	07.12.1995
16.	Ex. D7	Online copy of certified copy of sale deed	



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		registered as Doc. No. 2428/1995 in the office of the SRO, kodaikanal.	07.12.1995
17.	Ex. D8	Online copy of certified copy of sale deed registered as Doc. No. 2429/1995 in the office of the SRO, kodaikanal.	07.12.1995
18.	Ex. D9	Online copy of certified copy of sale deed registered as Doc. No. 2430/1995 in the office of the SRO, kodaikanal.	07.12.1995
19.	Ex. D10	Online copy of certified copy of sale deed registered as Doc. No. 31/1996 in the office of the SRO, kodaikanal.	07.12.1995
20.	Ex. D11	Online copy of certified copy of sale deed registered as Doc. No. 32/1996 in the office of the SRO, kodaikanal.	07.12.1995
21.	Ex. D12	Online copy of certified copy of sale deed registered as Doc. No. 1568/1997 in the office of the SRO, kodaikanal.	27.10.1997
22.	Ex. D13	Online copy of certified copy of sale deed registered as Doc. No. 1114/1998 in the office of the SRO, kodaikanal.	24.08.1998
23.	Ex. D14	Online copy of certified copy of sale deed registered as Doc. No. 1115/1998 in the office of the SRO, kodaikanal.	24.08.1998
24.	Ex. D15	Certified copy of Sale Deed registered as Doc. No. 228/1998 in the office of the SRO, Thousand Light.	30.03.1998
25.	Ex. D16	Certified copy of Sale Deed registered as Doc. No. 227/1998 in the office of the SRO, Thousand Light.	30.03.1998
26.	Ex. D17	Online printout of certified copy of sale deed registered as Doc. No. 1030/1998 in the office of the SRO, T.Nagar.	27.05.1998
27.	Ex. D18	Online printout of certified copy of sale	



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		deed registered as Doc. No. 383/2006 in the office of the SRO, T.Nagar.	17.02.2006
28.	Ex. D19	Online printout of certified copy of sale deed registered as Doc. No. 384/2006 in the office of the SRO, T.Nagar.	17.02.2006
29.	Ex. D20	Letter along with Postal Receipt, tracking Consignment and copy of the Will.	02.02.2022
30.	Ex. D21	Reply Letter from Mr. Thameen.	05.09.2022
31.	Ex. D22	Bank Statement	01.01.2014 To 31.03.2014
32.	Ex. D23	Copy of Letter	23.11.2023

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A.A.NAKKIRAN, J.

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**Pre-Delivery Judgement in
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