



O.S.A.Nos.304 and 366 to 369 of 2011

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.03.2024	Delivered on 04.06.2024
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CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE R.SAKTHIVEL

O.S.A.Nos.304 and 366 to 369 of 2011

O.S.A.No.304 of 2011:

1.G.Lalitha (Deceased)

2.S.M.Muruganandam

3.S.Bhuvaneswari

[Appellants 2 and 3 brought on record as legal representatives of the deceased sole appellant vide order dated 22.03.2017 made in C.M.P.Nos.9759 and 9760 of 2016 and 10621 to 10632 of 2016 and 5437 of 2017 in O.S.A.Nos.304 and 366 to 369 of 2011]

4.M.Senthil

[A4 is transposed from R4 vide Court order dated 24.02.2023 made in CMP.No.15396 of 2022]

...Appellants

Vs.

1.G.Ponnurangam (Died)



O.S.A.Nos.304 and 366 to 369 of 2011

2.G.Chandran

3.G.Vasanthakumari

4.M.Senthil

[R4 impleaded vide order dated 22.03.2017 made in C.M.P.No.5437 of 2017 in O.S.A.No.304 of 2011.]

[Transpose to A4 vide order dated 24.02.2023 made in C.M.P.No.15396 of 2022 in O.S.A.No.304 of 2011.]

5.Saraswathi

6.Usharani

7.Rani

8.Latha

9.Gopi

...Respondents

Prayer in O.S.A.No.304 of 2011: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules and Order XLI Rule 1 of the Code of Civil Procedure read with Clause 15 of the Letters Patent to set aside the judgment and decree dated 07.06.2011 made in T.O.S.No.2 of 1981.

O.S.A.Nos.366 to 369 of 2011:

1.G.Chandran

2.G.Ponnurangam (Died)

[R3 is transposed as 2nd appellant vide order dated 01.10.2018 made in M.P.Nos.1,1,1 & 1 of 2012 in O.S.A.Nos.366 to 369 of 2011.]



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3.Saraswathi

4.Usharani

5.Rani

6.Latha

7.Gopi

[Appellants 3 to 7 brought on record as legal heirs of the deceased 2nd appellant G.Ponnurangam vide order dated 19.04.2022 passed in C.M.P.No.4900, 4904, 4906 & 4908 of 2022 in O.S.A.Nos.366, 367, 368 & 369 of 2011.]

...Appellants

Vs.

1.G.Lalitha (Deceased)

2.G.Vasanthakumari

3.G.Ponnurangam

[R3 is transposed as 2nd appellant vide order dated 01.10.2018 made in M.P.Nos.1,1,1 & 1 of 2012 in O.S.A.Nos.366 to 369 of 2011.]

4.S.Mani

5.M.Muruganandam

6.S.M.Senthil

7.S.Bhuvaneswari

[R4 to R7 brought on record as legal representatives of the deceased R1 vide order



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dated 22.03.2017 made in C.M.P.Nos.10621
to 10623 of 2016 and 5437 of 2017 in
O.S.A.Nos.304 and 366 to 369 of 2011]

.... Respondents

Prayer in O.S.A.Nos.366 to 368 of 2011: Original Side Appeals filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of the Original Side Rules to set aside the order dated 07.06.2011 made in Application Nos.3283 of 2001, 1482 of 2001, 1483 of 2001 respectively in T.O.S.No.2 of 1981.

Prayer in O.S.A.No.369 of 2011: Original Side Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 1 of the Original Side Rules to set aside the decree and judgment dated 07.06.2011 made in T.O.S.No.26 of 2008.

For Appellants 2 and 3 in O.S.A.No.304 of 2011 and For Respondents 5 to 7 in O.S.A.Nos.366 to 369 of 2011	: Mr.P.C.Harikumar for M/s.P.C.Harikumar & Associates
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For 2 nd Respondent in O.S.A.No.304 of 2011 and For 1 st Appellant in O.S.A.Nos.366 to 369 of 2011	: Mr.T.S.Baskaran
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For Respondents 5 to 9 in O.S.A.No.304 of 2011 and For Appellants 3 to 7 in	: Mrs.Elizabeth Ravi
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COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

All these appeals arise out of two Testamentary Original Suits viz.,
T.O.S.Nos.2 of 1981 and 26 of 2008.

2. The above two Testamentary Original Suits were filed seeking grant of Letters of Administration in respect of two Wills said to have been executed by one Pattammal on 02.06.1977 and 14.08.1968. The said Pattammal died at Chennai on 15.07.1977. On her death O.P.No.552 of 1981 (T.O.S.No.2 of 1981) was presented on 05.08.1980 seeking Letters of Administration for the Will dated 2nd June 1977. Thereafter, another Original Petition in O.P.No.680 of 2000 (T.O.S.No.26 of 2008) was filed on 21.10.1982 seeking Letters of Administration in respect of the Will dated 14.08.1968.

3. According to the petitioners in O.P.No.680 of 2000, under the Will



dated 14.08.1968 the said Pattammal had bequeathed the property which is a residential premises situate at Swamipillai Street, Choolai, Chennai – 600 007 to her two sons, the petitioners in the said original petition. According to the petitioners in O.P.No.552 of 1981, who are the daughters of Pattammal, the said Pattammal had cancelled the Will dated 14.08.1968 and executed another registered Will in their favour on 02.06.1977. It could thus be seen that the sons of Pattammal viz., Ponnurangan and Chandran claimed as legatees under the first Will dated 14.08.1968 and the daughters of Pattammal viz., Lalitha and Vasanthakumari claimed as legatees under the latter Will dated 02.06.1977. Upon caveats having been filed in both the Original Petitions, they were converted into Testamentary Original Suits as aforesaid.

4. The sum and substance of the pleadings in T.O.S.No.26 of 2008 is that the Will dated 02.06.1977 is not true and genuine and it is only the Will dated 14.08.1968 that would prevail. The plaintiffs in T.O.S.No.2 of 1981 contended that since the Will dated 14.08.1968 has been cancelled by the subsequent Will dated 02.06.1977 the same alone would prevail and



therefore the plaintiffs in T.O.S.No.2 of 1981 are entitled to grant of Letters of Administration.

5. On the above pleadings the learned Single Judge framed the following issues in both the proceedings :-

Issues framed in T.O.S.No.2 of 1981:

1. Whether the plaintiff is entitled to grant of letter of administration in respect of the Will dated 02.06.1977 executed by deceased pattammal as prayed for?

2. Whether Pattammal was in sound state of mind at the time of executing the Will dated 02.06.1977?

3. Whether the suit is bad for non-joinder of necessary parties?

4. Whether the Will dated 02.06.1977 is true and genuine one?

5. To what relief, the plaintiff is entitled?

Issues framed in T.O.S.No.26 of 2008:

1. Whether the Will dated 14.08.1968 is the last Will of the deceased Pattammal?

2. Whether the plaintiffs have proved the Will dated 14.08.1968 in solemn form?



3. Whether Letters of Administration with the Will dated 14.08.1968 shall be granted to the plaintiffs?

4. What other reliefs the plaintiffs are entitled to?

6. At trial, evidence was recorded in T.O.S.No.2 of 1981. The Will dated 02.06.1997 was marked as Ex.P1, the release deed dated 27.01.1993 by the 2nd plaintiff in T.O.S.No.2 of 1981 was marked as Ex.P2. The death certificate of Shanmugam one of the attestors of the Will dated 2nd June 1977 has been marked as Ex.P3. The signature of the attestors in the Will dated 02.06.1977 viz., Ex.P1 were marked as Exs.P4 and P5. The affidavit of the attesting witness dated 05.08.1980 was marked as Ex.P6. The Will dated 14.08.1968 subject matter of T.O.S.No.26 of 2008 was marked as Ex.D1 and the transfer certificate of Gopal S/o. G.Kanniappa Naidu, an attesting witness to the will dated 18-08-1968, who was examined as DW3 was marked as Ex.D3.

7. While the plaintiff was examined as PW1 one S.Mani S/o.



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Shanmugam attesor to the Will dated 02.06.1977 was examined as PW2.

Ragavan S/o. Ramanuja Naicker, an attesor to the Ex.D1 Will dated 14.08.1968 was examined as DW1. G.Janakiraman S/o. the Scribe of the Will dated 14.08.1968 was examined as DW2 and Gopal Naidu S/o. the other attesting witness viz., Kanniappa Naidu was examined as DW3. One Sundara @ Sundaravadivelu another son of Shanmugam was examined as PW3, upon summons after the examination of the defence witnesses.

8. Upon consideration of the above evidence on record, the learned Single Judge held that the execution and attestation of both the Wills has been proved. However, the learned trial Judge concluded that, since both the Wills do not contain any reason for dis-inheritance of the other heirs, the dispositions made in the said Wills are unnatural apart from being suspicious. Therefore, the plaintiffs in both the proceedings are not entitled to grant of Letters of Administration and consequently dismissed the original suits. Hence, the plaintiff in T.O.S.No.2 of 1981 has come up on appeal in O.S.A.No.304 of 2011 and the 2nd plaintiff in T.O.S.No.26 of 2008 has come up with O.S.A.No.369 of 2011. The said 2nd plaintiff in



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T.O.S.No.26 of 2008 has also filed O.S.A.Nos.366, 367 and 368 of 2011 against the orders passed in the interlocutory applications in A.Nos.3283 of 2001, 1482 of 2001, 1483 of 2001 respectively, which were also dismissed along with the original suits.

9. The appellant in O.S.A.No.304 of 2011 died and her children were brought on record as appellants 2 and 3 and one of the sons M.Senthil was transposed as respondent No.4 in O.S.A.No.304 of 2011. The 1st respondent in O.S.A.No.304 of 2011 G.Ponnurangan died pending appeal and his legal representatives were brought on record as the respondents 5 to 9 in the said appeal. Similar amendments and impleading of legal representatives have also been carried out in the other appeals viz., O.S.A.Nos.366 to 369 of 2011 filed by the 2nd plaintiff in T.O.S.No.26 of 2008.

10. We have heard Mr.P.C.Harikumar, for M/s.P.C.Harikumar & Associates, learned counsel for the appellants 2 and 3 in O.S.A.No.304 of 2011 and respondents 5 to 7 in O.S.A.Nos.366 to 369 of 2011, Mrs.S.Elizabeth Ravi, learned counsel for the respondents 5 to 9 in



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O.S.A.No.304 of 2011 and for the appellants 3 to 7 in O.S.A.Nos.366 to 369 of 2011 and Mr.T.S.Baskaran, learned counsel for the 2nd respondent in O.S.A.No.304 of 2011 and for the appellant in O.S.A.Nos.366 to 369 of 2011.

11. Mr.P.C.Harikumar, learned counsel appearing for the appellants in O.S.A.No.304 of 2011 would vehemently contend that the learned Single Judge was not right in concluding that the dispositions in the Will are unnatural. He would submit that the very fact that the Testator had chosen to cancel the earlier Will and execute another Will in favour of the daughters would, by itself, demonstrate that she was not happy with her sons and hence decided to bequeath the property to the daughters to the exclusion of the sons. He would also contend that having held that the Will has been proved in accordance with law, the learned trial Judge was not right in concluding that the dispositions are unnatural. The learned counsel would also draw our attention to the evidence of PW1 to contend that there is nothing in the cross-examination of PW1 to suggest that the disposition is unnatural. He would also point out that the brothers were also living along



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with the mother and therefore it cannot be said that the Will was brought about or that the dispositions in the Will are unnatural.

12. Contending contra Mr.T.S.Baskaran, learned counsel appearing for the appellants in O.S.A.Nos.366 to 369 of 2011 would submit that the learned trial Judge was not right in his conclusion that the Will executed on 14.08.1968 is also unnatural. The learned counsel would point out that there is a recital in the Will to the effect that the sons must get the daughters married and that itself would be sufficient to show that the Testator Pattammal was aware of what she was doing and she wanted the property to be taken by the sons with an obligation imposed on them to perform the marriages of the daughters.

13. He would also draw our attention to the evidence of PW1 to contend that there is nothing in her evidence to show that the marriages were not performed by the sons. Drawing our attention to the pleadings as



well as the proof affidavit of PW1, the learned counsel would submit that there is no plea that the plaintiffs in T.O.S.No.26 of 2008 did not perform their obligations. The learned counsel would also point out that PW1 in her cross-examination has admitted that both PW1 and her sister remained unmarried at the time of death of their father and only after the death of the father the marriages were performed. Therefore, according to the learned counsel, the obligation that was imposed upon the plaintiffs in T.O.S.No.26 of 2008 viz., to get the daughters married was discharged by them and therefore the learned trial Judge was not right in concluding that there is no evidence to show that the marriages were performed by the plaintiffs in T.O.S.No.26 of 2008.

14. The learned counsel would also contend that there is neither a plea nor evidence to the effect that the marriages of the daughters were performed by the mother or by someone else. He would submit that the non-examination of the plaintiffs in T.O.S.No.26 of 2008 cannot be a ground to conclude that they did not discharge the obligation to perform the marriages of the daughters.



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15. Though reliance is placed by Mr.T.S.Bhaskaran, learned counsel on the judgment of the Division Bench in *Boomathi (Died) and others vs. Murugesan (Died) and others* reported in **2023 (2) MLJ 684** in support of his contention that once the execution of the Will is admitted, it need not be proved, on the premise that the cancellation of the first Will under the second Will is an admission of the first Will by the Testator.

16. We do not think we should go into that question in these appeals inasmuch as the learned Single Judge has categorically found that both the Wills have been proved by examining persons who are acquainted with the signatures of the Testator and the attesting witnesses. In T.O.S.No.2 of 1981 PW2 and PW3 have been examined to demonstrate the execution of the Will by the Testator. As regards T.O.S.No.26 of 2008 is concerned, there again three witnesses have been examined as DW1 to DW3. While DW1 Ragavan is son of Ramanuja Naicker one of the attestors to the Will, DW2 Janakiraman is the son of Scribe and DW3 Gopal is the son of the other attesting witness to the Will. Upon consideration of the evidence of these



witnesses, the learned trial Judge had concluded that the execution of both the Wills have been proved.

17. We do not find any material to up-turn the said conclusion of the learned Single Judge, which is based on a proper appreciation of the evidence on record. The learned Single Judge has however dismissed the suits on the ground that the dispositions are unnatural. Therefore, the only question that would arise for determination in these appeals is as to whether the learned trial Judge was right in his conclusion that the dispositions are unnatural.

18. As regards the second Will viz., the Will dated 02.06.1977 the learned trial Judge has concluded that the dispositions in the Will are not natural and there is no reason given for dis-inhering the sons. While answering issue No.4, the learned trial Judge has concluded that the dispositions are not natural and total dis-inheritance of the sons who were also admittedly residing in a portion of the house in which the Testator



Pattammal was residing leaves room for considerable doubt regarding the nature of disposition. The learned trial Judge took note of the fact that PW1 has specifically admitted that the relationship between the parties was quite normal and there was no strain in the relationship.

19. A perusal of the Will dated 02.06.1977 clearly supports the findings of the learned trial Judge. As pointed out by the learned trial Judge there is nothing in the Will which would justify the total exclusion of the sons of the Testator. PW1 in her evidence has categorically admitted that the relationship was not strained at all. In such circumstances, the conclusion of the learned trial Judge that the total exclusion of the sons would definitely be a suspicious circumstance and the propounder of the Will viz., the plaintiff in T.O.S.No.2 of 1981 has not dispelled the said suspicion by letting in tangible and reliable evidence cannot be faulted.

20. As rightly pointed out by the learned trial Judge, in the absence of any evidence regarding exclusion of sons, which the propounder is bound to place before the Court, we do not think that we can uphold the Will. Hence,



we sustain the conclusion of the learned trial Judge that the Will dated 02.06.1977, though proved in accordance with law, cannot be accepted as a valid disposition entailing the plaintiffs to issuance of Letters of Administration for the said Will.

21. Adverting to the reasons assigned by the learned trial Judge to dismiss the suit in T.O.S.No.26 of 2008, we find that the learned trial Judge has faulted the plaintiffs therein for not letting in any evidence to dispel the suspicious circumstance viz., the dis-inheritance of the daughters. A perusal of the Will dated 14.08.1968 would show that the daughters were aged 17 years and 14 years at the time of the execution of the Will dated 14.08.1968. While the property is bequeathed to the sons under the Will, it contains a recital that the sons must get the daughters married. The learned trial Judge has concluded that this disposition is unnatural, since the daughters have been dis-inherited and there is no evidence by the plaintiffs in T.O.S.No.26 of 2008 to prove that it is the sons who had performed the marriages of the daughters. The learned trial Judge would also point out that there is a total absence of evidence regarding the role of the sons in the marriage of the daughters. The fact that the sons, who were the only competent witnesses to



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22. No doubt, the learned counsel for the plaintiffs in T.O.S.No.26 of 1968 would argue that the fact that the marriages were performed after the death of the father would itself be sufficient to show that the marriage expenses were borne by the sons. The question as to whether the marriage expenses were borne by the sons is a question of fact. As rightly pointed out by the learned trial Judge it is the duty of the propounders of the Will to discharge all suspicious circumstances surrounding the execution of the Will.

23. The learned Single Judge himself has referred to several precedents which spell out that dis-inheritance of some of the heirs who would otherwise inherit the property without assigning any reason itself would be a suspicious circumstance. We do not want to burden this



judgment by referring to those precedents for re-stating the law which is so well settled. A direction to perform the marriages of the daughters could well be taken as an obligation imposed upon the sons and as a reason for not giving any share in the property to the daughters. But the sons, if they are to take the legacy, will have to prove that they have performed the marriages of the daughters as directed by the testator. This cannot be a matter of presumption and it has to be established by substantial evidence. In the absence of any evidence on the side of the plaintiffs in T.O.S.No.26 of 2008, we find that the learned Single Judge was right in concluding that the suspicion has not been dis-lodged by the propounders of the Will dated 14.08.1968. We are therefore unable to interfere with the said conclusion of the learned Single Judge also.

24. In the light of the above, the two appeals viz., O.S.A.Nos.304 and 369 of 2011 are **dismissed**. With reference to the other appeals, they arise out of orders passed in Interlocutory Applications. All the interlocutory Applications have been closed in the light of the disposal of the main appeals. The learned Judge has also come to the conclusion that no



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evidence has been placed before the Court with reference to enjoyment of the profits or proceeds from the property during the pendency of the suits.

Hence, the applications were closed. Hence, we do not see any reason to interfere with the orders passed in the applications. All the appeals are therefore **dismissed**. Bearing in mind the relationship between the parties, we direct the parties to bear their own costs in the appeals. Consequently, the connected miscellaneous petitions, if any, are closed.

(R.SUBRAMANIAN, J.)

(R.SAKTHIVEL, J.)

04.06.2024

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Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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