



TOS.No.21 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment Reserved on
01.08.2024

Judgment Pronounced on
16.08.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

TOS.No.21 of 2020

M.S.Rama Mohana Rao

.. Plaintiff

..Vs.

G.Prem Kumar

.. Defendant

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925, praying that the petitioner may be allowed to prove the Will in common form and that probate thereof, to have effect throughout the State of Tamil Nadu may be granted to the petitioner.

For Plaintiff : Mr.T.Karunakaran

For Defendant : Mr.G.Vijay Anand
for M/s.G.Vijay Anand & Associates

J U D G M E N T

Original Petition No.648 of 2019 has been filed by the executor of the Will of late, G.Sarojini dated 09.02.1996. However, one of the sons of the testatrix opposed the grant by filing a caveat and objections. In



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pursuance thereof, the Original Petition has been converted into the above

Testamentary Original Suit.

2.The plaint in brief:

The testatrix died on 26.07.2016, leaving behind a Will dated 09.02.1996. According to the plaintiff, he was appointed as the sole executor under the said Will and out of three sons of the testatrix, two of them have filed consent affidavits and one of the attesting witnesses, T.Narayanan also filed his affidavit of attesting witness. According to the plaintiff, the Will was executed by the testatrix in accordance with the provisions of the Indian Succession Act, 1925 and the Indian Evidence Act, 1872 and therefore, as the executor, the plaintiff has prayed for grant of probate.

3.The written statement filed by the defendant in brief:

The alleged Will sought to be probate is suspicious in nature and has been obtained by fraud, undue influence and coercion exercised by the beneficiary, son of the testatrix, G.Jawahar, who was cited as the 2nd respondent in the Original Petition. The mother never had the source to purchase the subject property and it was purchased only out of the



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income of the father. According to the defendant, even the Will was not duly executed by his mother, in a sound and disposing state of mind and memory. He has also denied due execution and attestation of the Will as projected by the plaintiff. According to the defendant, he had cordial relationship with the parents and there is no reason for the mother to exclude the defendant from any benefit under the Will.

4.The averments made in the Will cannot be true since the beneficiary G.Jawahar was not at all in Chennai at the time of his father's demise and he did not even attend the funeral and he came to Chennai only in April 1995. The further averments made in the Will that the defendant was earning large sums along with the brother, G.Rajkumar in United States of America is also untrue, as in 1996, according to the defendant, he was pursuing his studies in USA. The 2nd defendant in the Original Petition taking advantage of living in the family house, along with his mother has brought about the Will, manipulating the situation and coercing and unduly influencing his mother in an illegal and fraudulent manner, depriving the other two brothers totally. The defendant therefore prayed for dismissal of the Original Petition.



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5.Considering the pleadings available on record, on 08.10.2021,

this Court framed the following issues:

“i) Whether the Will dated 09.02.1996 is true and valid?

ii) Whether the Testator was in disposing state of mind at the time of execution of the Will?

iii) Whether the plaintiff is entitled to letters of administration as prayed for?”

However, it is seen that the plaintiff is the named executor under Ex.P1, Will and hence, the 3rd issue is re-casted in the manner following:

“i) Whether the plaintiff is entitled to grant of probate as prayed for?”

6.I have heard Mr.T.Karunakaran, learned counsel for the plaintiff and Mr.G.Vijay Anand, learned counsel for M/s.G.Vijay Anand and Associates, learned counsel for the defendant.

7.Mr.T.Karunakaran, learned counsel for the plaintiff would submit that the proceedings were initiated by the Chartered Accountant who has been named as executor. The Chartered Accountant had no role to play in the execution of the Will and it was only out of the own volition



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of the mother, she executed her last Will and testament. He has also further stated that both the brothers who were residing in USA permanently were not given any benefit and only the other brother, G.Jawahar, who was residing in India has been given the benefit of the property. He would further submit that though the said G.Jawahar was entitled to the entire movable assets of the deceased testatrix, the same was shared equally amongst the three brothers, even before they had knowledge about the existence of the Will executed by the mother. According to the learned counsel for the plaintiff, it clearly amplifies the fact that the beneficiary had no role to play in the execution of the Will and therefore, the allegations of coercion, undue influence, fraud, etc., are totally baseless. He would further submit that by examining P.W.2 and P.W.3, the plaintiff has also established due execution and attestation of Ex.P1 Will and therefore, the plaintiff was entitled to grant of probate.

8.The learned counsel for the plaintiff would place reliance on the decision of the Hon'ble Supreme Court in ***Rajkumari & Others Vs. Surinder Pal Sharma*** reported in (2021) 14 SCC 500 and ***Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi*** reported in (2009) 3 SCC 287 in support of his contentions entitling the plaintiff to grant of probate.



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9.Per contra, Mr.G.Vijay Anand, learned counsel for the defendant would submit that the averments in the Will regarding even the age of the testatrix were wrong. Similarly the averments that the defendant was earning very well abroad was also factually incorrect as the defendant was only a student at that time and these factual mistakes in the Will only go to show that the Will was not prepared at the instance of the testatrix. He would further submit that the testatrix has studied only up to 7th standard and she had no good education beyond that and therefore, she has been influenced unduly by the beneficiary son, G.Jawahar. The learned counsel for the defendant would also attack the Will on the following suspicious circumstances:

- i) The beneficiary was living along with the mother at the time of execution of the Will.
- ii) The Will does not even disclose the other two sons.
- iii) There is an overwriting which is unsubstantiated.
- iv) The testatrix has not signed the first page of the Will and
- v) Jurat portion of the Will is also not correct.
- vi) The evidence of Mr.Sivaprasad, P.W.3 was totally against the affidavit filed by the other attesting witnesses, T.Narayanan along with the Original Petition.
- vii) The signature of the mother is shaky.



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WEB COPY 10.The learned counsel substantiating the above suspicious circumstances, would submit that the family was in very cordial terms all along and excepting the mother, the testatrix, the family was well educated and it was the defendant who performed the last rites of his father in 1992 and till about 1995 it was only the defendant who took care of the mother and only after the beneficiary returned to Chennai, the Will has been executed. The language of the Will clearly shows that it has been drafted by a person having legal acumen, especially some one like a lawyer who has not even chosen to sign the Will drafted by him. Therefore, according to the learned counsel for the defendant, this also would be a suspicious circumstance.

11.He would take me through the evidence of the attesting witnesses, P.W.3 and the evidence of P.W.2 and point out to the inconsistencies in their evidence. He would further submit that the Will does not even give proper reasons for the bequest made to the son, G.Jawahar and further, the learned counsel for the defendant would state that the other brother, who has been examined as P.W.4 and has not chosen to contest the Will is a beneficiary of the beneficiary and



therefore, his evidence would have to be wholly discarded. The learned counsel would also submit that there has been a delay in producing the Will. He would further submit that the mother was having equal love and affection to all the three sons and there is no reason why the two sons would be totally disinherited from any benefit.

12.In support of his contention, the learned counsel for the defendant would place reliance on the following decisions:

- 1. *H.Venkatachala Iyengar Vs. B.N.Thimmajamma & Others* (1958 SCC Online SC 31).**
- 2. *Smt.Jaswant Kaur Vs. Smt.Amrit Kaur and Others* ((1977) 1 SCC 369).**
- 3. *S.Thirunavukkarasu Vs. B.Kandasuamy Reddy & 2 Others* (2001 (2) CTC 744).**
- 4. *Kavita Kanwar Vs. Pamela Metha & Others* ((2021) 11 SCC 209).**

13.I have carefully considered the rival submissions advanced by the learned counsel on either side. I have also gone through the pleadings as well as the oral and documentary evidence available on record.



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WEB COPY 14. Issues 1 and 2:

Admittedly, the testatrix is the mother of the parties. Her husband Mr.G.V.N.Rayudu pre-deceased her. According to the plaintiff, the testatrix appointed him as the executor of her Will dated 09.02.1996. The said Will has been marked as Ex.P1. It is not in dispute that the testatrix and G.V.N.Rayudu were blessed with three sons, one of whom is the defendant herein. Though only one of the three sons has been named as the sole beneficiary under the Will, the other brother who examined himself as P.W.4, G.Rajkumar has given his consent for probating the Will giving entire benefit to his brother, G.Jawahar.

15.It is only the defendant who has chosen to contest the grant of probate by filing caveat and objections. Before going to the alleged suspicious circumstances, which have been highlighted by the learned counsel for the defendant, it is to be seen whether the Will has been duly proved in the manner known to law.

16.A Will requires to be attested and proved in accordance with Section 68 of the Indian Evidence Act,1872 r/w Section 63(c) of the



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Indian Succession Act, 1925.

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17. The Will in question said to have been executed by the testatrix, G.Sarojini on 09.02.1996 is admittedly an unregistered Will. However, as required under the law, it has been attested by two witnesses. The Will is of only two pages. Admittedly, the first page has not been signed by the testatrix. However, on the reverse of the 1st page, namely the second page, she has affixed her signature and the Will is executed in the presence of two witnesses, T.Narayanan and N.Sivaprasad. The testatrix subsequently died on 26.07.2016, that is about 20 years after execution of Ex.P1, Will. The 1st attesting witness, T.Narayanan filed his affidavit of attesting witness along with Original Petition No.648 of 2019. Much has been argued about the said affidavit and the evidence of the other attesting witness, N.Sivaprasad, with which I will deal a little later. However, for completion of the narration, the plaintiff examined himself as P.W.1 and through him Ex.P1 to Ex.P7 were marked. The son of T.Narayanan, Sridhar Narayanan was examined as P.W.2 and through him, Ex.P8 to Ex.P12 were marked. The 2nd attesting witness, N.Sivaprasad was examined as P.W.3 and through him, Ex.P13 and Ex.P14 were marked. The son of the 3rd son of the testatrix, G.Rajkumar



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who had given consent for probate, was examined as P.W.4 and through him, Ex.P15 to Ex.P30 were marked and at the time of cross-examination of D.W.1, Ex.P31 and Ex.P32 were marked. On the side of the sole defendant, the defendant himself examined as D.W.1 and no document was exhibited on his side.

18.P.W.1, the executor, is a practicing Chartered Accountant. He has filed his proof affidavit in lieu of his chief examination and he has been elaborately cross-examined by the counsel for the defendant. He has said that he is a good friend of the testatrix's family and he has even claimed that the testatrix consented him before writing the Will and took his consent before appointing him as the executor of the Will. He has also further stated in the evidence that subsequent to the execution of the Will, he was informed about its execution by the testatrix herself.

19.One of the attesting witness, T.Narayanan died on 03.10.2020 and his son was examined as P.W.2. He has affirmed that the signature found in the Will is that of his father and the said signature has been marked as Ex.P12. The affidavit of attesting witness of his father, T.Narayanan was marked as Ex.P11.



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20.The 2nd attesting witness, namely N.Sivaprasad was examined as P.W.3. He has spoken about the testatrix calling him to her house at Adyar and the Will had already been signed by the testatrix and attested by T.Narayanan. He has also stated that the testatrix informed that she has executed the Will giving the property to her son, G.Jawahar and requested him to sign as the 2nd attesting witness. The 2nd attesting witness, namely P.W.3 has identified the signature of the testatrix as well as T.Narayanan, the 1st attesting witness besides his signature in Ex.P1, Will. He has further stated that the 1st attesting witness worked as Assistant/Steno under him and the testatrix's husband late, G.V.N.Rayudu. He has further stated that the husband of the testatrix and he were colleagues working in IIT Madras and good friends. He has further stated that he signed in the presence of the testatrix and the testatrix was in sound and disposing state of mind, memory and understanding when he was requested by the testatrix to attest the Will as the 2nd attesting witness.

21.As already mentioned above, the learned counsel for the



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defendant placing reliance on Ex.P11, affidavit and the evidence of P.W.3 stated that the version projected by P.W.3 is totally contrary to the affidavit of T.Narayanan in Ex.P11. I have perused Ex.P11, the affidavit of attesting witness.

22.Order XXV of the Original Side Rules deals with filing of petitions for probate and Letters of Administration. One of the necessary enclosures to be filed along with the petition for probate is an affidavit of an attesting witness. In fact, the Original Side Rules itself prescribes a specific form for the said affidavit of attesting witness. I notice that the affidavit of T.Narayanan which has been filed along with the Original Petition has been strictly prepared in accordance with the said Form No.56 appended to the Original Side Rules of the Madras High Court.

23.It is trite position that such affidavits are legal documents which are prepared by the learned counsel for the parties. When the counsel prepares the probate papers, he naturally falls back on the available forms in the Original Side Rules and therefore, in all probabilities, the affidavit of T.Narayanan has been prepared only in conformity to the said Form No.56.



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24.No doubt, it appears that the said T.Narayanan signed the Will in the presence of the testatrix alone and not in the presence of the 2nd attesting witness, N.Sivaprasad. However, the said T.Narayanan did not survive to give evidence or clarify the position with regard to the actual execution of the Will in the manner projected by him in the affidavit of attesting witness or in the manner spoken by P.W.3.

25.In this regard, I have carefully scrutinized the evidence of P.W.3, the 2nd attesting witness. He has admitted to the signature in Ex.P1, which has been marked as Ex.P13. P.W.3, in his cross-examination, has stated that he was not been present when the Will was executed by the testatrix G.Sarojini and that the other attesting witness, T.Narayanan did not sign the Will in his presence. However, he has stated that the Will was attested by him and it was only the testatrix who requested him to attest the Will. He has further stated in re-examination that while attesting Ex.P1, Will, excepting G.Sarojini, no one else was there and that Ex.P1 has already been signed by the testatrix, G.Sarojini and the 1st attesting witness, T.Narayanan. He has further stated that he



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does not remember on which day he attested Ex.P1, Will, but when he attested the signatures of the testatrix and the other attesting witness, T.Narayanan were already there.

26.The legal position is very clear that it is not necessary for both the attesting witness to be present at the same time. Section 63(c) of the Indian Succession Act only requires a Will to be attested by two or more witnesses and what is necessary is that each of them should have seen the testator sign or put his mark on the Will and that the Will should have been signed by the witnesses in the presence of the testator. However, the provision itself makes it clear that it is not necessary that more than one witness should be present at the same time and there is no particular form of attestation. Therefore, in the light of the evidence of P.W.3, identifying the signature and also clearly deposing that the testatrix had already executed Ex.P1, Will in the presence of the 1st attesting witness, T.Narayanan and that at her request, he attested the Will as the 2nd attesting witness in Ex.P1, Will in her presence, certainly satisfies the requirement of Section 63(c) of the Indian Succession Act. The signature of the 1st attesting witness, T.Narayanan is also identified by his son, P.W.2, Sridhar Narayanan. It is not the requirement of Section 63(c) of



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the Indian Succession Act that the testator must sign the Will only in the presence of two witness. Equally, there is no requirement that both the attesting witnesses must be present at the same time while attesting the Will.

27.In this regard, the decision of the Hon'ble Supreme Court in ***Rajkumari & Others Vs. Surinder Pal Sharma*** reported in (2021) 14 SCC 500, relied on by the learned counsel for the plaintiff assumes significance. In the said decision, the Hon'ble Supreme Court held that it is not necessary for both the attesting witnesses to be present at the same time and attest the Will in the presence of each other and the testator.

28.With regard to the testatrix not signing the first page of the Will, I do not see this as an invalidating circumstance. There is no specific form in which a Will is required to be written. Admittedly, both the 1st and 2nd pages of the Will are typed back to back in a single sheet of paper. Therefore, merely because, the first page has not been signed by the testatrix, it would not render the Will invalid, especially when there is no such requirement in law that each page of the Will should be signed.



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WEB COPY 29. It is not even the case of the defendant that the contents of the first page have been interpolated or changed and therefore, the Will cannot be a true and genuine document. More so, in this case when the Will is only consisting of two sheets, typed back to back and the signatures found only on the last page, it cannot be said that the first page would have been tampered or fabricated. Therefore, I do not see the non signing of the first page by the testatrix as a suspicious circumstance or a ground to disbelieve Ex.P1 Will.

30. The evidence of P.W.2 and P.W.3 clearly proved due execution and attestation of the Will in accordance with Section 63(c) of the Indian Succession Act. The fact that the affidavit of attesting witness filed along with Original Petition states that the Will was signed in the presence of both the witnesses and that the both the witnesses signed in each other's presence and the presence of the testatrix would not in any way render the Will invalid for the simple reason that the said affidavit was filed only in conformity to the Form No.56 of the Original Side Rules and the deponent of the said affidavit was also not examined in view of his demise pending proceedings. However, the evidence of P.W.3 qualifies



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the manner of execution of Ex.P1, Will which is wholly natural and believable. Moreover, P.W.3 could have easily toed the line of Ex.P11, affidavit of attesting witness, T.Narayanan, and stated that he also signed the Will in the presence of the testatrix and in the presence of the other attesting witness and that the Will was executed in his presence. The fact that he has given a totally different version which is clearly going against the affidavit of the other attesting witness in Ex.P11 goes to show that P.W.3 has only spoken the truth and his evidence being natural and truthful, it can certainly be favourably considered in support of due execution and attestation of Ex.P1, Will.

31.Coming to the suspicious circumstances, as highlighted by the learned counsel for the defendant, the fact that there is no disclosure of the other sons cannot be a suspicious circumstances in my opinion. The Will does disclose that the testatrix had three sons. However, it is only that their names are not mentioned and this cannot be a ground to invalidate the Will or suspect the Will.

32.According to the learned counsel for the defendant, there are certain factual errors with regard to age of the testatrix and the statement



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that the other two sons in USA earning large sums being incorrect, these again are highly insignificant and when it is clearly shown that the beneficiary did not have any role in the execution of Ex.P1, Will, it cannot be said that these statements even assuming without admitting that they are factually incorrect, the same would not be suspicious circumstances to invalidate or disbelieve, Ex.P1, Will.

33.The next suspicious circumstances is regarding the date of the Will. According to the learned counsel for the defendant, at the ninth paragraph page No.2, there is some overwriting. I have seen the original Will, Ex.P1 and I do not find any overwriting as claimed by the defendant. According to the defendant, the Will came to be executed within two months from the date on which the beneficiary came to India and till then it was the defendant who was taking care of the mother. However, as seen from the evidence, the execution of the Will was never known to all the three sons until such time, the locker was opened in the presence of three of them. In fact, prior to knowledge of Ex.P1, Will, the movable assets were divided equally amongst the three sons, which in fact as per the Will ought to have gone only to beneficiary G.Jawahar. However, the said G.Jawahar has not made any claim in respect of the



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amounts already divided amongst the three brothers. Therefore, when the beneficiary had absolutely no role to play in the execution of the Will, the mere fact that the Will was executed within two months after he returned to India is certainly not a suspicious circumstances to doubt the genuineness of Ex.P1, Will.

34. With regard to the jurat portion being wrong the learned counsel for the defendant submitted that it is only stated “ in witness whereof, I, the testatrix, G.Sarojini, have put my signature to the Will this 9th February 1996”. According to the learned counsel for the defendant this portion does not indicate that G.Sarojini signed in the presence of the attesting witnesses. However, on perusal of Ex.P1, Will, I find that after the above extracted portion, the schedule has been typed and below that the following is available “signed by the above named testatrix in the presence of both of us at the same time and both of us are in the presence of under directions of the testatrix signed our names hereunder as attesting witnesses”. With regard to one of the two witnesses affixing his signature at a later date, at the direction of the testatrix has already been dealt with by me earlier. Therefore I do not see this as invalidating circumstance to suspect the truth and genuineness of Ex.P1, Will. In fact,



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as rightly pointed out by the Hon'ble Supreme Court in *Rajkumari & Others Vs. Surinder Pal Sharma* reported in (2021) 14 SCC 500, technical objections should not defeat the laudable wishes of the testatrix and the probate Court being a Court of conscience should not permit such technicalities to override wishes of the testatrix. This ratio laid down by the Hon'ble Supreme Court would squarely apply in order to meet the alleged suspicious circumstances raised by the learned counsel for the defendant.

35. Here, I have already found that the evidence adduced on the side of the defendant clearly establishes that the testatrix was in sound and disposing state of mind, memory and understanding. Yet another argument of the learned counsel for the defendant is that the scribe of the Will was not examined. There is no law requiring that the scribe of the Will has to be examined in support of the proof of due execution and attestation of the Will. The proof of Will is governed only by Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act. The law only requires that one of the attesting witnesses has to be examined and also provides for alternate solutions in the event of both the attesting witnesses not being alive or not procurable to give evidence



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before the Court. Therefore, there is no merit in the argument of the learned counsel for the defendant that the Will has to be thrown out because the draftsmen or typist of the Will has not been examined.

36. With regard to delay, I find that the Will has come to light only after the locker in the name of the testatrix was opened, that too, in the presence of all the three sons which is affirmed by the evidence of the son, P.W.4 who gave evidence and also not disputed or denied by the defendant, who examined himself as D.W.1 and within a period of three years from the date of demise of the testatrix. The Original Side Rules only requires an explanation for delay where the Original Petition is filed beyond the period of three years from the date of demise. This also does not arise for consideration since the Original Petition has been admittedly filed within a period of three years.. Therefore delay is also not a ground available to the defendant to attack the truth and genuineness of Ex.P1, Will.

37. In view of the above, I hold that none of the circumstances pointed out by the learned counsel for the defendant are in fact raising any suspicion surrounding the truth and genuineness of due execution



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and attestation of Ex.P1, Will.

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38.Once the Court holds that the Will has been duly executed in the manner known to law and there are no suspicious circumstances surrounding the due execution of the Will, then the onus would shift to the caveator who alleges coercion, threat or undue influence. In this regard, I have perused the oral evidence of D.W.1 and also cross-examination of the plaintiff's witnesses by the counsel for the defendant. There is absolutely nothing to suggest that the Will was brought about by undue influence and coercion. The defendant has not even filed any document to further his plea of threat, undue influence and coercion exercised by the beneficiary. In fact, it has come out in the evidence that the beneficiary himself was not aware of the execution of Ex.P1, Will and the Will came to light only when the mother's locker was opened and the Will was found there. Therefore, in the absence of the defendant adducing any iota of evidence to establish his plea of allegations of fraud, undue influence and coercion, the said defense taken by the defendant in the written statement is wholly unsustainable and baseless.

39.In *H.Venkatachala Iyengar's case*, the Hon'ble Supreme Court held that the propounder should be called upon to show by



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satisfactory evidence that the Will was signed by the testator and that the testator at the relevant time was in sound and disposing state of mind and that he understood the nature and affect of the dispositions and put his signature to the document of his own. The Hon'ble Supreme Court further held that ordinarily when evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove sound and disposing state of the testatrix's mind and the signature has required by law, then Courts would be justified in making a finding in favour of the propounder and then onus on the propounder can be taken to be discharged on proof of essential facts indicated above. There is no quarrel with regard to the said settled proposition of law.

40.In *Smt.Jaswant Kaur'* case, the Hon'ble Supreme Court held that the burden of proving due execution of the Will lies only on the parties relying on the Will and when suspicious circumstances exist, evidence must be adduced to satisfy the Court's conscience. Again there is no quarrel with regard to the said proposition. I have already found that the circumstances which are alleged to be suspicious circumstances are not germane to doubt the truth and genuineness of the Ex.P1, Will. Also, fundamentally, the circumstances which are alleged to be suspicious



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should surround the actual execution of the Will and not circumstances which are totally irrelevant or extraneous to the execution of Will in question.

41. Herein above, I have already discussed in detail various circumstances which are contended to be suspicious circumstances but are actually not suspicious at all and therefore, this decision is also of no avail to the defendant.

42. This Court, in *S. Thirunavukkarasu's case*, held that when the date was written in the preamble portion and two of the attesting witnesses did not write the date below the signature and the 3rd attesting witness inserted the date below the signature of the other two witnesses, it would amount to suspicious circumstances. However, in the facts of that case the propounder was the sole beneficiary and he had taken a prominent role in the execution of the Will itself and the evidence was available to indicate that the Will was prepared under vitiating circumstances and therefore, the Court proceeded to hold that the Will was brought about under the suspicious circumstances. I do not find that this judgment also coming to the aid of the defendant.



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43. In *Kavita Kanwar's case*, the Hon'ble Supreme Court only reiterated the principles laid down by the Three Judge Bench of the Apex Court in *H. Venkatachalam Iyengar Vs. B.N. Thimmajamma* reported in *AIR 1959 SC 443* and explained as to what would amount to a suspicious circumstances. However, even in the said decision, the Hon'ble Supreme Court has held that in the ultimate analysis even if the Will is shrouded in suspicion, it would be a matter essentially of judicial conscience of the Court and the party which accepts the Will has to offer cogent and convincing explanation on the suspicious circumstances surrounding the Will.

44. Regarding unequal distribution, the argument put forth by the learned counsel for the defendant is that though the mother had equal love and affection for all the three sons, she had given the entire estate to only one of the sons. Therefore, according to the learned counsel for the defendant, disinheriting the other two sons would be a strong suspicious circumstance. The Court deciding the testamentary instrument has to put itself in the arm chair of the testatrix/testator and see if the bequests made under the Will would have been made by the testator or testatrix



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concerned in the given surrounding circumstances. Here, putting myself

in the arm chair of the testatrix, I do not find the bequest to one of the

sons being unnatural or improbable for the simple reason that admittedly

both the other sons are settled abroad. Merely because it is stated that the

brothers are earning sufficiently large sums of income abroad, which may

or may not be true or not, this would not be a criteria to suspect the Will.

In fact, it is shown in the evidence that D.W.1 the defendant as well as

P.W.4 the other two brothers have no intention to come back to India

and they are comfortably settled abroad. It was only the beneficiary son,

G.Jawahar, who returned to India in 1995 and has been here with the

mother until her demise and continues to reside in the suit property. In

fact, the defendant has gone to the extent of questioning the title of his

mother claiming that the mother had no independent source of income to

purchase the property and that she was only a name lender and the

property was purchased out of the income of the father. It is also not in

dispute that even though the movable assets also were bequeathed

absolutely to G.Jawahar, the sole beneficiary, prior to commitment of the

Will the movable assets have been shared by all the three sons equally.

Therefore, I do not find any circumstance which would blossom into a

suspicious circumstance warranting the Court to disbelieve or suspect the



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Will.

WEB COPY 45. **Issue No.3:**

In view of the findings in issue Nos.1 and 2, this issue is also answered in favour of the plaintiff.

46. For all the above reasons, the plaintiff, as the sole executor, is entitled to grant of probate.

47. In the result:

(i) The Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate with the Will dated 09.02.1996, annexed.

(ii) This Court, taking into consideration the nature of relationship between the parties, is not inclined to award costs.

16.08.2024

Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

1.P.W.1 - M.S.Rama Mohana Rao

2.P.W.2 - Sridhar Narayanan

3.P.W.3 - N.Sivaprasad



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4.P.W.4 - G.Rajkumar

Exhibits produced on the side of the plaintiff:

WEB COPY

S.No.	Exhibits	Date	Description
1.	Ex.1	09.02.1996	Will of late, G.Sarojini.
2.	Ex.2	01.04.1992	Death Certificate of G.V.N.Rayudu.
3.	Ex.3	23.10.2010	Legal Heir Certificate of G.V.N.Rayudu.
4.	Ex.4	26.07.2016	Death Certificate of G.Sarojini.
5.	Ex.5	04.01.2017	Legal Heir Certificate of G.Sarojini.
6.	Ex.6	03.01.2020	Consent affidavits of G.Jawahar, the 2 nd respondent in O.P.No.648 of 2019.
7.	Ex.7	03.01.2020	Consent affidavits of Rajkumar, the 3 rd respondent in O.P.No.648 of 2019.
8	Ex.8	13.11.2017	Aadhar card printout of Mr.Sridharan Narayanan.
9	Ex.9	23.01.2020	Online Death Certificate of T.Narayanan.
10	Ex.10	09.11.2020	Online Legal Heir Certificate of T.Narayanan.
11	Ex.11	June 2019	The affidavit of attesting witness of T.Narayanan.
12	Ex.12	03.01.2023	Mr.T.Narayanan's signature in the Will.
13	Ex.13	09.02.1996	Signature, name and address of Mr.Sivaprasad (2nd attesting witness) in the will of Late Mrs.Sarojini.
14	Ex.14	-	Aadhar card printout of N.Sivaprasad.
15	Ex.15	23.10.1975	Income tax return filed by the testatrix for the year ended 31.03.1975 showing house property at Gandhi Nagar, Adyar as her own property.
16	Ex.16	29.03.1978	Photocopies of the correspondence with Income tax officer along with copy of certificate.
17	Ex.17	31.03.1980	Income tax assessment order dated 31.03.1980 along with IT return filed by the testatrix for the assessment year



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			1976-1977.
18	Ex.18	22.08.1980	Photocopy of the Income tax assessment order along with statement of assessable income for the year 1975 to 76.
19	Ex.19	15.11.2016	Printout of the email from G.Premkumar to G.Rajkumar.
20	Ex.20	28.02.2019	Printout of the email from G.Rajkumar to G.Premkumar.
21	Ex.21	22.08.2016	Online statement of shares in Companies held by G.Sarojini, the testatrix shared between three brothers.
22	Ex.22	01.01.2016 & 31.12.2016	Online statement showing G.Sarojini client ID No.20323426 shares that came to G.Jawahar Demat client ID No.20318455 account and 1/3 transferred to G.Premkumar client ID No.50281773 with ICICI Bank.
23	Ex.23	22.09.2016	Reply e-mail to defendant by G.Rajkumar signifying his consent to open locker by G.Jawahar.
24	Ex.24	08.11.2016	E-mail G.Jawahar to G.Premkumar regarding Canara Bank locker nomination papers in the name of G.Jawahar.
25	Ex.25	29.11.2016	Printout of E-mail from G.Premkumar to G.Rajkumar and Jawahar.
26.	Ex.26	01.12.2016	Printout of E-mail from Jawahar to G.Premkumar.
27	Ex.27	19.12.2016	Printout of E-mail from Jawahar to G.Premkumar.
28	Ex.28	22.01.2019	Printout of E-mail from G.Premkumar to G.Rajkumar and Jawahar.
29	Ex.29	27.02.2019	Printout of E-mail from G.Rajkumat to G.Premkumar.
30	Ex.30	04.10.2013	Photocopy of the receipt of Rs.25 lakhs donated to the Indian Institute of Technology, Madras by the testatrix, G.Sarojini.
31	Ex.31	29.07.1974	Certified copy of the Adyar properties



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			Sale Deed Document No.168 of 1974.
32	Ex.32	-	Photocopy of the property tax demand card.

Witnesses examined on the side of the defendant:

D.W.1 - G.Prem Kumar

Documents marked on the side of the defendant:

Nil.

16.08.2024



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P.B.BALAJI,J.

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Pre-delivery judgment made in
TOS.No.21 of 2020

16.08.2024