



TOS. No.10 to 12 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.07.2024

Pronounced on: 30.10.2024

CORAM:

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

TOS.Nos.10, 11 & 12 of 2016

M.Ramadoss

.. Petitioner/Plaintiff in TOS. No.10 of 2016

Kishore Kumar @ Narayanan

.. Petitioner/Plaintiff in TOS. No.11 of 2016

R.Shamili @ Shamili Devi

.. Petitioner/Plaintiff in TOS. No.12 of 2016

..Vs.

1.M.Sarada Devi

2.R.Anjana Devi (Died)

3.N.Renganathan

4.Anandi

5.R.Sasikala

6.R.Vishnupriya

(Defendants 3 to 6 are impleaded
as LR's of the deceased Second
Defendant vide order dated 01.04.2021)

..Caveators/Defendants in all TOS

Prayer: Original Petition has been filed under Sections 222 and 276 of the



Indian Succession Act of XXXIX of 1925 for the grant of Letters of Administration annexed to the petitioner in the above TOS, as the son, grandson and granddaughter of deceased Mariammal and Madurai Muthu under the Will having effect limited to the State of Tamil Nadu.

For Plaintiffs : Mr.G.Surya Narayanan
in all TOS

For Defendants : Mr.K.V.Babu,
for Mrs.K.Sumathi for D1
in all TOS

D2 - Died
D3 - No Appearance
D4-D6 - Exparte

COMMON JUDGMENT

All these suits are relating to the last Wills executed by Mariammal and Madurai Muthu.

2. TOS. No.10 of 2016, arises out of OP No.631 of 2012 where the plaintiff as petitioner has sought for grant of letters of administration of the last Will and Testament of Late Mariammal and Madurai Muthu who died on 14.07.2006 and 01.06.2010 respectively, leaving behind a Will dated 21.09.2001,executed in the presence of two witnesses P.S.Narayanan and



E.Sundar.

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3. TOS. No.11 of 2016, has been filed by the plaintiff as petitioner in OP No.625 of 2012 seeking grant of letters of administration of the last Will and Testament of Late Mariammal and Madurai Muthu who died on 14.07.2006 and 01.06.2010 respectively, leaving behind a Will dated 21.09.2001,executed in the presence of two witnesses P.S.Narayanan and E.Sundar.

4. Similarly, TOS No.12 of 2016, has been filed by the plaintiff as petitioner in OP No.630 of 2012 seeking grant of letters of administration of the last Will and Testament of the Late Mariammal and Madurai Muthu who died on 14.07.2006 and 01.06.2010 respectively, leaving behind a Will dated 21.09.2001,executed in the presence of two witnesses P.S.Narayanan and E.Sundar.

5. It is seen that the deceased late Mariammal and Madurai Muthu have executed three separate Wills on the same day in the presence of the same attesting witnesses. The above three Original Petitions have been filed



seeking grant of letters of administration by the respective beneficiaries.

However, in view of the objections taken by the defendants, who are respondents 2 and 3 in the Original Petitions, the Original Petitions were directed to be converted as Testamentary Original Suits.

6. The sum and substance of all the three Original Petitions is that the petitioner/plaintiff in TOS No.10 of 2016, by name M.Ramadoss, is the son of Mariammal and Madurai Muthu; the first respondent in the OP, one by name Mr.M.Madhavan is the another son of the said Mariammal and Madurai Muthu; the plaintiff in TOS No.11 of 2016 is the grandson through Mr.M.Ramadoss and the plaintiff in TOS No.12 of 2016, is the granddaughter through Mr.M.Ramadoss.

7. According to the plaintiffs, the Testator and Testatrix have executed the respective Wills on 21.09.2001, while they were in sound and disposing state of mind, memory and understanding, and that the said Wills were duly executed and attested as required under the law. It is further stated that, though an executor has been appointed under the Wills, the respective legatees have filed the three OPs seeking grant of letters of administration.



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8. It is also stated that the subject property of the Will belonged to the Testatrix, Mariammal. However, her husband, Madurai Muthu also signed along with Mariammal and the Testatrix Mariammal pre-deceased her husband, Madurai Muthu on 14.07.2006. Subsequently, the Co-Testator Madurai Muthu also died on 01.06.2010. Under such circumstances, OPs have been filed and subsequently converted as the above Testamentary Original Suits.

9. The defendants are none else than the daughters of Mariammal and Madurai Muthu and in view of their objections by way of caveat as required under the provisions of the Indian Succession Act, along with supporting affidavits, the OPs have been converted as suits, consequent upon which, the first defendant has filed a written statement. The said written statement has been adopted by the second defendant.

10. The sum and substance of the written statement is as follows:

The relationship between the parties and also the date of death of the



parents is not disputed. It is admitted by the defendants that the mother, Mariammal purchased the subject property in and by a sale deed dated 04.07.1960. However, according to the defendants, the parents did not execute any testamentary instrument and they died intestate and therefore, the plaintiffs have filed C.S. No.152 of 2012 seeking partition and separate possession of the estate of their Mother, Mariammal.

11. According to the defendants, the thumb impressions found in the Wills are not that of Mariammal, their mother. The fact that three different Wills have been executed on the same day itself raises suspicion on the truth and genuineness of the Wills. The manner in which the Wills are prepared, exhibits that blank papers containing LTI of Mariammal have been used by the plaintiffs to fabricate the Wills.

12. In the partition suit, C.S. No. 152 of 2012, the plaintiff in TOS No.10 of 2016, ie., the son of the Testator/Testatrix has stated that the father Madurai Muthu has executed the Will on 06.09.2006. Therefore, when the father who survived his wife, Mariammal had executed a Will subsequently, then the said subsequent Will would become the last Will and Testament of



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their father Madurai Muthu and therefore, the earlier Will in respect of which grant is now sought for has already stood revoked. There was no necessity for executing three Wills, if really the intention of the parents was that the subject property should go to only the plaintiff and his children and the same is not according to the normal customary practice of execution of Wills.

13. Madurai Muthu, the father has claimed that he is the absolute owner of the property which again raises suspicion because the property admittedly was purchased in the name of Mariammal and even according to the plaintiff, when the father Madurai Muthu had executed the Will subsequently on 06.09.2006, the plaintiff without probating the same, cannot seek for any grant in respect of an earlier Will which automatically got revoked and superseded.

14. These objections apart, the defendants have also stated that their mother was compelled to affix LTI in blank papers for which she had categorically stated that all children should be consulted before taking any decision on the disposition of the property and her husband, Madurai Muthu



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was irked on such unsolicited advice by his wife and even went to the extent of beating his wife and confining her to her bedroom. According to the defendants, the mother was threatened by the plaintiff and her husband and she was also driven out of the house and she was living with the elder son Madhavan. The mother also gave a complaint to the Inspector of Police, All Women Police Station, Adayar on 06.02.2002. Therefore, according to the defendants when the mother Mariammal was forcibly sent out of the house in September 2001, by no stretch of imagination she would have executed the Will on 21.09.2001 within less than a span of two weeks.

15. According to the defendants, the mother was illiterate and could not read or write and used to affix only her thumb impression. According to the defendants, the thumb impression in the alleged Wills is not that of their mother Mariammal. It is also stated that on 26.07.2002, Mariammal had instructed her lawyer to issue a notice to her husband, Madurai Muthu and at that point of time she was living with her elder son, Madhavan. The husband i.e., Madurai Muthu sent a reply dated 01.08.2002 to the notice dated 26.07.2002 stating that Mariammal had no right in the property and that it was purchased by Madurai Muthu in the name of his wife Mariammal. Even



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in the said notice Mariammal had not mentioned anything about the alleged joint Wills dated 21.09.2001 and equally Madurai Muthu also did not mention about the execution of the Joint Wills on 21.09.2001. Relationship further worsened between the parents and on 05.02.2006, the father Madurai Muthu complained to the Inspector of the Police, Law and Order, R6 Kumaran Nagar Police Station alleging that his son, the plaintiff had physically assaulted him and also misappropriated huge sums from his Bank Accounts. It is also contended that even after the demise of Mariammal on 14.07.2006, the existence of the Wills were never disclosed. Even on 20.09.2010, though the plaintiff's father issued a lawyer's notice to his brother M.Madhavan, there was no whisper about the alleged Wills dated 21.09.2001 and the claim was made only under the Will dated 06.09.2006 which did not see the the light of the day.

16. According to the defendants, existence of the alleged Wills dated 21.09.2001 was made only on 04.06.2012 and there is mystery surrounding the execution of the alleged Wills. The spacing in the Wills is also not natural and signature of Madurai Muthu also differs in all the three Wills. There is also no sufficient space available for the signature of the second



attesting witness and the execution itself is cramped only because there is no more papers available containing the signatures/LTI of the Testator/Testatrix. Therefore, according to the defendants the Wills are fabricated. There is also no attestation clause in the Wills and when Madurai Muthu, the Testator himself claims in the subsequent Will dated 06.09.2006 that he is the owner of the property, such stand was not even put forth in the joint Wills dated 21.09.2001. According to the defendants, the execution of the Wills are shrouded in suspicions and therefore, the respective plaintiffs are not entitled to grant of letters of administration in their favour.

17. The plaintiffs filed a reply statement, the gist of which is as follows:-

The property was admittedly purchased in the name of Mariammal. The plaintiff further stated that the subsequent Will by Madurai Muthu executed on 06.09.2006 did not revoke the joint Wills dated 21.09.2001; there is no infirmity with regard to the attestation as alleged by the defendants. According to the plaintiffs, the Will dated 06.09.2006 executed by Madurai Muthu is of no relevance as, soon after the death of his wife Mariammal, Madurai Muthu was only in joint possession and enjoyment of



the property belonging to the plaintiffs in the three Testamentary Suits.

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18. Further the allegations of suspicious circumstances surrounding the execution of the Wills is also stoutly denied. Insofar as the complaints given by the parents, the plaintiffs submit that the mother had herself given a letter to the police during enquiry that she intends to live only with her husband. The other son Madhavan had allegedly purchased a property in his name from and out of the funds provided by the father, Madhurai Muthu and he had a grievance against the father and only at his instigation, the mother lodged the police complaint on 06.02.2002, especially because the mother was temporarily living with Mr.Madhavan, at that point of time for taking care of the new born child of Mr.Madhavan and his wife. It is also stated that during the lifetime of the father, he has also settled the property in the name of the second defendant, daughter besides also giving huge moieties to the first defendant, both at the time of her marriage as well as later and also half of the property at Sai Baba Colony was given to her. Only because the plaintiff and his children were not benefited, the Wills came to be executed by the parents and there is no suspicion surrounding the due execution of the three joint Wills dated 21.09.2001.



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19. The plaintiff has further stated that even assuming the father had executed a subsequent Will on 06.09.2006, though not legally valid, even under the said Will the property has been given only to the plaintiffs and there is no change of bequest between the Wills. The allegations of fabrication are denied the property admittedly standing in the name of Mariammal and her husband Madurai Muthu having not claimed any right or title over the said property, the joint Wills are therefore tenable and the subsequent Will executed by Madurai Muthu is of no avail.

20. Insofar as the allegations made by the defendants that the relationship was not cordial between the father and the son, the plaintiffs submit that if Madurai Muthu, the father had really any dispute with his son, the plaintiff in TOS. No.10 of 2016, the father would have cancelled the Wills. However, no such attempt has been made in this regard and therefore, according to the plaintiffs, the Wills are all true and genuine and the plaintiffs are entitled to the relief as prayed for.

21. Considering the pleadings, the following issues have been framed



in all the three Testamentary Original Suits:-

- “1. Whether the Will dated 21.09.2001 is true and genuine?*
- 2. Whether the plaintiff is entitled for Letters of Administration as prayed for?*
- 3. To what other reliefs the parties are entitled to?”*

22. The plaintiff in TOS No.10 of 2016, that is Mr.M.Ramadoss, has examined himself as P.W.1 in all the three Testamentary Suits, not only for himself but also as father of plaintiffs in TOS. Nos.11 & 12 of 2016. One of the attesting witnesses, E.Sundar has been examined as P.W.2 and Mr.P.S.Narayanan, attestor to Will, dated 06.09.2006 has been examined as P.W.3. On the side of the plaintiffs, Exs.P1 to P17 have been marked. On the side of the defendants, the first defendant, M.Sarada Devi, has been examined as D.W.1 and on the side of the defendants Ex.D1 to D5 have been marked.

23. I have heard Mr.G.Surya Narayanan, learned counsel for the plaintiff in all the three TOS and Mr.K.V.Babu, learned counsel for Mrs.K.Sumathi, the learned counsel for the first defendant in all the three Testamentary Original Suits.



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24.Mr.G.Surya Narayanan, learned counsel for the plaintiff in all the suits would submit that the Wills are handwritten by the father and they being joint Wills of the father and mother, the plaintiffs in their respective TOS being beneficiaries under the respective Wills, are entitled to the grant as prayed for. He would take me through the evidence of D.W.1 to show that D.W.1 has admitted the signature / Left Thumb Impression of their parents and also with regard to the pleadings in the written statement, as regards, the admission regarding joint Wills executed between the father and mother of the parties. He would also state that though the plea of coercion has been taken in the written statement, excepting the evidence of P.W.1, there is no independent evidence to establish the plea taken in the written statement and therefore, he would contend that the plaintiff, having examined the attesting witnesses to both the Wills, is entitled to grant as prayed for.

25.He would take me through the evidence of the attesting witnesses in this regard and contend that the plaintiff has more than sufficiently proved due execution and attestation of the Wills. He would further state that there



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is no embargo for executing separate Wills in respect of separate properties and mere fact that three Wills have been executed, would not amount to raising a suspicion as alleged by the defendants. He would also take me through the judgment in A.S.No.276 of 1970, where the father had represented the mother only as a power agent and therefore, he would assert that the father never claimed to be the owner of the suit subject property and had admitted the property to be that of the mother. In this context, he would submit that the subsequent Will executed by the father had no relevance as it was the property of the mother and therefore, despite being joint Wills executed by both the father and the mother, the act of the father executing a separate Will after the demise of the mother would be of no consequence and effect.

26.He would justify the filing of the petitions seeking grant of Letters of Administration in respect of the joint Wills where the mother is one of the executants. He would further submit that in any event, the father's Will, if at all valid, can pertain only to his 1/5th share and not to the entire property which again would be subject to the bequest made under the joint Wills. He would further submit that the Will of the father, by no stretch of imagination,



revokes the joint Wills dated 21.09.2001 and even in the pre-suit notice which was marked as Ex.D2 (TOS.No.12 of 2016), there is no claim that the father is the owner of the subject property.

27.He would also take me through the oral evidence where the defendants have admitted that the property belongs to their mother, Mariammal and therefore, he would rest his arguments by stating that the execution of subsequent Will by the father would not in any manner affect the earlier joint Wills dated 21.09.2001. He would further submit that none of the suspicious circumstances raised in the written statement have been substantiated by any evidence and in the absence of the same, when the plaintiff has established due execution and attestation of the Wills, the plaintiffs are entitled to the grant of Letters of Administration as prayed for.

28.The learned counsel for the plaintiff would place reliance on the decisions of the Hon'ble Division Bench of this Court in *G.Anandhi Vs. G.Bhuvaneswari* reported in *MANU/TN/3555/2017*, where the Division Bench of this Court held that, when the suit property is an absolute property of A and the same had been bequeathed in favour of the plaintiff therein, B,



a document projecting that both the executants of the Will were having power of revocation/cancellation of the joint Will/mutual Will is unsustainable.

29.In *K.S.Palanisami (Dead) through LR's and others Vs. Hindu Community in General and Citizens of Gobichettipalayam and Others*, reported in *MANU/SC/0266/2017*, where the Hon'ble Supreme Court dealing with the contention as to whether execution of a joint Will or joint and mutual Will, held that when there is nothing to indicate in the Will giving a life estate to the survivor and clearly indicating that the survivor shall have absolute right over the properties and that after his/her death, the charity has to be carried out from the income of the properties, the intention to be gathered was that the survivor was having a right of alienation and proceeded to hold that the Will in question in the said case was a joint and mutual Will, but with a rider that the said joint and mutual Will was with an express condition that the survivor shall have absolute right to deal with the property, keeping the object of trust alive.

30.In *Meena Pradhan and Others Vs. Kamla Pradhan and Another* passed by the Hon'ble Supreme Court in *Civil Appeal No.3351 of 2014*,



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where the Hon'ble Supreme Court held that the Will was duly executed in the presence of witnesses out of free Will and in a sound and disposing state of mind and the same stood proved by the testimony of one of the attesting witnesses and the defendants having let in no evidence to establish that the testator was not in a fit or stable mental condition at the time of execution of the Will, or that a Will was executed under suspicious circumstances, including the element of undue influence, held that the Will was valid and the validity was rightly upheld.

31.Per contra, Mr.K.V.Babu, learned counsel appearing for the 1st defendant in all the TOS proceedings and plaintiff in the partition suit would submit that the notices issued by the plaintiffs were only in respect of the subsequent Will by the father and not the joint Wills executed by the father and the mother. He would take me through the evidences of the attesting witnesses regarding the inconsistencies in their evidence, with regard to time of execution of the Will. He would also refer to Ex.P12, police complaint (TOS.No.10 of 2016). He would contend that all was not well in the family and in the light of such conduct of the parents, it was highly impossible for the mother to execute a Will in favour of her son and grandchildren through



the said son.

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32.He would further submit that when there is no cordial relationship between the father and mother and under Ex.P11 (TOS.No.10 of 2016), the father had given a complaint against his own wife i.e., the mother of the parties herein on 07.02.2002, it was highly unbelievable for the mother to have joined hands with her husband and execute the Wills in favour of the son and son's family alone, disinheriting the daughters. He would therefore contend that this is a very serious suspicious circumstance and has not been dispelled by satisfactory evidence on the side of the plaintiffs.

33.He would also refer to the complaint given by the father himself against the plaintiffs on 05.02.2006 and he would also point out to corrections made in the Will which have not been explained. He would also vehemently contend that even on a casual look at the Wills, it would evidence that the Wills have been fabricated, considering the irregular spacing and it only goes to show that the Wills have been fabricated using blank papers, with the LTIs of the mother and have been filled up subsequently. He would also state that the fact that the three Wills were



executed is again raising a suspicious circumstance as generally there will be only one last Will and testament executed.

34.He would also take me through the original Wills and highlight the differences amongst the three Wills, in order to fortify his contentions that the Wills have been fabricated on blank papers containing the LTIs of the mother and that the father has colluded with the son to totally disinherit his daughters. He would further submit that when the plaintiffs had referred only to the father's Will even when replying to the notice for partition, no probate has been sought for in respect of the father's Will and having given a go by to the joint Wills, it is not open to the plaintiffs to now seek grant in respect of the joint Will. He would further submit that the last Will and testament executed by the father, subsequent to the demise of his wife, alone would be the last Will and testament. Therefore, the joint Wills have been superseded by the subsequent Will and no grant can be made in respect of the earlier Will dated 21.09.2001.

35.The learned counsel for the defendants placed reliance on the decision of the Hon'ble Supreme Court in *Shivakumar and others Vs.*



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Sharanabasappa and Others reported in (2021) 11 SCC 277, where the Hon'ble Supreme Court, dealing with unusual features in the document in question being evident on the face of record, like different sheets of paper being used for a single document; placement of signatures of the testator are not uniform; excessive space between the typewritten contents and different pens being used for signatures, held that the execution of the Will was surrounded by abnormal, curious and mysterious circumstances and the inescapable conclusion was that the Will cannot be accepted as the last Will of the testatrix.

36.In *Meena Pradhan and Others Vs. Kamla Pradhan and Others* passed in *Civil Appeal No.3351 of 2014*, where the Hon'ble Supreme Court held that there are suspicious circumstances surrounding execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicion, before it can be accepted as the testator's of the last Will and when such suspicious circumstances exists the initial onus on the propounder is heavier. The Hon'ble Supreme Court further held that apart from statutory compliance it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound



state of mind, (c) he was aware of the nature and effect thereof and (d) the

Will was not executed under any suspicious circumstances.

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37.In *Govindan Chettiar Vs. Akilandam* reported in *MANU/TN/1608/1997*, this Court held that while appreciating the credibility of the witness, the Court cannot confine itself to what the witnesses have spoken, but, is bound to look into the surrounding circumstances in coming to the conclusion whether the witness has spoken regarding the true version. It is further held that when a person executes a Will, it follows that he wants that his property should be taken according to his desire and last wish. He wants to provide persons in the way he likes, or to whom he wishes to provide. Though law does not stand in the way of a man disposing of his self-acquired property in the way he likes, but at the same time, when a person, who is a natural heir that he is disinheriting, he is entitled to know why he has been disinherited. In the same decision, the Court further held that if the propounder had taken prominent part in the execution of the Will and has received substantial benefit under it, that itself can be treated as a suspicious circumstances attending the execution of the Will and the propounder has to remove the said suspicion by clear and satisfactory



evidence.

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38.I have carefully considered the submissions advanced by the learned counsel on either side.

39.Issue Nos.1 and 2:

It is the case of the plaintiffs that the late, Mariammal and Madurai Muthu who died on 14.07.2006 and 01.06.2010 respectively, left behind three joint Wills dated 21.09.2001 which were all executed in the presence of two witnesses, by name P.S.Narayanan and E.Sundar. According to the plaintiffs, the beneficiaries being three in number, the executants are stated to have executed three separate joint Wills, bequeathing respective portions to the three beneficiaries.

40.In support of the Wills, one of the attesting witnesses, E.Sundar has been examined as P.W.2. In fact, one of the attestators to the Will dated 06.09.2006 executed by the father, Madurai Muthu alone, on 06.09.2006, has been examined as P.W.3. It is now settled law that any Will has to be proved to have been executed and attested in accordance with Section 63(c)



of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. Further, even if due execution and attestation have been proved by the propounder, if suspicious circumstances surrounding the execution exists, then it is incumbent on the propounder to dispel all the suspicious circumstances, before the propounder may be entitled to grant of Probate/Letters of Administration.

41. Much has been argued about the joint Wills executed by the father and the mother, namely Mariammal and Madurai Muthu and the effect of the subsequent Will executed by the father, Madurai Muthu, subsequent to the demise of his wife. A perusal of the three Wills show that they are all unregistered Wills containing two sheets each. The first page contains the handwritten main portion of the Will which is alleged to have been signed by Madurai Muthu and with the LTI of Mariammal being affixed, in the presence of attesting witnesses, E.Sundar and P.S.Narayanan. The second page contains a sketch showing the portion bequeathed and the said page is also signed by Madurai Muthu with the mother, Mariammal affixing her LTI. Even in the second page, the attesting witnesses, E.Sundar and P.S.Narayanan have attested the signature/LTI of the Madurai Muthu and



Mariammal respectively.

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42.Further, on a reading of the Wills, it does not disclose as to whether the property under bequests in the said Wills are the joint properties of both Madurai Muthu and Mariammal. The bequest made are specific to the three plaintiffs in the above Testamentary Original Suits. There is no bequest to the survivor of the joint Wills. Admittedly, the property belongs only to Mariammal and not Madurai Muthu. In such circumstances, I do not find the Will executed by the father, Madurai Muthu subsequent to the demise of his wife Mariammal revoking or invalidating of the joint Wills dated 21.09.2001. If at all Mariammal had died intestate, then the Will of the father would take effect insofar as his 1/5th share alone is concerned. However, a mere fact that the father, Madurai Muthu executed a Will on 06.09.2006 would not revoke or supersede the joint Wills dated 21.09.2001. Therefore, I am unable to countenance the arguments of the learned counsel for the defendants that the Will of the father dated 06.09.2006 revokes the earlier joint Wills dated 21.09.2001 and no grant can be made in respect of the said joint Wills.



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43.Having found that the three Wills executed by Mariammal and Madurai Muthu are valid, especially being the alleged Last Wills of Mariammal, the next question that falls for consideration is as to whether the propounders have been established by sufficient and satisfactory oral evidence that the Wills have been duly executed and attested as required under the law. Section 63(c) of the Indian Succession Act spells out the manner in which a Will has to be executed and the same requires to be proved in line with Section 68 of the Indian Evidence Act, by examining at least one of the attesting witnesses to the Will.

44.In the present case, an attester one, E.Sundar has been examined as P.W.2. The propounder, son of Madurai Muthu and Mariammal, namely M.Ramadosh has examined himself as P.W.1 and in his proof affidavit, he has denied the allegations that the Wills have been fabricated. He has stated that the father has settled one property to the 2nd defendant and has also given huge monies to the 1st defendant during her marriage, apart from giving entire consideration to purchase the property for his brother, M.Madhavan who has not chosen to contest the validity of the Wills in the present proceedings. He has further stated that his parents were in good



physical and mental health at the time of execution of the Will.

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45. In his cross-examination, P.W.1, when confronted with the corrections/insertions in Ex.P1 (TOS.No.10 of 2016), he has stated that the corrections were there even when the father gave him the Will and he was not in a position to say who made the corrections/insertions. He has also stated that the mother affixed her LTI in his presence and in the presence of the attesting witnesses. He admits to the question put to him that in the bottom of the first page of the Will, the space after the contents is very cramped and that top of the Will paper is of uneven surface. He further stated that the 1st attesting witness, E.Sundar is his co-worker and other attesting witness, P.S.Narayanan was a contractor and plumber who is known to both his father and himself. To a question regarding who prepared the sketch attached to the Will, he has stated that the sketch was prepared by his father who was a licensed plumber and contractor in the Corporation of Chennai. He has further admitted that only one of the properties belong to the parents is the subject matter of the Wills and the other properties are tenanted. He has asserted that the property belongs only to the mother and the father had no right, though he had co-signed the Will dated 21.09.2001



along with the mother.

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46.As regards knowledge of the Will, he has stated that on the date of execution of the Will itself, at around 1.00 p.m., his father informed him through phone to come over to the father's house and at that time, his parents told him that they had executed Wills in favour of himself, his daughter and son. P.W.1 has further stated that he has shifted with his family to his mother-in-law's residence because his brother, M.Madhavan, used to drink and trouble, not only the parents but also himself and his family. He has further stated that the father had also given a police complaint and thereafter, with the interference of relatives and well-wishers, the brother was advised not to indulge in any such untoward activities and thereafter, the plaintiffs came back to West Mambalam and lived there.

47.As regards the attesting witnesses, P.W.1 admits that the 1st attesting witness, E.Sundar is his friend and they were working together in architect's office at Mylapore. He further stated that it was he who called the attesting witnesses to come over to the house for affixing their signatures in the Will and that they came at the request of P.W.1. He has further stated



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that when the attesting witnesses came over to the house, P.W.1 informed them that the parents had executed the Wills and the parents also read over the contents of the Wills and then, the mother affixed her LTI followed by the father affixing his signature and thereafter, the attesting witnesses affixing their respective signatures. He has further stated that all the three Wills were executed between 9.00 p.m and 9.30 p.m.

48.P.W.1 has further stated that both the witnesses came between 8.00 to 8.30 p.m., and at the request of the parents, they have attested the Wills. He has further admitted that there is no mention about the other brother and sisters in all the three Wills. Though P.W.1 states that when he asked his parents why they are not giving any property to his brother and sisters, they had mentioned that they had given them other properties. However, P.W.1 admits that after execution of the alleged Wills on 21.09.2001, the parents have not executed any Will or settlement in favour of his brother and sisters in respect of the other properties owned by them. In fact, P.W.1 states that the relationship was cordial amongst the siblings. P.W.1 has further admitted that the signature in the sketch and the Wills are in different colour inks. He further admits that the relationship between the father and the mother was



sometimes strained. To a question as to whether he knew about the mother having given a complaint against the father, himself and his wife on 06.02.2002, he has simply brushed aside by saying that only his father knows about it.

49. One of the attesting witnesses, E. Sundar has been examined as P.W.2. His proof affidavit is in the lines of the format provided as a separate form in the Original Side Rules. In the cross-examination, he has admitted that he is the friend of P.W.1 and that they have been working in the same office for several years. He has further stated that three Wills were executed on the same day. He has admitted to the fact that there are corrections in the Wills and the inks used were also different. His evidence only corroborates the evidence of P.W.1 with regard to time of execution of the Wills.

50. Testing the evidence of the propounder and the attesting witnesses in the light of Section 63(c) of the Indian Succession Act, I find that in the chief examination of the attesting witness, P.W.2, he has not clearly mentioned as to who signed the Wills first. He has merely stated that he was present along with the other attesting witness and that they saw the



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deceased, Madurai Muthu sign in English and Mariammal affixing her LTI in the Wills. However, P.W.1, in answering to a question in question No.102 in TOS.No.10 of 2016, has stated that after the father read the Wills to the witnesses, the mother affixed her LTI first and thereafter, the father affixed his signature and then, the attesting witnesses signed. In TOS.Nos.11 and 12 of 2016, there is no such averment or evidence regarding who signed the Wills first, either by P.W.1 or P.W.2. It is crystal clear, on perusal of the Wills in Ex.P1 (TOS.No.10 of 2016) that the father has signed first and only below his signature, the mother's LTI is found. In TOS.No.11 of 2016 also P.W.1 stated that after his father read the Will to the witnesses, his mother signed and then, the witnesses signed. In fact, he does not even speak about the father signing the Will after reading it. However, in TOS.No.12 of 2016, he gives a general answer that his parents signed. He has generally stated in TOS.12 of 2016 his parents affixed their signatures after the witnesses came. It is also quite strange that P.W.2 claims that he did not even ask the reason as to why he has been summoned to the house of P.W.1 and came to his knowledge only after reaching the house that P.W.1 has apparently called him to attest the Wills. Then, there is absolutely no credible evidence adduced by the attesting witness, regarding due execution of the three Wills,



especially they being executed by two persons and by no stretch of imagination, the requirement of Section 63(c) of the Indian Succession Act stands satisfied.

51. Even regarding suspicious circumstances, it is seen that the first page of the Will is alleged to have been written by the father himself in his own handwriting and signed by him in black colour, whereas, in all the three Wills, the second page which is the sketch, it is signed by the father in blue ink. The evidence of the attesting witness is also absent with regard to the execution of the three sketches on the same day which are annexed to the Wills. That apart, corrections are made in blue ink and according to both P.W.1 and P.W.2, the corrections had already been made and they are not aware as to who made such corrections. When the entire Wills are said to be handwritten by the father himself in a particular pen, it cannot be said that the corrections alone were carried out in different colour ink. The question or doubt arises as to whether such corrections have been made on a subsequent date. These doubts remain unanswered and have not been dispelled by the propounder.



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52. One another suspicious circumstance, which raises a lot of suspicion is that the relationship between the testator and the testatrix itself was strained and there have been complaints given by the testatrix against the testator, and also against her son and daughter-in-law. She has also moved away from the matrimonial residence and lived with her other son, M. Madhavan.

53. The specific allegation of the defendant is that the Wills have been executed on a blank paper containing the LTI of Mariammal. On a perusal of the three Wills, the said allegation appears to be probable and true for the reason that the manner in which the entire Wills are written and spacing between the lines, especially being cramped and very little space available towards the end of the first page, i.e., the documents appear to show that the contents have been written on pages already containing LTI of Mariammal. In fact, in TOS.No.10 of 2016, there are two corrections in blue ink, whereas, the Will has been written in black ink. The name of Mariammal has been written over the LTI available and there appears to be insufficient space for the attesting witnesses to affix their signatures and write their respective addresses below the signatures as well.



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54. In the sketch which is annexed to the Will, the signature of Madurai Muthu is in blue ink and in both the pages, it is Madurai Muthu who has signed first and thereafter, the LTI of Mariammal is affixed. This also runs contrary to the evidence available on record. Further, the corrections and irregular spacing also remain unexplained, though admitted by both P.W.1 and P.W.2. Similarly, in TOS.No.10 of 2016, the corrections carried out is with regard to age of Madurai Muthu which is in blue colour. The other correction pertaining to the year 1960 has not even been carried out in the Will (TOS.No.10 of 2016). In this Will also the signature of Madurai Muthu is across and over rides the LTI of Mariammal. Unlike the earlier Will, the name of Madurai Muthu is not written below his signature, apparently for want of space. In the present Will, the space available for the attesting witness to sign and write their addresses is even lesser than the other Wills. Similarly, in the second page, namely the sketch, the signature of Madurai Muthu is in blue ink.

55. In TOS.No.12 of 2016, there are about six corrections and the age of Madurai Muthu has been mentioned as 73 and the age of Mariammal has



been mentioned as 72 as against 72 and 71 in the earlier Wills. In this Will, the year 1960 has been written correctly and there being space available the witnesses have signed comfortably. However, the name of Mariammal has been written above the LTI which is against the normal practice. In fact, even in the same page, the name of Madurai Muthu has been written only below the signature. However, for want of space, it appears to have been written above the LTI. Similarly, in the second page, namely the sketch, the signature of Madurai Muthu is in blue ink. Thus, all is not well with the execution of the three Wills. The evidence of the attesting witness as already discussed also does not help the Court to arrive at a conclusion regarding valid and due execution and attestation of the Wills.

56. The attesting witness has not even spoken about who signed the Will first, which is one of the fundamental and primary requirements to prove due execution and attestation of the Will. Contrary to his evidence in cross, P.W.1 goes on to say that the mother affixed her LTI first and thereafter the father signed which is clearly against the documents themselves. Therefore, I am compelled to hold that the propounder has not satisfied the requirement of Section 63(c) of the Indian Succession Act and



Section 68 of the Indian Evidence Act and the Wills cannot be held to be validly proved as required under law.

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57. As already discussed, different inks are used and the irregular spacing has not been explained by the propounder and it only probablises the defense taken by the defendants that the Wills have been fabricated on blank papers on which the LTI of Mariammal had already been affixed or was available. In fact, the fact that the husband and wife themselves, namely the testator and testatrix were not in good terms has also come out in evidence as there have been complaints lodged by the mother. In fact, both the testator and the testatrix have given police complaints against each other.

58. Admittedly, even according to the propounder, his mother left the house and lived with the other son, M.Madhavan and the complaint was lodged by the mother on 06.02.2002 before the Inspector of Police, Adyar. This has come out in the pleadings, namely the proof affidavit. It is also admitted that the police complaints marked as Ex.D5 and Ex.D6 were given. Though it is claimed that thereafter the relationship was cordial, it is not probable for the mother to execute the Wills in question. Admittedly, the



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complaint was given by the mother against the father, the plaintiff and his wife i.e the daughter-in-law. The complaints available on record clearly show that the relationship was not cordial even in the first week of September 2001 and the testator, the father goes on record stating that his wife was living in the residence of the other son, M.Madhavan for about three months and that he would not have any problems if she came and lived with him and that he would not have any objection for the same. In the complaint dated 07.02.2002, Madurai Muthu has clearly stated that the relationship between his wife and the son and the daughter-in-law was really strained. Therefore, on an overall examination of the evidence on record, it is clear that the mother, Mariammal would have never disinherited the other children, namely son and daughters and given the entire property to the warring son, the plaintiff and his children.

59. Yet another suspicious circumstance is the fact that the Wills are totally silent about the existence of other children. On a plain reading of the three Wills, it gives a picture as if the plaintiff is the only son of the testator and testatrix. The Courts have repeatedly held that the Will has to disclose



not only the existence of the other legal heirs who may be disinherited, but should also ideally disclose reasons as to why the other legal heirs have been disinherited. Here, in the instant case, the very existence of the other legal heirs, the son and daughters have not been set out.

60. The father Madurai Muthu has admittedly executed a Will in Ex.P17 on 06.09.2006. The original Will has been marked and one of the attesting witnesses to the said Will has also been examined in support of due execution and attestation of the said Will in Ex.P17. The attesting witness, P.S.Narayanan is the same attesting witness in respect of the other joint Wills dated 21.09.2001. In his cross-examination, he has stated that Madurai Muthu signed the Will in his presence and in the presence of the 2nd attesting witness, the advocate and also a typist.

61. The Will is also notarized by an advocate, Selvaraj. However, P.S.Narayanan, P.W.3, the attesting witness states that he does not even remember the name of the advocate and he did not see the advocate sign the Will. He further states that he was called to come to the SRO, Saidapet,



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however, later on he states he went to the advocate's office which is located opposite to the SRO, Saidapet. If really there was an intention to register the Will, especially when the execution is said to have been done opposite to the SRO, the Will would have been registered. However, the Will is seen to be only notarized by the advocate and P.W.3 is not even able to say as to who the advocate was and he has not seen the notary signing the Will as well. When put a question as to whether the testator read over the Will to the attesting witness, he states that he himself read it and that the testator, Madurai Muthu told him that the earlier Will was handwritten and was not legible and therefore, he wrote the Will, Ex.P17 which has been prepared on the lines of the draft of the earlier handwritten Will. The said draft/handwritten Will is also not produced. Moreover, P.W.3 does not even say that the attester signed the Will in his presence and in the presence of the 2nd attesting witness and that the 2nd attesting witness saw the testator signing Ex.P17, Will. In any event, the evidence of P.W.3 is highly uninspiring and not satisfactory and does not meet the basic requirements of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. Therefore, I am unable to uphold the validity of Ex.P17, Will though it is not sought to be probated/administered before this Court by filing of appropriate



application in that regard, invoking the provisions of the Indian Succession Act.

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62. In any event what matters significantly is that the father, Madurai Muthu himself is said to have executed his last Will and testament on 06.09.2006, which has been relied on by the propounder, P.W.1 himself in his lawyer's notices prior to the filing of the partition suit by the sisters. However, the said Will has been disowned by P.W.1 himself. It is seen from Ex.P17, Will that Madurai Muthu, though claims that the property was purchased in the name of his wife, Mariammal, he proceeds to treat it as if it is his property and bequeathed the same to his son, P.W.1, the plaintiff. Curiously, there is no mention about the earlier Wills dated 21.09.2001, to which Madurai Muthu himself is a party/executant. Therefore, even Madurai Muthu has given a go by to the Wills dated 21.09.2001. If at all the said joint Wills were true, valid and duly acted upon, Madurai Muthu would have certainly disclosed about it in his Will in Ex.P17 and would have given reasons as to why he was executing the present Will. If really under the earlier three Wills, the properties were already bequeathed to P.W.1 and not to the other son and daughters, there was no necessity for the father executing another Will treating the property as his own property.



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63. This again only strengthens the suspicion that the father has taken sides only with the plaintiff, P.W.1 and has gone to the very extent to ensure that his other son and daughters are all disinherited. All these suspicious circumstances have not been dispelled by any satisfactory evidence on the side of the propounder. Therefore, even on these grounds, the Wills dated 21.09.2001 cannot be upheld.

64. For all the above reasons, the issues are answered accordingly. The Testamentary Original Suits are dismissed. There shall be no order as to costs.

30.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes/No

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Witnesses examined on the side of the plaintiff in all TOS:

P.W.1. - M.Ramados
P.W.2 - E.Sundar
P.W.3 - P.S.Narayanan

Exhibits produced on the side of the plaintiff in TOS.No.10 of 2016:



S.No.	Exhibits	Description
1.	Ex.P1	Original unregistered Will dated 21.09.2001. (in safety custody)
2.	Ex.P2	Original Death certificate of Mariammal dated 14.07.2006.
3.	Ex.P3	Computer generated copy of death certificate of Madurai Muthu dated 01.06.2010.
4.	Ex.P4	Original legal heir certificate of deceased Madurai Muthu dated 08.05.2012.
5.	Ex.P5	Original paper publication made in Tamil Evening daily "Malai Murasu" dated 30.06.2013.
6.	Ex.P6	Original paper publication made in English daily "Trinity Mirror" dated 20.07.2013.
7.	Ex.P7	Affidavit of assets dated 04.06.2012 filed in O.P.No.631/2012.
8.	Ex.P8	Certified copy of Judgment dated 14.03.1972.
9.	Ex.P9	Printed invitation for ear piercing.
10.	Ex.P10	Printed invitation for puberty function.
11.	Ex.P11	Photocopy of the police complaint dated 07.02.2002.
12.	Ex.P12	Typed copy of the police complaint dated 07.03.2002.
13.	Ex.P13	Original letter written by Madhavan sent to Advocate Ramachandran dated 18.07.2002
14.	Ex.P14	Affidavit of attesting witness.
15.	Ex.P15	First signature found in the Will, Ex.P1 as attester.
16.	Ex.P16	Certified copy of the Sale Deed dated 04.07.1960.
17.	Ex.P17	Original Will executed by late Madurai Muthu dated 06.09.2006.

Exhibits produced on the side of the plaintiff in TOS.No.11 of 2016:

S.No.	Exhibits	Description
1.	Ex.P1	Original Notarized Power of Attorney dated 05.06.2018.
2.	Ex.P2	Original unregistered Will dated 21.09.2001. (in safe custody)
3.	Ex.P3	Computer generated copy of Original Death certificate of Mariammal dated 14.07.2006.
4.	Ex.P4	Computer generated copy of original death certificate of



		Madurai Muthu dated 01.06.2010.
5.	Ex.P5	Photocopy of the legal heir certificate of deceased Madurai Muthu dated 08.05.2012.
6.	Ex.P6	Original paper publication made in Tamil daily "Dinamani" dated 25.08.2013.
7.	Ex.P7	Original paper publication made in English daily "The New Sunday Express" dated 01.09.2013.
8.	Ex.P8	Affidavit of Kishore Kumar @ Narayanan dated 04.06.2012 filed with O.P.No.625 of 2012.
9.	Ex.P9	Consent affidavit of 4 th respondent in the OP dated 04.06.2012.
10.	Ex.P10	Affidavit of attesting witness.

Exhibits produced on the side of the plaintiff in TOS.No.12 of 2016:

S.No.	Exhibits	Description
1.	Ex.P1	Deed of General Power of Attorney dated 05.03.2014
2.	Ex.P2	Will of the deceased, Madurai Muthu and Mariammal dated 21.09.2001.
3.	Ex.P3	Death Certificate of Mariammal dated 14.07.2006.
4.	Ex.P4	Death Certificate of Madurai Muthu dated 01.06.2010.
5.	Ex.P5	Legal Heirship Certificate of Madurai Muthu dated 08.05.2012.
6.	Ex.P6	Paper publication in Tamil daily "Malai Murasu" dated 30.06.2013.
7.	Ex.P7	Paper publication in English daily "Trinity Mirror" dated 20.07.2013.
8.	Ex.P8	Affidavit of Assets.
9.	Ex.P9	Consent given by R4 for grant of letter of administration dated 04.06.2012.
10.	Ex.P10	Affidavit of Attesting witness.

Witness examined on the side of the defendants in all TOS:

D.W.1 – M.Sarada Devi

Documents marked on the side of the defendants in all TOS:



TOS. No.10 to 12 of 2----

S.No.	Exhibits	Description
1.	Ex.D1	Written statement by the 2 nd defendant.
2.	Ex.D2	Notice to Madhavan dated 20.09.2010.
3.	Ex.D3	Notice to Sarada Devi dated 12.10.2010.
4.	Ex.D4	Notice to Anjana Devi dated 12.10.2010.
5.	Ex.D5	Notice to Mr.K.R.Vijayakumar, Advocate dated 11.11.2010.
6.	Ex.D6	Copy of complaint dated 05.02.2006.
7.	Ex.D7	Complaint given by the mother, Mariammal along with CSR dated 06.02.2002.
8.	Ex.D8	Notice dated 26.07.2002.
9.	Ex.D9	Reply to the notice dated 01.08.2002.
10.	Ex.D10	Complaint dated 05.02.2006.
11.	Ex.D11	Reply to Legal notice sent to the plaintiff's lawyer dated 11.11.2010.
12.	Ex.D12	Legal notice sent on behalf of the sister to the plaintiff's lawyer dated 19.10.2010.

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TOS. No.10 to 12 of 2016

TOS.Nos.10, 11 & 12 of 2016

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