



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.07.2024

Pronounced on: 16.08.2024

CORAM:

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

TOS.No.37 of 2021 & Tr.CS.No.14 of 2023

TOS. No.37 of 2021:-

1.V.Kalaivani
2.M.R.Vidhyasagar
3.M.R.Sabitharani

.. Petitioners/Plaintiffs

..Vs.

1.M.R.Elangovan
2.M.R.Nagamani

..Caveators/Defendants/R1 & R2

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925 for the grant of probate in common from the Will dated 02.01.2004, executed by late, M.R.Ramachandran and that probate thereof to have effect throughout the State of Tamil Nadu.

For Plaintiffs : Mr.P.Rajendrakumar

For Defendants : Mr.R.Manickavel



Tr.C.S. No.14 of 2023:-

1.M.R.Elangovan

2.M.R.Nagamani

..Plaintiffs

Vs.

1.M.R.Vidyasagar

2.M.R.Kalaivani

3.M.R.Sabitha Rani

4.The Branch Manager,
State Bank of India,
Jawahar Nagar Branch,
Chennai – 600 082.

...Defendants

PRAYER: Plaintiff filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the O.S.Rules, praying to pass judgment in favour of the plaintiff against the defendants,

(a) To divide the schedule mentioned properties by metes and bounds into five equal shares and allot the plaintiffs 2/5th share therein separately and deliver possession of such 2/5th share to the plaintiffs.

(b) to award the cost of the suit.

For Plaintiffs : Mr.R.Manickavel

For Defendants : Mr.P.Rajendrakumar for
defendants 1 to 3.



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TOS. No.37 of 2021 & Tr.CS.No.14 of 2023

COMMON JUDGMENT

The Testamentary Original Suit arises out of Original Petition in OP.

No.1178 of 2018 filed by the plaintiffs as petitioners, seeking grant of probate of the last Will and Testament of late, M.R.Ramachandran, dated 02.01.2004. The respondents in the said OP having filed Caveat, the OP was converted into the above Testamentary Original Suit and the respondents have been cited as the defendants in the Testamentary Original Suit.

2. Alleging that late M.R.Ramachandran died intestate, the suit in OS No.435 of 2018 before IX Assistant City Civil Court at Chennai was filed by the defendants in TOS, as plaintiffs therein, seeking partition and separate possession. In furtherance of orders of this Court, the said suit for partition was transferred to this Court and tried along with the above Testamentary Original Suit in Tr.C.S. No.14 of 2023.

3. The averments set out in the Testamentary Original Suit viz., the petition/plaint are as follows.



The plaintiffs are the daughter, son and daughter respectively of late M.R.Ramachandran and Vallabaisundari, their mother pre-deceased their father, having died on 01.03.1998. The father died on 21.04.2016, leaving a registered Will dated 02.01.2004, registered as document No.03 of 2004 in Book No.3 at the Sub-Registrar's Office, Sembiam, in the presence of two witnesses.

4. According to the plaintiffs, they were named as executors in the said Will and the property of deceased M.R.Ramachandran, has been bequeathed to the grandchildren viz., 1) M.V.Vallaba Narayanan and 2) M.V.Pandurangan, the sons of the second plaintiff alone, equally. The Will was found only while cleaning the house and hence, there was a delay in approaching the Court for grant of probate. The defendants are none other than their brothers. Contending that the Will was duly executed in accordance with law, the plaintiffs sought for grant of probate.

5. The gist of the written statement filed by the defendants:

The defendants do not deny the relationship between the parties. However, according to the defendants, the alleged Will dated 02.01.2004 is



not true and genuine and not executed by their father while he was in a sound and disposing state of mind. The case of the defendants is that the father was affectionate to all the children alike and he would have never executed the Will in favour of one son's children alone, disinheriting the rest of his sons and daughters. It is also stated that all the legal heirs have jointly submitted declarations and executed documents and collected the Fixed Deposit amount of Rs.5,00,000/- in the name of their father in State Bank of India, Jawahar Nagar Branch, where the plaintiffs as well as defendants have declared that their father died intestate and did not leave any Will.

6. Further, it is also contended that the father borrowed monies for performing the marriage of the third plaintiff and for such purpose, he had mortgaged the property with Kilpauk Benefit Society on 08.05.2003 and the same was duly discharged on 07.07.2009, for which payments have been made by the defendants. There was cordial relationship until such the father died and only thereafter, disputes arose. When a police complaint was given by the second defendant, during such enquiry, the second plaintiff claimed that the father had executed a Will. This was in June 2017 and till such time there was absolutely no whisper about the alleged Will, though the



Will was said to have been executed way back in 2004 and his father was also alive till 2016.

7. According to the defendants, the witnesses to the alleged Will are stock witnesses and the Testator was well versed in English and he would not have executed his Will in Tamil and it is also stated that the Scribe of the Will, One C.Masilamani, is an Advocate, who is none else than the father-in-law of the first plaintiff and the Will is the creation of the said Advocate, along with the plaintiffs 1 & 2. It is also stated that the second defendant was living in the subject property along with his family and he was forcibly vacated by the second plaintiff in June 2017. However, the second defendant has vacated the property under his occupation and keeping the said portion under lock and key. The defendants have filed OS No.435 of 2018 before the IX Assistant City Civil Court at Chennai for partition and the said suit is pending.

8. The defendants have also contended that the plaintiffs have not disclosed as to when they found the Will and why the OP was filed only after receiving notice in the suit for partition. It is also submitted that the



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Testator was aged about 71 years at the time of the execution of the alleged Will and was suffering from all kinds of old age ailments and by exercising undue influence, coercion and intimidation, the plaintiffs have brought about the alleged Will.

9. In the Partition Suit filed by the plaintiffs/defendants in the TOS, they have stated that their father, M.R.Ramachandran died intestate and consequently, they have entitled to 1/5th share each.

10. In the written statement filed by the defendants therein who are the plaintiffs in the TOS, they have stated that in view of the registered Will dated 02.01.2004 executed by their father, the Partition Suit is not maintainable and is liable to be dismissed.

11. The following issues were framed by this Court in TOS. No.37 of 2021 on 20.10.2022.

“ 1) Whether the deceased M.R.Ramachandran had executed a Will dated 02.01.2004 and it was registered as Document No.3 of 2004 in Book No.3 at the Sub-Registrar's Office, Sembiam?

2) Whether the Will dated 02.01.2004 alleged to



have been executed by the deceased M.R.Ramachandran is not a genuine and true Will?

3) Whether the plaintiffs are entitled for probate of the Will as prayed in the plaint?

4). To what other relief, the plaintiffs are entitled to”

12. In a suit for partition, the following four issues were framed by the XIX Additional City Civil Court, Chennai on 24.09.2018.

“1.Is it true that the father (M.R.Ramachandran) executed a Will dated 02.01.2004 in favour of his grandchildren born through D1?

2.Whether the suit does not lie in view of the pendency of the Probate Proceedings?

3. Whether the plaintiffs are entitled for partition of 2/5 shares in the suit property?

4. To what other relief?”

13. In view of joint trial of both TOS and the Partition Suit being ordered by this Court, evidence was recorded in the above TOS, and the second plaintiff examined himself as P.W.1 and marked Ex.P1 to Ex.P8. One Mr.C.M.Visweswaran, son of the Scribe, Mr.Masilamani, Advocate was examined as P.W.2 and through him Exhibits P9 and P10 were marked. Subsequently, P.W.3 one Jayanthi Saravanan, wife of one of the attesting witnesses to the Will by name Saravanan, was examined as P.W.3 and



though her, Ex.P11 to P17 were marked. On the side of the defendants, first defendant examined himself as D.W.1 and Exhibits D2 to D14 were marked. Ex.D1 was marked during cross examination of P.W.1.

14. I have heard Mr.P.Rajendrakumar, learned counsel for the plaintiff in TOS. No.37 of 2021 and defendants 1 to 3 in Tr.C.S. No.14 of 2023/partition suit and Mr. R.Manickavel, learned counsel for the defendants in the TOS and plaintiffs in the Partition Suit.

15. According to the learned counsel for the plaintiffs, the Will is a registered Will and the same has been proved in accordance with Section 69 of the Indian Evidence Act, 1872, since both the attesting witnesses could not be examined for reasons which were explained during trial. He would further submit that there could be no delay in approaching the Court, since the Testator was died only on 21.01.2016 and within one year, the OP was presented for probate. He would further submit that when both the attesting witnesses are not available or procurable, then recourse would have to be taken to prove the signature of the Testator and also signature of atleast one of the attesting witnesses.



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16. According to the learned counsel for the plaintiffs, P.W.1 herself has spoken about the signature of her father and he would take me through the relevant portions of the cross examination of P.W.1 in this regard. Insofar as proof of signature of one of the attesting witnesses, he would place reliance on evidence of P.W.3, wife of one of the attesting witnesses viz., Saravanan, who has identified the signature of her husband. The learned counsel for the plaintiffs would further submit that the very object of executing a Will is to alter the normal line of succession and therefore, just because the sons and daughters were disinherited and the property was given to two grandsons through the second plaintiff, it cannot be a ground to disbelieve the Will. He further emphasize that the Will is a registered Will that too executed way back in 2004 and the father was also alive for a period of 12 years thereafter and if really, the allegations of undue influence, coercion and intimidation are true, then certainly the Testator would have taken steps to revoke the said Will, or atleast bring it to the notice of the defendants who according to the defendants themselves, was in very cordial terms with their father.

17. He would further submit that the defendants have not come to the



Court with a consistent stand. On one hand, they claimed the Will to be a bogus Will, but on the other hand, they claimed that it was brought about by the plaintiffs exercising undue influence, coercion and by intimidating their aged and ill father. He would further submit that the attesting witnesses cannot be categorized as stock witnesses and D.W.1 admitted that he used to visit his father daily and only two days before his death, he was bedridden.

18. The learned counsel for the plaintiffs would place reliance on following decisions in support of his contention.

(a). *Janaki Devi Vs. R.Vasanthi and others*, reported in 2005 (1) CTC Page 61 where a Division Bench of this Court held that when the Will is a registered Will, it is not necessary to give positive evidence to prove that the Testatrix did see the attesting witnesses put their signatures or that the attesting witness saw the Testatrix signed document and where there is proof of signature, everything else is implied till the contrary is proved. It is also further held in the said decision that in the absence of witnesses who are either dead or cannot brought to Court or cannot recollect the facts, then secondary evidence is permitted.



(b) Relying '*Irudayammal V. Salayath Mary*', reported in 1972 (2)

MLJ 508, the Division Bench Judgment of this Court held that though Registration by itself would not amount to proof of execution, however when there is no other evidence available, the certificate of registration would be *prima facie* evidence of execution and the certificate of the Registration Officer under Section 60 of Registration Act was relevant for proof of execution.

(c) At Paragraph No.31 of the said judgment in *Janaki Devi*, (referred herein supra), this Court further held that Section 69 of the Indian Evidence Act, 1872 gives guidelines to prove a document which requires registration. Section 69 enacts provisions laying down as how a document which requires attestation should be proved and that the Section does not specify what kind of proof should be made available and therefore, even if a person who had seen the Testator signing the Will as well as the attesting witnesses signing the Will could speak about the execution and attestation and state that the handwritings and signatures are of the person/s who executed the document or in the handwriting of the person/s, then it can be taken that compliance of the mandate of Section 69 has been met.

(d) The Division Bench of this Court further held that when the



defendants in that case had alleged active participation and dominant role of the propounder in execution of the Will was a serious suspicious circumstance, when the Testatrix therein survived for six years after the said execution of the Will, the reasonable inference that could be drawn was that even if the beneficiary had participated in the execution of the Will, it was brought about only at the instance of the Testator and would not create any shadow of doubt about the genuineness of the Will.

18.(ii)(a) In the case of *Pentakota Satyanarayana and Others Vs. Pentakota Seetharatnam and others*, reported in (2005) 8 SCC 67, the Hon'ble Supreme Court held that unlike other documents, the Will speaks from the death of the Testator, and so, when it is propounded or produced before a Court, the Testator has already departed the world and cannot say whether it is his Will or not and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and the testament of the departed Testator.

(ii)(b) The Hon'ble Supreme Court further held that though the



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registration of the Will does not dispense with the need of proving execution and attestation in terms of Section 68 of the Evidence Act, when the Registrar had made necessary official endorsement, it would raise a presumption by reference to Section 114 of the Indian Evidence Act as to the regularity of performance and recording of such endorsement of registration. The Hon'ble Supreme Court on the facts of the said case held that burden of proof to prove the Will had been duly satisfied and discharged and the onus shifted to the contestant who opposed the Will, to bring on record materials to disbelieve the Will, in which event, the onus would shift back to the propounder to satisfy Court affirmatively that the Testator did know well the contents of the Will and executed the same in a sound disposing capacity.

19. Per contra, Mr.R.Manickavel, learned counsel for the defendants in the TOS and the plaintiffs in the partition suit would submit that the father of the parties viz., Testator was a retired District Revenue Officer who was well educated and he would not take the assistance of stock witnesses, especially unknown persons to attest a solemn document like his last Will and Testament. The learned counsel for the defendants would further state



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that the Scribe is none else than the father-in-law of the first plaintiff, who does not have children and the second plaintiff's children are the beneficiaries. He would also point out the evidence of P.W.1, where P.W.1 himself admitted that after death of his father, the building was named as '*Masilamani Illam*'. He would also submit that the petition does not mention the names of the two attesting witnesses and the fact that all the children were disinherited and children of the second plaintiff alone were made beneficiaries in the Will, by itself is a suspicious circumstance. He would further submit that the attesting witnesses have not been examined to prove the Will and the evidence of P.W.1 to P.W.3 is highly unsatisfactory and does not establish due execution and attestation of the Will even in terms of Section 69 of the Evidence Act. He would therefore pray for dismissal of the Testamentary Original Suit and decree being passed in the Partition Suit.

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

21. Admittedly, the parties in the Testamentary Original Suit as well



as the partition suit are litigating before this Court in respect of the property of their father, late Mr.M.R.Ramachandran. There is no dispute with regard to the factum of purchase of the property by the Testator, his date of death and the relationship between the parties. It is also admitted that their mother pre-deceased the father. The only contention is with regard to whether their father, late M.R.Ramachandran executed any testamentary instrument which is sought to be probated in the TOS or whether he died intestate and the Will projected in the TOS is not a true and genuine. Naturally if the Will is held to be true and genuine, then nothing will survive for consideration in the partition suit. Conversely, if the Will is found to be either not proved or not true and genuine, then the TOS will necessarily fail and judgement and decree will follow in the suit for partition.

22. In this regard, the issues regarding the truth and genuineness of the Will in the TOS as well as the suit for partition are taken up together viz., issue No.1 in the Partition Suit and issue Nos. 1 & 2 in TOS.

23. The second plaintiff, whose sons are the beneficiaries under the Will, examined himself as P.W.1. In his proof affidavit, he has stated that



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the father died on 21.04.2016 at Chennai, leaving behind a registered Will dated 02.01.2004 which was duly executed in the presence of the two witnesses. He has further stated that the whereabouts of the two attesting witnesses are not known to the plaintiffs, despite all efforts taken to locate them, including personally verifying the addresses shown by the two witnesses and also after verifying with the Sub Registrar's Office. He has also stated that Registered Posts were sent to both the attesting witnesses which were returned the endorsement '*insufficient address*'. The Scribe of the Will, Mr.C.Masilamani, also passed away and hence neither the attesting witnesses nor the Scribe could be examined. The original registered Will dated 02.01.2004 has been marked as Ex.P1. The Death Certificate of the Testator has been marked as Ex.P2. P.W.1, in his cross examination, has stated that he does not know who the attesting witnesses are. He has further stated that the signature in Ex.P1, Will is only that of his father. He has denied the suggestion that Ex.P1, Will was forged and it was prepared by him with the help of the Advocate, Masilamani, in order to avoid sharing the property with his brothers and sisters. He has also denied a suggestion that since the father had five children, there is no necessity to bequeath the property to P.W.1, children alone.



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24. One Mr.C.M.Visweswaran, son of the Scribe Mr.C.Masilamani, was examined as P.W.2. He has identified the signature of his father in the original Will and has also exhibited Ex.P9 & P10, which bear the signatures of his father. In his cross examination, he has stated that other than the facts that his father had signed Ex.P1 Will, he does not know anything about the execution of the Will.

25. The wife of one of the attesting witnesses by name, Jayanthi Saravanan has been examined as P.W.3. She has filed documents viz., death certificate of her husband Ex.P12 and also Exhibits P13, P14 and P15, where her husband's signature is available. She has identified her husband's signature in Exhibit P1, Will. In her cross examination, she states that she does not know anything about the case and she has not seen Ex.P1, prior to the date on which she has come to Court to give evidence. A specific question was put to her as to whether her husband's job was to sign the documents as witnesses in the Sub Registrar Office by receiving money, she has stated, yes, but however added that her husband did not receive any money. She was denied the suggestion that her husband did not sign Exhibit



P1, as an attesting witness. She has also further stated that she and her husband resided at No.116, Kamarajar Salai, Kodungaiyur, Chennai – 600 018 and that they did not reside at 76, M.R.H Road, Padi, Chennai – 600 050.

26. D.W.1, the first defendant, in his chief examination has stated that he being the eldest son, his father entrusted all important matters like bank, pension, property tax etc. to him. Even when the construction of the house was going on, the father entrusted the construction work to him and he always played a dominant role, next to his father. Therefore, according to the first defendant, without his knowledge, nothing could have happened. He has further stated that until the death of the father, the relationship amongst the parties was smooth and cordial. He further stated that the second plaintiff was unemployed and he never contributed anything for the family.

27. He has also reiterated various averments and allegations in the written statement. He has further stated that the Will has been suppressed for more than 13 years and when the father was very affectionate to all his



children and always treated them equally and he would never have executed Ex.P1, Will. He has further stated that only when the defendants filed a suit for partition, the plaintiffs had chosen to file the probate OP and according to the defendants, the Will is not a genuine document and the signatures found in the Will are forged and not that of his father. He has also stated that both the attesting witnesses are alcoholics who are always available in the Sub Registrar's Office to sign as stock witnesses for payment of Rs.50/- and therefore, both the witnesses are paid witnesses. He would also state that his father's signature differs in all the pages and also, being a retired District Revenue Officer, he having held a high post, he would not have chosen such stock witnesses to attest an important document like his last Will.

28. He has further stated that his father was well-versed in English and he would not have written the Will in Tamil and the Will is only the handy work of the first plaintiff's father-in-law, Masilamani, who was an Advocate. According to D.W.1, the said Masilamani started meddling with his family affairs and started influencing his sisters and brother, the second plaintiff and he has even put his name in front of the building after the death



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of the Testator. According to D.W.1, the Will was executed in suspicious circumstances and the first plaintiff has adopted the son of the second plaintiff and therefore, plaintiffs 1 & 2 are hand in glove. D.W.1 has further stated that in 2004, at the time of execution of the alleged Will, the father was 71 years old and was not having proper vision and he was suffering from several ailments, such as diabetics, etc. and therefore, it was impossible for his father to have gone to the Sub Registrar's Office without the knowledge of his children and got the Will registered and there is no discussion in this regard.

29. In the cross examination of D.W.1, he states that the signature in Ex.P1, Will appears to be like his father's signature, though he adds that there is a difference in the signature. He has admitted that his father is the owner of the property and he has every right to execute the Will as per his wish. He has further stated that he used to visit his father daily till his death and that only the last two days before his death, his father was bedridden. To the question as to on what basis he has stated that the Will is forged, he has stated that signature found in the Will varies. He has further stated that he has not filed any documents to show that the Will is a forged document



and that he has not taken any steps to prove the allegation of forgery. He has further stated that the Scribe, Masilamani Advocate, is his father's friend. He has also admitted that the property tax for the suit property is being paid by the second plaintiff only and that he is not paying the same.

30. As held by the Hon'ble Supreme Court in the case of *Pentakota Satyanarayana* (referred herein supra), the Will is a solemn document and the Testator is not alive to speak about the due execution or otherwise of the said Will. Therefore, the Will has to be necessarily proved in accordance with law. In the instant case, both the attesting witnesses have admittedly not been examined. Therefore, recourse has been taken to Section 69 of the Evidence Act. Even though P.W.2, the son of the Scribe, Masilamani, Advocate was examined, it is not sufficient to prove due execution and attestation of the Will, since the Scribe is not an attesting witness. However, subsequently, with the permission of the Court, P.W.3, Jayanthi Saravanan, the wife of one of the attesting witnesses, Saravanan, has been examined. She has categorically spoken about the signature of her husband and also identified her husband's signature in Ex.P1, Will.



31. P.W.1, even when his cross examination was confronted with the signature of his father, the Testator and he has clearly stated that the signatures found in Ex.P1, Will are only that of his father. Even D.W.1 in the witness box has stated that the signatures in the Will appear to be his father's signature. He only stated that there are differences in the signatures in the various pages to the Will. The Will being a registered document and the Sub Registrar also making the necessary official endorsements as held by the Division Bench of this Court in the case of *Pentakota Satyanarayana* (referred herein supra), presumption can be drawn with regard to the official acts being performed duly and regularly.

32. It is not the case of the defendants that the Will was registered by impersonation. The case of the defendants is in fact two fold. In one breath, the defendants states that the Will is forged and however in another breath, the defendants state that taking advantage of the old age and ill health of the father, the plaintiffs have brought about the Will exercising undue influence, coercion and intimidation. Both the stands go against each other. If the defendants plead that the Will is forged, then they cannot sustain the defence of undue influence, coercion and intimidation. Only if the



defendants admit the execution of the Will by the father, it is open to them to sustain and press the ground of undue influence, coercion and intimidation.

33. As already found, the Will being registered on 02.01.2004 and the Testator also having survived subsequently for 12 long years, I am unable to countenance the arguments of the learned counsel for the defendants that the Will was brought about by undue influence, coercion and intimidation. If really such undue influence or coercion had been exercised by the plaintiffs in collusion with the Advocate, Masilamani, the Testator would have certainly taken steps to bring it to the notice of the defendants or would have at least revoked the Will which was brought about by such undue influence or coercion. Even according to D.W.1, the father was hospitalized only for 2 days, that too prior to his death. Further, the defendants have also not adduced any evidence whatsoever to establish their allegation of undue influence, coercion and intimidation. In fact, even according to the defendants, the father was having equal love and affection to all the children. Further, D.W.1 himself admits that the Scribe is a friend of the Testator and in such circumstances, the allegation of collusion does not arise.



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34. It is also a case where the propounders or the beneficiaries have admittedly not played an active role in the execution of the Will. In fact, without knowing that there is a Will, the legal heirs also distributed the Fixed Deposit amount amongst themselves. In such circumstances, the allegation that the father-in-law of the first plaintiff, along with the plaintiffs have colluded together in bringing about the alleged Will also cannot be countenanced.

35. With regard to delay, I do not find any delay for suppressing the Will for 13 years, since the Testator himself died only in 2016 and within one year, proceedings have been initiated for the grant of probate. One of the suspicious circumstances raised by the learned counsel for the defendants is that when the father was admittedly having equal love and affection to his all his five children, there is no necessity to execute the Will in favour of his grandsons through the second plaintiff. In fact, the Hon'ble Supreme Court as well as this Court have repeatedly held that mere disinheritance of close legal heirs or disruption of the normal line of succession alone would not amount to a suspicious circumstances. In fact, D.W.1 himself as admitted in



his cross-examination that the second plaintiff had no source of employment, therefore in all likelihood, the Testator would have thought it fit to provide for the second plaintiff's children alone.

36. The Testator has stated that the second defendant was at liberty to continue to reside in the subject property even after his demise and only in the event of the second defendant vacating the portion, the executors shall claim right over the said portion. He has also directed that the second defendant to pay Rs.1,000/- per month to the executors for meeting statutory taxes and charges. Therefore, considering the evidence available on record and the nature of bequest, it cannot be said that the Will was executed in suspicious circumstances, merely because the children of the second plaintiff alone have been benefited under the Will. Excepting the defendants, the other two sisters, viz., V.Kalaivani & M.R.Sabitha Rani, daughters of the Testator who have also been named as executors have accepted the wishes of their father and came forward to probate his last Will and Testament, even though they are not beneficiaries under the said Will. In fact, even assuming for the sake of argument, the first plaintiff has adopted one of the sons of the second plaintiff and therefore she has colluded with the second



plaintiff, there is no reason for the third plaintiff, another daughter of the Testator to join hands with the plaintiffs 1 & 2. However, it is seen that she has also come forward to probate the Will as directed by her father, naming her as one of the three executors.

37. In terms of Section 69 of the Indian Evidence Act, the propounders have established that one of the attesting witnesses is no more and whereabouts of the other attesting witness are also not known and despite diligent steps taken by them to procure the attendance of the said witnesses, the same was not successful or possible. Therefore, the propounders have rightly invoked Section 69 of the Indian Evidence Act. P.W.1 as well as D.W.1 have spoken about the signature of their father in Ex.P1, Will. Though D.W.1 admits his father's signature in Ex.P1, Will, he only states that signatures amongst the pages in the Will appear to be different. Even discounting his evidence, P.W.1 has spoken about the Testator's signature and wife of Saravanan, P.W.3 has spoken about one of the attesting witnesses' signature.

38. Yet another contention raised by the learned counsel for the



defendants in the Testamentary Proceedings is that the witnesses of the Will are stock witnesses. Normally, the term 'stock witness' is referring to a person who is repeatedly called upon to give evidence in several criminal cases, at the instance of the Police Authorities. The term 'stock witness' as such, in my considered opinion, would not be applicable to civil proceedings, especially Testamentary matters. The Will requires attestation by any two witnesses and therefore merely because, the witnesses are allegedly available at the Sub Registrar's Office and they attest several documents that are presented for registration for payment would not in any way belittle the evidentiary value of their attestation of the Will. In any event, the said so called stock witnesses have not even been available to depose before the Court. Only due to their non availability, the procedure under Section 69 has been resorted. For all the foregoing reasons, the requirement of Section 69 of the Evidence Act has also been met.

39. Moreover, as held by the Hon'ble Division Bench of this Court, when a Will is registered, presumption can be safely drawn when other evidence is not available. Moreover, in the present case, the Testator himself was alive for 12 long years after execution of Exhibit P1, Will and



defendants also have not taken a consistent stand. In fact, they have taken mutually destructive versions, namely forgery on one hand and undue influence and coercion on the other hand. Therefore, it is clear that the defendants have not been able to challenge the Will on substantially legitimate grounds and even in support of their claims of forgery or undue influence and coercion, there is no evidence forthcoming from the side of the defendants. Therefore, I am inclined to hold that the Will has been duly proved in accordance with Section 69 of the Indian Evidence Act and the plaintiffs are entitled to grant of probate. The argument regarding delay also only pales into insignificance since admittedly, the Will is a registered instrument and moreover Testator himself was alive until 2016 and within one year of his death, the OP came to be filed. A Will taken effect only on the death of the maker and hence it cannot be contended that the Will was executed in 2004 and did not surface until 2017.

40. With regard to issue Nos. 2 & 3 in Tr.C.S. No.14 of 2023, in view of the findings rendered above, nothing survives for consideration in the suit for Partition which necessarily has to be dismissed.



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41. With regard to issue No.4 in TOS. No.37 of 2021, the Will dated 02.01.2004 has been proved in accordance with the Section 63(c) of the Indian Succession Act read with Section 68 of the Indian Evidence Act. The plaintiffs in TOS No.37 of 2021 are therefore entitled to grant of probate as prayed for.

42. Accordingly, the Testamentary Original Suit is allowed and the Suit for Partition in Tr.C.S. No.14 of 2023 is hereby dismissed. No costs.

16.08.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

Witnesses examined on the side of the plaintiffs:

- P.W.1. - Mr.M.R.Vidyasagar
P.W.2 - Mr.C.M.Visweswaran
P.W.3 - Mrs.Jayanthi Saravanan

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
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1.	Ex.P1	02.01.2004	Original Registered Will executed by Testator
2.	Ex.P2	27.04.2016	The computer generated copy of the death certificate of Mr.M.R.Ramachandran.
3.	Ex.P3	27.06.2016	The original legal heir certificate of Mr.M.R.Ramachandran.
4	Ex.P4	02.01.2004	The original receipt of registered Will.
5	Ex.P5	14.06.2017	The original CSR No.396 of 2017 against defendants.
6	Ex. P6	19.07.2017	The office copy of the plaintiffs letter to SBI with postal receipt
7	Ex.P7	15.03.2023	The office copy and return covers of the plaintiffs letter to both the attesting witnesses of the Will with postal receipt (2 Nos.)
8	Ex.P8	--	The original Family Card for the period from 2005 to 2009
9	Ex.P9	11.03.2004	The original family card issued by Railways Department
10	Ex.P10	26.11.2007	The original cash bill No.12360.
11	Ex. P11	--	The photocopy of the Aadhar card of Jayanthi Saravanan.
12	Ex. P12	15.03.2005	The computer generated copy of the death certificate of N.C.Saravanan.
13	Ex.P13	27.12.2003	The certified copy of the mortgage deed.
14	Ex.P14	02.01.2004	The certified copy of the receipt registered as Doc. No.18/2004.
15	Ex.P15	06.01.2004	The certified copy of the mortgage deed registered as Doc. No.85 of 2004 before the SRO, Sembiam.

Witnesses examined on the side of the defendants:

D.W.1 – Mr.M.R.Elangovan



Documents marked on the side of the defendants:

S.No.	Exhibits	Date	Description
1.	Ex.D1	08.05.2003	The certified copy of the mortgage deed dated 08.05.2003 with Kilpauk Benefit Society Limited.
2.	Ex.D2	07.02.1989	The certified copy of the sale deed in favour of M.R.Ramachandran.
3.	Ex.D3	08.05.2003	The certified copy of the Mortgage deed executed by M.R.Ramachandran, M.R.Elangovan, Nagamani and Vidyasagar.
4	Ex.D4	07.07.2009	The certified copy of the Mortgage Discharge receipt executed in favour of M.R.Ramachandran, M.R.Elangovan, Nagamani and Vidyasagar.
5	Ex.D5	20.11.2015	The original letter of authority executed by M.R.Ramachandran
6	Ex.D6	21.04.2016	The Original Burial ground report of M.R.Ramachandran.
7	Ex.D7	21.04.2016	The computer generated copy of the death certificate of M.R.Ramachandran.
8	Ex.D8	18.06.2017	The carbon copy of the Police complaint made by the second defendant to the Sub Inspector of Police, Peravallur Police Station against the second plaintiff dated 18.06.2017.
9	Ex.D9	18.06.2017	The original CSR under No.405 of 2017.
10	Ex.D10	27.06.2016	The original legal heir certificate of M.R.Ramachandran.
11	Ex.D11	27.01.2017	The original letter of Indemnity submitted to the Bank by sureties.
12	Ex.D12	27.01.2017	The original affidavit of K.Sivakumar.
13	Ex.D13	--	The photocopy of the bank passbook of deceased M.R.Ramachandran.
14	Ex.D14	--	The photocopy of the property tax statement of suit property.



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16.08.2024

P.B.BALAJI,J.

rkp



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