



A.S.(MD).No.184 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.184 of 2007

and

MP(MD)No.1 of 2007

J.Ramachandran

... Appellant/Plaintiff

Vs.

1.Ashok

2.Jaiyu

3.Nirmala Chandrasekaran

4.Sairam

5.S.Venkatraman

Srinivasan (Died)

6.Nagarajan

7.Krishnamoorthy

8.Sathyabama

9.S.Jeyaraman

10.K.M.Krishnamoorthy (Died)

(Memo dated 24.01.2024 filed on 29.01.2024 in USR No. 3120 is recorded, to the effect that R10 died and since he was set ex-parte in the original suit itself the appellant is exempted from impleading

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his legal heirs vide Court order dated 31.01.2024 made in A.S.(MD)No. 184 of 2007 by PDBJ)

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11.K.M.Sethu |(Died)

12.K.M.Vijayakumar

13.K.M.Mythili

14.R.Jeyalakshmi (Died|)

15.J.Narayanasamy

16.J.Venkataramani

17.J.Rajkumar

18.S.Radha ... Respondents Nos.1 to 18 /Defendants

19.R.Malathi

20.R.Uma Maheswari ... Respondents 19&20/LRs of
Deceased 14th Respondent

21.S.Bama

22.S.Arun

23.S.Lakshmi Narayanan

24.S.Sri Devi ... Respondents Nos.21 to 24

(Respondents 21 to 24 are brought on record as LRs of the deceased 11th Respondent vide Court order dated 08.12.2022 made in CMP(MD)No.9934 of 2022 in AS.No.184 of 2007 by NMJ)



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Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree made in O.S.No.99 of 2004 on the file of the District Court, Karur, dated 27.07.2002.

For Appellant : Mr.K.Govindarajan
For R21 to R24 : Mr.H.Lakshmi Shankar
For R1 to R9, R12,
R13, R15 to R20 : No Appearance
For R10, R11 & R14 : Died (Steps Taken)

JUDGMENT

This appeal has been preferred as against the Judgment and decree passed by the District Court, Karur, in O.S.No.99 of 2004, dated 27.07.2002, wherein, the first appellant herein has filed a suit for partition and separate possession and also for mesne profit. The trial Court dismissed the suit. Aggrieved against the same, the present appeal has been preferred by the appellant/plaintiff.

2.For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.



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3.The gist of averments made in the plaint are as follows:

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One Ramarathinam Iyer and Meenambal are the husband and wife.

The said Ramarathinam Iyer had ancestral properties in Kammanallur Village, Krishnarayapuram Taluk. The said Ramarathinam Iyer died intestate in the year 1949 leaving behind his wife Meenambal and his son Ganesha Iyer and 4 daughters namely, Nagarathinam Ammal, Rajalatchumi, Gnanambal and Kamalam as his legal heirs to succeed his estate. After demise of Ramarathinam Iyer, his wife Meenambal is entitled to 1/3 share, Ganesha Iyer is entitled to 1/3 share and Ramarathinam Iyer is entitled to 1/3 share. The share of Ramarathinam Iyer has to be divided into 6 equal shares. Thereby, the daughters of the Ramarathinam Iyer are each entitled to 1/18 share over the properties, the Meenambal is entitled to 7/18 share and the Ganesha Iyer is entitled to 7/18 share. The Meenambal also died intestate after leaving behind the son and daughters as legal heirs. Thereby, 7/18 shares has to be divided into 5 equal shares. Therefore, each daughter is entitled to 12/90 shares. The Ganesha Iyer is entitled to 41/90 shares. The said daughters of Meenambal are died intestate leaving behind their legal heirs to succeed her estate. The defendants 1 to 3 are the grand-daughters of



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Nagarathinam Ammal through her daughter namely, Saraswathy. The defendants 4 & 5 are the grand-daughters of Nagarathinam Ammal through another daughter namely, Meenatshi. The another daughter of Nagarathinammal Ammal got married Ganesa Iyer. Therefore, the defendants 1 to 5 are totally entitled to 12/90 shares. The said Ganesa Iyer died intestate leaving behind the plaintiff and the defendants 6 to 18 as his legal heirs to succeed his estate. The plaintiff and the defendants 15 to 18 are the children of Rajalatchumi. The defendants 6 to 10 are the children of Gnanambal. The defendants 11 to 14 are the children of Kamalam. The share of 42/90 will goes to the defendants 6 to 18. Therefore, the defendants 15 to 18 are entitled to 78/270 share over the properties. The defendants 6 to 10 are entitled to 17/270 shares. The defendants 11 to 14 are entitled to 78/270 shares. Therefore, the plaintiff and the defendants 15 to 18 are entitled to 78/270 shares over the properties. The plaintiff and the defendants are in joint possession of the properties. Since the defendants are not amenable for partition, the plaintiff issued notice to the defendants and the twelfth defendant issued reply notice by alleging false averment that a Will dated 18.08.1996 executed in favour of the twelfth defendant by the Ganesa Iyer is not



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correct and the said Will is a created document. The Ganesa Iyer has no right to execute any Will. Hence, they filed a suit for partition.

4. The brief averments of the counter filed by the twelfth defendant are as follows:

The plaintiff is having no right over the property. It is false to state that the properties are ancestral properties of Ganesa Iyer. The wife and sons of Ramarathinam Iyer having no right over the properties. The properties only belonged to Ganesa Iyer. Therefore, the share mentioned in the plaint are false. The entire properties were acquired by the Ganesa Iyer and the brothers of the Ganesa Iyer never entitled to the properties. The Ganesa Iyer was residing along with twelfth defendant at Krishnarayapuram and he only maintained the Ganesa Iyer. Therefore, he executed a Will dated 08.08.1996 and died on 24.06.1998. After the demise of Ganesa Iyer, the Will came into force and the twelfth defendant is in exclusive possession and enjoyment of the property. Therefore, the properties is not available for partition. Except the twelfth defendant, nobody have right over the property. The plaintiff never been joint possession along with the defendants. The sisters of the Ganesa Iyer



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never claimed any share over the property. Therefore, the suit is liable to be dismissed.

5. Based on the above said proceedings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled to 13/45 share over the suit property?

2. Whether the plaintiff is entitled to get profit means from the defendants 1 to 14?

3. To what relief the plaintiff is entitled to?

6. On 09.07.2007, the trial Court has framed the following issues:-

1. Whether the Will executed by the Ganesa Iyer in favour of the twelfth defendant is original document or not?

7. Before the trial Court on the side of the plaintiff, he was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the defendants, the twelfth defendant was examined as D.W.1 and further, D.W.2 & D.W.3 were examined and Exs.B1 to B8 were marked.



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8. After analyzing the evidence adduced on both sides, the trial Court has dismissed the suit.

9. Aggrieved over by the said judgment and decree, the present appeal has been preferred by the second defendant on the following grounds.

i) The trial Court judgment and decree in dismissing the suit for partition is erroneous and against the law and as such, the same is liable to be set aside.

ii) The trial Court ought to have considered the evidence in a proper prospective and without considering the evidence, erroneously came to the conclusion that the description in the evidence are all negligible and it is unknown to law.

iii) The trial Court having accepted that the properties are ancestral one ought to have held that the said Ganesa Iyer is not entitled to execute a Will in respect of ancestral property and as such, the suit ought to have been dismissed as against the claim of 12th defendant.



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iv) *The learned District Judge has failed to give reasons for coming to the conclusion in respect of year of death of Ramarathinam Iyer.*

v) *The trial Court has failed to consider the evidence adduced by D.W.1. He clearly deposed that Ramarathinam Iyer died when he was 14 years old.*

vi) *The trial Court erred in coming to the conclusion that there is no dispute with respect to the signature of Ganesa Iyer in Ex.B-1, Will.*

vi) *The trial Court failed to consider that there is exclusive denial on the part of the plaintiff in respect of Ex.B-1 and it's execution.*

vii) *The trial failed to consider that the alleged Will was not mentioned by the twelfth defendant while he applying for the legal heir Certificate before the Thasildar, Krishnarayapuram.*

viii) *The Court failed to consider the evidence of D.W.2 and D.W.1 are contradict in respect of execution of Will.*



ix) The trial Court failed to consider that the scribe of the Will and the another attester were not examined as witnesses by the defendant.

x) The trial Court erred in coming to the conclusion of discrepancy with respect to Ex.B-1, the discrepancy in the evidence in respect of Ex.B-1 are negligible since there is no dispute with respect to signature of Ganesa Iyer is perverse and liable to be set aside.

- Therefore, the judgment and decree passed by the trial Court are liable to be set aside by allowing this appeal.

10. The learned counsel appearing for the appellant would contend that the plaintiff has filed a suit for the relief of partition and separate possession of the suit property. Originally, the suit property was belonged to one Ramarathinam Iyer. He married one Meenambal. They have had 4 daughters and a son. After the demise of Ramarathinam Iyer, his wife Meenambal and son Ganesa Iyer are each entitled to 1/3 share over the suit property and the 1/3 share of Ramarathinam Iyer has to be divided into six parts. Thereby, the four daughters of the Ramarathinam Iyer equally entitled to 1/18 share over the suit property. The plaintiff is



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the grand-son of Ramarathinam Iyer through his daughter namely, Rajalatchumi. The Ganesa Iyer died intestate leaving behind his sisters to succeed his estate. Thereby, the plaintiff and the defendants 15 to 18 are jointly entitled to 78/270 shares. Therefore, the plaintiff is entitled to share over the suit properties. But, the defendants have pleaded that the Ganesa Iyer executed a Will dated 08.08.1996 by bequeathing the properties to the twelfth defendant. The said Ganesa Iyer never executed a Will in favour of the twelfth defendant and the said Will has not been properly proved by the defendants. But, the trial Court without considering the evidences adduced on the plaintiff's side, dismissed the suit by holding that the properties of the Ganesa Iyer were given to the twelfth defendant through the Will dated 08.08.1996. The evidences of D.W.1 and D.W.2 are contrary to the execution of Will. There is a suspicious circumstances. Therefore, the trial Court has erroneously dismissed the suit.

10.1. In order to support his contention, the learned counsel for the appellant has relied upon the following judgments of the Hon'ble Supreme Court of India :-



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i) Shivakumar and Others Vs. Sharanabasappa & Others reported in AIR 2020 SC 3102.

ii) Kavita Kanwar Vs. Mrs.Pamela Mehta And Others reported in AIR 2020 SC 2614.

11. The learned counsel for the respondents 21 to 24 would content that the Ganesa Iyer during his life time executed a Will dated 08.08.1996 and the plaintiff also issued notice claiming partition stating that Ramarathinam Iyer died in the year 1947 and his wife died in the year 1956 and the Ganesa Iyer died on 26.04.1998 and therefore, the plaintiff, who is the son of one of the daughters of Ramarathinam Iyer and one of the sister of Ganesa Iyer are entitled to share properties. The defendants have issued reply notice on 16.02.1999 by disputing the claim and stating that the properties absolutely belonged to Ganesa Iyer and he executed a Will dated 08.08.1996 in respect of his properties in favour of the twelfth defendant. Therefore, the claim right over the properties are baseless and imaginary. The plaintiff has not denied the Will. There is no specific denial in respect of the signature of the Ganesa Iyer. The Will was executed on 08.08.1996 and the same was completed on 10.09.1996. During the cross-examination of D.W.1 also, the plaintiff did not put any



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question denying or disputing the signature of Ganesa Iyer found in the Will. The mental faculties or state of mind of Ganesa Iyer at the relevant point of time was not challenged. Therefore, the execution of Will has been proved. D.W.1 and D.W.2 have categorically deposed about the execution and attestation of the Will. Therefore, the defendants have proved the Will by examining the attesting witness D.W.2 and the plaintiff has not even denied the signature found in the Will. The recitals of the Will are not in attached unnatural or artificial during the cross-examination of D.W.2. Therefore, each and every circumstances are not in suspicious. The circumstances would be suspicious, when it is not normal. The plaintiff's brother did not claim any right or share in the properties. Except the plaintiff, none of the other relatives including his own brother and sisters have not come forward to claim right or share over the properties. Pending the first appeal, the tenth defendant died. The legal heirs of the tenth defendant has not brought on record. The application in CMP(MD)No.12653 of 2022 seeking injunction to prevent the legal heirs of tenth defendant have not proved. In the partition suit, the abatement against the one of the parties, the entire proceedings abate. Therefore, the appeal has to be dismissed as abated. The suit properties,



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except the item No.22 is said to be ancestral properties of Ramarathinam Iyer. According to the plaintiff, the Ramarathinam Iyer died in the year 1949 before commencement of Hindu Succession Act, 1956. Ganesa Iyer was his only son. Therefore, the Ganesa Iyer gets all the properties as his co-sharer and he had executed a Will dated 08.08.1996. After the demise of Ganesa Iyer, the twelfth defendant has inherited the property on 24.06.1998. Therefore, the daughters of Ramarathinam Iyer have no right over the property. Hence, all the daughters of Ramarathinamm Iyer died much earlier even prior to the the death of Ganesa Iyer in the year 1988. Therefore, the contention raised by the plaintiff about the share of the daughters in the coparcenary or the daughters getting $\frac{1}{2}$ share of the Ramarathinam Iyer factual and legal misconceived. Therefore, this appeal is liable to be dismissed.

11.1. In order to support his contention, the learned counsel for the respondents 21 to 24 has relied upon the following judgments of the Hon'ble Supreme Court of India :-

i) Kanthimathi G. Vs. Lakshmi Ammal reported in 1990-1-L.W.



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ii) Swarnalatha and Others Vs, Kalavathy & Others reported in 2022 0 AIR(SC)1585.

iii) Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another reported in (1982) 1 SCC 20.

12. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 21 to 24 and perused the records.

13. Points for consideration in this appeal are,

i) Whether the properties are ancestral properties of Ramarathinam Iyer?

ii) Whether the Ganesa Iyer is entitled to the entire properties of Ramarathinam Iyer?

iii) Whether the Ganesa Iyer executed the Will dated 08.08.1996?

iv) Whether the death of tenth respondent is affected the entire case as abated?

v) Whether the plaintiff is entitled to share over the property?



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vi) *Whether the plaintiff is entitled to relief of mean profits?*

vii) *Whether the decree and judgment of the trial Court are sustainable in law or on facts?*

viii) *Whether the appeal is allowed or not?*

ix) *To what relief the appellant is entitled to?*

14. Point No.1: *Whether the properties are ancestral properties of Ramarathinam Iyer?*

The plaintiff has filed a suit for partition alleging that the properties are the ancestral properties of Ramarathinam Iyer. But, the defendants have also not seriously disputed the nature of the property. Both sides have not filed any documents to prove their contentions. But, the plaintiff who filed a suit for partition has to prove the nature of the property. The defendants also not denied the properties belongs to Ramarathinam Iyer. Once the defendants admitted that the properties are belonged to Ramarathinam Iyer. If the property is self acquired property, they can produce the sale deeds in the name of the Ramarathinamm Iyer. But, both parties have not produced any document. In this context, on the side of the plaintiff, he examined P.W.1 and marked Exs.A1 to Ex.A4. On the side of the defendants D.W.1 to D.W.3 were examined Ex.B1 to



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Ex.B8 were marked. The P.W.1, in his evidence stated that the suit properties are ancestral properties of the Ramarathinam Iyer. Therefore, the contention of the plaintiff that the properties are the ancestral properties of Ramarathinam Iyer are acceptable since no document is available to prove the property was purchased by the Ramarathinam Iyer. Therefore, it can be perused that the properties are the ancestral properties of the Ramarathinam Iyer. Thus, the point is answered.

15. Point No.2 : *Whether the Ganesa Iyer is entitled to the entire properties of Ramarathinam Iyer?*

According to the plaintiff, the properties belongs to Ramarathinam Iyer and he died after 1949. But, there is no mentioning about the exact year of death of the Ramarathinam Iyer. According to the defendants, the said Ramarathinam Iyer died in the year 1936. In the notice issued by the plaintiff, the plaintiff mentioned that the Ramarathinam Iyer, who died intestate in and around 1949. Therefore, the plaintiff himself admitted that the Ramarathinam Iyer died in the year 1949 prior to the commencement of Hindu Succession Act. Thereby, as per survivorship, the Ganesa Iyer, who is the only son of the Ramarathinam Iyer, is entitled



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to the suit properties. The learned counsel appearing for the appellant argued that the defendants admitted in his cross examination that when he was aged about 14 years, the said Ramarathinam Iyer died and he was aged about 59 years on the date of examination before the Court. Thereby, the Ramarathinam Iyer died after commencement of Hindu Succession Act. On careful perusal of evidence of D.W.1, it reveals that he admitted in his evidence that the Ramarathinam Iyer died while he as 14 years old. How ever, the plaintiff in his notice, stated that the Ramarathinam Iyer died in the year 1949. Therefore, the oral evidence of D.W.1 is not sufficient to prove the year of death of Ramarathinam Iyer. Per contra, the plaintiff himself admitted the year of death as 1949. Therefore, Ganesa Iyer is entitled to the entire properties of Ramarathinam Iyer. Thus, the point is answered.

16. Point No.3 : *Whether the Ganesa Iyer executed the Will dated 08.08.1996?*

According to the plaintiff, the Ganesa Iyer died intestate leaving behind the plaintiff and the defendants 6 to 18 as legal heirs to succeed his estate. According to the first defendant, the Ganesa Iyer executed a



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Will dated 08.08.1996. Thereafter, the said Ramarathinam Iyer after execution of Will, died on 24.06.1998. Therefore, after the demise of Ramarathinam Iyer, the Will came into force and the twelfth defendant was in possession and enjoyment of the properties. To prove the Will, the defendants examined the attesting witness D.W.2 and he, in his evidence categorically deposed about the execution and attestation of the Will. D.W.1 also deposed about the execution and attestation of the Will. During examination, D.W.2 has admitted that he only signed on 10.08.1996. But, the plaintiff stated that the attesting witnesses signed on 08.08.1998. Further, the learned counsel for the appellant draw the attention of this Court that there are discrepancies between the evidence of D.W.1 and D.W.2 regarding the execution of Will. The discrepancies are minor discrepancies and they are not relating to the mental state of the testator of the Will and they are only in respect of mode of travel. Therefore, those discrepancies are not relating to the mental state of the testator. Therefore, the defendants proved the Will by examining the attesting witnesses.



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16.1. The learned counsel appearing for the appellant has argued that as per the evidence of D.W.2, the propounder of the Will also accompanied with the testator at the time of execution of the Will and the same is suspicious circumstance. To support his contention, he relied the judgment in ***Kavita Kanwar Vs. Mrs.Pamela Mehta And Others*** reported in ***AIR 2020 SC 2614***.

16.2. On a careful perusal of the said judgment, it is clear that if propounder of the Will takes an active part in the execution of the Will and receives substantial benefit under it, then such a circumstance is generally treated as suspicious one. In the case on hand, D.W.2 submitted that he saw the propounder at the time of attesting the Will and apart from that, no other evidence revealed about the participation in executing the Will. Therefore, mere presence cannot be taken as active participation. Therefore, the said case law will not be applicable to the present fact of the case.

16.3. The learned counsel for the appellant also argued that the Will was executed in the presence of Notary. But, the Notary was not



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examined as witness. Therefore, the Will was not proved in accordance with law and there are suspicious circumstances over the Will. As per Section 68 of Evidence Act, atleast one of the attested witness has to be examined to prove the attestation of the Will. In this case, the D.W.1 is the one of the attesting witness and he deposed about the attestation and execution of Will. Thereby, the twelfth defendant proved the execution of the Will. The Ganesa Iyer died in the year 1998. He bequeathed all the properties through a Will in favour of the twelfth defendant. He absolutely owner of the properties mentioned in the Will. Therefore, the defendants have proved the Will dated 08.08.1996 executed by the Ganesa Iyer in favour of the twelfth defendant.

16.4. The learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court of India in **Sivakumar and Others Vs. Sharanabasappa and Others** reported in **2020 STPL 5451 SC** wherein, it has been held in paragraph 11 that,

“11. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a Will could be broadly summarised as follows:-



1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The Initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of Will is surrounded by suspicious circumstances stands on different footing. The presence of suspicious circumstances makes the onus heavier on the



propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion etcetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real. germane and valid' and not merely the 'fantasy of the doubting mind.'

7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or



doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8.The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution



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of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

16.5. On careful perusal of the judgment, it is clear that the Hon'ble Supreme Court of India has framed the guidelines in respect of prove the Will in suspicious circumstances. In the case on hand, there is no suspicious circumstances and the Will was clearly proved through the attesting witnesses and the above said case law will not applicable to the facts of the case. The above said case law will not helpful to decide the case of the appellant.

16.6. The learned counsel appearing for the respondents 21 to 24 has argued that the attesting witnesses of the Will has clearly deposed about the execution and attestation of the Will and the appellant has not raised any objection in respect of the signature found in the Will and the mental state of the testator. Therefore, there is no suspicious circumstance raised by the appellant. To support his contention, he relied Hon'ble Supreme Court judgments in ***Indu Bala Bose and Others Vs.***



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Manindra Chandra Bose and Another reported in (1982) 1 SCC 20 and Swarnalatha and Others Vs, Kalavathy & Others reported in 2022 0 AIR(SC)1585.

16.7. On careful perusal of the said judgments, it is clear that the suspicious circumstance may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the disposition made in the Will being unnatural, improbable or unfair in the light of relevant circumstance, or there might be other indications in the Will to show that the testator's mind was not free. Any and every circumstances, is not a suspicious circumstance a circumstance would be suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. Further, cases in which suspicion is created are essentially those where either the signature of the testator is disproved or the mental capacity of the testator is suspected. In the case on hand also there is no question about the signature of the testator and marked such of the testator.



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The learned counsel for the respondents 21 to 24 would contend that already the appeal was abated as against the tenth defendant. But, no legal heirs of the deceased was brought on record. Therefore, the entire case is abated since the suit is filed for partition over the suit property.

17.1. To support his contention, the learned counsel for the respondents 21 to 24 relied upon the judgment in **G.Kanthimathi and 4 Others Vs. G.Lakshmi Ammal etc.**, reported in 1990-2-L.W.



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17.2. On careful perusal of the judgment, it is clear that the appeal is abated due to the death of one of the respondents and failure to bring on record the legal heirs of the defendant in the partition suit. Hence, the entire suit is abated. In the case on hand, the tenth defendant died and his legal heirs was not brought on record. But, the plaintiff claimed in respect of the share of his mother, who is the daughter of Ramarathinam Iyer and the tenth defendant is another branch of daughter of Ramarathinam and his sisters and brothers are represented to the share of that branch. Thereby, the entire appeal is not abated. Therefore, the above said case law will not applicable to the present facts of the case since the said case, there is no representation for the share of one of the defendant. In this case, the plaintiff's brothers and sisters duly represented the case for the share of Ganambal. Therefore, the entire appeal is not abated. Thus, the point is answered.

18. Point No.5 : *Whether the plaintiff is entitled to share over the property?*

This Court already in the previous points decided that the properties are the ancestral properties of Ramarathinam Iyer and he died



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prior to the commencement of Hindu Succession Act. Thereby, the Ganesa Iyer is entitled to the property by way of survivorship and the Ganesa Iyer also executed a Will in favour of the twelfth defendant and thereby, the properties are not available for the partition. Therefore, the plaintiff is not entitled to any share over the properties and thus, the point is answered.

19. Point No.6 : *Whether the plaintiff is entitled to relief of mean profits?*

This Court in the previous points decided that the plaintiff is not entitled any share over the properties and thereby, he is not entitled to mesne profits. Thus, the point is answered.

20. Point Nos.7 & 8 : *Whether the decree and judgment of the trial Court are sustainable in law or on facts? & Whether the appeal is allowed or not?*

Before the trial Court, the plaintiff has filed a suit for relief of partition and separate possession and the trial Court framed the proper



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issues and also examined the witnesses and based on the evidence adduced on both sides and after the elaborate discussions, dismissed the suit by holding that the Ganesa Iyer executed the Will in favour of the twelfth defendant and the Will has been properly proved in accordance with law. Thereby, the property is not available for partition. Therefore, the trial Court has dismissed the suit based on available evidence. The judgment and decree passed by the trial Court are well reasoned and warrant no interference. In view of the above said discussion, this Court is of the opinion that the appeal has no merits and the same deserves to be dismissed. Thus, the points are answered.

21. Point No.9 : *To what relief the appellant is entitled to?*

This Court already decided in the previous points Nos.1 to 6 that the properties are belonged to the twelfth defendant by way of Will dated 08.08.1996. Thereby, the properties are not available for partition. Therefore, the appellant is not entitled to any relief through this appeal. Thus, the point is answered.



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22. In the result, this Appeal Suit is dismissed and the judgment and decree passed by the District Court, Karur in O.S.No.99 of 2004 dated 27.07.2002 is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

28.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To:

1. The District Judge,
Karur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD).No.184 of 2007

P. DHANABAL,J.

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A.S(MD) No.184 of 2007
and
MP(MD)No.1 of 2007

28.03.2024