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A.S.NOS.379 OF 2016 & 605 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01 / 08 / 2025

JUDGMENT PRONOUNCED ON : 06 / 11 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NOS.379 OF 2016 AND 605 OF 2019

AND

C.M.P. NO.4989 OF 2017

IN

A.S. NO.379 OF 2016

A.S.NO.379 OF 2016

Amsaveni

...

Appellant /
1st Defendant

Vs.

1.M.Rajalakshmi

...

1st Respondent /
Plaintiff

2.Balamani

3.Velusamy

4.The Government of Tamil Nadu
Represented by its District Collector,
Collectorate, Palladam Road,
Tirupur Town, Tirupur District.

5.The Tahsildar
Udumalpet.

...

Respondents 2 to 5 /
Defendants 2 to 5

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1

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of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated August 4, 2015 passed in O.S. No.55 of 2012 (which decree was amended on December 10, 2015 with regard to the description of property) by the learned I Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.A.K.Kumaraswamy
Senior Counsel
Assisted by Mr.S.Nagarajan

For Respondents 1-3: Mr.P.Valliappan
Senior Counsel
Assisted by Mr.S.C.Vishwanth

For Respondents 4&5: Mr.B.Tamil Nidhi
Additional Government Pleader

A.S.NO.605 OF 2019

Amsaveni ... Appellant /
Plaintiff

Vs.

1.Balamani
2.Velusamy
3.Rajalakshmi ... Respondents 1 to 3 /
Defendants 1 to 3

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated August 4, 2015 passed in O.S.No.144 of 2012 by the learned I Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.A.K.Kumaraswamy
Senior Counsel



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Assisted by Mr.S.Nagarajan

For Respondents 1-3: Mr.P.Valliappan
Senior Counsel
Assisted by Mr.S.C.Vishwanth

COMMON JUDGMENT

One Ramasamy and Ranganayaki had three daughters and one son, namely Balamani, Amsaveni, Rajalakshmi and Velusamy. Ramasamy passed away 35 years ago from the date of plaint which is August 1, 2012. Ranganayaki passed away on March 17, 2006.

2. Amsaveni filed the Suit for declaration and permanent injunction in O.S. No.289 of 2012 on the file of the District Munsif Court, Udumalaipet, against her three siblings. Then, Rajalakshmi filed the Suit for partition and injunction in O.S. No.55 of 2012 on the file of the 'I Additional District and Sessions Court, Tiruppur' ['Trial Court' for brevity] against her siblings and two government officials. Then O.S. No.289 of 2012 was transferred to the Trial Court and renumbered as O.S. No.144 of 2012. Since the parties and the suit property in both the Suits are substantially one and the same, joint trial was ordered and evidence was recorded in O.S. No.55 of 2012. After trial, the Trial Court decreed the



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Partition Suit filed by Rajalakshmi and dismissed the Declaration Suit filed by Amsaveni vide its Common Judgment and pursuant Decrees dated August 4, 2015, that is to say, the Trial Court decided both the Suit against Amsaveni.

3. Feeling aggrieved, Amsaveni has preferred the instant Appeal Suits. The Appeal Suit in A.S. No.379 of 2016 is filed under Section 96 read with Order XLI Rule 1 of the 'Code of Civil Procedure, 1908' ['CPC' for short] over and above the Common Judgment and Decree in O.S. No.55 of 2012 and similarly, the one in A.S. No.605 of 2019 is filed over and above the Common Judgment and Decree in O.S. No.144 of 2012.

4. For the sake of convenience, hereinafter, the parties will be referred to as per their array in O.S. No.55 of 2012.

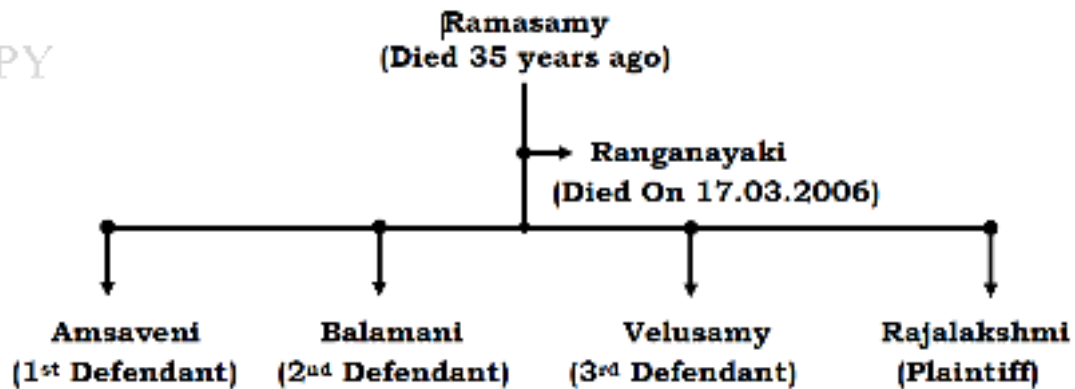
5. For easy understanding, reference may be made to the following genealogy chart:



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6. An extent of 3 Acre 16 Cents comprised in Survey Nos.355/C1, 355/C4, 355/D1 stands in the name of Ranganayaki by virtue of registered Sale Deed dated May 12, 1999 and the same is the suit property in both the Suits. There is no dispute with the above fact.

7. The case of the plaintiff is that the suit property is Ranganayaki's self-acquired property and revenue records stood in her name during her lifetime. Ranganayaki was suffering from neurotic problem and was bed-ridden from the year 2004. Since then, she was not in a sound and disposing state of mind and she passed away intestate on March 17, 2006. After her demise, the suit property devolved upon the plaintiff and defendants 1 to 3 under Section 15 of the Hindu Succession Act, 1956. While the plaintiff demanded amicable partition, the first defendant fraudulently obtained Legal Heirship Certificate excluding the plaintiff's



name. Hence, she filed the Suit in O.S. No.55 of 2012 seeking partition and permanent injunction, after exchange of notices.

8. The case of first defendant is that Balamani got married 37 years before the Suit and shifted to Coimbatore 10 years before the Suit. Rajalakshmi married against the wishes of the family in 1987 and settled in Coimbatore. Velusamy is married and has been settled in Canada for the past 10 years from the date of Suit.

8.1. Further case of the first defendant is that in 1998, her husband retired voluntarily from a private mill and received some retirement benefits. First defendant decided to invest the said amount in the suit property and entered into the Sale Agreement dated July 10, 1998 in her name with the vendors. But as per the advice of astrologer, the suit property was purchased in the name of Ranganayaki vide Sale Deed dated May 12, 1999. To put it differently, Amsaveni made her mother - Ranganayaki the owner of the suit property using her husband's hard earned money. Moreover, it was the first defendant who solely took care of Ranganayaki during the end of her lifetime.

8.2. Further case of the first defendant is that in view of all the above,



Ranganayaki executed the Suit Will dated February 10, 2006 in favour of first defendant in respect of suit property. Upon her demise, the Will came into force and revenue records were mutated in her name. The defendants 2 and 3 attempted to interfere with the first defendant's peaceful possession and enjoyment of the suit property and hence, first defendant filed the Suit in O.S. No.24 of 2009 before the District Munsif Court, Udulmalpet, against the defendants 2 and 3 for declaration and consequential permanent injunction and the said Suit was decreed on April 27, 2011. Then as the plaintiff began interfering with her peaceful possession and enjoyment, she filed another Suit for declaration and permanent injunction against the plaintiff and defendants 2 and 3 in O.S. No.289 of 2012 on the file of District Munsif Court, Udulmalpet, which later came to the file of the Trial Court and renumbered as O.S. No.144 of 2012 as elaborated above.

9. Second defendant filed a written statement and the same was adopted by third defendant. The written statement reiterates the plaint averments *qua* the ill-health of Ranganayaki towards the end of her lifetime and her intestate demise. Their further case is that the first defendant obtained *Ex-parte* Decree in her favour and against the defendants 2 and 3 in the Suit in O.S. No.24 of 2009 before the District



Munsif Court, Udulmalpet by fraudulent means; while the second defendant resides in Coimbatore and the third defendant resides in Canada, the Decree had been obtained by providing wrong address as if both are residing in Udulmalpet Taluk. No summons were served on the defendants 2 and 3 in that Suit and hence, the Judgment and Decree passed therein is void. Stating so, these defendants prayed to decree the Suit and to grant partition.

10. The fifth defendant filed a written statement. The same was adopted by fourth defendant. They both are government officials and formal parties to the Suit. They avered that the Suit is bad for misjoinder of parties and that the plaint does not disclose any cause of action against them. Stating so, these defendants prayed that the Suit is liable to be dismissed against these defendants.

11. On the above pleadings, the parties went for trial. The Trial Court framed the following issues:

'1. Whether the plaintiff in O.S.No.55/2012 entitled for partition and separate possession?

2. Whether the plaintiff in O.S.No.55/2012 entitled for permanent injunction against the defendants?



3. Whether the plaintiff in O.S.No.144/2012 entitled for the relief of permanent injunction?

4. Whether Ranganayakiammal executed a Will dated 10.02.2006 in favour of plaintiff?

5. Whether the plaintiff in O.S.No.144/2012 is entitled for declaration that Suit Property belongs to her?

6. To what relief the plaintiff entitled for?

12. Joint trial was conducted and evidence was recorded in O.S. No.55 of 2012 as stated *supra*.

12.1. At trial, on the side of plaintiff, plaintiff - M.Rajalakshmi examined herself as P.W.1 and marked Ex-A.1 to Ex-A.7. Further, one Ms.Dhanalakshmi was examined as P.W.2 and one Pangajam was examined as P.W.3.

12.2. On the side of the defendants, the first defendant examined herself as D.W.1 and marked Ex-B.1 to Ex-B.32. Attestors of the Suit Will namely A.Nagarajan and V.Viswanathan were examined as D.W.2 and D.W.3. D.W.2 marked Ex-B.33 to Ex-B.35. D.W.3 marked Ex-B.36 and Ex-B.37. In addition, the Village Administrative Officer of the Suit village,



namely S.Palanisamy was examined as D.W.4 and Ex-X.1 to Ex-X.4 which are Adangals and Chittas in respect of suit property were also marked.

13. Upon full-fledged trial, the Trial Court found that

- (i) Ranganayaki alone paid the entire sale consideration and purchased the suit property.
- (ii) The description of the suit property found in the Will varies from that in Ex-B.6 - Sale Deed dated May 12, 1999.
- (iii) The first defendant failed to prove the execution of Will by Ranganayaki in a sound and disposing state of mind.

13.2. Upon these findings, the Trial Court decreed the Suit in O.S. No.55 of 2012 by passing a Preliminary Decree dividing the suit property into four equal shares and allotting one such share to the plaintiff - Rajalakshmi and also granted permanent injunction restraining the first defendant - Amsaveni from alienating or encumbering the plaintiff's, second and third defendants' share in the suit property. The Suit was dismissed *qua* the fourth and fifth defendants. Further, the Trial Court dismissed the Suit in O.S.No.144 of 2012 filed by Amsaveni seeking



declaration and permanent injunction in respect of suit property.

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14. Feeling aggrieved, the first defendant has preferred the instant Appeal Suits as stated *supra*.

15. This Court heard the arguments of Mr.A.K.Kumaraswamy, learned Senior Counsel appearing for the appellant - Amsaveni (first defendant); Mr.P.Valliappan, learned Senior Counsel appearing for the respondents 1 to 3 (plaintiff and defendants 2 & 3); and Mr.B.Tamil Nidhi, learned Additional Government Pleader, appearing for respondents 4 and 5 (defendants 4 and 5), in full.

16. Mr.A.K.Kumaraswamy would argue that the Trial Court failed to consider Ex-B.5 – Sale Agreement, the loan documents in the name of Ranganayaki in Ex-B.7 to Ex-B.19, the revenue records in Ex-B.22, Ex-B.23 and Ex-X.1 to Ex-X.4 as well as the Ex-B.31 and Ex-B.32, which are respectively the Judgment and Decree passed in O.S. No.24 of 2009 on the file of the District Munsif Court, Udulmalpet.

16.1. He would contend that there was no source of income for Ranganayaki. Ex-B.5 - Sale Agreement stands in the name of the first



defendant - Amsaveni, pursuant to which Ex-B.6 - Sale Deed was executed in the name of Ranganayaki. Though the aforesaid loan documents stand in the name of Ranganayaki, they show that some of the loan installments were paid by first defendant's husband. These point out that Ranganayaki was merely a name lender. Further, it was only the first defendant who took care of Ranganayaki during her old age until her demise. The plaintiff and defendants 2 and 3 settled elsewhere and failed on their duty to look after their mother. Moreover, the relationship between Ranganayaki and Rajalakshmi was strained as Rajalakshmi married against the will of Ranganayaki. It was in these circumstances, Ranganayaki executed Ex-B.35 - Will (Original) dated February 10, 2006. Ex-B.35 - Will came into effect upon the demise of Ranganayaki and revenue records in respect of suit property which stood in the name of Ranganayaki were mutated to the name of first defendant (Ex-B.22, Ex-B.23 and Ex-X.1 to Ex-X.4).

16.2. He would further argue that the plaintiff and defendants 2 and 3 have not specifically denied the execution of Ex-B.35 - Will by Ranganayaki. While so, Ex-B.35 being a registered Will, only formal proof is required, which was satisfied by the first defendant by examining D.W.2 and D.W.3, the attestors to the Will. The Trial Court despite holding that



the evidence of D.W.2 and D.W.3 prove the execution of Ex-B.35 - Will, arrived at an erroneous finding that the first defendant failed to remove the suspicious circumstances surrounding Ex-B.35 - Will in a cryptic fashion. The Trial Court failed to consider that Rajalakshmi and Velusamy failed to attend the funeral of Ranganayaki and that it was only the first defendant who took care of Ranganayaki during her lifetime.

16.3. He would further argue that the description of property in Ex-B.35 - Will suffers from typographical errors in survey numbers; in certain places, Survey No.355 has been wrongly mentioned as Survey No.335. Complete and Cogent reading of Ex-B.35 would clearly show that the intention of the testatrix - Ranganayaki was to bequeath the property covered under Ex-B.6 - Sale Deed which is the suit property, in favour of first defendant. There is no other property in the name of the testator. Hence, the typos cannot deprive the first defendant of her valuable rights over the suit property.

16.4. He would further argue that the aforesaid Judgment and Decree in Exs-B.31 and B.32 are still in force and bind defendants 2 and 3. Accordingly, he prayed to allow these Appeals and dismiss the Suit filed in O.S. No.55 of 2012 and decree the Suit filed in O.S. No.144 of 2012.



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17. In response to the above arguments, Mr.P.Valliappan would argue that the burden of proof to prove Ex-B.35 - Will is upon the first defendant; that the first defendant being the propounder of the Will has to prove Ex-B.35 after removing the suspicious circumstances surrounding it; that at the time of alleged execution of Ex-B.35 - Will, the testatrix - Ranganayaki was 78 years old; that the exclusion of non-inheritance by natural legal heirs i.e., the plaintiff and defendants 2 and 3, the non-mentioning of the custody of Ex-B.6 - Sale Deed, and the close proximity between the date of Ex-B.35 and the date of demise of Ranganayaki create serious suspicion around the voluntariness and the fit and disposing state of mind of the testator; that the evidence of D.W.2 and D.W.3 are not sufficient to prove the Will as they suffer from contradictions and as they do not satisfy Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 read with Section 3 of the Transfer of Property Act, 1882.

17.1. He would further argue that the description of property in Ex-B.35 - Will and that in Ex-A.1 – Sale Deed are different; that Survey No.335/C1 and Survey No.335/C4 do not belong to the testatrix and they



are erroneously mentioned in the Will; that Ex-B.35 was malafidely created in a hasty manner resulting in such gross error, which cannot be rectified after the lifetime of the testator; that, hence, if this Court concludes that Ex-B.35 has been proved, even then it will enure benefit to the first defendant only *qua* the portion of the suit property in Survey No.355/D1 which is a well, and not the remaining portion of the suit property in Survey No.355/C1 and Survey No.355/C4; that the Trial Court, after considering the evidence available on record, rightly decreed the Partition Suit filed by the plaintiff and dismissed the Declaration Suit filed by the first defendant; that there is no warrant to interfere with it. Accordingly, he would pray to dismiss these Appeal Suits.

18. He would rely on the following Judgments in support of his contention:

- (i) Judgment of the Hon'ble Supreme Court in ***Janki Narayan Bhoir -vs- Narayan Namdeo Kadam***, reported in ***AIR 2003 SC 761 : (2003) 2 SCC 91***;
- (ii) Judgment of this Court in ***Kamalam -vs- Sasikala***, reported in ***2024 - 2 - LW-100***.



19. Mr.B.Tamil Nidhi would submit that this is an inter-se dispute between the plaintiff and the defendants 1 to 3. Defendants 4 and 5 are not necessary parties to the Suit. They mutated the revenue records only on the basis of Ex-B.35 - Will. However, they are ready and willing to obey any Order that this Court may pass against them.

20. This Court has considered both sides' submissions and perused the evidence available on record. Upon such consideration, the following points arise for determination in these Appeals:

- (i)** Whether the plea of the first defendant that she purchased the suit property in the name of the testatrix - Ranganayaki is legally sustainable in view of the Prohibition of Benami Property Transactions Act, 1988 ?
- (ii)** Whether Ex-B.35 - Will dated February 10, 2006 allegedly executed by Ranganayaki bequeathing the suit property in favour of the first defendant is true, valid and binding on the plaintiff ?
- (iii)** Whether the Judgment and Decree passed in O.S.No.24 of 2009 on the file of District Munsif Court, Udulmalpet is valid and binding on the plaintiff and the defendants 2 and 3 ?



Point No.(i)

21. The plaintiff sent Ex-A.2 - Notice to the first defendant on June 25, 2012. The first defendant replied vide Ex-A.7 - Reply Notice on July 12, 2012, *inter alia* stating that Ranganayagi had no wherewithal to buy the suit property; that first defendant entered into Sale Agreement (Ex-B.5) in respect of suit property in her name; that however, she purchased the suit property in the name of her mother - Ranganayaki as per the advice of astrologer, using her husband's retirement benefits; that Ranganayaki executed a Will (Ex-B.35) during her last phase of life in favour of the first defendant in respect of the suit property. In short, vide Ex-A.7, she raised a plea of *Benami*. However, she neither pressed the plea of *Benami* into service in her written statement in O.S. No.55 of 2012 nor in her plaint in O.S. No.144 of 2012. In fact, in the said plaint and written statement, as well as in Paragraph No.3 of her chief affidavit as D.W.1, she consistently maintained a stand that the suit property absolutely belonged to Ranganayaki vide Ex-B.6 - Sale Deed. She has half-heartedly marked Ex-B.5 - Sale Agreement and stated in Paragraph No.7 of her chief-affidavit that she gave her husband's money to her mother - Ranganayaki to purchase the suit property and that is why the mother gave back the suit property to her vide Ex-B.35 - Will. It need not be stated here that there is



no such recital in Ex-B.35, as this relates to the next point for determination. What could be understood from the above is that she gave up on the plea of *Benami*. Even while assuming that the plea of *Benami* is pressed into service by the first defendant, in view of the Prohibition of Benami Property Transactions Act, 1988, on and after May 19, 1988, the plea is not legally available to the first defendant [vide ***R. Rajagopal Reddy -vs- Padmini Chandrasekharan***, reported in (1995) 2 SCC 630]. **Point No.(i) is answered in favour of the plaintiff and against the first defendant.**

Point No.(ii)

22. This Court would like to first refer to ***H. Venkatachala Iyengar -vs- B.N. Thimmajamma***, reported in ***AIR 1959 SC 443***, which is regarded as the *locus classicus* for proof of Will. The legal principles *qua* proof of Will were settled by the Hon'ble Supreme Court as hereunder:

"18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern



the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression “a person of sound mind” in the context. Section 63 requires that the testatrix shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be



the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. 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 who has already departed the world 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 testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show



by satisfactory evidence that the will was signed by the testator; that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would



naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of



judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word “conscience” in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

*22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson**



[(1946) 50 CWN 895] “where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth”. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.”

23. This Court shall now appraise the facts of the instant case bearing in mind the above legal principles. At the time of execution of Ex-B.35 - Will, the testatrix - Ranganayaki was an age old woman. As per the recitals contained in Ex-B.35 - Will, she was 85 years old. Her death certificate in Ex-B.1 would show that she was 78 years at the time of Ex-B.35 - Will. Thus, it could be understood that she must have been in her late seventies or early eighties at the time of Ex.B.35 -Will. She passed away about a month after allegedly executing Ex-B.35. These facts would make it probable that the testatrix's health condition was feeble at the time of execution of Ex-B.35. Further, the testatrix was not a literate person. In these circumstances, there lies heavy burden on the first defendant to prove that the testatrix executed the testament in a fit and disposing state of mind,



voluntarily and out of her own volition.

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24. To prove Ex-B.35 - Will, the first defendant examined D.W.2 and D.W.3, the attestors thereto. This Court has perused the evidence of D.W.2 and D.W.3. In their chief-affidavit, they deposed that the testatrix - Ranganayaki affixed her thumb impression in Ex-B.35 - Will in their presence. Though they have not directly mentioned, cogent and conjoint reading of their evidence would make it very clear that they impliedly deposed that the testatrix signed in Ex-B.35 at the office of document writer. At this point, it has to be noted that one of the main ingredients in proof of Will is that each of the attestors shall witness the testatrix sign the Will or have received a personal acknowledgment of testatrix's signature and that each of the attestor shall sign in the presence of the testator. While D.W.2 and D.W.3's account of execution of Ex-B.35 - Will (as in their chief-affidavit) speaks of the testatrix affixing her thumb impression in the Will in their presence, there is no whisper about them signing as attestors in the presence of the testatrix.

25. Further, contrary to their chief-affidavit, in their cross-examination, they deposed that they went to Sub-Registrar's Office where they signed the Will following the testatrix.



26. Furthermore, D.W.2 deposed in his cross-examination that first defendant's husband is a close friend of D.W.2, that he does not know about the title and extent of suit property, that he has never been acquainted with the testatrix before, that he is not aware of when the testatrix passed away, that he does not know much about the family and family members of the testatrix, that he is not acquainted with D.W.3 before. Interestingly, when he was posed with a suggestion that the testatrix passed away before 2005 (while the Will was executed in 2006), he evasively answered that he does not know about the same.

27. Similarly, it could be gathered from the cross-examination of D.W.3 that he is also not acquainted with the testatrix. He has deposed that he knows no one else other than the first defendant, that only one day prior to the execution of Will, he came to know about the testatrix and that D.W.2 called upon him to sign as an attesor which is contrary to D.W.2's deposition that he does not know D.W.3. Further, D.W.2 and D.W.3 have deposed that the husbands of defendants 1 and 2 were present at the time of execution of Ex-B.35. The main point here is that in our society, in general, a person who is completely distant and unknown to the testatrix would not be made an attesor. Usually, attestors are persons acquainted



with the testator, or at least one of them would be. There is no plausible reason for making such unacquainted and unrelated people as attestors, that too when the husbands of defendants 1 and 2 were said to be present at the spot. At least one of them i.e., the husbands of defendants 1 and 2 could have been made an attestor if really they were present, which is not the case here.

28. Further, the testatrix - Ranganayagi had three daughters and one son. In these circumstances, non-inclusion of other legal heirs gives rise to suspicious circumstances. Though the first defendant asserted that her siblings are residing away from their mother and she alone looked after their mother, Ex-B.35 is silent about the other natural heirs viz., the plaintiff and defendants 2 and 3. It does not contain any recital to support the assertion of the first defendant.

29. The evidence of the attestors viz., D.W.2 and D.W.3 suffer from material contradictions as discussed above. Hence, the evidence of D.W.2 and D.W.3 is not sufficient to prove Ex-B.35 - Will. On careful scrutiny of their evidence, they do not satisfy the requirements under Section 63 of the Indian Succession Act, 1925, Section 68 of the Indian Evidence Act, 1872 read with Section 3 of the Transfer of Property Act, 1882.



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30. Further, it is a contention of the first defendant that she gave her husband's retirement money to her mother / testatrix - Ranganayaki to purchase the suit property. At this point, it would be pointed out that Ex-B.5 - Sale Agreement stands in the name of first defendant. But there is no recital in Ex-B.35 to even suggest that first defendant lent money to purchase the suit property under Ex-B.6 - Sale Deed. Hence, the said contention deserves to be rejected.

31. Moreover, the description of property in Ex-B.35 - Will is also wrong. An error by inadvertence in the description of property may not be significant given that otherwise the subject matter and the intention of the testatrix are clear and unambiguous. But in this case, Ex-B.35 does not have any reference to the Sale Deed in Ex-B.6 and does not specify the four boundaries of its subject matter. Further, Ex-B.35 specifically recites that only the property more fully described therein is bequeathed; there is no such recital that all the properties of the testatrix - Ranganayaki is bequeathed. There is no other element to identify the subject matter of Ex-B.35. Hence, there is no option but to read Ex-B.35 strictly. Description of property under Ex-B.35 covers Survey Nos.335/C1, 335/C4A and 355/D1,



out of which, Survey No.355/D1 alone is covered under Ex-B.6 -Sale Deed, which is in fact just an irrigation well and appurtenance thereto.

Admittedly, the other two survey numbers do not belong to the testatrix and hence, she has no right to dispose them of, or execute Will in respect of them. The first defendant's contention is that Survey No.355/C1 and Survey No.355/C4A have been wrongly mentioned as Survey No.335/C1 and Survey No.335/C4A in the description of property. Interpreting it strictly even if it really suffers from typographical errors *qua* description of property cannot be read in favour of the first defendant. Thus, even if this Court operates on the assumption that Ex-B.35 is proved, even then the first defendant would only be entitled to the well in Survey No.355/D1 and not the remaining portion of suit property. The Trial Court after appreciating the evidence and facts and circumstances, rightly arrived at the same conclusion. There is no warrant to interfere with the said decision. **Point No.(ii) is answered accordingly in favour of plaintiff and against the first defendant.**

Point No.(iii)

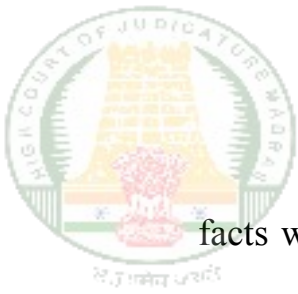
32. Firstly, since the Suit in in O.S. No.24 of 2009 is one for declaration of title based on the Will and for injunction, the plaintiff being a natural heir is a necessary party to that Suit [See *T. Panchapakesan -vs-*



Peria Thambi Naicker, reported in (1972) 85 LW 841 (DB) and **A.Ramachandra Pillai -vs- Valliammal**, reported in (1987) 100.LW 486].

However, the plaintiff was not impleaded as a party to the Suit and hence, the Suit in O.S. No.24 of 2009 is bad for non-joinder of necessary party and would not bind the plaintiff - Rajalakshmi.

33. Further, the first defendant in her Suit as well as in her Ex-A.7 - Reply Notice has stated that the plaintiff - Rajalakshmi and the second defendant - Balamani are residing in Coimbatore for the past ten years (from the date of Suit), and the third defendant -Velusamy is residing abroad since 1998. While so, a bare perusal of Ex-B.31 and Ex-B.32 - Judgment and Decree passed in O.S. No.24 of 2009 filed by the first defendant, brings the first defendant's mischief to light. The first defendant, being plaintiff in O.S. No.24 of 2009, has stated the address of second defendant - Balamani as "No.80, Dharapuram Road, Gandhi Nagar II Colony, Udumalapet" and that of the third defendant - Velusamy as No.6/91, A.Ammapatti Village, Pedhappampatti via, Aamandhakadavu Post, Udumalapet Taluk". Contrary to her admissions, she has given false addresses as if the defendants 2 and 3 were residing in Udulmalpet, which in the considered opinion of this Court amounts to suppression of material



facts which in turn amounts to fraud as per settled legal principles. Thus, she fraudulently caused the summons for defendants 2 and 3 to be served to wrong addresses and obtained an *Ex-parte* Decree against them behind their back. It is a well-known legal principle that fraud vitiates all solemn acts, that justice and fraud cannot thrive together and that any Judgment and Decree obtained by playing fraud is a nullity in law and such a Judgment and Decree can even be set aside in collateral proceedings [vide *S.P. Chengalvaraya Naidu -vs- Jagannath*, reported in (1994) 1 SCC 1]. The same has also been reiterated by Hon'ble Supreme Court in a catena of cases, for instance *A.V. Papayya Sastry -vs- Govt. of A.P.*, reported in (2007) 4 SCC 221. Hence, Ex-B.31 and Ex-B.32 - Judgment and Decree passed in that Original Suit is *void* and the plaintiff and the defendants 2 and 3 are not bound by the same. Furthermore, perusal of Ex-B.31 and Ex-B.32 - Judgment and Decree would further reveal that the said Will was marked in the Suit without examining the attesting witness. Considering the cumulative facts and circumstances of the case, this Court holds that Ex-B.31 and Ex-B.32 - Judgment and Decree would be void. **Point No.(iii) is answered in favour of the plaintiff and against the first defendant.**

34. It is by now pellucid that the suit property is a self-acquired



property of Ranganayaki. She passed away on March 17, 2006 as a Hindu leaving behind the plaintiff and the defendants 1 to 3 as her legal heirs under Section 15 of the Hindu Succession Act, 1956. The moment she passed away, the suit property devolved upon her aforesaid legal heirs equally i.e., the plaintiff and the defendants 1 to 3 are each entitled to $\frac{1}{4}$ share. Hence, the plaintiff and the defendants 1 to 3 are co-heirs / co-owners who are deemed to be in joint possession and enjoyment. Mere mutation of revenue records in the name of first defendant itself would not give her any exclusive title. Therefore, the Suit Valuation and the Court Fee under Section 37 (2) of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955 are correct. Furthermore, the Suit is filed within 12 years after succession opened and hence the reliefs sought for by the plaintiff and the first defendant are not barred by limitation.

35. This Court has considered the case laws relied on by Mr.P.Valliappan. They advance general principles of law and there is no dispute with them.

CONCLUSION:

36. Resultantly, the Appeal Suits stand dismissed. The Common



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Judgment and Decrees of the Trial Court stand confirmed. Taking into consideration the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

06 / 11 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

The I Additional District and Sessions Judge
Tiruppur.



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R. SAKTHIVEL, J.

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