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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2025

PRONOUNCED ON : 19.08.2025

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN**

T.O.S.No.19 of 2002

and

T.O.S.No.92 of 2013

G.Hemachalam

...Plaintiff in T.O.S.No.19 of 2002

G.Somasundaram

...Plaintiff in T.O.S.No.92 of 2013

Vs.

1. Neelavathi

2. G.Somasundaram

...Defendants in T.O.S.No.19 of 2002

(2<sup>nd</sup> defendant impleaded as per order dated 26.10.2015 made in A.No.6481 of 2015 by GCJ)

G.Hemachalam

...Defendant in T.O.S.No.92 of 2013

**Prayer in T.O.S.No.19 of 2002:**

This Civil Suit is filed under Sections 222, 255 and 276 of the Indian Succession Act, XXXIX of 1925 for grant of probate.

**Prayer in T.O.S.No.92 of 2013:**

This Civil Suit is filed under Sections 222 and 276 of the Indian Succession Act, XXXIX of 1925 for grant of probate.



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For Plaintiff(s): Mr.S.Subbiah, Senior Counsel,  
Assisted by Ms.G.Sumithra  
in T.O.S.No.92 of 2013

Mr.R.Thiagarajan  
in T.O.S.No.19 of 2002

For Defendant(s): Mr.S.Subbiah, Senior Counsel,  
Assisted by Ms.G.Sumithra  
in T.O.S.No.19 of 2002

Mr.R.Thiagarajan  
in T.O.S.No.92 of 2013

### **COMMON JUDGMENT**

Both these Testamentary Original Suits relate to two separate Wills, which are both registered and executed by V.Nagammal who died on 20.12.1997.

2.Originally, O.P.No.108 of 2002 had been filed by G.Hemachalam seeking probate of a Will dated 30.11.1988 registered as Document No.105/1988 in the office of the Sub-Registrar, Anna Nagar, Chennai, said to have been executed by his mother V.Nagammal. In the said Original Petition,



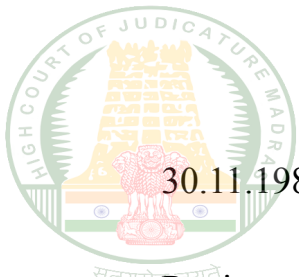
the petitioner had impleaded his four sisters namely, Neelavathi, Manonmani, Parameswari, Sankar Eswari and his brother G.Somasundaram as respondents.

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On caveat being filed by Neelavathi, O.P.No.108 of 2002 was converted as T.O.S.No.19 of 2002. Subsequently, by an order dated 26.10.2015 in A.No.6481 of 2015, G.Somasundaram was impleaded as the 2<sup>nd</sup> defendant.

3.G.Somasundaram filed O.P.No.528 of 2006 seeking probate of a Will dated 16.09.1985 also said to have been executed by V.Nagammal which had been registered as Document No.124 of 1985 in the office of the Joint Sub Registrar Office – I (District Registrar) Office of the Registrar, Madras North. In the said petition, he had impleaded his brother G.Hemachalam and sisters viz., Neelavathi, Manonmani, Parameswari, Sankar Eswari as respondents. On caveat filed by G.Hemachalam, O.P.No.528 of 2006 was converted as T.O.S.No.92 of 2013.

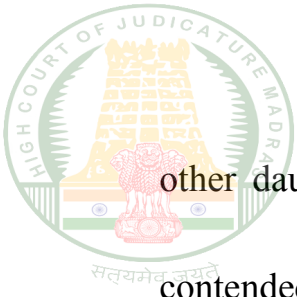
4.In O.P.No.108 of 2002 / T.O.S.No.19 of 2002, the petitioner / plaintiff G.Hemachalam stated that his mother V.Nagammal had executed a Will dated



30.11.1988 registered as Document No.105 of 1988 in the Office of the Sub

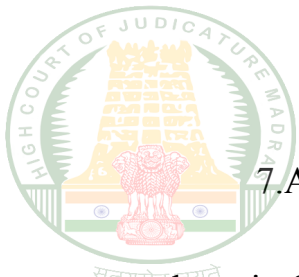
Registrar, Anna Nagar, Chennai, and had named him as executor. He sought grant of probate of the said Will. In the petition, he had also given the manner in which she had bequeathed the properties which stood in her name. He therefore claimed that as executor he must be permitted to prove the Will and probate must be granted. Very significantly, he had not mentioned whether any earlier Will had been executed by V.Nagammal. In the list of documents he had also not filed a copy of any earlier Will. On caveat being filed by Neelavathi, O.P.No.108 of 2002 was converted as T.O.S.No.19 of 2002.

5.In her written statement, it had been contended by Neelavathi that V.Nagammal did not have any source of income to purchase the properties. It was stated that their father who was a Gold smith by profession was the only earning member of the family and had purchased the properties in the name of V.Nagammal. It was therefore contended that V.Nagammal was not the absolute owner of the properties in Item Nos.1, 4 – 8 mentioned in the Will and that she could bequeath only an undivided 1/7 share in the said properties and that all



other daughters and sons were entitled to the remainder portion. It was also contended that Item Nos.2 and 3 were ancestral properties which belonged to the father of V.Nagammal, T.Venkatak Krishnan Mudaliar and they were therefore not the absolute properties of V.Nagammal and that all the children have a share in the said properties.

6.It had been further contended that the testatrix knew only Tamil language and the Will was in English and it had not been stated that the contents had been read over and translated to the testatrix. It had been further contended that the testatrix was living along with her two sons and her last daughter and in the year 1988 there was a dispute between the two sons and the testatrix and consequently, there was an oral partition of the property where they were residing. It had been further contended that the testatrix was made to execute the Will during her troubled state of mind. She was under the influence of the plaintiff G.Hemachalam. It was therefore contended that the petitioner / suit should be dismissed.



7. As already stated, G.Somasundaram was impleaded as 2<sup>nd</sup> defendant in the suit. Subsequently, he also filed his written statement wherein, he contended that his mother V.Nagammal died on 20.12.1997 at Aysha Hospital, Chennai and had been suffering from various ailments, more specifically from diabetics and was under constant medical supervision. It had been stated that the plaintiff instead of taking her to the hospital took her to the Registrar Office and executed the Will. It had been contended that the witnesses were friends of the plaintiff who had never seen the execution of the Will by the said V.Nagammal. He also contended that even during the life time of the father M.Govindasamy Mudaliar, the testatrix V.Nagammal had executed a Will on 12.09.1975 and registered as Document No.162 of 1975 in the office of the Sub Registrar, Anna Nagar. Later the father Govindasamy Mudaliar died on 11.06.1984 and thereafter, V.Nagammal had approached an advocate, K.Kumarasamy to make out a Will and accordingly a Will dated 16.09.1985 was executed by her which was registered as Document No.124 of 1985 in the office of the Sub Registrar, Madras North in the presence of witnesses. It had been contended that this was the only genuine Will executed by V.Nagammal and the Will projected by the

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plaintiff was the not a genuine Will and that there were suspicious circumstances surrounding its execution. It had been further contended that on

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and from the year 1987, the health of V.Nagammal deteriorated and there was clotting of blood in the brain and she was not in a position to take correct decisions by her own. It was stated that taking advantage of this position, the plaintiff had created the Will dated 30.11.1988. It had been specifically stated that the contents of the Will had not been read over and explained to V.Nagammal who did not know English. It had been stated that the disposition of the properties were not in accordance with the desire of V.Nagammal. It was therefore contended that the suit should be dismissed.

8.In O.P.No.528 of 2006 / TOS.No.92 of 2013, the petitioner G.Somasundaram stated that his mother V.Nagammal died on 20.12.1997 at Aysha Hospital Chennai and had executed a Will on 16.09.1985 which had been registered as Document No.124 of 1985 in the office of the Joint Sub-Registrar – I, Madras North, in the presence of witnesses. It had been contended that there was fair distribution of the assets held by her and she had further stated about



the marital status of her three daughters and also placed an obligation on her sons to perform the marriage of the last daughter. It had been stated that out of the two houses which stood in her name she had bequeathed one each to her two sons and also other items of suit properties in equal proportions to both the two sons. She had also appointed her two sons G.Somasundaram and G.Hemachalam as executors of the Will. It had therefore been contended that he must be permitted to prove the Will and probate should be granted of the said Will.

9.As already stated, G.Hemachalam filed caveat and O.P.No.528 of 2006 was converted as Testamentary Original Suit in T.O.S.No.92 of 2013.

10.In the written statement filed by the defendant, G.Hemachalam, it had been stated that V.Nagammal had executed her last Will on 30.11.1988 which had been registered as Document No.105 of 1988 in the office of the Sub-Registrar, Anna Nagar, bequeathing the properties to her sons and two of the daughters. It had been stated that the Will sought to be proved dated 16.09.1985



had been superseded by the later Will dated 30.11.1988. It was also mentioned specifically that it stood revoked. It had therefore been stated that the Will which formed the subject matter of O.P.No.108 of 2002 / T.O.S.No.19 of 2002 alone should prevail and that therefore T.O.S.No.92 of 2013 should be dismissed.

11.Since both the two Wills projected had been executed by the same testatrix V.Nagammal, common issues were framed for consideration as follows:

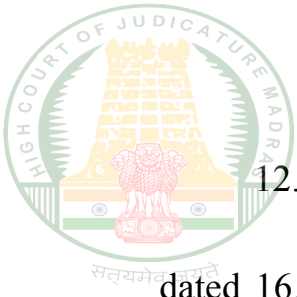
*“(i)Whether the Will dated 16.09.1985 is the Last Will and Testament of late V.Nagammal?*

*(ii)Whether the Will dated 30.11.1988 superseded the Will dated 16.09.1985?*

*(iii)Whether the Will dated 30.11.1988 is obtained by fraud, coercion and undue influence?*

*(iv)Whether the Testator is the owner of the properties mentioned as Item Nos.1 to 8 in the Will dated 30.11.1988?*

*(v)To what other relief the plaintiff in both the suits are entitled to?”*



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12.The plaintiff in T.O.S.No.92 of 2013 who sought to prove the Will dated 16.09.1985 was directed to lead evidence and during trial he examined himself as PW-1. He further examined M.A.Lakshmipathi, Advocate, as PW-2. Ex.P1 was the certified copy of the Will dated 16.09.1985. The original had not been produced and an explanation had been given that it had been taken away by the plaintiff in T.O.S.No.19 of 2002, G.Hemachalam. Ex.P2 was the Death Certificate of V.Nagammal dated 20.12.1997. Ex.P3 was the Affidavit of Assets and Ex.P4 was the certified copy of the deposition in O.S.No.854 of 2002 which was marked during the cross examination of DW-1.

13.The defendant G.Hemachalam was examined as DW-1 and he examined T.R.Hemachandran and R.Sivakumar as DW-2 and DW-3 respectively. During cross examination of PW-1, he also marked Exs.D1 to D11. These documents included the Passbooks in the name of V.Nagammal / D1, D2 and D3, Marriage Invitation cards of Sankareeswari and Hemachalam / D4 and D5, letters addressed to V.Nagammal / D7, D8 and D11 and documents relating to the property tax / D9 and D10. DW-1 further marked the original Will



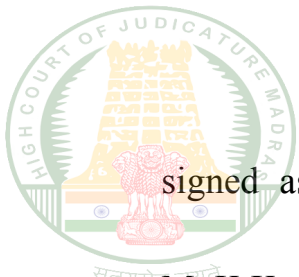
registered as Document No.105 of 1988 dated 30.11.1988 as Ex.D12 and the

Affidavit of Attesting witness in O.P.No.108 of 2002 as Ex.D13.

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14.Heard arguments advanced by Mr.S.Subbiah, learned Senior Counsel assisted by Ms.G.Sumithra for the plaintiff in T.O.S.No.92 of 2013 / 2<sup>nd</sup> defendant in T.O.S.No.19 of 2002 and by Mr.R.Thiagarajan, learned counsel for the defendant in T.O.S.No.92 of 2013 / plaintiff in T.O.S.No.19 of 2002

15.Mr.S.Subbiah, learned Senior Counsel for the plaintiff in T.O.S.No.92 of 2013 pointed out the facts relating to the two Testamentary Original Suits and the Original Petitions and the relationship among the parties. He stated that both the plaintiff G.Somasundaram and G.Hemachalam were the sons of M.Govindasamy Mudaliar and V.Nagammal who also had four daughters, Neelavathi, Manonmani, Parameswari, Sankar Eswari. The learned Senior Counsel pointed out that V.Nagammal had executed a Will on 16.09.1985 which had been registered as Document No.124 of 1985 in the Office of the Joint Sub Registrar – I, Madras North. He pointed out that there were earlier litigations which she had faced and therefore, when executing that particular Will, she had approached her advocate, Mr.K.Kumarasamy who had drafted the Will and also



signed as a witness. The second witness was Mr.Kanagaraj, the junior of Mr.K.Kumarasamy. The original of this Will had been taken away by Hemachalam, the plaintiff in T.O.S.No.19 of 2002 and therefore, the learned Senior Counsel stated that the registration copy alone had been produced and marked as Ex.P1. The learned Senior Counsel stated that in the said Will V.Nagammal had very clearly expressed her intentions by bequeathing one property at Chennai to her elder son G.Somasundaram and the other property at Chennai to her younger son G.Hemachalam. She had also stated that thereafter the two properties would devolve to the respective legal representatives and if there were no legal representatives it would revert back to the other brother. She also stated about her three daughter who had been married and further placed an obligation on the two sons to perform the marriage of the unmarried daughter, Sankar Easwari. The learned Senior counsel stated that the Will was a true reflection of the wishes of V.Nagammal who had maintained equality among her two sons and four daughters and saw to it that none of them were prejudiced by the execution of the Will.

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16. The learned Senior Counsel further argued that G.Somasundaram who had been named as one of the executors along with G.Hemachalam had been examined as PW-1 and he had also withstood cross examination. He further pointed out that the attesting witnesses, Mr.K.Kumarasamy and Mr.Kanagaraj, Advocate, had unfortunately died before they could tender evidence and therefore Mr.M.A.Lakshmipathy, Advocate, another junior of Mr.K.Kumarasamy was examined as PW-2. The witness had very clearly stated about his knowledge of the signature of the two attesting witnesses and identified them. The learned Senior Counsel contended that the registered Will dated 16.09.1985 had been proved in manner known to law.

17. With respect to the Will projected by G.Hemachalam, who was the plaintiff in T.O.S.No.19 of 2002, the learned Senior Counsel again took the Court through the Will and pointed out the extreme irrationality in the disposition of the properties. He pointed out that all the properties were bequeathed to G.Hemachalam and the superstructure property at Aynavaram, Chennai, alone had been bequeathed to G.Somasundaram and with respect to



the land, it had been stated that 1/4<sup>th</sup> ground of vacant land shall be taken by her

last daughter G.Sankar Eswari @ Dhanalakshmi and 1/2 ground of vacant land

adjacent to the land given to G.Sankar Eswari shall be taken by one of her other

daughter G.Parameswari. She had further stated that the remaining portion of

two grounds of land, including the house and well shall be taken absolutely by

G.Hemachalam. She had also stated that if the two daughter were to sell their

vacant land, the first offer must be made to G.Hemachalam and if he fails to

purchase the same, they would be at liberty to sell it to any third party. The

learned Senior Counsel stated that therefore G.Somasundaram had been ousted

from inheritance except grant of life interest over the superstructure of the

property at Aynavaram.

18.The learned Senior Counsel further stated that prior to the execution of

this Will, dated 30.11.1988, V.Nagammal was not in a sound and disposing state

of mind. She was suffering from Diabetes, requiring treatment. She had been

admitted to Aysha Hospital at Chennai, where she died on 20.12.1997. The

learned Senior Counsel further pointed out the evidence of DW-2 and DW-3 the

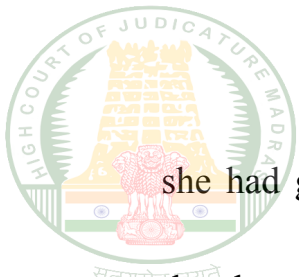
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attesting witnesses, who during the cross examination admitted that they had not seen the other signing the Will. The learned Senior Counsel was emphatic in his

submission that the Will had not been proved in manner known to law. The learned Senior Counsel stated that since the Will had not been proved in manner known to law, the Court will have to dismiss T.O.S.No.19 of 2002 and since the Will which is the subject matter of T.O.S.No.92 of 2013 had been proved, that suit must be decreed and probate granted to the plaintiff therein.

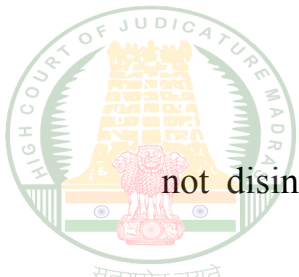
19.Mr.R.Thiagarajan, learned counsel for the defendant in T.O.S.No.92 of 2013 / plaintiff in T.O.S.No.19 of 2002 contested the arguments advanced. The learned counsel took the Court through the Will dated 30.11.1988 registered as Document No.105 of 1988 which had been marked as Ex.D12. He pointed out that the testatrix had very clearly stated about the status of her four daughters and two sons. All the daughters, in her own words, had been decently married and well provided and happily residing with their respective husbands. The learned counsel stated that the testatrix was therefore, very conscious as to the position in which her daughters were placed. She had also stated in the Will that



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she had given them Sreethanam, Jewels, Silverwares etc. She had also stated that her first son G.Somasundaram had married but the second son was not married. She had then listed out the properties in her name. She had thereafter stated that her second son alone is looking after her interest and attending to her needs. She had further stated that she had spent lot of money for the education of her first son and to set up a plastic industry for him and also celebrated his marriage at her own costs including gift of jewels of about fifteen sovereigns. The learned counsel pointed out that the testatrix further expressed her grievance that her first son G.Somasundaram had changed his attitude towards her and was acting against her interest and therefore, she was not given him any property absolutely.

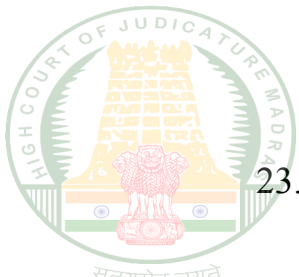
20.Mr.R.Thiagarajan, learned counsel, by pointing out the above statements made by the testatrix, was emphatic in his submission that the testatrix had given adequate and sufficient reasons for not giving any property absolutely to her first son. She had also given the reason why she was giving the properties absolutely to her second son, G.Hemachalam. But she had however



not disinherited her son G.Somasundaram. She had made provision that the property at No.1, Parasurama Eswaran Koil Street, Aynavaram, Chennai, shall be possessed by her first son G.Somasundaram and after his lifetime, the property shall be enjoyed by S.Yogendrakumar, her grandson after he attains the age of majority. The learned counsel stated that there cannot be any more fair dispensation of the assets.

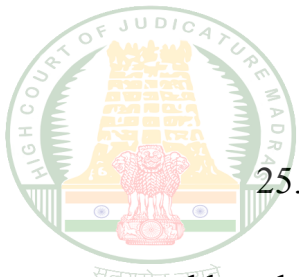
21.The learned counsel then pointed out that the testatrix had further provided for her last daughter G.Sankar Eswari @ G.Dhanalakshmi and to her third daughter G.Parameswari. She had also stated that her first two daughters G.Neelavathi and G.Manonmani are happily residing with their respective husbands and are well provided and therefore do not require any property in their favour.

22.The learned counsel argued that, by this Will, the earlier Will executed by the testatrix dated 16.09.1985 which was marked as Ex.P1 stood superseded. It was been specifically revoked. It no longer according to the learned counsel, had the force of law.



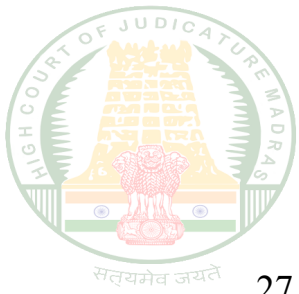
23.The learned counsel further pointed out that to prove the said Will the two attesting witnesses, T.R.Hemachandran and R.Sivakumar were both examined and they both tendered evidence about their physical presence in the Sub-Registrar office and signing the document. The learned counsel pointed out that the evidence had been taken after considerable number of years from the date of execution of the Will and there was therefore every possibility of minor contradictions which would not be fatal to the case of the plaintiff in T.O.S.No.19 of 2002.

24.The learned counsel further argued that on the other hand the plaintiff in T.O.S.No.92 of 2013 had not examined even one of the attesting witnesses. He had only examined an advocate to speak about the signature of another advocate and stated that it is only natural that the advocate would identify the signatures and being experienced in Court matters would know how to answer questions in support of the party who had called him. He therefore stated that no credence can be given to the evidence of the advocate who had been examined as PW-2, M.A.Lakshmipathi.



25. The learned counsel also pointed out that there was no evidence adduced to speak about the alleged physical infirmity of the testatrix. She was a aged lady and had age related illness but that did not mean that she was not in a sound and disposing state of mind when she executed the Will which was marked as Ex.D12. It had also been registered and therefore a presumption arises that it had been executed in proper form and that the Sub-Registrar had carried out his duties in accordance with the rules and there cannot therefore be any doubt raised about either the execution or attestation or registration of the said Will.

26. Mr.R.Thiagarajan, learned counsel, was very emphatic in his submission that the Will had been proved in manner known to law and if Ex.D12 had been proved, then automatically Ex.P1 will have to be rejected by the Court. The subsequent Will will take precedence over the earlier Will which had been very specifically revoked by the testatrix while executing the Will dated 30.11.1988. He therefore contended that T.O.S.No.19 of 2002 should be allowed and T.O.S.No.92 of 2013 should be dismissed.



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27.I must readily admit that both the learned Senior Counsel and the learned counsel during the course of their arguments had relied on precedents on the points asserted by them. Those precedents shall be cited while discussing the issues in the suit. Similarly substantial portions of the evidence recorded had also been pointed out and again those portions shall be extracted while examining the issues in the two suits.

28.I am of the firm opinion that the issues framed should be recast since even admittedly, the Will dated 16.09.1985 was not the last Will and the Will dated 30.11.1988 had superseded the Will dated 16.09.1985 and therefore, Issue Nos.1 and 2 are redundant of any discussion.

29.Similarly Issue No.4, namely, whether the testatrix was the owner of the properties mentioned as Item Nos.1 to 8 had been framed on the basis of the written submission filed by the 1<sup>st</sup> defendant in T.O.S.No.19 of 2002, Neelavathi who did not participate subsequently during the trial. Her advocate also did not



advance arguments on that ground. The two contesting parties,

G.Somasundaram and G.Hemachalam have projected their respective cases on the basis that the testatrix V.Nagammal was the owner of all the properties mentioned in her two Wills. Therefore, Issue No.4 need not also be taken up for consideration by this Court.

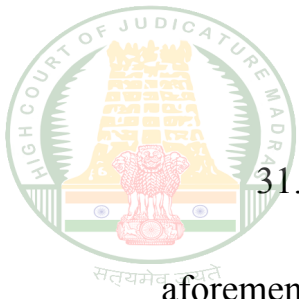
30. But however, the central issue is about the proof of the Will dated 16.09.1985 / T.O.S.No.92 of 2013 and the Will dated 30.11.1988 / T.O.S.No.19 of 2002. Therefore, the issues are recast as follows:

*(i) Whether the Will dated 16.09.1985 registered as Document No.124 of 1985 in the office of the Joint Sub Registrar – I, Madras North, is a true and genuine document and had been proved in manner known to law?*

*(ii) Whether the Will dated 30.11.1988 registered as Document No.105 of 1988 in the office of the Sub Registrar, Anna Nagar is a true and genuine document and had been proved in manner known to law.*

*(iii) Whether the Will dated 30.11.1988 had been obtained by fraud, coercion, undue influence ? (Original Issue No.3)*

*(iv) To what other relief are the parties in both the suits entitled to?*



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31.I am deeply conscious that the issues have been recast as aforementioned after arguments had been advanced and during the course of the dictation of this common judgment. But even the issues have been recast only on the basis of the arguments advanced and the evidence available on record and therefore, I hold that no prejudice would be cast to both the plaintiffs in the two suits owing to the recasting of the issues. The parties have adduced evidence by examining PW-2 and DW2 / DW3 towards proof of the two Wills. No further evidence is required to be tendered to decide the issues as recasted.

32.It must be kept in mind that a duty is cast on this Court to primarily examine whether the Wills projected by the two plaintiffs had been proved in manner known to law.

33.It is to be noted that under Order XIV Rule 1 CPC, an issue for determination arises when a fact is asserted by one party to the suit and denied by another party to the suit. That fact will have to be framed as an issue for determination by the Court on the basis of the pleadings and evidence adduced.



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34. In the instant case, the first issue as originally framed was whether the Will dated 16.09.1985 was the last Will of the testatrix. It obviously is not and that it is not is admitted by both the sides. Therefore, no issue arise on that particular aspect. The second issue framed was whether the Will dated 30.11.1988 superseded the earlier Will. Even on this aspect there is no divergence of opinion between the plaintiff and the defendant. It is for that reason that the said two issues have been deleted and the issues have been recast as aforementioned.

**Issue No.1:**

35. This issue surrounds the Will dated 16.09.1985 said to have been executed by V.Nagammal, the mother of the plaintiff G.Somasundaram and the defendant G.Hemachalam.

36. G.Somasundaram had initially filed O.P.No.528 of 2006 under Sections 222 and 276 of the Indian Succession Act, 1925 seeking grant of probate of the Will dated 16.09.1985. This Will have been registered as Document No.124 of 1985 in the Office of the Joint Sub Registrar – I, Madras



North. In the petition, he had stated that the defendants had put up an another

Will dated 30.11.1988. He had thus disclosed about the execution of the later

Will.

37.The properties mentioned in the schedule to the petition, had been purchased by the father M.Govindasamy Mudaliar who died on 11.06.1984. In the Will dated 16.09.1985 V.Nagammal had bequeathed one property each at Chennai to each of her two sons and had also made disposition about the other schedule mentioned properties. It had been contended by the learned Senior Counsel for the plaintiff in T.O.S.No.92 of 2013 that the distribution of the properties had been fair and equal.

38.In the written statement, it had been contended that V.Nagammal had executed yet another Will dated 30.11.1988 registered as Document No. 105/1988 in the office of the Sub-Registrar, Anna Nagar, Chennai, bequeathing a larger share of the properties to the defendant G.Hemachalam. It had therefore been contended that the Will dated 16.09.1985 had been revoked and the Will dated 30.11.1988 alone should be taken into consideration.

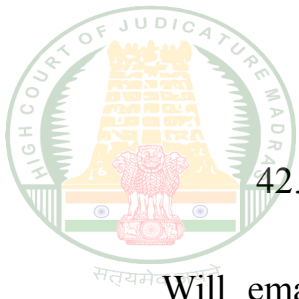


39. During trial, the plaintiff G.Somasundaram was examined as PW-1.

The certified copy of the Will dated 16.09.1985 was marked as Ex.P1. It is the contention that the original had been taken away by the defendant and not been returned back and therefore reliance is placed on the certified copy of the Will.

40. A perusal of the said Will marked as Ex.P1 shows that it had been drafted by an advocate Mr.K.Kumarasamy who had also attested it along with his junior Mr.M.Kanagaraj. By the time the trial could commence, both the attesting witnesses had unfortunately died. The plaintiff therefore examined as PW-2 Lakshmipathy who was attached to the office of Mr.K.Kumarasamy. He affirmed and confirmed the signatures of the attesting witnesses found therein.

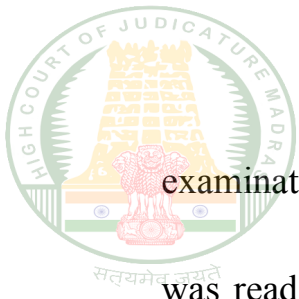
41. During the cross examination of PW-1, the defendants marked Exs.D1 to D11 which also included the passbooks of V.Nagammal, the marriage invitation card of the defendant and an other sister and communications relating to a Taxation Appeal and correspondences between the parties.



42. During the cross examination of PW-1, the following facts about the

Will emanated namely, (i) the original Will had been taken away by the defendant / Hemachalam, (ii) that it was prepared by an advocate Mr.K.Kumarasamy, and (iii) that one of the witnesses was Mr.M.Kanagaraj junior to Mr.K.Kumarasamy.

43. It had also been revealed during the cross examination that the father of the plaintiff and defendant started a goldsmith shop and out of the income earned, the testatrix had purchased the properties mentioned in the Will. It had also been stated during cross examination that the testatrix was suffering from all sorts of medical ailments such as hypertension, diabetes, blood pressure and urinary infection and other ailments. It also came to light that under the advise of Mr.K.Kumarasamy, Advocate and Professor of Law College, V.Nagammal had written the Will. Mr.K.Kumarasamy also happened to be a close family friend. It was also stated by PW-2 that he was a Professor of Law College and that, his father Sanjeevi Naidu was also an Advocate. These specific details had been stated by the witness during cross examination. It was also stated in cross



examination that the testatrix informed the witness that the contents of the Will was read over to her by the advocate Mr.K.Kumarasamy. PW-1 further stated during cross examination that the testatrix was sick from 1987 and had a blood clot and was hospitalized and was treated in the Aysha Hospital in Poonamallee.

44. With respect to the Will dated 30.11.1988, PW-1 stated that he saw the Will for the first time during his cross examination on 16.02.2016.

45. The witness was also cross examined by the counsel for the 1<sup>st</sup> defendant in T.O.S.No.19 of 2002. During cross examination he stated that in the Will Ex.P1, the testatrix had very clearly stated that out of the income earned by the father, the properties had been purchased.

46. An analysis of the cross examination of PW-1 would reveal that he had very clearly spoken about the circumstances surrounding which the testatrix had approached Mr.K.Kumarasamy for preparation of the Will and that she informed him that the contents of the Will had been read out to her. He further



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very significantly stated that on and from 1987, she was sick and had a blood clot and was hospitalized and was treated in Aysha Hospital in Poonamallee Road, where she actually died on 20.12.1997. Thus, the witness had very clearly stated about the preparation of the Will, its execution and registration.

47.To prove the Will, PW-1 had examined PW-2, M.A.Lakshmipathy., Advocate. His chief examination was taken orally. He stated during his chief examination that he joined the office of Mr.K.Kumarasamy in September 1968 and was conversant with his signature. He also stated that Mr.M.Kanagaraj, the other attesting witness was also an advocate and junior in the same office. Both, Mr.K.Kumarasamy and Mr.M.Kanagaraj were no more. He also stated that the address of the chambers of Mr.K.Kumarasamy was No.8, Law Chambers, High Court Buildings, Chennai. He further stated that Mr.K.Kumarasamy had conducted several cases for the testatrix. These facts are in conformity with the statement given by PW-1 about Mr.K.Kumarasamy and the natural inclination of the testatrix to approach him for preparation of a Will. It has to be noted that since both the attesting witnesses have died, the signature of the attesting

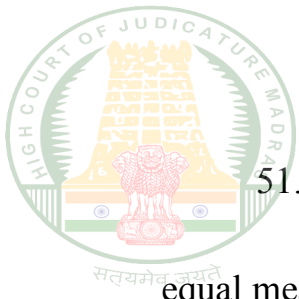


witnesses had been affirmed by PW-2 who was also an advocate of the very same office.

48.The law provides that to prove the execution of the Will if the attesting witnesses are not available then any individual who is familiar with his signature can be examined.

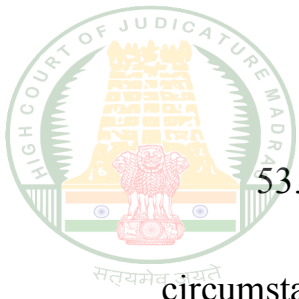
49.In the instant case, Mr.M.A.Lakshmipathy was the junior in the office of Mr.K.Kumarasamy who also drafted the Will. He and the other attesting witness Mr.M.Kanagaraj had both died and Mr.M.A.Lakshmipathy who was also a junior in the office of Mr.K.Kumarasamy had spoken about the signatures of the attesting witnesses. The evidence of PW-1 and PW-2 have not been shattered during cross examination but rather the surrounding circumstances had been elicited only during the cross examination.

50.To this extent, I hold that the Will marked as Ex.P1 dated 16.09.1985 had been proved in manner known to law.



51. It is also to be noted that the testatrix had bequeathed the properties in equal measures to her two sons. She also placed an obligation on them to ensure that their unmarried sister is also married. Thus the Will had been written, keeping in mind the status of all the family members. It is a natural bequeathed of a mother in favour of her sons and daughters. It is also natural that she had approached an advocate known to her to draft the Will and to sign as an attesting witness.

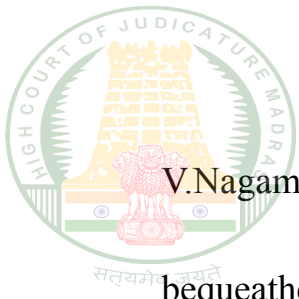
52. Ex.P1 however is a registered copy. It had been contended that the original had been taken away by the defendant G.Hemachalam. In his proof affidavit, DW-1 G.Hemachalam had never denied that particular assertion made by PW-1 G.Somasundaram that the original Ex.P1 had been taken away by him. This nondenial is very significant and it could be construed as an admission of that allegation by the plaintiff, G.Somasundaram that the original of Ex.P1 had been taken away by the defendant G.Hemachalam. This fact had also been asserted in the petition and again not specifically denied in the written statement.



53. Additionally, the defendant had not raised any suspicious circumstances surrounding the execution of the Will Ex.P1. He only claimed his right under the subsequent Will which had been marked as Ex.D12 dated 30.11.1988 and that the Will dated 16.09.1985 / Ex.P1 stood revoked. But so far as this issue is concerned namely, whether the Will dated 16.09.1985 had been proved in manner and is a true and genuine document, I hold that the Will had been properly executed, registered, proved and is a true and genuine document. I answer this issue in favour of the plaintiff G.Somasundaram in T.O.S.No.92 of 2013.

### **Issue Nos:2 & 3**

54. Both these issues surround the validity of the Will dated 30.11.1988 which is also a registered Will, registered as Document No.105 of 1988 in the office of the Sub Registrar, Anna Nagar, Chennai. In this Will, it had been very categorically stated that the Will dated 16.09.1985 had been revoked. But however, the Will must be proved in manner known to law as provided under Section 67 of Bharatiya Sakshya Adhiniyam, 2023. In this Will, the testatrix



V.Nagammal had changed the nature of bequeath and had practically

bequeathed all her properties to the propounder of the Will, G.Hemachalam /

her second son. In his proof affidavit, G.Hemachalam had stated that the Will

had been attested by T.R.Hemachandran and R.Sivakumar who were also

present in the office of the Sub Registrar when the Will was registered.

55.During his cross examination, DW-1 stated that the Will Ex.D12 dated 30.11.1988, had been drafted by an advocate, Ramachandran who had not been examined as a witness. He stated that in the evening of 30.11.1988 at around 5.00 PM or 5.30 PM he received a phone call from his mother who informed about the execution of the Will, Ex.D12. He then went over to the office of the Sub Registrar, Anna Nagar, from his place of office by the city bus. The following two questions were put to him:

*“Q: On reaching Sub Registrar Office, Anna Nagar who were the persons seen by you?”*

*A:My mother and witness Hemachandran.*

*Q:Apart from the two persons did you see anybody?*

*A:No.”*



56.He further stated that the had approached the witnesses and requested their signatures.

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57.He had reached the office of the Sub Registrar at around 7.00 PM. The following questions were then put to him.

*“Q:I put it to you that the two witnesses namely Hemachandran and Sivakumar were not present at that time when you reached the Anna Nagar SRO.*

*A:Yes. The above said witnesses not present at that time.*

*Q:Therefore, I put it to you that you did not see the witnesses the signature affixed by your mother and the witnesses in Ex.D12 Will.*

*A:Yes”*

It is thus clear that he had not physically witnessed the execution of the Will or the signing of the Will either by the testatrix or by the two witnesses.

58.To further prove the Will, the first attesting witness T.R.Hemachandran was examined as DW-2. He filed his proof affidavit wherein, he stated that he along with the other witness R.Sivakumar saw the testatrix subscribing her



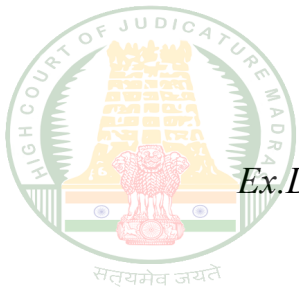
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signature in each page in the Will and thereafter, he and the other witness had signed one after the other which act was also witnessed by the testatrix and thereafter, Will was presented for registration between 4.00 and 5.00 PM on 30.11.1988 in the office of the Sub Registrar, Anna Nagar. During his cross examination, he had stated as follows about the manner in which he had affixed his signature in Ex.D12 Will:

*“..... Hemachalam called me over phone and asked me to come to the SRO's Anna Nagar, the next day at 4 P.M. The next date, I went there along with my friend Sivakumar as he told me that he needed two people. On the next day, I went there sharply at 4 P.M. along with my friend Sivakumar at the request of Hemachalam. I do not remember whether Nagammal had already signed Ex.D12 before my arrival. I first signed Ex.D12 on the reverse of page 1 as identifying witness and subsequently on page 6, as the first attesting witness. I went to the SRO's office sharply at 4 P.M. and signed Ex.D12 between 4 and 5 p.m and left immediately without speaking to anybody. ....”*

59.He further stated during cross examination as follows:

*“.....It is correct to state that I did not see Nagammal signing*



*Ex.D12. ....”*

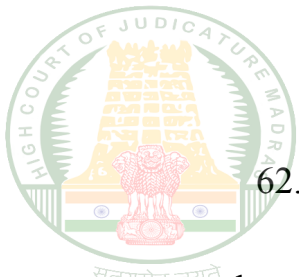
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60.This is a very categorical admission that the witness had signed independently the document and did not see the testatrix signing the document and she had signed the document independently and had not seen the witness signing the document.

61.Section 63(c) of the Indian Succession Act, 1925 is as follows:

***“63.Execution of unprivileged wills:***

*(c).The will shall be attested by two or more witnesses, each of who has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator; or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”*



62.It is clear that there has been total non compliance of the above mandatory provision.

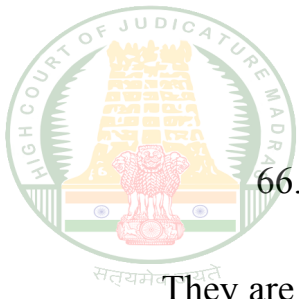
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63.To further prove the Will DW-3 R.Sivakumar the other attesting witness was examined. He had been summoned on subpoena. In his chief examination the very first question and answer is as follows:

*“Q:See Ex.D12 original registered Will executed by V.Nagammal. Did you witness signing of Nagammal in Ex.D12*  
*A:I did not see.”*

64.This is admission of a material fact. The witness very clearly admitted in chief examination that he did not see the testatrix Nagammal signing the Will Ex.D12.

65.It is thus seen that both the witnesses to the document, DW-2 Hemachandran and DW-3 R.Sivakumar had not seen the testatrix signing the Will and they had also not seen the other witness signing the Will. Again there is total failure of compliance of the requirements under Section 63(c) of the Indian Succession Act, 1925.



66.Both DW-2 and DW-3 had not witnessed Nagammal signing the Will.

They are not seen her signing the Will. They have not witnessed her signing the Will. They are strangers to the Will. Their signatures might appear in Ex.D12 but they have not signed it in the presence of the testatrix. They have not seen the testatrix signing the Will. The testatrix had not seen them signing the Will and each one of them had not seen the other signing the Will. There is total non compliance of the mandatory provision as required under Section 63(c) of the Indian Succession Act, 1925. As a matter of fact, DW-3 did not even know the testatrix. To a very specific question he answered as follows:

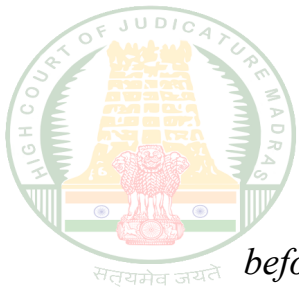
*“Q:Do you know the testatrix of Ex.D12?”*

*A:I do not know.”*

67.Even though in chief examination he had admitted that he had not seen the testatrix signing in front of him, the same question was again put in cross examination and he again asserted that he did not seen her signing the Will. The questions in this regard are as follows:

*“Q:Did you witness Nagammal signing Ex.D12?”*

*A:I did not witness.*



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*Q:Do you know whether Nagammal went through Ex.D12 before subscribing her signature?*

*A:I do not know.*

*Q:I put it to you that you do not know whether Nagammal affixed her signature in Ex.D12?*

*A:Yes.*

*Q:Where and when did you attest the Ex.D12?*

*A:In the Sub-Registrar Office, Anna Nagar in the corridor.”*

68.He had again stated during cross examination that he had not seen the testatrix signing the Will, that he did not know whether she had read the Will and that he did not know whether she had actually signed the Will and that he had signed the Will in the corridor of the office of the Sub-Registrar, which would evidently mean that he did not see sign the Will either in the presence of the other witness DW-2/Hemachandran or in the presence of testatrix.

69.A specific question was asked whether he had seen DW-2, Hemachandran affixing his signature. He stated that he did not see PW-2 signing the Will.

*“Q:Did you see who signed first on the rear side of 1<sup>st</sup> page?*



*A:I did not see.*

*Q:Did you see Mr.Hemachandran affix the signature as identifying witness?*

*A:I did not see him sign.*

*Q:Was Mr.Hemachandran present at that time?*

*A:I do not know.”*

70.He again reasserted that fact. The questions and answers are as follows:

*“Q:I put it to you that you did not see Hemachandran and Nagammal in the Sub-Registrar Office?*

*A:I did not see.*

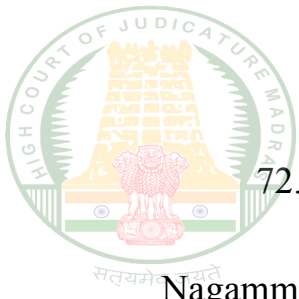
*Q:Did Hemachandran introduce you to Nagammal and Hemachalam in the Sub-Registrar Office?*

*A:I did not see them. Witness adds:- I do not know those persons.”*

71.He further stated that he had not signed any affidavit in the case. The question and answer is as follows:

*“Q:Have you signed any affidavit in relation to the present case?*

*A:I have not signed any affidavit.”*



72.He further kept asserting that he was not aware whether the testatrix Nagammal ever signed Ex.D12 and that he did not know whether she was in a

sound and disposing state of mind. The questions and answers are as follows:

*“Q:I put it to you that you are not aware whether Nagammal signed Ex.D12?*

*A:Yes. I do not know.*

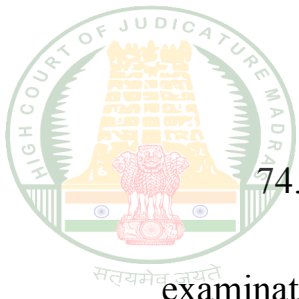
*Q:So I put it to you whether the said Nagammal was in a sound and disposing state of mine at the time of signing affixing her signature in Ex.D12?*

*A:Yes. I do not know.”*

73.He further admitted that he was not competent to speak whether Nagammal affixed her signature in his presence. The question and answer is as follows:

*“Q:I put it to you that you are not competent to speak about the fact that Nagammal affixed her signature in Ex.D12 in your presence?*

*A:Yes. It is correct.”*



74. Thereafter re-examination was conducted and the question in re-examination was as follows:

*“Q:I put it to you that the execution and attestation and identifying of witnesses have taken place only in Sub-Registrar Office, Anna Nagar?”*

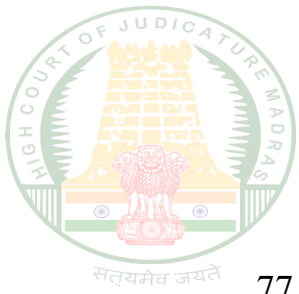
*A: Yes. ”*

75. The witness was then again cross examined and he again asserted that he did not see the testatrix signing the Will:

*“Q:Did you see Nagammal affixing her signature in the presence of Sub-Registrar?”*

*A:I did not see her. ”*

76. The evidence very clearly establishes that Ex.D12 Will dated 30.11.1988 which is the subject matter of T.O.S.No.19 of 2002 is neither a true document nor had been proved in manner known to law. It could have been signed by Nagammal, the testatrix, but there has been total failure of the requirements under Section 63(c) of the Indian Succession Act, 1925. The witnesses had signed independently and not in the presence of each and had not seen the testatrix signing the Will and she had not seen them signing the Will.



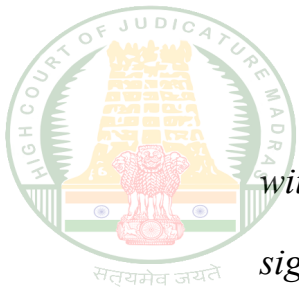
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77.The learned counsel for the plaintiff relied on a series of judgments but on facts and on appreciation of evidence, it is clear that DW-2 and DW-3 had very categorically admitted that they had not seen the testatrix signing the Will and on that ground itself, I hold that the Will had not been proved in manner to law.

78.It had been held by the Hon'ble Supreme Court that there must be strict compliance of the provisions under Section 63(c) of the Indian Evidence Act, 1925.

79.This had been stated in the judgment of the Hon'ble Supreme Court reported in *(2022) 3 SCC 209, Murthy and others Vs. C.Saradambal and other*. Even in that case, the witness to the Will had not spoken in support of the plaintiff and the Hon'ble Supreme Court had rejected his evidence. It had been held as follows in paragraph No.49:

*“49. Apart from that, Section 63(c) of the Succession Act, 1925, firstly states that the will has to be attested by two or more*



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*witnesses/attestators, each of whom should have seen the testator sign on the will in his presence, or has received from the testator, a personal acknowledgment of his signature on the will. Secondly, each of the witnesses shall sign on the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation is necessary. **The aforesaid two mandatory requirements have to be complied with for a testament to be valid from the point of view of its execution.** ”*

(Emphasis Supplied)

80.In the instant case, both the witnesses to the Will have stated that they have not seen the testatrix signing the Will. Their evidence is fatal to the case of the plaintiff in T.O.S.No.19 of 2002.

81.The manner in which the testatrix had bequeathed the properties in the Will, Ex.D12 gives rise to a strong suspicion that there has been influence exerted on her by the plaintiff in T.O.S.No.19 of 2002. It is an unnatural bequeath. It is for that reason that the witnesses were also screened away from her presence when she purportedly signed the Will. A very strong suspicion arises about the manner in which the Will had been prepared, executed and



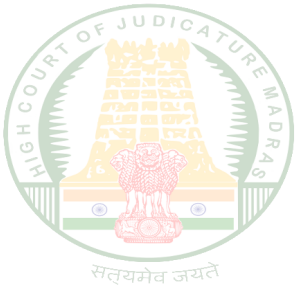
registered. I hold that the plaintiff had not dispelled any of the circumstances which give rise to suspicions surrounding execution of the Will.

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82. In *AIR 1955 SCC 346, Girja Datt Singh Vs. Gangotri Datt Singh*, though the appeals were under U.P. Encumbered Estates Act and the other appeal emanated from a title suit, still the entire issue revolved around proof of a Will and its due execution and attestation as provided under Section 63(c) of the Indian Succession Act. The Hon'ble Supreme Court had examined the evidence in detail and had held as follows:

*19. It still remains to consider whether the attestation of the signature of the deceased on the will, Ext. A-36 was in accordance with the requirements of Section 63 of the Succession Act. Section 63 prescribes that:*

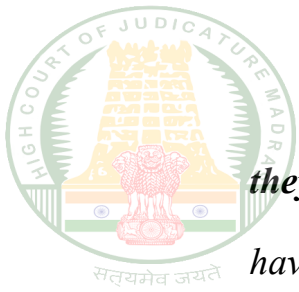
*“63. (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the*



*witnesses shall sign the will in the presence of the testator....”*

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*20. In order to prove the due attestation of the will, Ext. A-36 Gangotri would have to prove that Uma Dutt Singh and Badri Singh saw the deceased sign the will and they themselves signed the same in the presence of the deceased. The evidence of Uma Dutt Singh and Badri Singh is not such as to carry conviction in the mind of the Court that they saw the deceased sign the will and each of them appended his signature to the will in the presence of the deceased. They have been demonstrated to be witnesses who had no regard for truth and were ready and willing to oblige Gur Charan Lal in transferring the venue of the execution and attestation of the documents, Ext. A-23 and Ext. A-36 from Gonda to Tarabganj for reasons best known to themselves. If no reliance could thus be placed upon their oral testimony, where would be the assurance that they actually saw the deceased execute the will in their presence and each of them signed the will in the presence of the deceased. **It may as well be that the signature of the deceased on the will was appended at one time, the deceased being there all alone by himself and the attestations were made by Uma Dutt Singh and Badri Singh at another time without having seen the deceased sign the will or when the deceased was not present when***



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*they appended their signatures thereto in token of attestation. We have no satisfactory evidence before us to enable us to come to the conclusion that the will was duly attested by Uma Dutt Singh and Badri Singh and we are therefore unable to hold that the will, Ext. A-36 is proved to have been duly executed and attested.*

(Emphasis Supplied)

83.Thus, in order to prove the due attestation of the Will, the propounder must prove that the two attesting witnesses saw the testator signing the Will and they themselves signed the Will in the presence of the testator.

84.In the instant case, as pointed out, it has not been proved that both DW-2 and DW-3 saw the testatrix signing the Will or even saw the other witness signing the Will, leave alone the testatrix seeing them signing the Will.

85.Both the Issue Nos.2 and 3 are answered against the plaintiff in T.O.S.No.19 of 2002 / defendant in T.O.S.No.92 of 2013.

**Issue No.4:**

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86.In the result,

(i)I hold that the Will dated 16.09.1985 registered as Document No.124 of 1985 registered in the office of the Joint Sub-Registrar – I, Madras North, had been proved in manner known to law.

(ii)The Will dated 30.11.1988 registered as Document No.105 of 1988 in the office of the Sub-Registrar, Anna Nagar, had not been proved in manner known to law.

(iii)T.O.S.No.92 of 2013 is decreed with costs. Probate to be issued to the plaintiff in accordance with the Rules.

(iv)T.O.S.No.19 of 2002 is dismissed with costs.

**19.08.2025**

smv

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

**List of witness on the side of plaintiff:**

PW-1 – Mr.G.Somasundaram

PW-2 – Mr.M.A.Lakshmipathi

**List of witness on the side of defendant:**

DW-1 – G.Hemachalam

DW-2 – T.R.Hemachandran

DW-3 – R.Sivakumar

**Court Witness:**

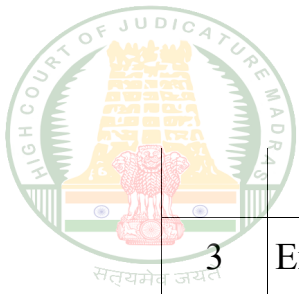
CW-1 – G.Vani

**List of Exhibits:****Plaintiff side Exhibits:**

| S.No | Exhibit | Description                                                                     |
|------|---------|---------------------------------------------------------------------------------|
| 1    | Ex.P1   | Certified copy of the Will dated 16.09.1985 (in safe custody)                   |
| 2    | Ex.P2   | Original Death Certificate of V.Nagammmal dated 20.12.1997                      |
| 3    | Ex.P3   | Affidavit of Assets                                                             |
| 4    | Ex.P4   | Certified copy of the deposition in O.S.No.854/2002 (marked through DW-1 cross) |

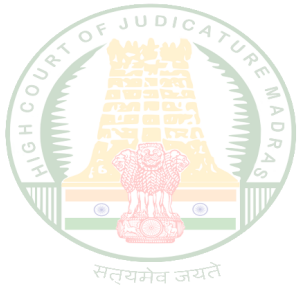
**Defendant side Exhibits:**

| S.No | Exhibit | Description                                                              |
|------|---------|--------------------------------------------------------------------------|
| 1    | Ex.D1   | Original Indian Bank pass book of V.Nagammmal (marked through PW1 cross) |
| 2    | Ex.D2   | Original current account pass book of Vellala Co-operative               |



|    |        |                                                                                                            |
|----|--------|------------------------------------------------------------------------------------------------------------|
|    |        | Bank of V.Nagammal (marked through PW1 cross)                                                              |
| 3  | Ex.D3  | Original pass book of Indian post office of V.Nagammal (marked through PW1 cross)                          |
| 4  | Ex.D4  | Original Invitation card of Sankareeswari (marked through PW1 cross)                                       |
| 5  | Ex.D5  | Original Invitation card of Hemachalam (marked through PW1 cross)                                          |
| 6  | Ex.D6  | Original receipt of Sundaram Chit Fund dated 23.04.1973 (marked through PW1 cross)                         |
| 7  | Ex.D7  | Original letter addressed to V.Nagammal dated 22.10.1963 (marked through PW1 cross)                        |
| 8  | Ex.D8  | Original letter addressed to V.Nagammal dated 21.10.1963 (marked through PW1 cross)                        |
| 9  | Ex.D9  | Original property tax receipts (marked through PW1 cross)                                                  |
| 10 | Ex.D10 | Original communication pertaining to taxation appeal committee dated 29.01.1962 (marked through PW1 cross) |
| 11 | Ex.D11 | Original letter addressed to V.Nagammal dated 14.09.1956 (marked through PW-1 cross)                       |
| 12 | Ex.D12 | Original Will registered as Doc.No.105/1988 dated 30.11.1988 (in safe custody)                             |
| 13 | Ex.D13 | Affidavit as attesting witness to OP No.108/2002                                                           |

19.08.2025



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TOS Nos.19 of 2002 & 92 of 2013



**C.V.KARTHIKEYAN J.**

smv

Pre-delivery Judgment made in  
T.O.S.No.19 of 2002  
and  
T.O.S.No.92 of 2013

**19.08.2025**