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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 29.07.2025**

**PRONOUNCED ON : 29.08.2025**

CORAM :

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

**T.O.S.No. 15 of 2022**

**And**

**Tr.C.S.No. 6 of 2023**

**T.O.S.No. 15 of 2022**

M.R.Anusuya

... Petitioner/Plaintiff

**Vs.**

1. R.Akshaya  
D/o. Late M.R.Anuradha

2. R.Muraalidaran  
S/o. Late Mr.Anuradha

... Respondents/Defendants

**Prayer :** This Suit filed under Sections 232 & 276 of the Indian Succession Act, read with Order XXV Rule 5 of O.S.Rules, for the grant Letters of Administration with the Will annexed may be granted to the petitioner as one of the legatee/sole beneficiary under the Will of the deceased Mrs. P.N.Vasundara having effect throughout State of Tamilnadu and grant such other or further relief.

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For Plaintiff : Mr. S.Mukunth  
Senior Advocate  
for Mr.K.Ramkumar

For Defendants : Mr. M.Aloysius Raja Pragash

**Tr.C.S.No. 6 of 2023**

1. R.Akshaya
2. R.Muraalidaran
3. S.Ragavan ... Plaintiffs

**Vs.**

Mrs.Anushiya ... Defendant

**Prayer :** This Suit filed under Order VII Rule (1) & (2) of CPC please to

(a) pass a preliminary decree and Judgement for partition to divide the schedule of properties Item Nos .1 and 2 into two equal shares and allot one such share along with separate possession;

(b) pass final decree by appointing an advocate Commissioner to divide the schedule of properties item Nos.1 and 2 into two equal shares and allot one such share along with separate possession; and

(c) award the costs of the suit.

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For Plaintiffs : Mr. M.Aloysius Raja Pragash

For Defendant : Mr. S.Mukunth  
Senior Advocate  
for Mr.K.Ramkumar



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**COMMON JUDGMENT**

Initially O.P.No. 529 of 2021 had been filed by M.R.Anusuya seeking grant of Letters of Administration with Will annexed relating to a Will dated 23.12.2013 registered as Document No. 84 of 2013 on the file of the Sub Registrar, Villivakkam, Chennai, said to have been executed by her mother P.N.Vasundara, who died on 12.02.2020. In the said Original Petition, the petitioner had impleaded as respondents R.Akshaya and R.Muraalidaran, daughter and son of her deceased sister M.R.Anuradha. On caveat being filed by the respondents, O.P.No. 529 of 2021 had been converted as T.O.S.No. 15 of 2022.

2. The defendants in the aforementioned Testamentary and Original Suit, R.Akshaya and R.Muraalidaran and also their father S.Ragavan had filed O.S.No. 2548 of 2021 before the XXII Additional City Civil Court at Chennai against Anushiya / plaintiff in T.O.S.No. 15 of 2022 seeking a preliminary decree and judgment for partition of the schedule items of properties into two equal shares and allot one such share to the plaintiffs with separate possession



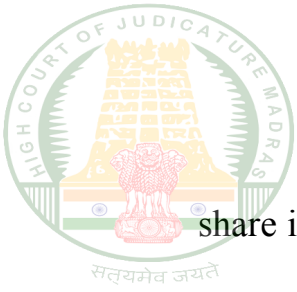
and to pass a final decree by appointing an Advocate Commissioner to divide the properties into two equal shares and to allot one such share to the plaintiffs.

3. Item No.1 in the schedule was a flat at Varanasailam apartment, B1, measuring 750 square feet together with 265 square feet of undivided share of land out of 4950 square feet at Nos. 67 and 68, Thirumangalam road, 2<sup>nd</sup> Street, Villivakkam, Chennai – 600 049. Item No.2 in the schedule to the plaint was 30 sovereigns of gold jewels.

4. The said suit was transfered to the file of this Court for trial along with T.O.S.No. 15 of 2022 by order dated 18.11.2022 in Application No. 5156 of 2022.

**T.O.S.No.15 of 2022:**

5. It is the contention of M.R.Anusuya, the plaintiff, who had filed O.P.No. 529 of 2021 that her mother Mrs.P.N.Vasundara was the owner of vacant land bearing Plot Nos. 67 and 68 in Thirumangalam Road, 2<sup>nd</sup> Street, Villivakkam, Chennai – 600 049, measuring 2 grounds and 150 square feet ie., 4950 square feet. The property conveyed was 265 square feet of undivided



share in the said land. The constructed area was a residential front Flat No.B1 in the Northern Wing of the first floor with plinth area of 529 square feet and also in the common plinth totally, 624 square feet. It had been contended by the plaintiff that her father had predeceased her mother. The plaintiff had another sister, M.R.Anuradha, who died on 28.03.2008 leaving behind the defendants as legal heirs.

6. It had been contended that the schedule property had been purchased by her mother by a sale deed dated 31.03.2004 registered as Document No. 1112 of 2004 in the Office of the Sub Registrar, Villivakkam. It had been further contended that the mother Mrs.P.N.Vasundara had executed a Will bequeathing the property to the plaintiff. The Will was dated 23.12.2013 and registered as document No. 84 of 2013 on the file of the Sub Registrar at Villivakkam. An executor had not been appointed under the Will. The plaintiff further claimed that her mother was living with her and she provided her with food, shelter and medical expenses. It was under those circumstances that O.P.No. 529 of 2021 was filed seeking Letters of Administration of the said Will.

7. The respondents had filed caveat and O.P.No. 529 of 2021 was



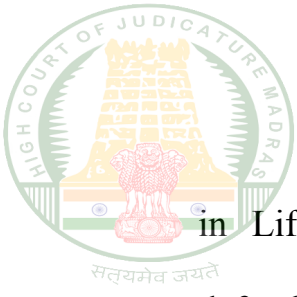
converted as T.O.S.No. 15 of 2022.

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8. The defendants filed written statement wherein they questioned the assertion that the testatrix was living with the plaintiff. They contended that the testatrix was living in her own apartment at Villivakkam. They further stated that their mother, M.R.Anuradha died on 28.03.2008 leaving behind them and her husband Raghavan as legal heirs. It had been contended that the plaintiff had deliberately not impleaded their father as party in the Original Petition.

9. It was contended that the testatrix never executed any Will and she had no intention to execute any Will exclusively in favour of the plaintiff and that the Will had been created by the plaintiff with intention to usurp the property. It was further contended that the testatrix was a financially sound, getting pension of around Rs.60,000/- per month. They further contended that whenever the plaintiff was absent, the testatrix would call the defendants over phone and meet them and inform them that the suit property as well as her ornaments should be equally divided into two shares without any dispute.

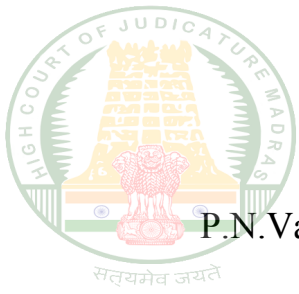
10. It had been further contended that the testatrix had made deposits



in Life Insurance Corporation and other deposits in the name of the defendants and the policies and deposit receipts have been retained by the plaintiff, who had refused to return the same. It was further contended that the witnesses named in the Will are real estate brokers.

11. They further stated that on 28.03.2008, their mother M.R.Auradha @ Priya was murdered and she left behind them and also their father S.Raghavan as legal heirs. They further contended that they had issued a notice calling upon the plaintiff to divide the suit property into equal shares and to provide one share to them. The plaintiff had issued a reply on 09.10.2020 raising false contentions and alleging existence of a Will said to have been executed by the deceased Vasundara. However, the details of the Will was not disclosed.

12. It had been stated that a further notice was issued which had not been disclosed in the plaint. It had also been contended that it was the defendants who have been providing for the testatrix during her last days. It was further stated that the signatures found in the Will do not belong to the testatrix P.N.Vasundara. It had been contended that the Will had been created by the plaintiff without the knowledge and consent of the testatrix



P.N.Vasundara. They also stated that they had filed a suit for partition in O.S.No. 2548 of 2021 before the XXII Additional City Civil Court at Chennai, which was also pending.

**Tr.C.S.No. 6 of 2023:**

13. In the plaint in O.S.No. 2548 of 2021 on the file of hte XXII Additional City Civil Court, Chennai, the plaintiffs, R.Akshaya, R.Muraalidaran and S.Ragavan, contended that they are the legal heirs of the deceased M.R.Anuradha @ Priya, who died on 28.03.2008. She was the daughter of P.N.Vasundara, who died on 12.02.2020. The plaintiffs claimed that they are also the Class-I legal heirs of P.N.Vasundara being the legal heirs of her pre-deceased daughter. The defendant was Mrs.Anushiya, another daughter of P.N.Vasundara.

14. It had been contended that P.N.Vasundara was possessed of the suit schedule properties and the defendant was evading to partition the same in spite of requests made. The plaintiffs had issued a legal notice on 05.10.2020 calling upon the defendant to divide the property into two equal half and allot one such portion to the plaintiffs. The defendant replied on



09.10.2020 with frivolous contents stating that the deceased P.N.Vasundara had executed a Will in favour of the defendant. The plaintiffs contended that the deceased P.N.Vasundara had no intention of executing any such Will. She was working in the Land and Administrative Department in the Government of Tamilnadu and retired in the year 2004 and received retirement benefits and was also receiving pension. It was under those circumstances that the suit had been filed seeking partition and separate possession of ½ share in the suit schedule properties.

15. The defendant filed a written statement stating that Anuradha died on 28.03.2008 leaving behind the plaintiffs as Class-I legal heirs. It had been stated that after her death, the third plaintiff had re-married and was living separately. It was further contended that her mother P.N.Vasundara was living with her and she was taking care of her by providing food and shelter. Her mother had also undergone eye surgery and the expenses were borne by the defendant. It was further contended that her mother had executed a Will after taking an independent decision and had bequeathed the suit schedule properties in favour of the defendant. The Will was executed in the presence of the witnesses. She further stated that the plaintiffs never took care of her mother and did not also come to the hospital and did not bear the medical



expenses. The defendant and her husband had done the final rites and ceremonies.

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16. It was also contended that the first plaintiff had married a person of her choice and it was the defendant, who had been taking care of her family. It had been stated that under the instigation of the third plaintiff, the first and second plaintiffs had issued the notice seeking partition and had filed the suit with oblique motives. It had been contended that the suit should be dismissed in view of the fact that P.N.Vasundara had executed a Will bequeathing the properties in entirety to the defendant.

17. It is to be noted that O.S.No. 2548 of 2021 had been transferred from the City Civil Court, Chennai to this Court by order dated 18.11.2022 in Application No. 5156 of 2022, to be heard and tried jointly along with T.O.S.No. 15 of 2002. It had been directed that evidence would be recorded in T.O.S.No. 15 of 2002 since the burden was on the propounder of the Will.

### **Issues:**

18. In O.S.No. 2548 of 2021 even when the suit was pending in the City Civil Court, the following issues were framed:-



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*“(i) whether the plaintiffs are entitled for preliminary decree of partition of Item Nos. 1 and 2 of the suit schedule in two equal shares and to be allotted one such share?; and*

*(ii) To what other relief?”*

19. A persual of the records reveal that though evidence had been recorded, there is no indication of issues having been framed in T.O.S.No. 15 of 2002. The following issues are therefore framed:

*“(i) Whether the Will dated 23.12.2013 registered as Document No. 84 of 2013 in the office of the Sub Registrar, Villivakkam, said to have been executed by P.N.Vasundara, who died on 12.02.2020 is tainted by any suspicious circumstance?;*

*(ii) Whether the suit is hit by non joinder of necessary party?;*

*(iii) Whether the contention of the defendants that the identity of the attesting witnesses had not been verified and proved is a suspicious circumstance*



*surrounding the execution of the Will?*

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*(iv) Whether the Will had been executed when the testatrix was in sound and disposing state of mind?*

*(v) Whether the disinheritance of the defendants by the testatrix could be considered as a suspicious circumstances surrounding the execution of the Will?;*

*(vi) Whether the Will had been proved in manner known to law?; and*

*(vii) To what reliefs, are the parties entitled to?"*

20. Since joint trial had been directed to be conducted in both the suits, the consolidated issues would be:-

*“(i) Whether the Will dated 23.12.2013 registered as Document No. 84 of 2013 in the office of the Sub Registrar, Villivakkam, said to have been executed by P.N.Vasundara, who died on 12.02.2020 is tainted by any suspicious circumstance?;*

*(ii) Whether the suit is hit by non joinder of necessary party?;*



(iii) *Whether the contention of the defendants that the identity of the attesting witnesses had not been verified and proved is a suspicious circumstance surrounding the execution of the Will?*

(iv) *Whether the Will had been executed when the testatrix was in sound and disposing state of mind?*

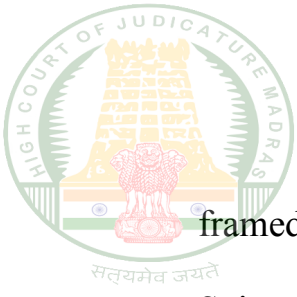
(v) *Whether the disinheritance of the defendants by the testatrix could be considered as a suspicious circumstance surrounding the execution of the Will?; and*

(vi) *Whether the plaintiffs in Tr.C.S.No. 6 of 2023 are entitled to a preliminary decree of partition of Item Nos. 1 and 2 of the suit schedule in two equal shares and to be allotted one such share?;*

(vii) *Whether the Will had been proved in manner known to law?; and*

(vi) *To what reliefs, are the parties entitled to? ””*

21. It must be further stated that the aforementioned issues had been



framed on the basis of the pleadings in both the Testamentary and Original Suit and the Civil Suit. Evidence had also been adduced with knowledge of the stands taken by the respective parties. Therefore, no further evidence is required to determine the issues.

22. During trial, the plaintiff in T.O.S.No. 15 of 2022 tendered evidence as PW-1 and examined two other witnesses T.Senthil and T.R. Raja as PW-2 and PW3.

23. The plaintiff marked Exs. P-1 to P-7. Ex.P-1 was the certified copy of the sale deed with respect to the suit schedule property; Ex.P-2 was the Will dated 23.12.2013 registered as Document No.84 of 2013 in the Office of the Sub Registrar, Villivakkam, Ex,P-3 was the death certificate of the testatrix, P.N.Vasundara and Ex.P-4 was her legal heirship certificate. Ex.P-5 is the death certificate of the siser of the plaintiff/mother of the defendants/M.R.Anuradha @ Priya, who died on 28.03.2008, Exs.P-6 and P-7 are the signatures of the witnesses in Ex.P-2. During the course of cross examination of PW-1, Ex.D-1, the legal heirship of M.R.Anuradha, Ex.D-2 the ration card and Ex.D-3, the death certificate of P.N.Vasundara had been marked.



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24. On the side of the defendants one witness / second plaintiff R.Muraalidaran was examined as DW-1. He marked Exs. D-4 to D-9. Ex.D-4 was the encumbrance certificate of the property, Exs. D-5 and D-6 are the notices exchanged between the parties; Ex.D-7 was the Adhar Card of the first defendant and Ex.D-8 was the Adhar Card of the second defendant and Ex.D-9 was the Adhar Card of their father S.Raghavan.

25. Heard arguments advanced by Mr.S.Mukunth, learned Senior Counsel for the plaintiff in T.O.S.No. 15 of 2022 / defendant in Tr.C.S.No. 6 of 2023 and Mr. M.Aloysius Raja Pragash, learned counsel for the defendants in T.O.S.No. 15 of 2022 and the plaintiffs in Tr.C.S.No. 6 of 2023.

26. Written argumnts were also filed by both the sides.

27. Mr.S.Mukunth, learned Senior Counsel pointed out the facts of the case and stated that the mother of the plaintiff, P.N.Vasundara had executed a Will dated 23.12.2013 which had been registered as Document No. 84 of 2013 in the office of the Sub Registrar at Villivakkam in the presence of two attesting witness, who had both been examined as PW-2 and PW-3. The



learned Senior Counsel stated that the defendants were the daughter and son of the late sister of the plaintiff, M.R.Anuradha, who died on 28.03.2008. In the Will, the property of the testatrix had been bequeathed entirely to the plaintiff. The learned Senior Counsel argued that one of the contentions raised by the defendants was that no reason had been given to disinherit them. The learned Senior Counsel further pointed out that they had also raised a ground that their father S.Raghavan was not made a party to either the Original Petition filed seeking Letters of Administration or after it had been converted in T.O.S.No. 15 of 2022. The learned Senior Counsel stated that the said S.Raghavan had remarried and was therefore not a necessary party and that he had no caveatable interest.

28. The learned Senior Counsel further pointed out that even in the notice issued by the learned counsel for the defendants dated 09.10.2020 in Ex.D-6, instructions were given only by the defendants in the Testamentary and Original Suit and notice had not been issued on his instructions. The learned Senior Counsel contended that the non joinder of S.Raghavan was not fatal to the case. The learned Senior Counsel stated that one another ground mentioned in the Written Statement was that the witnesses had not been properly identified and that their identities were not properly verified. But



however, the learned Senior Counsel pointed out that during their cross examination, no suggestion was put denying their signatures or non compliance of the mandatory provision of Section 63(c) of the Indian Succession Act, 1925. The learned Senior Counsel pointed out that the witnesses were present during the registration of the Will and a presumption must be drawn under Section 114(e) of the Indian Evidence Act, 1872 ::BSA, 2023 that any Official act done by a public servant must be presumed to have been done in proper and lawful manner.

29. The learned Senior Counsel further stated that DW-1 in his cross examination had admitted that the testatrix was in good health. It was therefore argued that she had executed the Will out of her own free and had taken an independent decision. The learned Senior counsel stated that the Will had been proved in manner known to law. It was therefore contended that Letters of Administration will have to be necessarily granted for the Will.

30. Mr. M.Aloysius Raja Pragash, learned counsel for the defendants however disputed the contentions raised. In his arguments, the learned counsel pointed out that the non joinder of a necessary party namely, the father of the defendants was fatal to the case of the plaintiffs. In this



connection, he pointed out the legal heirship certificate of M.R.Anuradha which also indicated that the father of the defendants was also one of her legal heir. This had been marked as Ex.D-1. The learned Counsel placed reliance on Section 15 of the Hindu Succession Act, 1956 in this regard. The learned Counsel further pointed out that the identity card of the two attesting witnesses had not been attached along with the Will / the registration copy filed in the Court. He also contended that the signatures of PW-3 deferred in several pages.

31. The learned Counsel further pointed out that there were contradictions in the evidence of PW-2 and PW-3 with respect to the place where the signatures had been obtained. They had stated that the signatures were affixed in the house of the testatrix and that everybody then went over to the Sub Registrar Office. It had not been clarified as to who took the testatrix to the Sub Registrar Office and brought her back to the house. It had also been contended that the Will was signed in the Registrar Office. The learned counsel further pointed out that both the eyes of the testatrix were operated upon and it was doubtful whether she could even see properly much less read the contents of the Will. He pointed out that these suspicious circumstances had not been addressed and removed by the plaintiff.



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32. He further pointed out that no shares had been given to the defendants, who had lost their mother and no reason had been given as to why they were disinherited. He further pointed out that the mother of the defendants had been murdered but in the Will that fact had not been mentioned and the cause of death had been wrongly stated that she died owing to illness which was factually not correct.

33. The learned counsel further pointed out that the scribe had not been examined and stated that mere registration would not validate the Will or would make the Will proved in manner known to law. It was therefore contended that the Testamentary and Original Suit should be dismissed and the Civil Suit filed by the defendants seeking partition and separate possession must be decreed and a preliminary decree must be granted dividing the properties into two equal shares and one share should be allotted to the defendants in the Testamentary and Original Suit / plaintiffs in the Civil Suit.

34. Mr.S.Mukunth, learned Senior Counsel in his reply arguments pointed out that the signatures of the testatrix were similar and there were no



differences. He pointed out that the photograph of the testatrix had been printed in the Will at the time of registration. He further argued that the testatrix had also signed in the Sub Registrar Office and therefore was aware of the nature of the document and about the contents of the document. He again reiterated that she was in good health which fact had been actually admitted by DW-1 during cross examination. He also stated that the non-impleading of the father of the defendants is not fatal to the case. The learned Senior Counsel therefore contended that the Testamentary and Original Suit should be decreed and the Civil Suit should be dismissed.

35. Both the sides had also filed written arguments,

36. I have carefully considered the arguments advanced and perused the materials available on record.

37. The Original Petition in O.P.No. 529 of 2021 had been filed by M.R.Anusuya seeking Letters of Administration with Will annexed relating to the Will dated 23.12.2013 said to have been executed by her mother P.N.Vasundara, who died on 12.02.2020. The petitioner had impleaded as respondents R.Akshaya and R.Muraalidaran, daughter and son of her late



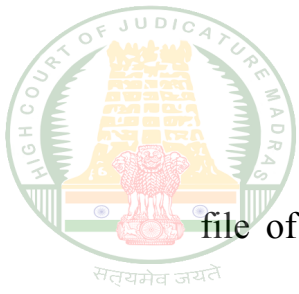
sister M.R.Anuradha.

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38. R.Akshaya, R.Muraalidaran and their father S.Raghavan had filed O.S.No. 2548 of 2021 in the City Civil Court, Chennai, seeking partition and separate possession of the very same property which was the subject matter of the Will executed by P.N.Vasundara. They had also included as Item No.2 in the plaint, gold jewels. They had filed the suit against M.R.Anusuya, their maternal aunt.

39. Consequent to Caveat being entered by the respondents in O.P.No. 529 of 2021, the said Original Petition was converted as T.O.S.No. 15 of 2002.

40. Since both the Testamentary and Original suit and also the Civil Suit related to the same property and since the plaintiff in T.O.S.No. 15 of 2022 claimed right owing to Will executed by P.N.Vasundara and further since, seeking partition and separate possession of the same property, R.Akshaya, R.Muraalidaran and S.Raghavan had filed O.S.No. 2548 of 2021 before the City Civil Court, Chennai and since the issues overlapped, a direction was issued to transfer the said suit from the City Civil Court to the



file of the Original Side of the Madras High Court to be tried along with

T.O.S.No. 15 of 2022. The suit was transferred and re-numbered as

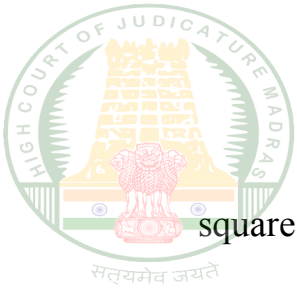
Tr.C.S.No. 6 of 2023. Joint Trial was conducted with the plaintiff in

T.O.S.No. 15 of 2022 leading evidence.

**Issue Nos.1, 2, 4 & 5:**

41. These issues surround the fact whether the Will dated 23.12.2013 registered as Document No. 84 of 2013 in the office of the Sub Registrar, Villivakkam, said to have been executed by P.N.Vasundara, who died on 12.02.2020 is a genuine document and whether T.O.S.No. 15 of 2022 was hit by non joinder of necessary party and whether the testatrix was in a sound and disposing state of mind at the time of execution be termed as a suspicious circumstance.

42. P.N.Vasundara, the testatrix was employed in the Land and Administrative Department of the Government of Tamilnadu and had retired on attaining the age of Superannuation on 2004. She received her retirement benefits and was also receiving pension from the Government. She was the owner of the property, a Flat B1, Varanasailam Apartments measuring 750



square feet together with 265 square feet of undivided share in land out of 4950 square feet at Nos. 67 and 68, Thirumangalam Road, 2<sup>nd</sup> Street, Villivakkam, Chennai – 600 049.

43. She had two daughters M.R.Anusuya and M.R.Anuradha. M.R.Anusuya is the plaintiff in T.O.S.No. 15 of 2022 and the defendant in Tr.C.S.No. 6 of 2003. M.R.Anuradha, died on 28.03.2008 leaving behind as her legal representatives, her husband, her daughter and son. However subsequently, her husband remarried and the evidence shows that he is living separately with his wife.

44. It is the case of the plaintiff in T.O.S.No. 15 of 2022 that P.N.Vasundara had executed a Will dated 23.12.2013 registered as Document No. 84 of 2013 on the file of the Sub Registrar at Villivakkam. It is to be noted that she had purchased the suit schedule property which is Flat No. B-1 Vasranasailam Apartment, measuring about 624 sq.ft., at Villivakkam in Chennai out of her own earning. She died on 12.02.2020. She left surviving as legal heirs, her daughter M.R.Anusuya and another pre-deceased daughter M.R.Anuradha.

45. The plaintiff in T.O.S.No. 15 of 2020 is M.R.Anusuya and the



defendants are the legal heirs of M.R.Anuradha / daughter and son. It is contended by the plaintiff that her mother P.N.Vasundara was living along with her and that she alone took care and custody of her by providing food and shelter. In the Will, P.N.Vasundara had stated that the elder daughter M.R.Anuradha died out of ill health on 28.03.2008 when was living with her in laws. However, the fact is that she was murdered.

46. The learned counsel for the defendants pointed out this particular aspect and argued that it was extremely unnatural on the part of a mother not to give the actual reason of her death of the own daughter and to camouflage the same by stating that she died on ill health. This point was urged by the learned counsel for the defendants to hold that the Will is not a true and genuine document.

47. It must also be pointed out that though the earlier daughter died of unnatural causes, it was not an information that could be easily and freely divulged to the general public. I would therefore view this death from the view of a mother. She had very clearly stated in the Will of that the legal representatives of M.R.Anuradha would not be entitled to seek any claim in the property.



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48. It is also on record that P.N.Vasundara had underwent eye surgery both in the eyes in the year 2012. This was pointed as a suspicious circumstances, but this fact had also been disclosed in the proof affidavit of PW-1 M.R.Anusuya. There has been no suppression on that particular fact.

49. The following are the questions put to PW-1 relating to issue of eye operation of the testatrix P.N.Vasundara:-

*“Q30: I put it to you that you have mentioned that you have spent Rs.50,000/- for Vasundara's eye operation, since she has been drawing pension amount of Rs.40,000/- and more and she is capable of spending such money and you have not spent any money.*

*A: I deny it.*

*Q31: Have you produced any document to show that you have spent Rs.50,000/- for her eye operation?*

*A: I have not produced any document before this Court but I have the documents.*

*Q32: I put it to you that you are not having any documents, if you have the document, the same would have been filed by you before this Court.*



*A: I deny it.”*

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50. It is thus seen that no question was put to the witness that the testatrix was affected by the eye operation and therefore was not in a position to read the contents of the Will.

51. The plaintiff had also examined as PW-2, T.Senthil, one of the attesting witnesses. Questions were put to him about the eye operation which P.N.Vasundara had undergone. The questions and answers were as follows:-

*“Q30: Do you know the said Vasundara underwent eye operation in both the eyes?*

*A: I know she underwent an operation for one eye.*

*Q31: Is it correct to say after her eye operation, she was with the black specs?*

*A: I do not remember.*

*Q32: I put it to you that in the year 2012, the said Vasundara underwent an eye operation in her two eyes and she was not in a position to identify the persons and in the mean time, you all obtained the Will signed from*



*Vasundara without disclosing the contents of the Will.*

*A: I deny it.”*

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52. To this witness, who claimed to be present at the time when the Will was executed and signed by P.N.Vasundara, it was specifically put that the testatrix was not in a position to identify the persons and that signatures were obtained without disclosing the contents of the Will.

53. The witness had however denied the suggestion.

54. The plaintiff had also examined as PW-3 T.R.Raja, the second attesting witness. He was also questioned about the eye surgery which P.N.Vasundara underwent. The questions and answers were as follows:-

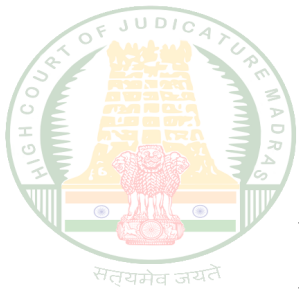
*“Q26: Do you know that Vasundara underwent an eye surgery at Vasan Eye Care in December 2012?*

*A: Yes, but I do not know where it was done.*

*A27: Is it correct to say that Vasundara came to the Registrar Office with the black specs?*

*A: No.*

*Q28: I put it to you that after eye surgery, Vasundara*



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*was nt in a position to identify the persons, therefore without her knowledge and consent, the Will got registered.*

*A: No.”*

55. From the above evidence recorded, it is clear that in December 2012, P.N.Vasundara underwent eye surgery. The Will was dated 23.12.2013 nearly a year after the surgeries in the eye.

56. I hold that this would therefore not be a circumstance which could be held against her capacity to execute the Will and to understand the contents of the Will. It must be kept in mind that she was a Government Servant and had retired on attaining the age of superannuation and therefore cannot be said to be a person who would be ignorant of procedure relating to either registration or incapable of reading and understanding the contents of a document.

57. It had been further contended on behalf of the defendants that the testatrix had not divulged the correct reason of her daughter's M.R.Anuradha death. It had been contended that she was murdered but the testatrix had only stated that she had died of illness. The loss of a daughter would affect any mother. The loss of a daughter due to unnatural circumstance would affect a



mother more deeply. The loss of a first born daughter would affect the mother more and more deeply. There is always a possibility of her living in a state of denial about the fact that her daughter was murdered.

58. The Will had been registered and naturally gets the colour of a public document. There will be hesitancy for any mother to disclose this fact. I hold that non disclosure about the cause of death would not be so fatal to hold that the Will was not a genuine document. The Will had been registered as document No. 84 of 2013 in the office of the Sub Registrar at Villivakkam.

59. Section 114(e) of the Indian Evidence Act, 1872 gives rise to a presumption that any Official Act would have been done in the manner prescribed by law. The scanned photograph of the testatrix and her thumb impressions are also found in the document. She had been identified by the two attesting witnesses. They had also attested the Will. The Will had also been drafted by an Advocate. She had very clearly stated that the property under the Will would devolve only to her younger daughter, the plaintiff in the Testamentary and Original Suit. She had also very clearly stated that as a mother, she had provided sridana articles and performed the marriage of her elder daughter. She had further stated that she had purchased the suit



schedule property out of her own income. These are facts which cannot be either denied or disputed. Again I hold that on the ground of disinheritance of the defendants, the Will cannot be held as a document to be rejected.

60. Much reliance had been placed by the learned counsel for the defendants that on the death of her daughter, her son-in-law / husband of the first daughter also should have been categorised as a legal heir along with the respondents/defendants in the Testamentary proceedings. It had been claimed that non joinder would affect the proceedings. In this connection, reliance had been placed on Section 15 of the Hindu Succession Act 1956.

61. In the petition, it had been contended that the petitioner had impleaded all the next of kin and other persons interested as parties/respondents. She had impleaded as respondents, the grand daughter and grandson of the testatrix. It must however be noted that the husband of M.R.Anuradha had remarried and during cross examination, DW-1 admitted that fact and stated that his father had a daughter aged about 23 years. M.R.Anuradha, had died on 28.03.2008. DW-1 R.Muraalidaran grazed the witness box to tender evidence in chief by filing proof affidavit dated



24.11.2023. He was cross examined on 26.07.2024. He stated that his father had remarried and had a daughter aged about 23 years through his second wife. This would indicate that the said daughter was born in the year 2001. This would further indicate that the relationship with his second wife was existing even when his marriage with M.R.Anuradha was subsisting. A suggestion was put to DW-1 that his father was one of the accused charged with murder of M.R.Anuradha. The witness denied that suggestion. But around the time when the Will was executed in the year 2013, this fact would have played on the mind of the testatrix. She had very clearly stated that the husband of M.R.Anuradha or any of his relatives should not have any share in the proeprty. Since he had also remarried even before the filing of the Original Petition, his non inclusion as a respondent was only a natural step taken. I hold that this would not affect the Testamentary and Original Suit proceedings.

62. A reading of the Will clearly shows that the testatrix had considered all surrounding circumstances of the family. She had stated about the manner in which she obtained the proeprty, the agreements which had entered into with the developer and also the manner in which the property would devolve after her death.



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63. The defendants have not been able to point out any serious illness which had affected the mental calibre except for the fact that she had undergone eye surgery. But that was about a year prior to the execution of the Will. It had also been held that the fact that she had undergone eye surgery nearly a year before the date of the Will would not affect the genuinity of the Will.

64. In view of the above reasons, I hold that the Will dated 23.12.2013 registered as Document No. 84 of 2013 in the Office of the Sub Registrar, Villivakkam, said to have been executed by P.N.Vasundara, who died on 12.02.2020 cannot be termed as a document which had been executed by her without knowledge of the contents and when she was not in a sound and disposing state of mind. The Testamentary and Original Suit proceedings were not also affected by non joinder of necessary party. I also hold that the disinheritance of the defendants by the testatrix cannot be considered as a suspicious circumstance.

65. Issue Nos. 1, 2, 4 and 5 are answered accordingly.



**Issue Nos. 3 and 6:**

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66. These two issues surround the identity of the attesting witness and whether the Will had been proved in manner known to law.

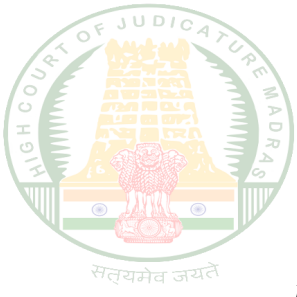
67. It is one aspect to hold that there are no suspicious circumstance surrounding the execution of the Will but even if so held, the Will has to be necessarily proved in manner known to law.

68. The following provisions would be instructive in determining these issues:-

(i) Section 63(c) of the Succession Act, 1925

***“63. Execution of unprivileged Wills.—***

*Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—*



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*(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*

*(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*

*(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 acknowledgement of his signature or mark, or 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. ”*

(ii) Section 68 of the Indian Evidence Act / Section 67 of Bharathiya

Sakshya Adhiniyam, 2023:-

***“68. Proof of execution of document required by***



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***law to be attested.***

*If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.] ”*

69. Section 63(c) extracted above stipulated that the testatrix and the two witnesses must be present at the same time and they must each sign the Will at the same time in the presence of each other and must also witness the other person signing the Will at the same time.

70. Section 68 of the Indian Evidence Act requires that the Will must be proved by the examination of atleast one of the attesting witnesses.



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71. In the instant case, PWs 2 and 3 are the two attesting witnesses and they have both been examined.

72. It is therefore imperative that they must tender evidence that they signed the Will in the presence of the testatrix and that they both saw her signing the Will and that they also saw each other signing the Will. They must also state that the Will had been prepared under her directions and they were also present in accordance with her directions.

73. P.W.2 T.Senthil had filed his proof affidavit. He stated that on 23.12.2013 he, and T.R.Raja, the other attesting witnesses were both present in the house of the testatrix P.N.Vasundara and *“we did then and there, see the deceased said and subscribed her name at the foot of the said Will”* and that further all were present at the same time and subscribed their respective names and signatures on the foot of the said Will. Thus, in the proof affidavit, he had very categorically stated that he and the testatrix P.N.Vasundara and the second attesting witness T.R.Raja were all present in the house of the testatrix at the same time on 23.12.2013 and they all witnessed her signing the Will and that they signed the Will in the presence of each other at the foot of the Will. This statement is in conformity to the



mandate required under Section 63(c) of the Indian Succession Act, 1925.

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74. The second attesting witness T.R.Raja was examined as PW-3. He also filed his proof affidavit. In his proof affidavit, he stated that on the request made by the testatrix, P.N.Vasundara he had volunteered to witness her intention to execute her Will and that he and the other witness T.Senthil signed as witnesses to the said Will in her presence and in the presence of each other, all being present at the same time and they all subscribed their respective names and signatures at the foot of the Will. In the subsequent paragraph, he stated that he and the other attesting witness, T.R.Raja, which name is obviously wrong since it should be T.Senthil accompanied P.N.Vasundara to the office of the Sub Registrar, Villivakkam on the same day i.e., on 23.12.2013 and that the Will was registered as a document in their presence. To a large extent, the evidence in chief of both PWs 2 and 3 are similar and in compliance of the mandate prescribed under Section 63(c) of the Indian Succession Act 1925.

75. PW-2 was cross examined and his identity was questioned. The following questions were put to him:-

*“Q10: Have you produced any document to show*



*that you are residing in the above said address?*

*A: I have not produced.*

*Q11: You have not produced any ID proof at the time of signing in the Will. Am I correct?*

*A: Yes, I have not given any ID proof.*

*Q12: Have you produced any ID proof before this Court?*

*A: I have not produced.”*

76. He was then asked about the second witness to the Will and his answers were as follows:-

*“Q22: Do you know the name of the 2<sup>nd</sup> witness in the Will?*

*A: No, I do not know.*

*Q23: Do you know the second witness?*

*A: I do not who is the second attesting witness.*

*Witness repeats that he is residing next to my flat. ”*

77. It thus seen that he had stated that PW3 T.R.Raja is a stranger.

78. PW-2 was then asked about the actual execution of the Will.



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*“Q25: In what language the Will was drafted?*

*A: I have not seen.*

*Q26: Do you remember in which stamp paper (Rs.25, Rs.100) the Will was made?*

*A: I do not know.*

*Q27: Is it correct to say that you do not know the contents of the Will?*

*A: Yes, I have not read.*

*Q28: Who were all present at the time of signing the Will?*

*A: I do not remember.*

*Q29: Where did you sign the Will? Whether it is in the Registrar Office or in the house?*

*A: I do not remember.”*

79. It is thus seen that he has stated he has no knowledge about the language in which the Will was written, he does not know the contents of the Will, and he does not know who were present at the time of signing the Will and that he does not remember whether he signed the Will in the Office of the Sub Registrar or in the house of the testatrix.

80. PW-1 has thus proved to be an extremely evasive witness. In his proof affidavit, he had very categorically stated that he was present in the



house along with the testatrix and the other attesting witness and that they had signed at the same time in the presence of each other. During his cross examination, he however stated that he does not remember who were present at the time signing the Will and he does not know whether he signed the Will in the office of the Sub Registrar Office or in the house. Some levearge could be given that he may not remember the place where he signed the Will but he should have atleast disclosed that the testatrix was present at the time when he signed the Will. He has been examined as a witness to state that he witnessed her signing the Will. The anwer “*I do not remember*” would only lead the Court to presume that he had not signed as a witness to the Will.

81. He was asked further qeustions about the date and other circumstances surrounding the execution of the Will.

*“Q33: Do you know on which day the Will was executed?”*

*A: I do not remember.*

*Q34: Can you tell the time of execution of the Will and the time of you affixed your signature in the Will as attestig witness?”*

*A: I do not remember.*

*Q35: Do you know who took the said Vasundara to Sub-Registrar Office since she was aged?”*



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*A: I do not know.*

*Q36: Do you know who drafter the Will, who signed on the Will, time of execution?*

*A: I do not remember.*

*Q37: Page 5 and 6 of the Will is shown to the witness. Do you know the signature of the 2<sup>nd</sup> attesting witness?*

*A: I do not know.*

*Q38: Page 6 of the Will is shown to the witness. Do you know the signature of the 2<sup>nd</sup> attesting witness?*

*A: I do not know. I know my signature only."*

82. PW-2 had thus stated that he does not know who took the testatrix to the Office of the Sub Registrar. This statement in cross examination must be read in conjunction with the statement in the proof affidavit of PW3 T.R.Raja, who stated that he and PW-2 and the testatrix went together to the Sub Registrar Office. He had also disclaimed all knowledge about the signature of the second attesting witness/PW-3. He had thus not served either the cause of the plaintiffs or the cause of the Court to determine whether the Will had been proved in manner known to law. He is a totally unreliable witness and his evidence has to be discarded.



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83. PW-3, T.R.Raja was also cross examined on the circumstances surrounding the Will. He was first asked whether he had filed the proof affidavit / examination in chief. The following were the questions and the answers given:-

*“Q2: Have you filed any affidavit apart from this proof affidavit?”*

*A: No.*

*Q3: Proof affidavit is shown to the witness. Do you know who filed this proof affidavit?*

*A: I do not know. My counsel would have filed the same.”*

84. It is to be noted that he was cross examined on 08.09.2023 and his proof affidavit is dated 10.08.2023 which was just around a month back and he had stated that he does not know who filed his proof affidavit.

85. PW-3 was also questioned about his identity:-

*“Q6: Have you filed any document to show your residential address?”*

*A: No.*

*Q7: At the time of registration of the Will, did you*



*give any proof of identity to prove your identity?*

*A: Yes.*

*Q8: Ex.P2 – Will is shown to the witness. Is there any ID proof attached in the Will?*

*A: No.*

*Q9: I put it to you that you have not filed any identity card or ID proof either at the time of registration of the Will or at the time of giving evidence.*

*A: I have given my Aadhar Card to my counsel.”*

86. As a fact, the identity proof of both the witness had not been attached to the Will.

87. PW-3 was then asked about who were present at the time of execution and registration of Will and whether he signed the Will. The questions and answers were as follows:-

*“Q 16: Do you remember who were all present at the time of execution and registration of the Will?*

*A: Vasundara, witnesses Senthil and myself.*

*Q17: Where did you sign the Will?*

*A: At the Registrar Office.*



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*Q18: Other than Registrar office, have you signed in any other place?*

*A: No.*

*Q19: Do you know who accompanied Vasundara to the Registrar Office?*

*A: I do not know.”*

88. He had thus given a very emphatic answer that he signed the Will in the Office of the Registrar and at no other place. This evidence must be read in conjunction with the proof affidavit of PW-2, who stated that the testatrix and he and PW3 signed the Will in the house of the testatrix in the presence of each other which statement was also affirmed by PW-3 in his proof affidavit. Very strangely in his cross examination PW-3 stated that he signed the Will only in the office of the Sub Registrar and at no other place. The credibility of PW3 is also put to serious doubt.

89. In his proof affidavit, PW-3 further stated that he, the testatrix and he had wrongly mentioned “*T.R.Raja*” had gone to the Sub Registrar Office together. But during cross examination, he stated that he does not know who accompanied the testatrix to the Sub Registrar Office. Again the witness is either deliberately untruthful or deliberately stating a false statement.



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90. PW-3 was further asked about his signature and the question and answer was as follows:-

*“Q21: Whether you have signed at the Registrar Office or at Kodambakkam?*

*A: Only at Registrar Office.”*

91. During his cross examination, he stated that he had gone independently to the office of Sub Registrar and did not accompany the testatrix whereas in his proof affidavit, he had very specifically stated that he had gone along with testatrix to the office of the Sub Registrar. The questions and answers were as follows:-

*““Q29: On the day of Registration of the Will, when did you go to Registrar Office?*

*A: After Noon.*

*Q30: At what time, you entered into the Registrar Office and at what time, you came out from the Registrar Office?*

*A: I entered around 12 o' clock, and I came out*



*around 3 o' clock.*

*Q31: Who took Vasundara from the Registrar Office to her house after execution of the Will?*

*A: I do not know.*

*Q32: Therefore, I put it to you that you did not accompany the Testatrix Vasundara to Registrar Office and also to her house.*

*A: Yes.”*

92. PW-3 was further questioned about who drafted the Will and at whose instance it was executed and where it was written. The question and answer was as follows:-

*“Q34: I put it to you that as far as the Will is concerned, you do not know who drafted the Will, at whose instance it was executed and where it was written?*

*A: Yes, I do not know.”*

93. Section 63(c) of the Indian Succession Act very specifically mandates that the witnesses must sign the Will in the presence of the testator and must also receive a personal acknowledgement from the testator of their signature. The evidence of PW-3 is extremely unconvincing.



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94. It is thus seen that the identity of the two witnesses, PW2 and PW3 had not been established and there has been admission of non compliance of the mandate stipulated. Section 63(c) of the Indian Succession Act.

95. In *AIR 2023 SC 469 :: 2023 (9) SCC 734 [ Meena Pradhan and Ors. Vs. Kamala Pradhan and Ors.]*, the Hon'ble Supreme Court had held as follow in paragraph No.10:

*“10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam [Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sh*



*aranabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:*

*10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;*

*10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

*10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:*

*(a) The testator 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 the said signature or affixation shall show that it was intended to give effect to the writing as a will;*

*(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;*

*(c) Each of the attesting witnesses must have 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 such signatures;*



*(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;*

*10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

*10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

*10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

*10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

*10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*



*10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will; ”*

96. In the instant case, the evidence of PW2 and PW3 extracted above clearly shows that there was no compliance of the stipulations stated in Section 63(c) of the Indian Succession Act, 1925.

97. In **(2015) 8 SCC 615 [Jagdish Chand Sharma Vs. Narain Singh Saini and Others]**, it had been held as follows:-

*“57. A will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer res integra, that it carries with it an overwhelming element of sanctity. As understandably, the testator/testatrix, as the case may be, at the time of*



*testing the document for its validity, would not be available, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. This is more so, as many a times, the manner of dispensation is in stark departure from the prescribed canons of devolution of property to the heirs and legal representatives of the deceased. The rigour of Section 63(c) of the Act and Section 68 of the 1872 Act is thus befitting the underlying exigency to secure against any self-serving intervention contrary to the last wishes of the executor. ”*

98. In view of the evidence extracted, wherein both PW2 and PW3 have clearly stated that they have not witnessed the testatrix signing the Will, I hold that the Will had not been proved in manner known to law.

99. The learned Senior Counsel for the plaintiff placed reliance on the Judgment of the Hon'ble Supreme Court reported in **(2005) 2 SCC 784 [ Sridevi and Others Vs. Jayaraja Shetty and Others]** wherein it had been held that if a Will had been duly executed and the propounder had dispelled the suspicious circumstances then, it would be proof of the Will.

100. In that case, the scribe of the Will had been examined and both



the attesting witness had also deposed that the testator had signed the Will in their presence.

101. In the instant case, there is complete absence of that particular statement in the evidence of both PWs 2 and 3. The facts in the said Judgment are certainly distinguishable and will not apply to the nature of the evidence adduced by the plaintiffs in this case.

102. The learned Senior Counsel for the plaintiff also placed reliance on the Judgment of the Hon'ble Supreme Court reported in **(2007) 11 SCC 621 [Savithri and others Vs. Karthyayani Amma and Others]**. In that case, there was exclusion of natural heirs. However, the Hon'ble Supreme Court on facts found that the testator was a cancer patient without independent sources of income and totally dependent on the respondents, namely, his sister and her children and therefore, the testator was bound to place implicit faith and confidence only upon those who had been looking after him.

103. In the instant case, the testatrix was a public servant and had sufficient sources of income to purchase the property. She was well aware of the circumstances but unfortunately PWs 2 and 3 had not deposed that they



had seen her signing the Will in their presence during cross examination. The facts are distinguishable.

104. The learned Senior Counsel for the plaintiff further placed reliance on the Judgment of the Hon'ble Supreme Court reported in **(2003) 8 SCC 537 [ Ramabai Padmakar Patil and others Vs. Rukminibai Vishnu Vekhande and others]** which was a case of disinheritance of other legal representatives and bequeathing the property only to a widowed daughter. The Hon'ble Supreme Court had held that this would not be a factor to hold that the Will is shrowded with suspicious.

105. In the instant case, the Will had been held to be a genuine document expressing the intent of the testatrix but unfortunately, PWs 2 and 3 had failed during cross examination and did not state the requirements as mandated under Section 63(c) of the Indian Succession Act, 1925.

106. In view of the above reasons, I hold with respect to Issue Nos. 3 and 6 that the identity of the attesting witness had not been verified and that the Will had not been proved in manner known to law.



107. Issue Nos. 3 and 6 are answered accordingly.

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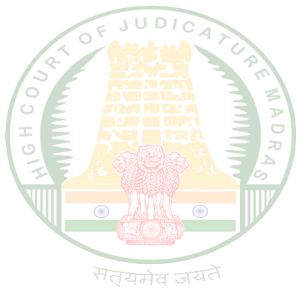
**Issue No.7:**

108. In view of the fact that the Will has failed the scrutiny of the Court, I hold that the plaintiffs in Tr.C.S.No. 6 of 2023 are entitled for partition and separate possession of the 1<sup>st</sup> Item of suit schedule property in two equal shares and to be allotted one such share along with separate possession. In the absence of any evidence regarding availability of the gold jewellery stated in the 2<sup>nd</sup> Item of suit property, and in view of the absence of any details of the same, the suit is dismissed regarding claim of share in 2<sup>nd</sup> item of suit property. A preliminary decree is passed with respect to Item No.1 of suit schedule property alone.

109. This issue is answered accordingly.

**Issue No.8:**

110. In the result:-



(i) T.O.S.No. 15 of 2022 is dismissed;

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(ii) Tr.C.S.No. 6 of 2023 is decreed and preliminary decree is passed entitling the plaintiffs for one half of the 1<sup>st</sup> item of suit property and dismissed with respect to the 2<sup>nd</sup> item of suit property. The plaintiffs are at liberty to apply for final decree in manner known to law; and

(iii) No order as to costs with respect to both the suits.

Vsg

29.08.2025

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking Order

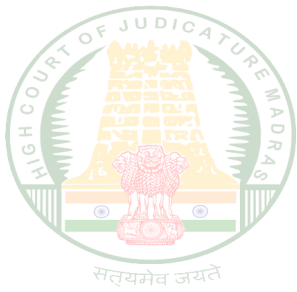
**1. List of Witnesses Examined on the side of the Plaintiffs:-**

1. P.W.1 – M.R.Anusuya

2. P.W.2 – T.Senthil

3. P.W.3 – T.R.Raja

**2. List of Exhibits Marked on the side of the Plaintiff:-**



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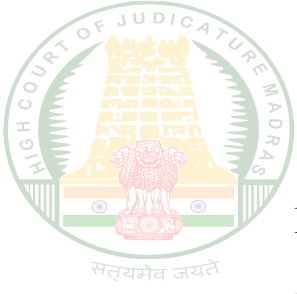
1. Ex.P1: certified copy of the sale deed dated 31.03.2004;
2. Ex.P2: Will dated 23.12.2013 registered as Document No. 84/2013 in the office of Sub Registrar, Villivakkam;
3. Ex.P3: Death Certificate of P.N.Vasundara dated 12.02.2020;
4. Ex.P4 : Legal heirship certificate of P.N.Vasundara dated 15.06.2020;
5. Ex.P5: computer generated death certificate of M.R.Anuradha @ Priya; and
6. Ex.P6 : Signature of the witness in Ex.P-2.
7. Ex. P-7 : Signature of the witness in Ex.P-2.

**3. List of Witnesses Examined on the side of the Defendants:-**

1. DW1 – R.Muraalidharan

**4. List of Exhibits Marked on the side of the Defendants:-**

- Ex.D-1 : legal heirship certificate of M.R.Anuradha;
- Ex.D-2 : Ration Card;
- Ex.D-3 : Online printout of death certificate of P.N.Vasundara;
- Ex.D-4 : Online printout of encumbrance certificate;
- Ex. D-5: Office copy of the legal notice dated 05.10.2020;



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Ex.D-6: Reply notice dated 09.10.2020;

Ex.D-7 : Adhar Card of R.Akshaya Ragavan;

Ex.D-8 : Adhar Card of R.Mutaalidaran; and

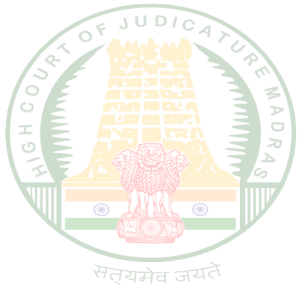
Ex.D-9 : Adhar Card of Ragavan Srinivasan.

vsg

29.08.2025

**C.V.KARTHIKEYAN, J.**

Vsg



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**Pre-Delivery Judgment made in**

**T.O.S.No. 15 of 2022**

**And**

**Tr.C.S.No. 6 of 2023**

**29.08.2025**