



A.S.No.173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Judgement Reserved on : 28..03..2025

Judgement Pronounced on : 07..04..2025

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Appeal Suit No.173 of 2022

and

C.M.P.Nos.6299 of 2022 & C.M.P.No.4158 of 2025

Reji Abraham

.... Appellant / 2nd defendant

-Versus-

1.Abraham Saji

.....1st Respondent / Plaintiff

2.Jessy Dick George

..... 2nd Respondent / 1st Defendant

3.Shoba Abraham

..... 3rd Respondent / 3rd Defendant

Appeal filed under Section 96 r/w Order XLI of the Code of Civil Procedure, 1908, seeing to set aside the Judgement and Decree dated 03.02.2022 passed in O.S.No.333 of 2016 on the file of the learned III Additional District Judge, Coimbatore.

For Appellant : Mr.R.Bharath Kumar

For Respondent(s) : Mr.K.K.Sivashanmugam for R1

No Appearance for RR2 and 3



A.S.No.173 of 2022

JUDGEMENT

WEB COPY

Aggrieved by the decree and judgement dated 03.02.2022 passed by the learned Additional District Judge at Coimbatore in O.S.No.333 of 2016 decreeing the suit in part and thereby granting a preliminary decree in respect of one-fourth share in the undivided one-half share in Item-II(a) of the suit schedule properties and one-fourth share in the ground floor in Item-II(b) of the suit schedule properties and also one-fourth share in the undivided one-half share in the front open space, vacant space surrounding the building, staircase, terrace, out house and two water tanks with electric motor in Item-II(b) of the suit schedule properties, the 2nd defendant has come up with the present appeal suit.

2. The appellant is the 2nd defendant; the 1st respondent is the plaintiff and the respondents 2 and 3 are the defendants 1 and 3 respectively in the suit in O.S.No.333 of 2016.

3. For the sake of convenience, the parties will hereinafter be referred to as per their array in the original suit before the trial court.

4. The suit was filed for a decree and judgement of declaration, declaring that the plaintiff is entitled to one-fourth share in the suit schedule mentioned properties and for a direction for the division of the suit schedule mentioned



properties by metes and bounds into four equal shares and allotment of one such share to the plaintiff; and for the costs of the suit.

A. Case of the Plaintiff:

5.1 The plaintiff and the 2nd defendant are the sons and the defendants 1 and 3 are the sons and daughters of late N.K. Abraham and late Lilly Kutty Abraham. The mother of the plaintiff, Lilly Kutty Abraham acquired the Item-I of the suit properties through a sale deed dated 01.12.2004. N.K. Abraham owned Item-II of the suit schedule of properties. Lilly Kutty Abraham, the mother of the plaintiffs and defendants passed away on 01.07.2011.

5.2 After the death of their mother, on 05.02.2009, their father had executed a WILL bequeathing all his properties, including the property of their mother, Lilly Kutty Abraham, to the plaintiff and the defendants 1 to 3. The said WILL is valid only with respect to the self-acquired properties of Abraham. Since her mother died intestate, her properties have to be devolved on her legal heirs as per the law of succession.

5.3 Further, according to the plaintiff, he and defendants 1 to 3 are entitled to one-fourth share each in Item-I of the suit schedule properties. So also, he and the defendants are entitled to a share in the properties bequeathed to their sister Usha, who is the other daughter of N.K. Abraham and Lilly Kutty



Abraham. The said Usha died on 12.07.2011, issueless. When he (plaintiff) sought a partition of properties left behind by Lilly Kutty and Usha, the 2nd defendant did not come forward for partition. Hence, the suit.

(B) Case of the 2nd defendant:

6.1 The 2nd defendant in his written statement admitted the fact that his father N.K. Abraham died on 01.07.2011 and his mother Lilly Kutty died on 13.12.2008. According to him, the plaintiff is permanently settled in Kuwait, while the 1st defendant has settled in Jamshedpur. The 3rd defendant has no children and is divorced. Usha, the other sister also, died without issues.

6.2 The 2nd defendant, however, denied the fact that N.K. Abraham executed a WILL on 05.02.2009. According to him, the attesting witnesses to the WILL are close associates of the plaintiff and with their assistance, the WILL was created by the plaintiff to defeat his (2nd defendant's) right in the suit properties.

6.3 According to the 2nd defendant, his father, the testator of the WILL was suffering from diabetes, renal disease and also from dementia and his toe was amputated due to the complications of diabetes. His father was not in a sound disposing state of mind at the time of execution of the alleged WILL. The WILL came into existence on the 54th day after the demise of wife of the



testator. His father, the testator was not moving out at the relevant point of

time. Prior to the date of execution of the alleged WILL, his father, the testator had undergone surgeries. After the death of his father, the testator, the WILL was not acted upon.

6.4 Further according to the 2nd defendant, the alleged WILL is a document created by the plaintiff in order to knock off the valuable properties of their father. When the plaintiff relies upon the WILL regarding the properties bequeathed in his favour, he ought not to have questioned the very same WILL with respect to the other properties which were bequeathed in his (2nd defendant's) favour. The suit is not maintainable on facts and in law as all the properties which are subject matter in the alleged WILL have not been included in the suit schedule. The plaintiff did not inform about the WILL after the death of the testator. He alone has paid all taxes and charges in respect of the properties. The suit is bad for partial partition.

(C) Case of the 3rd defendant:

7. The 3rd defendant admitted the execution of the registered WILL on 05.02.2009 by her father. Under the WILL, Item-II(a) of the suit schedule of properties, the ground floor was bequeathed to her and other sister, Usha, and the first floor was bequeathed to her (3rd defendant), and the remaining vacant



A.S.No.173 of 2022

WEB ONLY

area was jointly bequeathed to Usha and her (3rd defendant). Further, under the WILL, Item-II(b) of the suit schedule properties was allotted to both Usha and herself (3rd defendant). After the death of her sister-Usha, the properties allotted to her sister-Usha devolved on all the parties to the suit.

8. On the basis of the above pleadings, the trial court had framed the following issues for trial:

(1) Whether the Will dated 05.02.2009 said to have been executed by N.K.Abraham is true, valid, genuine and binding on the parties?

(2) Whether the plaintiff is entitled to the relief of partition as sought for?

(3) Whether the suit is bad for partition?

(4) For what other relief?

9. During the trial, on the side of the plaintiff-Abraham Saji, he examined himself as P.W.1, and in support of his case, one Joseph was examined as PW2 and Exs. A1 to A7 were marked on the side of the plaintiff. On the side of the defendants, no oral and documentary evidence was adduced.

10. Upon considering the oral and documentary evidence available on record, the trial court had decreed the suit in part in respect of Item-II(a) and



A.S.No.173 of 2022

Item-II(b) of the suit schedule properties and granted a preliminary decree in

favour of plaintiff in respect of one fourth share in the undivided one-half share

in Item-II(a) of the suit schedule mentioned properties and one-fourth share in

the ground floor in Item-II(b) of the suit schedule mentioned properties and

also one-fourth share in the undivided one-half share in front open space,

vacant space surrounding the building, stair case, terrace out house and two

water tanks with electric motor in plaint Item-II(b) of the suit schedule

mentioned properties and dismissed the suit for partition in respect of item-I of

the suit schedule mentioned properties. Aggrieved by the decree and judgement

granting preliminary decree in favour of the plaintiff in respect of Item-II(a)

and (b) of the suit schedule mentioned properties, the 2nd defendant is before

this court. Though the suit was dismissed insofar as the relief of partition in

respect of Item-I of the suit schedule mentioned properties, the plaintiff has not

chosen to file any appeal or cross objection.

Application under Order XLI, Rule 27 of CPC:

11. Pending appeal suit, the 2nd defendant, who is the appellant in appeal

suit, filed a miscellaneous petition in C.M.P.No.4158 of 2025 under Order XLI,

Rule 27 of CPC seeking to receive additional documents namely, medical

records of his late father, proof affidavit filed by him in O.S.No.1738 of 2008,



A.S.No.173 of 2022

judgement passed in O.S.No.1738 of 2008 and a letter dated 03.02.2022

obtained through RTI, on his behalf.

12. According to the 2nd defendant, the trial court disbelieved his defence that the WILL was not genuine and valid in the eye of law mainly on the ground that he had not produced any medical records to show that his father was really ill at the relevant point of time and that he was not in a sound disposing state of mind for the execution of the WILL. The specific case of the 2nd defendant is that despite his best efforts, he was unable to trace and produce his father's medical records during the trial of the suit before the trial court. Those documents are absolutely relevant to prove the fact that his father was not in a sound disposing state of mind at the time of execution of the alleged WILL on 05.02.2009. He, therefore, prayed for an order in his favour for the reception of the documents as additional evidence to be marked on his side.

13. Opposing this petition, the plaintiff filed his counter affidavit *inter alia* contending that any additional evidence could be received only under exceptional circumstances where such evidence could not be produced at the time of trial despite due diligence being exercised by the 2nd defendant at the trial stage. The 2nd defendant was fully aware of his father's/testator's medical



A.S.No.173 of 2022

history; however, he did not avail himself of the opportunity to produce those records during the trial. The 2nd defendant is trying to relitigate the issues those have been decided by the trial court.

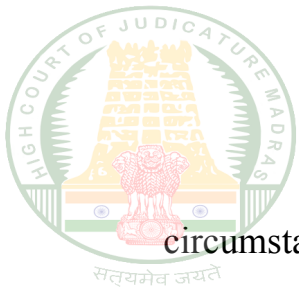
14. Let this court first decide the application filed under Order XLI, Rule 27 of CPC for the reception of additional documentary evidence at the appellate stage.

15. Heard the learned counsel for the 2nd defendant and the learned counsel for the plaintiff on the miscellaneous petition for reception of additional evidence.

16. The learned counsel for the 2nd defendant would submit that despite due diligence, the 2nd defendant was unable to collect the medical records pertaining to his deceased father and therefore, this application.

17. The learned counsel for the plaintiff would, on the other hand, contend that the 2nd defendant did not at all choose to enter the witness box and there was no such pleading in the written statement filed by the 2nd defendant except for an evasive denial that the WILL was not true and it was created one and the testator was not in a sound state of mind at the time of execution of the WILL.

18. In the light of the above legal position and the facts and



A.S.No.173 of 2022

circumstances of the case, the point that arises for consideration is

WEB COPY

Are the additional documents sought to be proved in evidence at the appellate stage by filing an application under Order XLI, Rule 27 of the CPC necessary for the lis to be adjudicated effectively?

19. There is no quarrel with the proposition that the appellate court has the power to allow the additional evidence. However, such discretion is required to be exercised with due care and circumspection. The power under order XLI Rule 27 of the CPC is not intended to be exercised to fill up the lacunas, or to make up any deficiency in the case. Normally, reception of such additional evidence will not be entertained by the court(s) and a provision is made in this regard as and by way of exception that additional evidence may be permitted subject to fulfilment of the conditions enumerated under Order XLI, Rule 27 of CPC.

20. A party to an appeal is not entitled to produce additional evidence under Order 41 Rule 27 of the CPC, irrespective of fact, whether oral or documentary, in the appellate court unless it is shown that the court which passed the decree refused to admit evidence, which ought to have been admitted, or if the party to the appeal is able to establish that such evidence was not within his knowledge or, despite exercise of due diligence, the evidence



A.S.No.173 of 2022

could not be produced by him at the time when the decree appealed against was passed by the trial court; or if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgement or for any other substantial cause, the additional documents could be relied upon.

21. However, in the instant case, on a careful perusal of the entire evidence, it is seen that despite an opportunity was very much available to the 2nd defendant/appellant herein before the trial court, he had not even chosen to come to the witness box to adduce oral evidence disputing the registered WILL executed by his father. Except setting up a defence that his father was a diabetic and his right toe was amputated and he was not in a sound state of mind to bequeath his properties, to buttress his contention, he has not even adduced any oral evidence. Therefore, the contention of the 2nd defendant, that despite his due diligence to trace the medical records and other documents referred to in the petition and to produce the same during the trial, he could not succeed in his attempt, cannot be countenanced.

22. That apart, the documents which are now sought to be produced as additional evidence are receipts in respect of the purchase of medicines and a copy of the summary issued by G.Kuppuswamy Naidu Memorial Hospital and Lab Report of Vedanayagam Hospital Private Limited to show that he was



A.S.No.173 of 2022

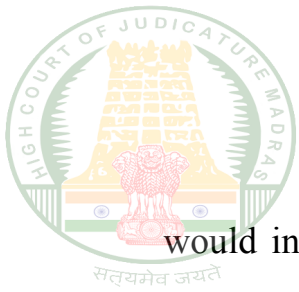
admitted to the hospital on 10.09.2013 and discharged on 13.09.2013 for the

WEB treatment of hypertension, diabetes mellitus and chronic kidney disease.

23. It is relevant to note here that the testator himself detailed in his registered WILL about the surgery performed on him and the grievous wound that appeared in his left foot and also his old age and stable mind. The medical recods, which are now sought to be produced as additional documentary evidence, would show that the testator was admitted to the hospital for hypoglycaemia and was discharged from the hospital within three days thereafter.

24. On the contrary, the WILL in question was executed on 05.02.2009. Therefore, even assuming that the testator was not well during the year 2010 and was admitted to the hospital for a while, that by itself would not have any impact on deciding the question of the validity of the WILL in question. The very defence of the 2nd defendant/appellant herein is that his father was a chronic diabetic.

25. At any rate, the discharge summary and medicine receipts annexed in the petition for the reception of additional documentary evidence would be no way helpful to the 2nd defendant to prove the mental faculty of his father, the testator of the WILL. The very discharge summary now sought to be filed



A.S.No.173 of 2022

would in fact only show the fact that the sugar level of the father of the 2nd defendant was monitored and he was conscious and blood sugar was also normal. Merely because a person was suffering from chronic diabetes, it cannot be said that his mental condition was totally unstable at all times. Therefore, the medical documents and other documents which are now sought to be filed by the 2nd defendant as additional documentary evidence would not be said to be relevant to prove the fact that he was not in a sound state of mind to execute the WILL in question and his mental faculty was affected due to illness.

26. As the 2nd defendant/appellant herein has not even adduced oral evidence before the trial court, now, at the appellate stage, he cannot introduce medical records, such as the discharge summary of the year 2010 and the receipts for the purchase of medicines, to show that his father was lacking mental faculty at the time of execution of the WILL in question. The other documents, which were affidavits filed by the 2nd defendant himself in the other suit in O.S.No.1738 of 2008 on the file of the III Additional District Munsif, Coimbatore, filed by a third party-K.A.Jacob, against the 2nd defendant herein claiming to be a tenant. The affidavit filed in a different suit cannot be treated as evidence at all. That apart, the judgement passed in the other suit in O.S.No.1738 of 2008 filed by a person claiming to be a tenant would also be in



no way relevant to the present lis.

WEB COPY

27. In the light of the above discussions, this court is of the firm view that the petition filed under Order XLI, Rule 27 of CPC for the reception of the additional documentary evidence does not have any merit and the same deserves to be dismissed.

Appeal Suit No.173 of 2022 :

28. This court has heard Mr.R.Bharath Kumar, learned counsel for the 2nd defendant/appellant herein and Mr.K.K.Sivashanmugam, learned counsel for the plaintiff/1st respondent herein. There is no representation for the 1st defendant/2nd respondent herein and the 3rd defendant/3rd respondent herein.

29. The learned counsel for the appellant/2nd defendant would submit that Item-I of the suit schedule properties belonged to his mother. Item-II(a) of the suit schedule properties belonged to his father. Whereas the father in his WILL dated 05.02.2009 had included the properties owned by his wife, the mother of the plaintiff and defendant, as well. That apart, the other sister of the 2nd defendant, viz., Usha, who died issue-less, was also the beneficiary under the WILL in question.

30. The learned counsel for the appellant/2nd defendant would further submit that the WILL which was relied upon by the plaintiff was not executed



by his father while he was in a sound disposing state of mind, and he was suffering from diabetes and kidney ailments for many years, and in fact, his right toe was amputated. The WILL in question was executed on the 54th day after the death of the mother of the plaintiff and defendants; by that time their father was not at all recovered from the grief of the demise of his wife, the mother of the plaintiff and defendants. There is a series of suspicious circumstances attached to the WILL in question.

31. The learned counsel for the 2nd defendant/appellant would further contend that though there were several properties dealt with by the testator under the WILL in question, however, the suit was filed only in respect of two of them. Thus, according to him, the suit is bad for partial partition. He would further contend that, in fact, the 2nd defendant was all along residing with the father, and he was also appointed as a nominee of his father. Therefore, it was submitted by the learned counsel that the WILL has not been proved in the manner known to law. The additional evidence relied upon by the appellant would clinchingly prove the medical condition of his father.

32. Per contra, the learned counsel for the plaintiff/1st respondent would moreover contend that the suit is filed only in respect of two items. Those two items are also the subject matter of the WILL. Since the properties belonged to

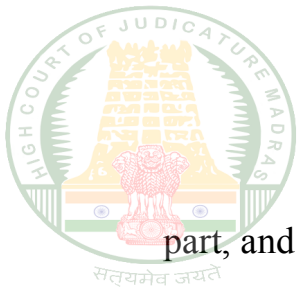


A.S.No.173 of 2022

the mother of the parties, they had also been included in the WILL, the WILL

was not valid, and the properties owned by the mother had to be devolved among her legal heirs only as per the law of succession. The learned Judge allowed the suit, holding that the WILL was perfectly valid insofar as the bequeathment of the properties owned by the testator only, and dismissed the suit insofar as the item-I of the suit schedule mentioned properties is concerned since the same was owned by the wife of the testator. Given the equity in the allotment to the appellant and others, the plaintiff had not chosen to challenge the aforesaid findings.

33. The learned counsel for the plaintiff/1st respondent would further contend that though the testator was a chronic diabetic and was taking treatment, his mental condition was stable and mere taking treatment for the diabetes mellitus cannot be a ground to suspect the genuineness of the WILL. The WILL was written by the testator himself and it was witnessed by P.W.2 who was one of the attesting witnesses. The evidence of P.W.2 would show that he has not only spoken about the execution of the WILL by the testator, but also the attestation of the WILL, and no suspicious circumstance surrounding the WILL was brought on record through his cross-examination. The trial court, upon considering all these factual aspects, decreed the suit in



A.S.No.173 of 2022

part, and the same does not require any interference at the hands of this court.

WEB COPY

34. This court has considered the rival submissions and perused the available oral and documentary evidence carefully.

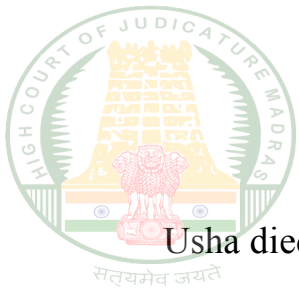
35. In the light of the above rival submissions, now, the points that arise for consideration in this appeal suit are:

(1) Whether the Will dated 05.02.2009 was true and validly executed by its testator N.K.Abraham while he was in a sound disposing state of mind?

(2) To what relief the parties are entitled to?

Point No.1:

36. The suit was laid only in respect of two items of properties. According to the plaintiff, though his father had executed a registered WILL on 05.02.2009 bequeathing properties to all his sons and daughters, the contention of the plaintiff is that since his father, the testator, had also included in the WILL the Item-I of the suit scheduled mentioned properties which were owned by the mother in favour of the 2nd defendant, the plaintiff challenged the WILL in that respect and sought partition in the same on the ground that his father had no right to bequeath the property owned by his mother. As far as the other items of property are concerned, the plaintiff sought a share in the properties bequeathed to her sister-Usha under the WILL on the ground that her sister -



A.S.No.173 of 2022

Usha died issueless.

WEB COPY

37. Per contra, the 2nd defendant would contend that the plaintiff cannot take benefit of a part of the WILL in question and question the bequeathment made to the 2nd defendant in respect of the property owned by his mother. The 2nd defendant in para 9 of his written statement had specifically pleaded that if the WILL is claimed to be true by the plaintiff, then he (2nd defendant) is entitled to Item-I of the suit schedule mentioned properties bequeathed by the father (testator) in his favour.

38. The above pleadings would thus only indicate that the 2nd defendant intended to take the benefit under the WILL in question in view of the bequeathment of Item I of the suit scheduled mentioned properties.

39. In the light of the above position of the parties, when the WILL (Ex.A.4) in question is carefully perused, it is seen that the testator himself had stated in his WILL about his old age and stable health condition and also the wound that had appeared on his left foot, and considering all those, he had decided to bequeath his properties among all his children, including his daughter Usha, who later on died issueless.

40. To prove the execution of the WILL, the plaintiff has examined P.W.2-Joseph, one of the attesting witnesses. On a careful perusal of the



A.S.No.173 of 2022

evidence of P.W. 1 and P.W. 2, particularly, on going through the entire cross-examination of P.W. 1 and P.W. 2, except for a suggestion that the father of the parties was suffering from chronic diabetes and renal issues and was not in a sound state of mind, no other circumstances, which were in the nature of suspicious circumstances, were brought to suspect the execution of the WILL and the attestation of the WILL by P.W. 2.

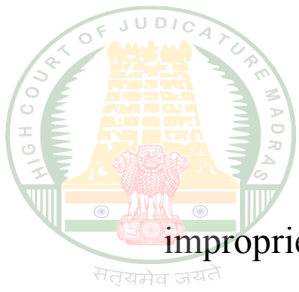
41. Further, though it was suggested on behalf of the 1st defendant to P.W.2 that the WILL was executed on the 54th day after the wife of the testator died by the time the testator was not all recovered from the grief of his wife and therefore, he could not have decided to execute the WILL. Merely because the WILL was executed on 54th day after the demise of the wife of the testator, it cannot be said that the testator was not in a good mental condition to take a rational decision to execute the WILL.

42. From the available evidence it is clear that the testator, who is the father of the plaintiff and the defendants, was doing business and he had gone to the Office of the Registrar and executed the WILL. The WILL was attested by P.W.2 and another as required under the law. As long as there was no suspicious circumstance inherent in the WILL, the desire of the testator has to be respected.



43. Even assuming that the testator, the father of the plaintiff and the defendants was suffering from ailments due to diabetes and its complications that might not be a ground to hold that the testator had lost his mental faculty at all. The execution of Ex.A.4-WILL by the testator has been categorically spoken to by P.W.2. Though P.W.2 was cross-examined extensively, his chief examination regarding the execution of the WILL by the testator and the attestation made by him along with another witness in the presence of the testator has not shattered. Once the execution of the WILL has been clearly proved, merely because the testator was suffering from complications due to diabetes that cannot be a ground to hold that the testator had no mental capacity to execute the WILL. The evidence of P.W.1 and P.W.2 would categorically show that the testator had an experience in the construction field and was working in Mangalore and Valparai and their evidence would indicate that the testator was not a layman and he had been engaged in construction work and therefore, it cannot be said that he had no mental capacity at the relevant point of time to execute the WILL (Ex.A.4).

44. Thus, on a careful re appreciation of the entire evidence of P.W.1 and P.W.2 and the documentary evidence, this court is of the view that the finding of the trial court that the WILL has been proved does not suffer from any



A.S.No.173 of 2022

impropriety or perversity and as such no interference is required. This point is

answered accordingly against the 2nd defendant/appellant and in favour of the 1st respondent/plaintiff.

Point No.2:

45. The plaintiff sought partition of one-fourth share in Item-I of the suit schedule mentioned properties on the ground that the above said property was owned by his mother, and therefore, his father had no right to execute the WILL in respect of suit Item-I. This plea was rightly negated by the learned judge taking note of the fact that the beneficiary under the WILL cannot accept one portion of a WILL under which a property was bequeathed to him and dispute the other portion of the WILL which takes away his right in a property.

46. In such a situation, Section 180 of the Indian Succession Act, 1925, will certainly come into operation, which states that as long as a legatee takes a benefit under the WILL, if he objects to the WILL in respect of right in immovable property, he shall give up all the benefits provided to him under the WILL. The plaintiff in the instant case had taken a benefit in respect of the other item of properties. Therefore, the plea of the plaintiff that he is entitled to a share in Item-I of the suit schedule mentioned property on the ground that the same was owned only by his mother and his father, who had no right over the



A.S.No.173 of 2022

same, had bequeathed it under the WILL to the 2nd defendant. As already

stated above, the learned judge has rightly negated this plea. As against which, no appeal was filed by the plaintiff/1st respondent herein. Similarly, this principle would apply to the 2nd defendant/appellant as well. The appellant/2nd defendant in para 9 of his written statement had stated that Item-I of the suit scheduled mentioned properties was bequeathed to him under the WILL. Having chosen to take a benefit under the WILL, the 2nd defendant/appellant cannot object to the WILL in respect of the other portion.

47. On a careful perusal of the WILL (Ex.A.4), it is seen that the testator had bequeathed a share in the properties to all his sons and daughters. The details of the bequeathment made under the WILL are:

(i)(a) an extent of 5113 square feet (11 cents 321 square feet) of vacant site comprised in S.F.No.287 of Sangapur Village, and consisting of ground and first floors with RCC terraced buildings (Door Nos.29A and 29B), which is shown as Item-I in the WILL; and

(b) an extent of 5 ¼ cents of vacant site comprised in S.F.No.272/1 of Sangapur village and consisting of buildings with RCC terraced buildings



WEB COPY



A.S.No.173 of 2022

(Site No.21/Door No.46) shown as the 1st part in Item-II in the WILL was bequeathed to Usha, and Shoba (3rd defendant) was allotted to the deceased daughter Usha and the 3rd defendant (Shoba).

(ii) an extent of 3 ½ cents of vacant site (Site No. 22 / Door No.45) comprised in S.F.No.272/1 shown as the 2nd part in Item II in the WILL was bequeathed to the plaintiff;

(iii) an extent of 8400 square feet (19 cents and 123 square feet) of vacant site comprised in S.No.120 of Sangapur village together with the right to use the roads in agreement as on 02.06.1989 shown as Item-III in the Will was bequeathed to the 1st defendant;

(iv)(a) an extent of 386 square feet of vacant site comprised in S.No.272/1 of Sangapur village consisting of RCC terraced buildings together with the right to use the layout roads described as the 1st part in Item-IV in the will was bequeathed to the 2nd defendant; and

(b) an extent of 1410 square feet (3 cents



WEB COPY



A.S.No.173 of 2022

and 102 square feet) of vacant site comprised in S.F.No.272/1 of Sangapur village, consisting of RCC terraced buildings together with the right to use the layout road described as the 2nd part in Item No.IV in the WILL, was bequeathed to the 2nd defendant.

48. It is relevant to note here that the property described as Item-I under the WILL is the suit Item-II(b); the property described as the 1st part of Item-II under the WILL is the suit Item-II(a). The 2nd part of Item-IV described under the WILL is the suit Item-I. The plaintiff, however, did not include the properties, viz., the 2nd part of Item-II described under the WILL and the 1st part of Item-IV in the suit.

49. Further, a careful further perusal of the WILL makes it clear that the testator bequeathed his properties to all his sons and daughters, taking note of the locations and existing buildings. Therefore, this court is of the view that merely because the testator had bequeathed 3 ½ cents to the plaintiff with buildings thereon, that cannot be a ground to deny the entire WILL. In fact, the 2nd defendant/appellant was also bequeathed 386 square of vacant site and buildings thereon and other property measuring 1410 square feet and buildings thereon. Furthermore, merely because the value of the properties are different,



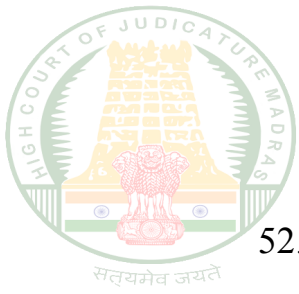
A.S.No.173 of 2022

the disposition made under the WILL cannot be questioned, and it cannot be

said that the WILL was a fabricated one.

50. Since this court has already concluded in the preceding paragraph that the WILL was validly executed and the execution of the WILL and its attestation stood proved and no suspicious circumstances were brought on record to show that the WILL was not validly executed, the contentions of the 2nd defendant that the WILL was a fabricated one and the disposition under the WILL was unreasonable have no legs to stand. Merely because the disposition was not equally made by the testator among the plaintiff and the defendant in itself cannot be a ground to hold that there are suspicious circumstances attached to the WILL. The law in this regard is well-settled. The WILL is the intention, desire and will of the testator, and under the law, the testator has the freedom to give his property to whomsoever he likes or distribute his properties equally or to the extent he likes.

51. In the light of the discussions made above, the 2nd defendant/appellant herein is not entitled to any relief in this appeal and the judgement and decree under appeal do not require any interference. This point is answered accordingly.



A.S.No.173 of 2022

52. In the result, the appeal suit is dismissed. The judgement and decree

dated 03.02.2022 made in O.S.No.333 of 2016 on the file of the learned III

Additional District Judge, Coimbatore, are confirmed.

In the light of the discussions made already, C.M.P.No.4158 of 2022 filed by the 2nd defendant for the reception of the additional documentary evidence is dismissed.

Considering the relationship between the parties, the parties are directed to bear their respective costs incurred on this appeal proceedings. Consequently, C.M.P.No.6299 of 2022 is closed.

Index : yes / no
Neutral Citation : yes / no
kmk

07..04..2025

To

- 1.The III Additional District Judge, Coimbatore, Coimbatore District.
- 2.The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



A.S.No.173 of 2022

N.SATHISH KUMAR.J.,

kmk

Pre-delivery Judgement
in
A.S.No.173 of 2022

07..04..2025