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T.O.S.No.76 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.04.2025

Pronounced on : 09 .04.2025

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.76 of 2013

(O.P No.603 of 1995)

Gurbir Kaur Suri

.. Plaintiff

..Vs.

Indrajit Singh Suri

.. Defendant

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Probate in respect of the last Will and Testament of the deceased Atter Kaur Suri. Against this petition, a Caveat and Supporting affidavit was filed by the Caveator. As per order of this Court, the Original Petition No.603 of 1995 was converted into Testamentary Original Suit No.76 of 2013.

For Plaintiff	: Mr.Prakash Goklaney
For Defendant	: M/s.AL.Gandhimathi Senior Counsel for Mr.L.Palanimuthu



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J U D G M E N T

The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased Atter Kaur Suri.

2.The brief facts of the case of the plaintiff as culled out from the plaint are as follows:

The deceased Atter Kaur Suri died on 29.10.1983 leaving behind her husband viz., Dhian Singh Suri, three sons viz., a) Gurcharan Singh Suri , b) Indrajit Singh Suri and c) Kartar Singh Suri and one daughter viz., Gurbir Kaur Suri as her legal heirs. The property in Will was purchased through the income of the husband of the deceased in her name. Her husband died on 29.10.1994 and the Will was executed on 08.09.1983 in the presence of the witnesses, whose names appear at the foot thereof and the same was duly registered as Document No.58 of 1983 Book No.III, with Sub Registrar of Thyagarayanagar. Since Gurcharan Singh Suri and Kartar Singh Suir had passed away, the other defendants are the legal heirs.



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2.01. The deceased had bequeathed her property bearing Old No.21, (New No.67) Habibullah Road, T.Nagar, Chennai 600 017, subject to life interest of her husband. The said Will was attested by two witnesses namely Kartar Kaur and Arshleen Aneja.

2.02. The plaintiff /petitioner has been appointed as the executrix under the Will. The father of the petitioner was in custody of the Will since he is having life interest in the immovable property and the family being closely knit, he had not permitted probate of the Will during his life time.

2.03. The amount of assets which are likely to come to the petitioner/plaintiff does not exceed in the aggregate a sum of Rs.2,69,000/- and the net amount of the said assets after deducting all items which the petitioner is by law allowed to deduct is only of the value of Rs.2,64,000/-. No application has been made to any District Court or Delegate or to any other High Court for probate of any Will of the said deceased with or Letters of Administration with or without the Will annexed of his properties and credits. The plaintiff hereby undertakes to duly administer the property and credits of the said late Mrs.Atter Kaur Suri, deceased, in any way concerning



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her Will by paying first her debts and then the legacy therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in this regard within six months from the date of Letters of Administration with the Will annexed to the petitioner/plaintiff and also to render to this Hon'ble Court a true account of the said property and credits within one year from the said date. Hence, they prayed to grant Probate.

3. The brief averments made in the written statement filed by the 2nd defendant are as follows:

All the allegations contained in the plaint are denied as false except those that are specifically admitted herein. Even during the life time of the parents, the property was mortgaged with the State Bank of India and the 2nd defendant only paid the dues by getting one time settlement. The father of the 2nd defendant was with the defendants 1 to 3 but later he was not taken care of and the father was residing with the 2nd defendant till his death in 1994. The 2nd defendant has filed suit for partition in the year 2010 and the same is still pending. The petitioner/plaintiff had filed OP.No.603 of 1995



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praying for probate of the Will dated 08.09.1983 after a period of more than

10 years after the death of the mother. The suit is barred by limitation. The

Will is surrounded by suspicious circumstances and total dis-inheritance of the sons and being given to the daughter and the petitioner/plaintiff is put to strict proof of the same. The 2nd defendant denies the execution of the Will and he submits that his mother was fully bed ridden and immovable for about six months before her death. She was a cancer patient. The Will is said to be executed on 08.09.1983 on which date the deceased was not even able to move hands to sign the Will. As such, the Will is forged one and has not been executed and denied as false and not true and genuine and the same has been created for the purpose of grabbing the property by the petitioner/plaintiff. Hence, the suit is liable to be dismissed.

4. Based on the aforesaid pleadings, the following issues are framed for consideration:

- 1) Whether the Will dated 08.09.1993 is true and genuine?
- 2) Whether the Will has been proved in the manner known to law?



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3) To what other relief, the plaintiff is entitled?

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5. On the side of the Plaintiff, the plaintiff was examined as P.W.1 and Ex.P1 was marked. One Mrs.Arshleen Aneja was examined as PW2 and Ex.P2 was marked. On the side of the defendant, 2nd defendant was examined as DW1. No document was marked on the side of the defendants.

6. This Court heard the arguments on either side and also perused the materials available on record.

Issues Nos.1 to 3

7. The learned counsel for the plaintiff contended that the deceased Mrs.Atter Kaur Suri by way of a Registered Will dated 08.09.1983 had bequeathed her house property to the plaintiff. Since the life time of the husband of the deceased, he had not permitted probate of the Will, it was only after his demise on 29.10.1994, the Will was traced recently and now the petitioner is taking steps to have the Will proved. She being the main legatee under the Will and it has become incumbent on her part.



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8. The learned counsel further contended that the execution of the Will is true and genuine because the testatrix was in a sound and disposing state of mind. The petitioner/plaintiff being the surviving daughter and beneficiary under the Will have taken out this petition for Probate. The Will has been proved in the manner known to law. The attesting witness-P.W.2 has not only spoken about the execution, but also the attestation of the Will. Besides, there is no suspicious circumstance whatsoever brought on record to doubt the genuineness of the Will. Hence, he prays for Probate in favour of the petitioner/plaintiff.

9. Per contra, the learned counsel appearing for the defendant contended that the alleged Will dated 08.09.1983 has not been executed by the testatrix out of her own free Will and volition and the same is a concocted and fabricated document procured for the purpose of snatching away the property from the legal heirs of late Atter Kaur Suri. The said property has been purchased in the name of the testatrix from the income



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source of the husband of the Testatrix.

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10. It has been further contended that while the Testator died on 29.10.1983, the probate proceedings has been initiated in the year 1995 without any reasons after 10 years of her death. Hence, it is barred by limitation. Further, the defendant has cleared the mortgages on the property and the Testatrix was not well and fully bedridden for a period of six months before her death since she was a cancer patient. Hence, the Will is surrounded by suspicious circumstance in executing the Will. In support of his contention, the learned counsel for the defendants had relied on the Judgment reported in 2016-1-LW.577, S.Vatsala Vs.K.S.Mohan & Others in OSA.No.10 of 2013. Hence he prays for dismissal of the present suit.

11. The Plaintiff/PW1 has filed proof affidavit in lieu of chief examination, wherein she had narrated the averments made in the petition stating that the plaintiff have filed the main original petition for the grant of Probate in her favour in respect of the Last Will and Testament executed by the testator on 08.09.1983. Ex.P1 is the original Will executed by the



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deceased Mrs. Atter Kaur Suri and the said Will is a registered one. Ex.P2 is the original death certificate of Mrs. Atter Kaur Suri and the same has been filed to prove that testatrix died on 29.10.1983.

12. Even though the defendant contended that the probate proceedings has been initiated after more than 10 years, P.W1 has explained in her petition as well as in her cross examination the reasons for the delay in filing the probate proceedings that the plaintiff was in Delhi after marriage and since the father of plaintiff was given life interest, the Will can be probated after his death. After death of the father of the plaintiff in the year 1994, the Probate proceedings was initiated. The plaintiff has properly explained the reasons for the delay.

13. Further, in the cross examination of P.W.2, she deposed that at the request of the said deceased and in her presence and in the presence of each other, all being present at the same time, set and subscribe their respective names and signatures at the foot of the Will as witnesses thereto. Further, she deposed that the Testatrix was of sound and disposing mind,



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memory and understanding.

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14. Further, she has stated that the deceased had signed the Will in Punjabi language. Both the attesting witnesses attested the Will in the presence of the testatrix Mrs. Atter Kaur Suri. The testator also saw both the attesting witnesses while signing the Will and both the attesting witnesses also saw the testatrix signing the Will. The testator was not compelled or forced by anybody to execute the Will. The evidence of attesting witness has not only proved the execution, but also attestation of the Will. The Will is a registered one.

15. Despite the defendants contended that there is suspicious circumstances in the execution of the Will on the medical ground, he has not produced any oral and documentary evidence to prove the same. Further, the plaintiff has proved the Will by way of oral and documentary evidence as stated above. Hence, this Court is of the view that the Will has been properly executed by the said Mrs. Atter Kaur Suri. Hence, the Will dated 08.09.1993 is true and genuine and the same has been proved in the manner



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known to law. Accordingly, issue Nos.1 and 2 are answered.

WEB COPY 16. Since issue No.1 and 2 are answered in favour of the plaintiff, she is entitled to grant probate as prayed in the suit. Accordingly, issue no.3 is answered.

17. In the result, the suit is decreed as prayed for. Hence, the plaintiff is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The plaintiff is also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The plaintiff is further directed to render true and correct accounts once in a year. No costs.

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Index : Yes/No
Internet : Yes
Speaking/Non-speaking order
gv



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Witnesses examined on the side of the plaintiffs

PW1 - Mrs.Gurbir Kaur Suir

PW2 – Mrs.Arshleen Aneja

List of documents marked on the side of the plaintiff:

Ex.P1 is the Original Will dated 08.09.1983 executed by Mrs.Atter Kaur Suri in favour of the plaintiff.

Ex.P2 is the Original death certificate dated 29.10.1983 of the deceased Mrs.Atter Kaur Suri

List of witnesses examined on the side of the defendants:

DW1 - Mr.Indrajit Singh Suri

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A.A.NAKKIRAN,J

gv

Pre-delivery Order made in

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