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SA No. 514 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.11.2025

PRONOUNCED ON: 28-11-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

SA No. 514 of 2016

AND

CMP NO. 9128 OF 2016

1. Shankari(died),
W/o. Shanmugam@janarthanan,Res At
1 To 4 No.75, Aruganthampoondi, Big
Street, Thottapalayam, Vellore-4.
Shanmugam @ Janarthanan (died). and
8 Others

2.J.Ravichandran
S/o. Shanmugam@janarthan.

3.J.Anbarasu
S/o. Shanmugam@janarthan.

4.J.Mohan
S/o. Shanmugam@janarthan.

5. MALA
W/o. Kumaresan, D/o.
Shanmugam@janarthanan,
Venkatachalam Mudali Street, Renipet,
Walajah Tk.



6.J.Baskaran

S/o. Shanmugam@janarthan. Res At,
No.75, Aruganthampoondi Big Street,
Thottapalayam, Vellore-4.

7. INDIRA

W/o. S.Udhayakumar, D/o.
Shanmugam@janarathanan, 2nd Cross
Road, Gandhi Nagar, Vellore-6.

8.Delhi @thamizharasi

W/o. A.Gopal, D/o.
Shanmugam@janarathanan,
Venkatachalam Street, Rani Pet,
Walajah.

9.J.Anandha Kumar

S/o. Shanmugam@janarthan, Res At,
No.75, Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

[Appellant 2 To 9 LR's Of The Deceased 1st
Appellant Viz Shankari as Per Memo Dated
21/10/2021(SR31358), made in SA.514/2016].

Appellant(s)

Vs

1. V.Gnaesa Mudhaliar(died)

S/o. Venkatesa Mudaliar, Both Res At,
No.72, Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

2.V.Subramania Mudaliar(died),

S/o. Venkatesan Mudaliar.



3.G.Banumathi,

W/o. V. Ganesa Mudaliar No. 72,
Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

4.Geetha,

D/o. V. Ganesa Mudaliar No. 72,
Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

5.G.Jothilingam,

S/o. V. Ganesa Mudaliar No. 72,
Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

6.Santhi,

D/o. V. Ganesa Mudaliar No. 72,
Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

7.G.Meganathan,

S/o. V. Ganesa Mudaliar No. 72,
Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

8.Sumathi,

D/o. V. Ganesa Mudaliar No. 72,
Aruganthampoondi, Big Street,
Thottapalayam, Vellore-4.

9.V.S.Pichandi,

S/o. V. Subramania Mudaliar No.
72/213, Aruganthampoondi, Big
Street, Thottapalayam, Vellore- 632



10.P.Manjula,

D/o. V. Subramania Mudaliar No. 54/2

Perithanadanam Subbaraya Mudali

Street, Velapadi Vellore

11.B.Sujatha,

D/o. V. Subramania Mudaliar No. 7,

3rd Main Road Rajiv Gandhi Nagar,

Allapuram Vellore

Respondents 3 To 8 brought on record as LR's for Respondent(s)
the Deceased R1 Viz V.Ganesa Mudaliar and the
respondents 9 To 11 brought on record as LR's of
the Deceased R2 Viz V.Subramania Mudaliar Vide
Court Order Dated 4/1/2022 made in CMP
Nos.19508, 19515, 19522 And 19530/2021 In
SA.514/2016.

PRAYER: The Second Appeal has been filed under Section 100 of Code of
Civil Procedure against the judgment and decree dated 01.02.2016 in A.S.
No.16 of 2013 and Cross Appeal on the file of the I Additional District and
Sessions Judge, Vellore confirming the Judgment and decree dated 30.03.2012
in O.S. No.142 of 2000 on the file of the Subordinate Judge, Vellore.

For Appellant(s): Mr. T.R. Rajagopalan,
Senior Counsel
M/s.P.Veena Suresh



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SA No. 514 of 2016



For Respondent(s): M/s.V.Srimathi For R2 To R11
R1 - Died

ORDER

The Second Appeal has been preferred as against the decree and judgment passed by the First Appellate Court in A.S.No.16 of 2013 on the file of the I Additional District and Sessions Judge, Vellore dated 01.02.2016, wherein the respondents 1 and 2 herein, being the Plaintiffs, have filed a Suit for the relieves of declaration to declare the title over the Plaintiffs, for recovery of possession and for mesne profits and the Suit was decreed in respect of declaration and recovery of possession and the Suit was dismissed in respect of mesne profits. Aggrieved by the said decree and judgment, the defendants have preferred an appeal in A.S. No.16 of 2013 and the Plaintiffs have filed Cross objections in respect of mesne profits. The First Appellate Court dismissed the appeal filed by the appellants / defendants by confirming the decree and judgment of the trial Court and Cross objection filed by the Plaintiffs was allowed. Aggrieved by the said decree and judgment passed by the First Appellate Court, the defendants have preferred this second appeal.



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2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

3. *The brief averments of the Plaint before the trial Court are as follows:*

The Suit property is a joint family property belonging to the Plaintiffs and their deceased father Venkatesa Mudaliar. The said Suit property was purchased by the said joint family for the benefit of the joint family and the said property was treated and possessed as joint family property. However, during the lifetime, the said Mr. Venkatesa Mudaliar executed a registered Will dated 20.03.1997 regarding the Suit property, bequeathing the same in favour of the Plaintiffs. The said Venkatesa Mudaliar also executed an another Will dated 20.03.1997 bequeathing the house property in favour of the Plaintiffs. The 1st defendant is the daughter of the said Venkatesa Mudaliar and sister of the Plaintiffs. The 2nd defendant is the husband of the 1st defendant. Considering



the close relationship between the parties, the defendants were permitted to reside in the Suit house and they were in permissive possession. The said Venkatesa Mudaliar died on 15.02.2000. After his demise, the Plaintiffs are the absolute owners of the Suit property through the said Will. The Plaintiffs requested the defendants to vacate the Suit property and deliver the vacant possession, but they were evading to vacate the property. Therefore, the Plaintiffs had issued a notice dated 18.03.2000 and the defendants issued a reply notice dated 27.03.2000 with false averments. The defendants are claiming that the Suit property was the separate and self-acquired property of Venkatesa Mudaliar and the same is not correct. Even if it is the separate property of Venkatesa Mudaliar, by virtue of the Will executed in favour of the Plaintiffs, they have become absolute owners of the property. Through the reply notice, the defendants denied the title of the Plaintiffs over the properties and they are claiming share over the property. The defendants possession even after demanding to vacate the premises is unlawful and therefore, they are liable to pay mesne profits at Rs.1,000/-. Therefore, the Plaintiffs filed the Suit for declaration and recovery of possession and for mesne profits.



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4. The brief averments of Written Statement filed by the 1st defendant are as follows:-

The Suit filed by the Plaintiffs is not maintainable. The Plaint schedule property is not a joint family property and the said property was purchased by the father of the 1st defendant and the Plaintiffs, for the benefit of the 1st defendant and from the date of purchase of the Suit schedule mentioned property, the 1st defendant alone is in the possession and enjoyment of the property. Soon after her marriage with the 2nd defendant, she went and lived with her husband at her father-in-law's house. The mother of the 1st defendant brought the 1st defendant and her husband, back to their house and her father also permitted them to reside in the suit property. Therefore, the 1st defendant being the only daughter has been in possession and enjoyment of the property. The allegation that the Plaint schedule property was thrown to the common hotchpot and blending together and enjoying as joint family property is false. The alleged Will said to be executed by the father of the 1st defendant dated 20.03.1997 is denied and the same is a forged one. The father of the Plaintiffs



and the 1st defendant was seriously ill before his death for more than 5 years and was bed-ridden and he died 15.02.2000 and he was not in a sound disposing state of mind and he does not know what is happening around him. Taking advantage of the same, the Plaintiffs have created the said Will. The allegation that the defendants 1 and 2 are living in the Suit property on permission of the father of the 1st defendant and the Plaintiffs, is denied and her father purchased the said property for her benefit and from the date of purchase, she is in possession and enjoyment of the property. The Plaintiffs are not in joint possession of the defendants. The father of the Plaintiffs and the 1st defendant died intestate and thereby, the Plaintiffs and the 1st defendant are equally entitled to 1/3 share over the property. Therefore, the Suit is liable to be dismissed.

5. Based on the above said pleadings and upon hearing both sides and perusing the documents, the trial Court had framed the following issues:

(i) Whether the Plaintiffs are entitled to relief of declaration in respect of the Suit property.

(ii) Whether the Plaintiffs are entitled to recovery of possession.



(iii) Whether the Plaintiffs are entitled to mesne profits.

(iv) Whether the Suit property is a joint family property.

(v) Whether the Will allegedly executed by Late Mr. Venkatesa Mudaliar on 20.03.1997 is valid and genuine.

(vi) Whether the defendant is the absolute owner of the Suit property.

(vii) To what reliefs, the Plaintiffs are entitled to.

6. In order to prove the case of the Plaintiffs, before the trial Court, they examined PW1 and PW2 and marked Ex.A.1 to Ex.A.13 and on the side of defendants, DW1 and DW2 were examined and Ex.B.1 to Ex.B.3 were marked. After evaluating the oral and documentary evidences adduced on either side, the trial Court decreed the Suit in respect of the prayers viz., declaration of title and recovery of possession and dismissed the Suit in respect of mesne profits. Aggrieved by the said decree and judgment passed by the trial Court dated 30.03.2012, the defendants had preferred an appeal before the First Appellate Court i.e., I Additional District and Sessions Court, Vellore in A.S. No.16 of 2013 and the Plaintiffs had preferred cross objections as against the dismissal of



relief of mesne profits.

7. The First Appellate Court after hearing both sides and perusing the records, framed the following *points for determination*:

(i) Whether the trial Court was correct in deciding the 1st defendant was not the owner of the Suit property.

(ii) Whether the trial Court was correct in deciding the Suit property is the joint family property consisting of Plaintiffs and their father.

(iii) Whether the trial Court was correct in deciding the execution and attestation of Ex.A.4 Sale Deed was proved by the Plaintiffs.

(iv) Whether the trial Court was correct in deciding the 1st defendant not entitled inherit the property by virtue of Hindu Succession Act, 2005.

(v) Whether the trial Court was correct in dismissing the Suit partly regarding the mesne profits.

(vi) Whether the appeal has to be allowed.

8. After analysing the evidences adduced on both sides and perused the records including the judgment of the trial Court, the *First Appellate Court*



dismissed the appeal filed by the defendants and allowed the cross objections filed by the Plaintiffs for mesne profits. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred by the defendants.

9. This Court, while admitting the second appeal, has framed the following substantial questions of law:

(i) Are the Courts below right in upholding the alleged Wills (Ex.A3 and Ex.A4) when the Plaintiffs have not proved the same in accordance with Sections 65 and 68 of the Indian Evidence Act.

(ii) When the alleged Wills are surrounded by humpty number of suspicious circumstances, are the Courts below right in satisfying its conscience on the available evidence on record, to expel such suspicion.

10. The learned Senior counsel appearing for the appellants / defendants would submit that the appellants are the defendants before the trial Court and the respondents herein have filed the Suit for declaration and for recovery of



possession and for mesne profits. The Courts below failed to consider that the property is not a joint family property and self-acquired property of Late Mr. Venkatesa Mudaliar. The said Venkatesa Mudaliar died intestate leaving behind the Plaintiffs and the 1st defendant as his legal heirs. The said property was purchased by the said Mr. Venkatesa Mudaliar through a Sale Deed dated 30.03.1966. Thereafter, he died intestate. However, the defendants created a Will dated 20.03.1997 and the said Mr. Venkatesa Mudaliar died on 15.02.2000 and he was unable to understand what was happening around him for more than 5 years before his death. Therefore, the Will is a created one and the Plaintiff have to prove the said Will. The said Wills are surrounded by so many suspicious circumstances and the Plaintiffs have not proved the Will through sufficient evidence. Therefore, the Wills have not been proved in accordance with law. The Plaintiffs failed to examine any attesting witness. According to the Plaintiffs, the 1st attesting witness namely Mr. Gopal died and therefore, the son of said Mr. Gopal was examined to identify the signature of the attesting witness. As per law, if the attesting witnesses in the Will are not available, the Plaintiffs have to examine the witnesses who acquainted with the signature of



the attesting witness as well as the testator, but they failed to examine witnesses to identify the signature of the attestors and Testator. Therefore, they failed to prove the execution of the Will in accordance with law. But the Courts below have failed to consider the above said aspects and erroneously decreed the Suit.

10.1. Moreover, the Wills are surrounded by humpty number of suspicious circumstances and in the Wills, there is no mention about the residence of the 1st defendant in the said property and the witnesses have not deposed about the sound disposing state of mind of the testator. The Plaintiffs have failed to prove the non-availability of the attesting witnesses of the Will. The Plaintiffs admitted that, they were present all along with the testator while preparing and executing the Wills. Therefore, they had actively participated in the execution of the Wills, that creates serious doubt over the genuineness of the Wills. DW2 is not an attesting witness to the Will. Therefore, the Plaintiffs have miserably failed to prove the Will in accordance with law. However, the Courts below have not considered the above said aspects and decreed the Suit. The 1st appellant / 1st defendant being the daughter of Late Mr. Venkatesa



Mudaliar is entitled to 1/3 share over the property and the Plaintiffs are not entitled to any relief of declaration and possession over the property. Therefore, the appeal is liable to be allowed by setting aside the decree and judgment passed by the Courts below.

10.2. In support of his contention, the learned Senior Counsel appearing for the appellants has relied upon the following judgments:

(i) ***Ramesh Chand (D) Thr. Lrs. v. Suresh Chand and Another reported in [2025] 9 S.C.R. 339.***

(ii) ***M. Uma vs. Ramu @ Ramalingam (died) reported in 2025 (3) CTC 681.***

(iii) ***Gopal (since deced). represented by his Legal Heirs vs. C. Baskar reported in 2025 (3) CTC 796.***

11. The learned counsel appearing for the respondents / Plaintiffs would submit that the Suit property is a joint family property of their father Mr. Venkatesa Mudaliar and they purchased the property for the benefit of the joint



family. Thereafter, their father executed Wills dated 20.03.1997 bequeathing the property in favour of the Plaintiffs. The said Mr. Venkatesa Mudaliar died on 15.02.2000. After his demise, the Will came into effect and the Plaintiffs are the absolute owners of the said Suit property. Since the 1st defendant is the daughter of the said Mr. Venkatesa Mudaliar and the sister of these Plaintiffs, the Plaintiffs permitted the defendants 1 and 2 to reside in the said property and they are in permissive possession. However, when the Plaintiffs requested them to vacate the premises, the defendants 1 and 2 failed to vacate the premises and the defendants 1 and 2 were claiming some right over the property, thereby, the Plaintiffs filed the Suit for declaration and recovery of possession and for mesne profits. Before the Trial Court, they examined PW1 and PW2 and marked Ex.A.1 to Ex.A.13 and on the side of the defendants in the Suit, they examined DW1 and DW2 and marked Ex.B.1 to Ex.B.3. The trial Court, after analysing oral and documentary evidences adduced on both sides, has correctly decreed the Suit in respect of declaration and for recovery of possession.

11.1. The trial Court accepted the Wills executed by Late Mr. Venkatesa



Mudaliar. The Plaintiffs have examined PW2 to identify the signature of the attesting witness namely Mr. Gopal, thereby they proved the Wills in accordance with law. However, the trial Court failed to consider the prayer for mesne profits and therefore, the defendants preferred an appeal before the First Appellate Court as against the decree and judgment declaring declaration and recovery of possession in favour of the Plaintiffs. After preferring the appeal by the defendants, the Plaintiffs have preferred cross objections in respect of the mesne profits and the First Appellate Court has correctly applied the law and appreciated the facts and dismissed the appeal filed by the defendants and allowed the cross objection filed by the Plaintiffs by ordering for mesne profits. Therefore, the Courts below have correctly decreed the Suit and judgments of the Courts below need not be interfered with through this second appeal. There is no substantial question of law involved in this case. Therefore, this second appeal is liable to be dismissed.

12. This Court heard both sides and perused the entire materials available on record.



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13. In this case, the Plaintiffs' contention is that the property is a joint family property of their father Late Mr. Venkatesa Mudaliar and the said Mr. Venkatesa Mudaliar executed Wills in favour of the Plaintiffs on 20.03.1997 by bequeathing the said Suit property to the Plaintiffs. Therefore, they are the absolute owners of the Suit property. The 1st defendant is the sister of the Plaintiffs and the 2nd defendant is the husband of the 1st defendant. Therefore, they were permitted to reside in the property and they are in permissive possession of the property. According to the defendants, the property was purchased by the father of the 1st defendant namely Mr. Venkatesa Mudaliar and he died intestate and he was bed-ridden for more than 5 years before his death and he died on 15.02.2000. Taking advantage of the age and ill-health of her father, the Plaintiffs have created a forged Will and therefore, the 1st defendant is also entitled to 1/3 share over the property. In order to prove the case of the Plaintiffs, they examined PW1 and PW2 and marked Ex.A1. to Ex.A.13 and on the side of the defendants, they have examined DW1 and DW2 and marked Ex.B.1 to Ex.B.3. PW1 is the 1st Plaintiff and he deposed about the case and



according to him, his father executed Wills in favour of the Plaintiffs. In order to prove the said Wills dated 20.03.1997, they examined PW2. According to the Plaintiffs, the attesting witnesses are not available on the date of examination of witnesses, thereby, in order to identify the signature of the attesting witness, the son of one of the attesting witnesses was examined as PW2 and he deposed about the signature of his father and identified the signature of the 1st attesting witness.

14. As per Section 68 of Evidence Act, at least one of the attesting witnesses, has to be examined as a witness, to admit the Will. If the attesting witnesses are not alive and their whereabouts could not be traced out, then by invoking Section 69 of the Evidence Act, a person who has acquaintance with the signature of the testator and the attesting witnesses, has to be examined. Before invoking Section 68 of the Evidence Act, the Plaintiff has to satisfy that the attesting witnesses are not alive on the date of examination. Admittedly in this case, the Plaintiffs have not taken any steps to summon the attesting witnesses. As per the evidence of PW2, one of the attesting witnesses namely



Mr. Gopal was no more and his son was examined as PW2 and he has identified the signature of his father, one of the attesting witnesses. However, no any evidence in respect of the another attesting witness and only after proving the non-availability of the another attesting witness, the Plaintiff can invoke Section 69 of the Evidence Act. Moreover, in this case, even Section 69 of the Evidence Act, has not been complied with, as per Section 69 of the Evidence Act, the witness has to identify the signature of the attesting witness as well as the testator. PW2 had only identified the signature of his father, the 1st attesting witnesses and he has not identified the signature of the testator. Therefore, the Courts below failed to consider the same. Therefore, the decree and judgments passed by the trial Court as well as the First Appellate Court are unsustainable.

15. As far as the substantial questions of law that “*Are the Courts below right in upholding the alleged Wills (Ex.A3 and Ex.A4) when the Plaintiffs have not proved the same in accordance with Sections 65 and 68 of the Indian Evidence Act*” are concerned, it is true that the Plaintiffs have not examined the attesting witnesses to prove the Will. According to the Plaintiffs,



the attesting witnesses are not alive on the date of examination, but no steps were taken by the Plaintiffs by summoning the attesting witnesses for examination. However, they examined PW2, who is said to be the son of the 1st attesting witness and he deposed about the death of the 1st attesting witness and identified the signature found in the Will as 1st attesting witness. At the same time, another witness is also available in the Will, but there is no evidence as to whether the 2nd attesting witness was alive or not. In the absence of any proof to show that both the attesting witnesses are no more and unable to trace out their whereabouts, the other mode of proving the Will does not arise. Even assuming that the attesting witnesses are no more, in order to satisfy the condition under Section 69 of Evidence Act, the Plaintiff ought to have examined witnesses to identify the signatures of the Testator as well as the attesting witnesses. In the case on hand, PW2 has identified the signature of the 1st attesting witness only and not identified the signature of the Testator. Therefore, the condition under Section 69 of the Evidence Act has not been complied with and the Wills have not been proved in accordance with law.



16. At this juncture, the learned Senior counsel appearing for the appellants has relied upon the following judgments:

M. Uma vs. Ramu @ Ramalingam (died) reported in 2025 (3) CTC 681 and Gopal (since deced). represented by his Legal Heirs vs. C. Baskar reported in 2025 (3) CTC 796.

On a careful perusal of the above judgments, it is clear that Section 69 of Evidence Act is attracted, only when there is a clear proof that the attesting witnesses are not alive and could not be found. If no clear proof about the non-availability of the attestors, Section 69 of the Evidence Act cannot be pressed into service and the burden lies on the propounder. In the case on hand, the Plaintiffs failed to prove that the attesting witnesses were not found. No independent witnesses have been examined regarding the whereabouts of the attestors. Therefore, in view of the above said judgments and the available evidences, it is clear that the Plaintiffs failed to prove the execution of the Will in accordance with law. Thus, the ***1st substantial question of law is answered.***



17. As far as the 2nd *substantial question of law that “When the alleged Wills are surrounded by humpty number of suspicious circumstances, are the Courts below right in satisfying its conscience on the available evidence on record, to expel such suspicion” is concerned*, already this Court decided in the previous points that the Wills have not been proved by examining attesting witnesses. Apart from that, there are suspicious circumstances. In the Will, there is no mention about the possession of the 1st defendant and the Plaintiffs have also admitted the possession of the 1st defendant and the 1st defendant has also pleaded that the property was purchased for the benefit of the 1st defendant and after purchase of the property, she along with her husband i.e., the 2nd defendant, are in possession and enjoyment of the property. Therefore, if the Will is genuine, Testator ought to have mentioned about the possession of the 1st defendant. Moreover, according to the Plaintiffs, they were also present at the time of execution of the Wills and thereby, it is clear that they have also actively participated in the execution of the Wills. There is no evidence about the state of mind of the Testator. When the defendant raised question about the state of mind, it is the duty of the Plaintiffs to prove the Will to expel the surrounding



circumstances, but they failed to expel the suspicious circumstances and the

Plaintiffs also actively participated in the execution of the Wills, thereby the

Plaintiffs failed to prove the Wills and to expel the suspicious circumstances.

Therefore, the Wills have not been proved in accordance with law.

18. At this juncture, the learned Senior Counsel appearing for the appellants has also relied upon a judgment in ***Ramesh Chand (D) Thr. Lrs. v. Suresh Chand and Another reported in [2025] 9 S.C.R. 339***, wherein the Hon'ble Supreme Court in Para 26, has held as follows:-

“26. Further, in the case of [Meena Pradhan and Others v. Kamla Pradhan and Another](#)⁹ following essentials to prove a Will were mentioned:

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;*

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [[Shivakumar v. Sharanabasappa](#), (2021) 11 SCC 277] ”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.”*

19. On a careful perusal of the above said judgment, it is clear that for the purpose of proving the execution of a Will, atleast one of the attesting witnesses, who is alive, subject to the process of the Court and capable of giving



evidence, shall be examined. If 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. 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. One who alleges fraud, fabrication, undue influence etc., has to prove

the same. However, even in the absence of such allegations, if there are

circumstances giving rise to doubt, then it becomes the duty of the propounder

to dispel such suspicious circumstances by giving a cogent and convincing

explanation. In the case on hand, there are so many suspicious circumstance.

The Plaintiffs, themselves have actually participated in the execution of the Will

and there are so many other suspicious circumstances also and the same have

not been dispelled by the Propounders. The Plaintiffs failed to dispel the

suspicious circumstances and thereby, they failed to prove the execution of the

Will. But the Courts below have erroneously decreed the Suit. Therefore, the

decree and judgments of the Courts below are liable to be set aside.



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20. In this case, the Suit was partly decreed in respect of declaration and recovery of possession. As against the decree and judgment, the defendants have preferred appeal and in that appeal, the Plaintiffs have filed cross objections in respect of mesne profits. The Appellate Court dismissed the main appeal and allowed the cross objections. As against the main appeal, the defendants have preferred the second appeal, but no separate appeal has been preferred as against the cross objections. The respondents in the cross objections, ought to have preferred an appeal. However, the relief of mesne profits is based on the main relief, but the main relief itself was dismissed. Therefore, the non-filing of appeal as against the cross objections will not affect the case of the appellant herein. It is settled law that without challenging the cross objections, the appellant cannot agitate and it operates as *res judicata*, but in this case, the cross objection is in respect of mesne profits. When the main relief of declaration and recovery of possession itself declined to the Plaintiffs, the consequential relief of mesne profits cannot be granted and through this judgment, the said cross objection becomes infructuous.



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21. Therefore, in view of the above discussions and the answers to the Substantial Questions of law, this Court is of the opinion that the ***second appeal has to be allowed.***

22. Accordingly, ***the Second Appeal is allowed. The decree and judgment dated 01.02.2016 passed in A.S. No.16 of 2013 on the file of the I Additional District and Sessions Judge, Vellore confirming the Judgment and decree dated 30.03.2012 in O.S. No.142 of 2000 on the file of the Subordinate Judge, Vellore are set aside. The Suit in O.S. No.142 of 2000 is dismissed.***

There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

28-11-2025

mjs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

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1. The I Additional District and Sessions Judge, Vellore.
2. The Subordinate Judge, Vellore.



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SA No. 514 of 2



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