



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.09.2025
Pronounced on	17.10.2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA**TOS No. 30 of 2016**

Mr.G.Rajesh Kumar
S/o.Late S.Ganpathlal Jain, residing in Ground
Floor, No.16/33, Somasundara Devar, 4th Street,
Ayanavaram, Chennai-600 023.

..Petitioner / Plaintiff

Vs

G.Vasanth Kumar
S/o.Late S.Ganpathlal Jain, No.16/33, Somasundara
Devar, 4th Street, Ayanavaram, Chennai-600 023.

..Respondent / Defendant

PRAYER : This Suit has been filed under Sections 232 and 276 of the Indian Succession Act read with Order XXXV Rule 5 of the Original Side Rules, praying to grant Letters of Administration with the Will annexed to the petitioner as one of the son / beneficiary legatee under the Will of the said deceased having effect limited to the State of Tamil Nadu.

For Plaintiff(s): Mr.Kuberan, for
M/s.Rank Associates

For Defendant(s): Mr.S.Mukund, Senior Counsel, assisted by
Mr.K.Venkata Subban for
M/s.Sarvabhauman Associates



J U D G M E N T

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This Testamentary Original Suit has been filed seeking Letters of Administration with the Will annexed to the petitioner as one of the son / beneficiary legatee under the Will of the said deceased having effect limited to the State of Tamil Nadu.

2. Heard Mr.Kuberan, learned counsel for the plaintiff and Mr.S.Mukund, learned Senior Counsel for the defendant and perused the materials available on record.

3. The petition in brief:

The plaintiff and the defendant are the children of the deceased S.Ganpathlal Jain. The plaintiff has filed the Original Petition in O.P.No.163 of 2015 by alleging that his father S.Ganpathlal Jain has executed a registered Will dated 13.01.2014. In the said Will, 'A' schedule property has been bequeathed in favour of the plaintiff / petitioner and the first respondent / defendant and 'B' schedule property has been exclusively given to the plaintiff / petitioner. Since the first respondent in the Original Petition has filed caveat and



objected to the petitioner / plaintiff's claim as regards the Will, the

Original Petition has been converted into Testamentary Original Suit.

4. The brief of the written statement filed by the defendant is as follows:

The fact as to the execution of the Will is true. However, the Will has been executed by the father due to the coercion and undue influence exercised by the plaintiff on him. The Will was not executed by the executant out of his free will. At the time when the Will was executed, the father of the parties was not fully conscious and the Will has been registered by the Sub-Registrar in the hospital where the father of the parties was taking treatment. The father died after two months from his discharge from the hospital. The 'A' schedule property of the Will was purchased by the father of the parties along with his mother G.Laxmi Devi, the defendant and the plaintiff on 06.12.1995. Hence, each of the purchasers has got 1/4 share in the property. As the mother had died intestate, her 1/4 share in the property devolved on her legal heirs including her husband, the plaintiff, the defendant and her three daughters and hence, the dispossession in respect of 'A' schedule property is not in accordance with law. As the Will has been executed



by the father of the parties under the influence of the plaintiff, he is not entitled to the grant of letters of administration as prayed.

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5. On the basis of the above pleadings, the Court has framed the following issues:

- "1. Whether the testator had executed the Will dated 13.01.2014, voluntarily and without any undue influence?*
- 2. Whether the plaintiff is entitled to grant of Letters of Administration for the Will of S.Ganpathlal Jain dated 13.01.2014?*
- 3. To what relief are the parties entitled?"*

6. During the Course of the trial, on the side of the plaintiff, three witnesses have been examined as P.W.1 to P.W.3 and Exhibits A1 to A6 were marked. On the side of the defendant, D.W.1 has been examined and no documents have been marked.

7. The learned counsel for the plaintiff submitted that the defendant did not deny the factum of execution of the Will and even the three sisters of parties also did not raise any objection. Just because the three sisters of parties were not given with any share in the property, the defendant cannot claim that the Will is shrouded with suspicious circumstances. In fact, the three sisters of parties



themselves did not claim that the Will is not a genuine one. As the defendant had admitted the execution of the Will, the defendant has got onus to prove that it was executed by the father of the parties while he was under the influence of the plaintiff and also that he was not fully conscious at the time when the Will was executed. The Sub-Registrar of the Registration Department had come to the hospital where the Testator was taking treatment and he would not have registered the Will, if the executant of the Will was not in conscious state of mind. The defendant has not discharged his burden to prove the contrary. On the other hand, the plaintiff has proved the genuineness of the Will by examining all the attestors under Section 68 of the Indian Evidence Act. The Testator was fully conscious of what was happening around him and it cannot be said that he was under the influence of the plaintiff as alleged by the defendant. As the plaintiff has proved the genuineness of the Will to the satisfaction of the Court, he is entitled for the decree as prayed.

8. The learned Senior Counsel appearing for the defendant submitted that the property mentioned in 'A' schedule of the Will belonged to four persons viz., the plaintiff, the defendant and the father and mother of the parties and they had jointly purchased the same. The mother died intestate and the father executed the Will thereafter. The father stated that he is entitled to 1/3 share. In fact, the



three sisters of parties also have a share in the $\frac{1}{4}$ share of their mother. The father will get the share in the mother's $\frac{1}{4}$ share along with all the legal heirs and hence, the share of each sharer would be $\frac{7}{24}$. So, he cannot bequeath more than $\frac{7}{24}$ share through the Will. The rest of the property which does not come within the rights of the Testator has to be excluded. The plaintiff during his cross-examination has admitted that his father was interested to give him only Kolathur property. When the Testator had taken treatment for 10 days in the hospital, the plaintiff made use of the occasion and got the Will executed and so, it cannot be considered as the Will executed by the Testator out of his free will.

9. The Testator, viz., S.Ganapthlal Jain is the father of the plaintiff and the defendant. The plaintiff, who is the propounder of the Will under enormous circumstances, has got the burden to establish that the Testator was competent to make decisions at the time when the Will was executed and he was found to be sound and disposing state of mind.

10. In the instant case, there is no quarrel as to the genuineness of the Will. It is admitted by the defendant that the Will has been executed in the hospital, where the father of the parties was taking treatment for his illness as he



was a cancer patient. The objection is only in respect of his fit state of mind when the Will was executed.

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11. In order to discharge the burden on the part of the plaintiff that the Will had been executed by the Testator in a fit and disposing state of mind, the plaintiff had examined three witnesses. The plaintiff has been cross-examined by laying certain questions as to the entitlement of his father to bequeath the quantum of the share of the property found in the Will.

12. Insofar as the entitlement of the property is concerned, that cannot be taken up as an issue in the Testamentary Original Suit. The grant of Letter of Probation in favour of a party, who has proved the truth and genuineness of the Will, does not mean that it will cure the defect of title, if any, of the Testator to bequeath the property involved in the Will. Since the dispute as to title of the property has to be dealt by way of a Civil Suit, the discussion in this suit is restricted to the issues framed herein.

13. The plaintiff was examined as PW1 and he has stated in his evidence that his father has been admitted in a hospital viz., V.S. Hospital, in the month of December 2013 for taking treatment for cancer. During that time, he was



in-patient for 10 days. The Will has been executed in that hospital and the Sub-Registrar visited the hospital to make the registration process convenient to the Testator who has been admitted therein. The defendant has also accepted in his evidence that the Will has been registered in the hospital and the Sub-Registrar has arrived to the hospital to accomplish the process of registration.

14. In the Will, which has been marked as Ex.A1, PW2 and PW3 has been shown as attestors. When the defendant has posed a question to PW1 during his cross examination none of the Doctors, who treated the Testator at the hospital stood as a witness for the Will PW1 responded that the necessity did not arise because the witnesses, who attested the Will, had seen the Testator keeping fit state of mind to execute the Will.

15. Another ground has been raised by the defendant in respect of the suspicion in the unequal manner in which the disposition of the properties have been made. In the Will, his father has stated that he has got 1/3rd share of the 'A' Schedule, but in fact he has got only 7/24th share. It is explained by the learned Senior Counsel appearing for the defendant that the 'A' schedule belonged to four persons, viz., the plaintiff, the defendant and the father and mother as they have jointly purchased the same. Since the Will has been executed after the life



time of the mother who died intestate, $\frac{1}{4}$ share of the mother of the parties would be inherited by all her children. Therefore, $\frac{1}{4}$ out of $\frac{1}{4}$ share of the mother of the parties could be included to the share of the father of the parties and he would have got disposable title only in respect of $\frac{7}{24}$ share in the 'A' schedule property. Though the Testator is entitled only in respect of $\frac{7}{24}$ share, he has executed the Will in respect of larger portion. It goes without saying that the Testator can convey title in favour of the legatee only to an extent of the title he himself enjoyed over the property.

16. However, the question of title need not be questioned in a Testamentary Original Suit as it revolves around the genuineness and other aspects surrounding the Will. But, the learned Senior Counsel appearing for the defendant submitted that the wrong quoting of the share by the Testator would show the involvement of the plaintiff in preparing the Will and executing his interest through his father. Once the plaintiff could prove through preponderance of probabilities that the Testator was conscious and in sound state of mind while executing the Will, then the burden would shift upon the defendant to disprove the same. There may be some unjust allotment of properties between the legal heirs of the deceased, but that alone cannot be the reason to doubt the Will of the Testator.



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17. One of the attestors, who was examined as PW2, has stated in his evidence that on a call from S.Ganpathlal Jain, he went to the hospital. When he went to the hospital, the Testator was not in ICU, but he was in normal ward. Though the plaintiff was present in the hospital, he was not present in the room, where the Will was executed. He further stated that the Testator was conscious at the time when the Will was executed. In his evidence, he did not ascertain whether the Testator had affixed his signature in his presence or whether his signature had already been affixed before he arrived. When that question was posted to him, he answered that he did not remember. In fact, the attestor is expected to adduce evidence on a particular aspect that would prove the genuineness of the Will. In the instant case, genuineness is not in dispute. Even according to the defendant, the Will has been executed in the hospital and the Will is a registered one. The evidence of PW2 that he was present at the room where the Will has been executed itself is sufficient to show that the Will has been executed in his presence. For the reasons best known to the Testator, he did not do any discussion as to the disposition of the property before settling the terms in writing.



18. Another attester of the Will, who was examined as PW3, has also stated in his evidence that the Testator was in a good state of mind while signing the Will and that the other witness was also present when he attested his signature on the Will. PW3 is carrying on business in a shop near the shop of the Testator. He has also asserted in his evidence that on receiving call from S.Ganpathlal Jain, he went to the hospital. He has stated that the Sub-Registrar was also present at the room where the Will was executed inside the hospital and that the plaintiff was present in the hospital, but he was not in the room where the Will was executed. After PW3 went inside the room, he enquired the Testator about his health and the Testator informed him that he should attest the Will executed by him. PW3 has stated that the Testator was waiting for him to arrive and then signed the Will and other attester has also signed the Will, but the Will has been made ready even before the attestors arrived. However, the Testator did not have any complaints about the contents of the Will and he pleased to sign the same.

19. A comprehensive reading of the evidence of PW2 and PW3 would show their presence at the time when the Testator had signed the Will and at that time, the Testator was very much conscious.



20. The plaintiff who has come to the Court seeking Letter of Administration only can do so much in order to prove that the Will is genuine and it is executed at a time when the Testator was in sound and disposing state of mind. This is the point where the burden would shift upon the defendant to disprove the same. However, the defendant has not furnished any documents to show that the health condition of the Testator was so deteriorated at the time of execution of the will so that he was not able to understand how the disposition of the properties done.

21. When the defendant, who was examined as DW1, was posed a question during the cross-examination as to how could a person's signature be obtained when he was not conscious, he answered that his father could have been probably conscious at that time, but could not have been fully conscious. Still, the defendant did not choose to examine any Doctor or the Sub-Registrar to substantiate his contention that the Testator was not conscious enough to execute a Will as alleged by the plaintiff. In fact, when a blind question was put to him about the proof to show the unconsciousness of his father at the time when he was in the hospital and executed the Will, he has stated that he did not have any proof to substantiate the same.



22. The defendant had not chosen to examine the Doctor who was present in the hospital at the time when the Will was executed and the Sub-Registrar to prove that the Testator was not fully conscious when he executed the Will. The defendant may not be happy about the way in which the disposition has been done by his deceased father in the Will. There may be even unjustness in gifting the property to two of the sons of the Testator, but that alone is not competent to conclude that the Testator was not competent enough to execute the Will.

23. The learned counsel for the plaintiff submitted that there is no rule that the presence of the Doctors is mandatory at the time of executing the Will. In support of his contention, he cited the judgment of the Supreme Court in ***Madhukar D.Shende -vs- Tarabai Aba Shedage*** reported in (2002) 2 SCC 85. In the said judgment, it is held as under:-

“8. The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such



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*fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the jury in *R. v. Hodge* [(1838) 2 Lewis CC 227] may be apposite to some extent:*

“The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be



a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict — positive or negative.

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9. It is well settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of “not proved” merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance.”

24. When the plaintiff has proved that at the time when the Will was executed, his father was conscious enough to do the act of execution, the burden would shift upon the shoulder of the defendant to disprove the same. On the



very same point, reliance was also placed on the judgment of the Supreme Court in *Meenakshiammal (dead) through LRS -vs- Chandrasekaran* reported in (2005) 1 SCC 280. For a better appreciation, the relevant portion of the said judgment is extracted under:-

“19. In the case of *Chinmoyee Saha v. Debendra Lal Saha* [AIR 1985 Cal 349] it has been held that if the propounder takes a prominent part in the execution of the will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same.”

25. Despite the fact that burden of proof has shifted upon the defendant, he did not adduce any positive evidence to show that his father was in such an unfit mental state and he was not able to exercise his choice and make decision while executing the Will. Hence, the one and only conclusion that can be arrived now is that the Will dated 13.01.2014 has been executed by its Testator



voluntarily and without any undue influence. So, the plaintiff is entitled to get the Letters of Administration for the Will dated 13.01.2014 as prayed by him.

Thus, the issue nos. 1 and 2 are answered in favour of the plaintiff. As the plaintiff has been granted the relief he sought, no other relief needs to be granted and thus, issue no. 3 is also answered.

26. In the result,

- (i) This Testamentary Original Suit is **allowed and decreed** the Letters of Administration, having effect throughout Tamil Nadu, shall be issued in favour of the plaintiff in respect of the Will executed on 13.01.2014 by the Testator S.Ganpathlal Jain in favour of the plaintiff.
- (ii) The plaintiff is directed to duly administer the estate of the deceased as mentioned in the suit schedule.
- (iii) The plaintiff shall 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.
- (iv) The plaintiff is further directed to render true and correct accounts once in a year.
- (v) No costs.



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To

The Assistant Registrar (O.S-II),
Madras High Court,
Chennai – 600 104.

**APPENDIX****I. Witnesses:**

On the side of the Plaintiff	
PW1	G.Rajesh Kumar
PW2	Suresh Surana
PW3	M.Shankar
On the side of the Defendant	
DW1	G.Vasanth Kumar

II. Exhibits:

S. No.	Exhibits	Description of Documents
1.	P1	Original Will testament executed by late S.Ganpathlal Jain dated 13.01.2014.
2.	P2	Photocopy of the Death Certificate of S.Ganpathlal Jain dated 24.05.2014.
3.	P3	Photocopy of the Death Certificate of G.Laxmi Devi dated 11.10.2014.
4.	P4	Original Legal Heirship Certificate of S.Ganpathlal Jain dated 29.12.2014.
5.	P5	Original Newspaper publication dated 03.03.2016.
6.	P6	Original Newspaper publication dated 10.03.2016.

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Dr.R.N.MANJULA, J.

Maya

TOS No. 30 of 2016

Dated : 17.10.2025