

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 11.06.2025

Pronounced on : 25.06.2025

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

T.O.S.No.32 of 2016

1.Banumathi @ Banumathi
2.D.Swetha
3.D.Sneha

...Plaintiffs

Vs

1.D.Suseela (Deceased)
2.T.S.Radha Shyamsundar
3.D.Ganapathy (Deceased)
4.D.Kalyani Swaminathan
5.D.Murali
6.Banumathi
7.D.G.Pravin Kumar
8.D.G.Prasanna Kumar

...Defendants

Defendants 2 to 5 impleaded as per the order of this Court dated 17.02.2021 in A.No.67 of 2021.

Defendants 6 to 8 brought on record as legal heirs of deceased 3rd defendant and amendment carried out as per order dated 04.12.2024 in A.No.5334 of 2024 in T.O.S.No.32 of 2016.



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Prayer: This Testamentary Original Suit filed under Sections 232 & 276 of the Indian Succession Act read with order XXV Rule 5 O.S. Rules, the petitioner praying to grant a Letters of Administration with the Will annexed to the properties, credits of the deceased may be granted to the plaintiffs as Wife and Children, beneficiary under the Will of the deceased.

For Plaintiffs : Mr.A.Babu

For Defendants : Mr.M.V.Seshachari

JUDGMENT

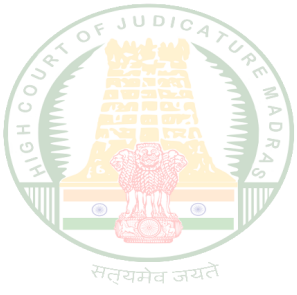
This Testamentary Original Suit had been initially filed as O.P.No.753 of 2015 under Sections 232 and 276 of the Indian Succession Act, 1925 seeking Letters of Administration of the Will dated 05.07.2013 executed by D.Sundaram, who died on 03.08.2013. The petitioners in the Original Petition were his widow and two daughters. The respondent was his mother. She raised objections. The Original Petition was then converted as T.O.S.No.32 of 2016 in which the petitioners in O.P.No.753 of 2015 were categorized as the plaintiffs and the respondent was categorized as the defendant.

2.It is the case of the plaintiffs, that D.Sundaram, late husband



of the 1st plaintiff and father of the 2nd and 3rd plaintiffs suffered from cancer and with intention to bequeath the properties acquired by him and the properties in which he and the 1st plaintiff were joint owners, had executed a Will on 05.07.2013 in the presence of two attesting witnesses. It their case that the Will had been executed when D.Sundaram was in a sound and disposing state of mind. He died on 03.08.2013. The plaintiffs then filed O.P.No.753 of 2015 seeking grant of Letters of Administration.

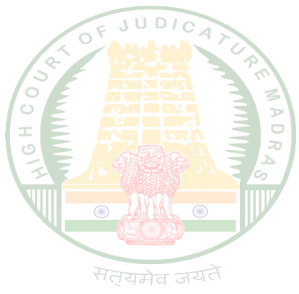
3.In the written statement filed by the defendant / mother of the testator, it had been contended that D.Sundaram was suffering from cancer and was completely bedridden and therefore, was not capable of understanding the nature of the document he is said to have signed on 05.07.2013. It had been further stated that the plaintiffs sought partition of the properties of D.Sundaram and the defendant had also agreed provided 1/4th share was allotted to her. However, the plaintiffs had prepared a draft release deed. The defendant refused to accept the release deed. It had been contended that the plaintiffs had not revealed about the existence of the Will dated 05.07.2013. It had been specifically stated that the Will had been created by the plaintiffs. It had been therefore stated that the suit should be dismissed.



4.It must be pointed out that the plaintiffs sought Letters of

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Administration with respect to four properties. The 1st item of suit property was vacant land at plot No.11, Muthu Meena Nagar, Kabulakandigai Village, Tiruthani Taluk, Chengalpet District measuring 1 ground and 510 sq.ft. The 2nd item of property was plot No.4 with built up area of 1238 sq.ft., in the 1st floor, in old Door No.10, new Door No.26, present Door No.21, GRN Flats, Tilak Street, T-Nagar, Chennai – 600 017 together with 1/8th undivided share of 2 grounds and 1715 sq.ft. Both the above two properties were the self acquired properties of D.Sundaram. The 3rd item of property was land and building at old Door No.28, new Door No.6, present Door No.13, Varadappa Naicken Street, West Mambalam, Chennai – 600 033 measuring 1 ground and 64 sq.ft. The 4th item of property was land and building at Door No.15/1, old Door No.5, new Door No.15, present Door No.46, Naickamar Street, West Mambalam, Chennai – 600 033 measuring 1400 sq.ft., with built up area of 2824 sq.ft. In both item Nos.3 and 4 D.Sundaram was entitled to an undivided 50% share and the 1st plaintiff was entitled to the balance one half share.



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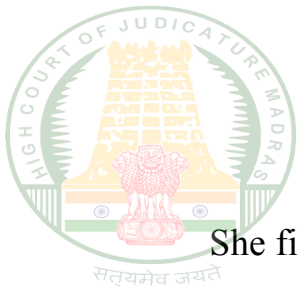
5. Under the Will, D. Sundaram had bequeathed his share in item Nos. 1 and 2 properties to the three plaintiffs in equal parts and had bequeathed his undivided 50% share in item Nos. 3 and 4 in equal parts to the 2nd and 3rd plaintiffs / his daughters.

6. On the basis of the pleadings, the following issues were framed for trial on 17.07.2019:

- 1. Whether the Will dated 05.07.2013 is true and valid?*
- 2. Whether the plaintiffs are entitled to Letters of Administration of the said Will?*
- 3. To what other reliefs the parties are entitled to?*

7. It must also be mentioned that the defendant died during the pendency of the suit and her two sons and two daughters were brought on record as D2 to D5. Thereafter, D3 died and his legal representatives were brought on record as D6 to D8.

8. The parties were then invited to tender evidence. The 1st plaintiff Banumathi @ Banumathi Sundaram examined herself as PW-1.



She filed her proof affidavit and marked Exs.P1 to P14. Exs.P1 to P3 and P9 were the documents relating to the title of the properties. Ex.P4 was the discharge summary of D.Sundaram dated 03.07.2013. Ex.P5 was the original Will dated 05.07.2013. Ex.P10 was the copy of the death certificate of D.Sundaram. Ex.P13 was the copy of the legal heirship certificate.

9.The plaintiff then examined A.Srinivasan / Chartered Accountant and Income Tax Practitioner as PW-2 who was the scribe of the Will and also one of the attesting witness. He also filed his proof affidavit and stated that he had prepared the Will at the instance of D.Sundaram and had signed the will in the presence of the testator and in the presence of the other attesting witness, K.S.Bhasker who also signed in the presence of the testator and in the presence of attesting witness.

10.The plaintiff then examined K.S.Bhasker as PW-3 who was the other attesting witness. He also affirmed his signature in the Will.

11.All the three witnesses were cross-examined. The main thrust of the cross-examination on behalf of the defendants was that the



plaintiffs had produced a draft release deed to be executed by the 1st defendant and she had objected to the same. It had been stated that D.Sundaram was not in a sound and disposing state of mind at the time of executing the Will since he was suffering from cancer.

12.On the side of the defendants, the 3rd defendant, D.Ganapathy, was examined as DW-1 and he filed his proof affidavit. He did not mark any documents. The details of the medical expense of the 1st defendant spent by the 1st plaintiff were marked as Ex.P15 (series) during cross-examination of DW-1. The E-mail correspondences between DW-1 and the husband of the sister of the 1st plaintiff were marked as Exs.P16, P17 and P18.

13.The defendants also examined the 4th defendant, D.Kalyani Swaminathan as DW-2. She also filed her proof affidavit and was also cross-examined. She did not mark any documents.

14.Mr.A.Babu, learned counsel for the plaintiffs pointed out that the testator D.Sundaram, husband of the 1st plaintiff and father of the 2nd



and 3rd plaintiffs was suffering from cancer and therefore, there was a necessity to execute a Will to bequeath his self acquired properties and the two properties in which he had one half share along with the 1st plaintiff to his two daughters and also to the 1st plaintiff. The learned counsel stated that the fact that he was suffering from cancer had been very specifically stated in the Will. In the Will he had also stated that his days were coming to a close and therefore, there was an immediate necessity to ensure proper bequeath of his properties. The learned counsel stated that therefore, the testator had requested the assistance of PW-2 to draft the Will. PW-2 was a Chartered Accountant. The Will was drafted and it was signed by the testator and attested by PW-2 and PW-3.

15. The learned counsel further stated that the family of the testator had a property at Tambaram and a partition suit was pending and it was for that reason that the testator sought to execute a Will to ensure that his self acquired properties and the properties in which he had an one half share along with the 1st plaintiff devolves only to the plaintiffs and not to anybody else. The learned counsel contended that the execution of the Will had been proved by examining PW-2 and PW-3. He further pointed out that



the defendants have not produced any document to prove their stand that the testator was not in a sound and disposing state of mind. He further contended that after the death of the 1st defendant, the 1st plaintiff had spent monies towards the funeral expenses. She had also borne the medical expenses of the 1st defendant. In this regard, Ex.P15 (series) were marked. The 1st plaintiff had spent a sum of Rs.3,08,870/- on 12.08.2020 toward the medical expenses of the 1st defendant at Sudar Hospital Private Limited and the documents reflected the payment had been paid by the 1st plaintiff. This document was admitted by DW-1 during his cross-examination. The learned counsel therefore argued that the Will had been proved in manner known to law and the defendants have not produced any document or any proof to show that the testator was not in a sound and disposing state of mind at the time of execution of the Will. He therefore contended that the suit should be decreed and Letters of Administration should be granted to the plaintiffs.

16.Mr.M.V.Seshachari, learned counsel for the defendants, contended that the testator was suffering from cancer and was admitted in hospital and was discharged only on 03.07.2013. The learned counsel contended that, it was therefore probable that the Will which was dated

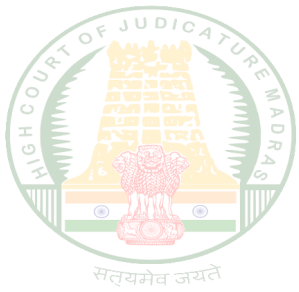


05.07.2013 had been obtained when D.Sundaram was not in a sound and disposing state of mind. The learned counsel further pointed out that the plaintiffs had produced a draft release deed to be executed by the 1st defendant and when she refused to sign the same had thereafter produced the Will. The Will was not revealed till that time. The learned counsel contended that owing to the medical condition of D.Sundaram, it was not probable that he would have executed the Will. He also contended that there was no reason to exclude his mother / 1st defendant from being a beneficiary. The learned counsel contended that the attestors to the Will were interested persons and no credence could be given to their evidence. The learned counsel therefore argued that the suit should be dismissed.

17.I have carefully considered the arguments advanced and perused the material records.

Issue No.1:

18.This issue is whether the Will dated 05.07.2013 has been proved and is valid.



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19.Originally, the plaintiffs had filed O.P.No.753 of 2015 seeking Letters of Administration with respect to the Will dated 05.07.2013 of D.Sundaram, late husband of the 1st plaintiff and father of the 2nd and 3rd plaintiffs who died on 03.08.2013. It is a fact that he was suffering from cancer and had been discharged from hospital on 03.07.2013 which is evidenced by Ex.P4. He had executed Ex.P5 Will on 05.07.2013. In the Will, the testator had very clearly stated as follows:

“I am a cancer patient and I am not in good health. At any time my life may come to an end. I am anxious that after my life time my properties should devolve smoothly according to my desire as set out in this Will, so that there may not be any complications.”

20.He had then stated that the 1st plaintiff was working in Southern Railway and two properties had been jointly purchased in his name and in the name of the 1st plaintiff. He had also given the addresses of the said properties. He thereafter stated that he had purchased two properties. He had then stated as follows:

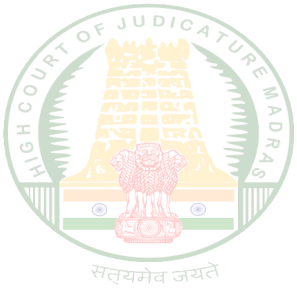
“My mother D.Suseela is aged about 90 years. All along I am paying a sum of Rs.3,000/- (Rupees Three Thousand only) to her to meet her needs. Due to the nature of



disease, I may not live for a long period. Therefore, I wish that till the life time of my mother, my wife has to make such payment to my mother and take care of her and if needed to pay money for medical expenses. With regard to the properties mentioned in Item Nos.1 & 2, I have got half share and I bequeath the same to my two Daughters and they should enjoy the same jointly along with my wife and Item Nos.3 & 4 are my absolute properties and I bequeath the same to my wife and my two daughters equally and they should enjoy the same jointly after my life time.”

21.It is thus evident that he was well aware of his own circumstances, his own medical ailments and the necessity to execute the Will. He had also placed an obligation on the 1st plaintiff to take care of the medical expenses of his mother.

22.It must be pointed out that the 1st plaintiff had been true to his wishes and Ex.P15 series very clearly shows that she had paid the medical expenses of the 1st defendant, D.Suseela to a sum of Rs.3,08,870/-. This document had been admitted by DW-1 in his cross-examination.



23.To prove the Will, the plaintiffs had also examined PW-2,

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A.Srinivasan who is a Chartered Accountant. During his cross-examination, questions were put about his competency to draft the Will, but he asserted his competency. He had stated as follows about how he was called by D.Sundaram to give instructions for preparing the Will.

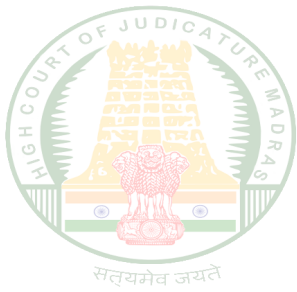
Q1: You have stated testator D.Sundaram had called and given instructions on 28.06.2013. Did you meet him in person or you spoke over phone?

A: Mr.Sundaram has called on 28.06.2013 and I met him in person to take his instructions in respect of the Will which he proposed.

Q2: Can you tell me the exact date when you met D.Sundaram?

A: I met him same date 28.06.2013.

24.It is thus clear that the instructions for preparing the Will were given only by the testator D.Sundaram. The witness denied the suggestion that D.Sundaram had not in a position to understand the contents of the Will.



25.The plaintiffs also examined as PW-3, K.S.Bhasker, the second attesting witness. He also identified his signature in the Will. He answered as follows about being called to sign as witness PW-3.

“Q4: Who had requested you to sign as an attester in Ex.P5?

A: Mr.Sundaram requested me to sign as a attesting witness in Ex.P5.

Q5: Do you know who is the other attester to the Will, can you list the name?

A: Mr.Srinivasan who is the auditor.”

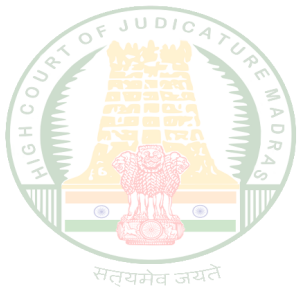
26.With respect to the instructions for preparation of the Will and whether the testator was in a position to understand the contents of the Will, he had answered as follows to the questions put to him:

“Q14: I put it to you that you have no direct knowledge as to who gave you instruction for preparation of Will.

A: Mr.Sundaram told me.

Q15: I put it to you that due to the medical condition Mr.D.Sundaram was not in a position to understand the contents of the Will and was depended upon his wife Mrs.Banumathi.

A: I deny.”



27.It is thus seen that both the attesting witnesses withstood cross-examination. They affirmed their signatures and the signature of the testator in the Will, Ex.P5. The original Will had also been produced by the plaintiffs.

28.On the side of the defendants, the 3rd defendant was examined as DW-1. He admitted that within three days from the date of execution of the Will he came to know about the same.

“Q71: When you came to know the Will?

A:After passing of 3 days from the date of execution of the Will I came to know about the same.”

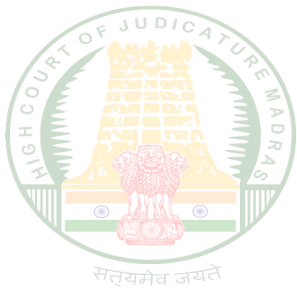
24.He had also admitted to the fact that the 1st plaintiff had borne the medical expense of the 1st defendant:

“Q24: Who spend the money for the hospital expenses of your mother?

A: Banumathi Sundaram

Q25: It is the bills for medical expenses spent for your mother by Banumathi Sundaram?

A: Yes. The bills marked as Ex.P15 (series) (2 Nos.)”



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29.He further admitted that he had appointed an Advocate for his mother, the original defendant.

Q74: Who appointed the advocate of your mother?

A: Myself only appointed her advocate.

30.He also stated that there were settlement talks and that he demanded Rs.2,00,00,000/- (Rupees Two Crores only) from the plaintiffs.

“Q81: What is your demand made at the time of settlement by you?

A: Since it is a worthy property, I demanded for Rs.2,00,00,000/-”

31.The witness had not established any suspicious circumstances surrounding the execution of the Will. As a matter of fact, he had the knowledge of the Will within three days from the date of execution of the Will. This statement is contrary to the statement in the written statement of the 1st defendant who stated that the Will was revealed by the 1st defendant after considerable delay.



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32.The defendants also examined as DW-2, the 4th defendant.

She did not mark any document. She also admitted that it was the 1st plaintiff who spent the medical expenses of the 1st defendant when she was in the hospital. She also admitted that she also received a sum of Rs.50,000/- towards funeral expenses from the 1st plaintiff.

“Q31: Who spent the money for hospital expenses of your mother?”

A: Banumathi Sundaram spent money.

Q32: (Ex.P15 series is shown to the witness) Ex.P15 is relating to the medical expenses of your mother?

A: Yes.

Q33: Apart from the medical expenses, a sum of Rs.50,000/- was paid by the Banumathi Sundaram to you towards the death ceremony expenses of your mother?

A: Yes”

33.On the other hand, she had spent only Rs.15,000/- towards the medical expense of her mother.

“Q45: Did you, your brother, your mother, sister spend any money for Sundaram's medical expenditure in respect of his



cancer treatment?

A.No. Witness adds: I have spent little amount for above said medical expenses.

Q46: How much amount was spent by you for the cancer treatment for Sundaram?

A: In June 2013, I spent Rs.15,000/- towards scan expenses.”

34.Further questions were put to her about the medical expenses.

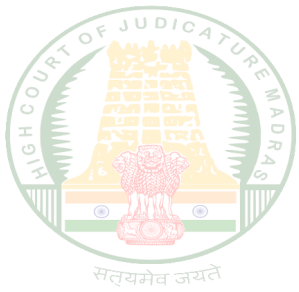
“Q70: Are you aware that the plaintiff paid the medical expenditure for your mother?

A: Yes, I know.

Q71: Have you reimbursed or returned the medical expenditure paid by the plaintiff till date?

A.No.”

35.It is again seen that the defendants have not established any suspicious circumstances surrounding the execution of the Will and more importantly that the 1st plaintiff had discharged the obligation placed on her to bear the medical expenses of the 1st defendant.



36.In **2021 11 SCC 209, Kavita Kanwar Vs. Pamela Mehta**

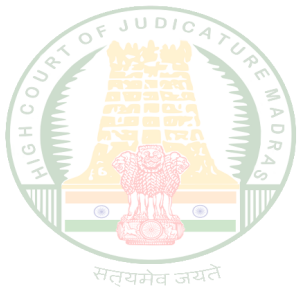
WEB COPY **and others**, the Hon'ble Supreme Court had laid down the relevant provisions of law to be examined to determine the proof affidavit:

“23. It remains trite that a will is the testamentary document that comes into operation after the death of the testator. The peculiar nature of such a document has led to solemn provisions in the statutes for making of a will and for its proof in a court of law. Section 59 of the Succession Act provides that every person of sound mind, not being a minor, may dispose of his property by will. A will or any portion thereof, the making of which has been caused by fraud or coercion or by any such importunity that has taken away the free agency of the testator, is declared to be void under Section 61 of the Succession Act; and further, Section 62 of the Succession Act enables the maker of a will to make or alter the same at any time when he is competent to dispose of his property by will. Chapter III of Part IV of the Succession Act makes the provision for execution of unprivileged wills (as distinguished from privileged wills provided for in Chapter IV) with which we are not concerned in this case.

23.1. Sections 61 and 63 of the Succession Act, relevant for the present purpose, could be usefully extracted as under:

“61. Will obtained by fraud, coercion or importunity.

—A will or any part of a will, the making of which has



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been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void. ...

63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules—

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

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

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than



one witness be present at the same time, and no particular form of attestation shall be necessary.”

23.2. Elaborate provisions have been made in Chapter VI of the Succession Act (Sections 74 to 111), for construction of wills which, in their sum and substance, make the intention of legislature clear that any irrelevant misdescription or error is not to operate against the will; and approach has to be to give effect to a will once it is found to have been executed in the sound state of mind by the testator while exercising his own free will. However, as per Section 81 of the Succession Act, extrinsic evidence is inadmissible in case of patent ambiguity or deficiency in the will; and as per Section 89 thereof, a will or bequest not expressive of any definite intention is declared void for uncertainty. Sections 81 and 89 read as under:

“81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.—Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted. ...

89. Will or bequest void for uncertainty.—A will or bequest not expressive of any definite intention is void for uncertainty.”

Moreover, it is now well settled that when the will is surrounded by suspicious circumstances, the Court would

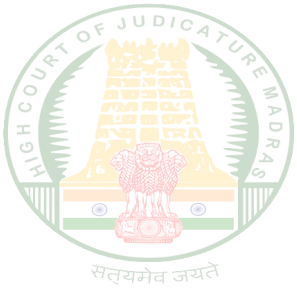


expect that the legitimate suspicion should be removed before the document in question is accepted as the last will of the testator.

23.3. As noticed, as per Section 63 of the Succession Act, the will ought to be attested by two or more witnesses. Hence, any document propounded as a will cannot be used as evidence unless at least one attesting witness has been examined for the purpose of proving its execution, if such witness is available and is capable of giving evidence as per the requirements of Section 68 of the Evidence Act, that reads as under:

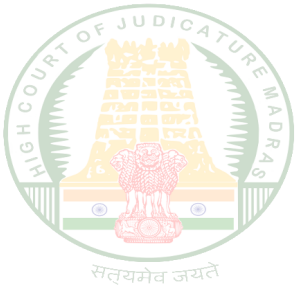
“68. Proof of execution of document required by law to be attested.—*If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”



37. In the instant case, as pointed out repeatedly above, the defendants have not established any suspicion circumstances surrounding the execution of the Will. As a matter of fact, they have admitted that the 1st plaintiff had acted in accordance with the wishes of the testator in bearing the medical expenses of the 1st defendant / mother of DW-1 and DW-2. Therefore, it would not lie in the mouth to deny the execution of the Will. On the one hand, they had accepted her spending the medical bills of their mother which was an expectation of the testator in his Will. On the other hand, they claim that the testator did not execute the Will in a sound and disposing state of mind. The very fact that he had placed an obligation on the 1st plaintiff to bear the medical expenses of his mother would show that he was actually in a sound and disposing state of mind. He had taken care that his mother's expenses are borne by his wife, the 1st plaintiff. She reciprocated his trust. He had also taken care of his wife / 1st plaintiff and his two daughters / 2nd and 3rd plaintiffs by bequeathing his share in the properties to them.

38. The execution of the Will had also been proved by PW-2 and PW-3 who both deposed with clarity.



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39.In *AIR 1959 SC 443, H.Venkatachala Iyengar Vs.*

B.N.Thimmajamma and others, the Hon'ble Supreme Court had held as follows:

“18.What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must

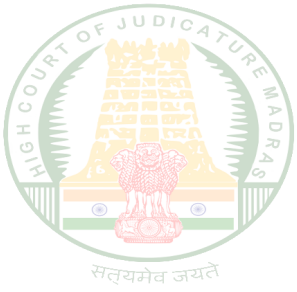


be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression “a person of sound mind” in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty.



The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.



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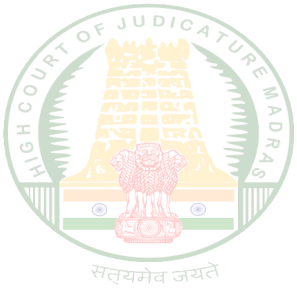
40. The Hon'ble Supreme Court further examined about the suspicious circumstances and necessity to remove any legitimate doubt surrounding the execution of the Will and held as follows:

“20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would

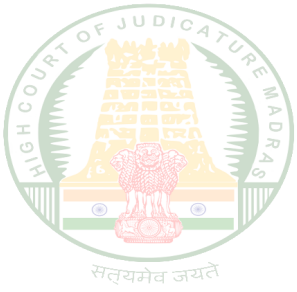


be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.”

41. In the instant case, PW-2 and PW-3 have very clearly deposed that the testator was in a sound and disposing state of mind while executing the Will and had understood the contents of the Will and thereafter, had executed the Will. Even in the Will, he had very clearly stated that he was suffering from cancer and therefore, there was a necessity to bequeath his properties and the properties were bequeathed only to his wife and two daughters. With respect to his mother, he had directed that his wife should bear the medical expenses. The 1st plaintiff had actually borne the medical expenses. That fact had been proved by Ex.P15 series. Both DW-1 and DW-2 had admitted to the said documents and to the said fact.



42. The only suspicious circumstances according to the defendants was that the testator was suffering from cancer. The fact that he was suffering from cancer cannot be either denied or disputed, but the issue is whether he understood what was the nature of the document he had executed and whether he was in a sound and disposing state of mind. Evidence had been very clearly and logically let in that he had understood the contents. He realized the importance of the document. There was an ongoing Civil Suit pending between him and his brothers and also his mother relating to the ancestral property at Tambaram. He was therefore very careful to ensure that the properties he had purchased and the properties to which he had one half share along with the 1st plaintiff were bequeathed only to his wife and two daughters. The reasons given by him are extremely credible. He was aware about his medical condition. He knew that he was at the door step of death. PW-2 is a Chartered Accountant. There is no room for suspicion over the testator placing reliance on the expertise of PW-2. PW-3 was related to the 1st plaintiff. It is not a blood relationship. He was her sister's brother-in-law. The relationship was a step away. The testator had to trust in someone. He placed trust in PW-3.



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43. In the Will, the testator had not only affixed his thumb impression but also affixed his signature. It had been very clearly stated that he had signed the Will in the presence of the attesting witnesses and that the attesting witnesses also signed in his presence and in the presence of each other. It is thus seen that the plaintiffs have proved the Will in manner known to law while the defendants have not established any iota of suspicion circumstance.

44. I hold that the Will had been proved in manner known to law and in the manner required by law. I therefore hold that the Will dated 05.07.2013 is true and valid. This issue is answered in favour of the plaintiffs.

Issue No.2:-

45. This issue is whether the plaintiffs are entitled to grant of Letters of Administration of the said Will. The conclusion reached with respect to issue No.1 automatically indicates that the plaintiffs are entitled for grant of Letters of Administration. The defense raised is with frustration rather than with any intent. The defendants admitted that there was a suit



pending in Tambaram Sub Court regarding division of the ancestral property. It is only natural that the testator relied on PW-2 to draft a Will to avoid any claim by his brothers and sisters over the properties he had acquired by himself or the properties to which he had one half share along with the 1st plaintiff. It is only natural that he excluded his brothers and sisters from any share. He had however been extremely thoughtful by providing for the medical expense of his mother. The 1st plaintiff had kept up to his wishes by spending money towards the medical expenses and also by spending money towards the funeral expense of the 1st defendant. Therefore, the plaintiffs have acted in accordance with the wishes of the testator. I hold that they are entitled for grant of Letters of Administration. This issue is also answered in favour of the plaintiffs.

Issue No.3:-

46.In the result, I hold that, the suit has to be decreed and Letters of Administration must be granted to the plaintiffs with respect to the Will dated 05.07.2013 executed by Mr.D.Sundaram who died on 03.08.2013. The suit is decreed, however without costs, in view of the relationship among the parties. The plaintiffs are entitled for grant of Letters



of Administration of the Will dated 05.07.2013 executed by D.Sundaram,

who died on 03.08.2013.

25.06.2025

smv

Index : Yes/No

Neutral citation : Yes/No

Speaking order : Yes/No

List of witnesses on the side of plaintiffs:

P.W.1 – Banumathi @ Banumathi Sundaram

P.W.2 – A.Srinivasan

P.W.3 – K.S.Bhasker

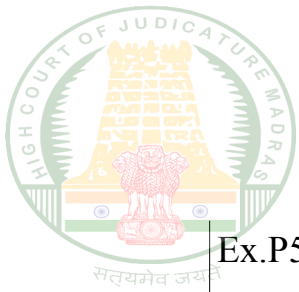
List of witnesses on the side of defendants:

D.W.1 – D.Ganapathy

D.W.2 – D.Kalyani Swaminathan

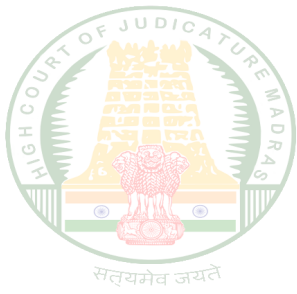
List of Exhibits:

Ex.P1	16.09.1998	Certified copy of the Sale Deed Doc.No.1443 of 1998.
Ex.P2	30.03.1993	Certified copy of the Sale Deed Doc.No.980 of 1993
Ex.P3	21.08.2002	Certified copy of the Sale Deed Doc.No.2919 of 2002.
Ex.P4	03.07.2013	Original Discharge Summary of D.Sundaram.



Ex.P5	05.07.2013	Original Will of D.Sundaram is marked with proof and relevancy.
Ex.P6	29.09.2016	Photocopy of the letter issued by ICICI Bank.
Ex.P7 Series 2 Nos.	07.09.2014	Original requisition letters for registration of settlement deeds.
Ex.P8	07.09.2014	Original affidavit of D.Sundaram.
Ex.P9	19.11.2010	Printout copy of certified copy of the Sale Deed.
Ex.P10	23.08.2013	Printout copy of Death Certificate of D.Sundaram (Affidavit under Section 65B of Indian Evidence Act is submitted)
Ex.P11		Ex.P11 is the printout copy of the Income Tax Return for the AY – 2015 – 16 to 2018 – 19 with enclosure. (Affidavit under Section 65B of Indian Evidence Act is submitted)
Ex.P12	09.09.2014	E-mail correspondence between Ganesh and Ganapathy dated 09.09.2014. (Certificate is submitted)
Ex.P13		Photocopy of the Legal Heirship Certificate of deceased D.Sundaram (Original seen verified and returned)
Ex.P14		True copy of Statement of Accounts.
Ex.P15		The bills marked as Ex.P15 (Series)(2 Nos.)
Ex.P16	07.09.2014	E-mail correspondence
Ex.P17		Correspondence dated 09.09.2014
Ex.P18		Correspondences dated 10.09.2014, 11.09.2014, 12.09.2014 and 24.09.2014
Ex.P19		Correspondences dated 05.10.2014, 06.10.2014, 04.11.2014, 05.11.2014 and 05.12.2014

25.06.2025



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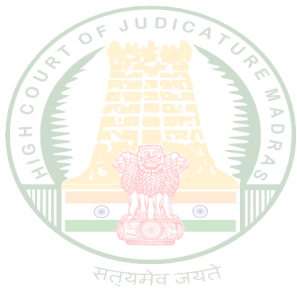
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C.V.KARTHIKEYAN,J.,

smv

Pre-delivery Judgment
in
T.O.S.No.32 of 2016

25.06.2025



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T.O.S.No.32 of 2016

C.V.KARTHIKEYAN,J.

The Registry had raised a clarification stating that the Clause relating to executing sureties had not been mentioned in the Judgment dated 25.06.2025.

2. The plaintiffs shall execute a security bond for Rs.25,000/- (Rupees Twenty Five Thousand Only) in favour of the Assistant Registrar (OS-II), High Court of Madras.

3. The same may be incorporated in the Judgment dated 25.06.2025 and fresh Judgment copy may be issued.

4. Except the same, all other aspects shall remain intact.

07.07.2025

vum