



WEB COPY



OSA.Nos.427, 435 & 436 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2025

PRONOUNCED ON : 24.04.2025

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH
and
THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

Original Side Appeal Nos.427, 435 & 436 of 2018
and
CMP.Nos.19930, 19932 & 19934 of 2018
and
CMP.Nos.18952, 18954 & 18951 of 2021

Gopal (since deced.) rep. by his legal heirs

1. G.Lakshmi
W/o.Late.G.Gopal
2. G.Sridhar,
S/o.Late.G.Gopal
3. G.Srinath
S/o.Late G.Gopal

... Appellants in all OSAs.

-Versus-

1. C.Baskar
S/o.Late.P.Chellaiah
2. G.Chandrayya
3. G.Nagarathinam

... Respondents in OSA.No.427/2018

1. G.Nagarathinam
2. G.Chandrayya
3. G.Jamuna
4. C.Bhaskar
5. C.Sadana

... Respondents in OSA.No.435/2018



OSA.Nos.427, 435 & 436 of 2018

1. C.Baskar
S/o.Late.P.Chellaiah

2. G.Chandrayya
3. G.Nagarathinam

... Respondents in OSA.No.435/2018

Prayer in OSA.No.427/2018:- Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the common judgement and decree dated 20.12.2017 rendered in C.S.No.772 of 2005 and dismiss the suit and thereby, allow the Appeal.

Prayer in OSA.No.435/2018:- Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the judgement and decree dated 20.12.2017 passed by the learned Judge in TOS.No.32 of 1999 and allow the Appeal.

Prayer in OSA.No.436/2018:- Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the common judgement and decree dated 20.12.2017 passed by the learned Judge and decree the Counter Claim made by the 1st defendant in C.S.No.772 of 2005 and allow the Appeal.

For Appellants : Mr.R.Thiagarajan

For Respondents : Ms.Y.Kavitha
for M/s.P.V.S.Giridhar Associates
for R1 in OSA.Nos.427 & 436 of 2018
for R4 in OSA.No.435 of 2018



OSA.Nos.427, 435 & 436 of 2018

COMMON JUDGMENT

WEB COPY

*(Judgment of the Court was delivered by **C.KUMARAPPAN, J.**)*

In all the three OSAs, one Mr.Gopal is the appellant. After his demise, his legal heirs were impleaded as the appellants.

2. OSA.No.427 of 2018 was filed by Gopal to set aside the common judgment dated 20.12.2017 rendered in C.S.No.772 of 2005 and prayed to dismiss the suit, by allowing these OSA.

3. OSA.No.435 of 2018 filed to set aside the common judgment and decree dated 20.12.2017 passed in TOS.No.32 of 1999 thereby, prayed to decree the suit by allowing the OSA.

4. Similarly, OSA.No.436 of 2018 filed against the dismissal of the Counter claim made in C.S.No.772 of 2005.

5. In TOS.No.32 of 1999, two properties are involved. They are, the property situate in No.26, Solaiaimman Koil Street, Purusawalkam and



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

No.39, Minor Trustpuram. The first floor of the property in No.26, Solaiamman Koil Street was allegedly bequeathed to one Chandrayya. Similarly, the property at Minor Trustpuram was allegedly bequeathed to the present appellant Gopal.

6. For the sake of convenience, we deem it appropriate to refer to the parties according to their litigative status in TOS.No.32 of 1999.

7. The brief facts which give rise to the instant appeals are as follows:-

TOS.No.32 of 1999

(a). The plaintiff Gopal filed a TOS to grant a probate of a Will dated 25.12.1984, which according to him was executed by his father Mr.G.Ramakrishna Chetty, who died on 02.05.1993 leaving behind his two sons and three daughters. His sons are the plaintiff Mr.Gopal and the 2nd defendant Mr.Chandrayya. His 3 daughters are (i) Hemavathi, who predeceased Mr.G.Ramakrishna Chetty, (ii) G.Nagarathinam, who is the first defendant in TOS.No.32 of 1999 and (iii) Mrs.G.Jamuna, who was later impleaded as the 3rd defendant in TOS.No.32 of 1999.

(b). According to the averments in TOS, Mr.G.Ramakrishna Chetty appointed the plaintiff as an executor of the Will dated 25.12.1984. Hence,

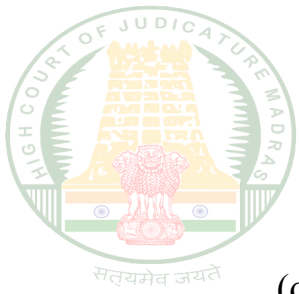


OSA.Nos.427, 435 & 436 of 2018

WEB COPY

after the demise of his father, preferred the present TOS for the grant of Probate. The 1st defendant G.Nagarathinam has initially objected for grant of Probate and has also contended that the Will dated 25.12.1984 is a forged and fabricated document. Similarly, the 2nd defendant Chandrayya had also taken such defence. While so, before impleading the defendants 3 to 5 namely Jamuna and her legal heirs, a compromise was reached between Gopal, Nagarathinam and Chandrayya and based on the above compromise, a Probate was granted on 05.08.2002 in favour of Gopal.

(c). While so, the 4th defendant Bhaskar viz., the grandson of Ramakrishna Chetty through his daughter Jamuna, came to know about the grant of Probate. Thereafter, he filed an application for revocation of the same. On his application, the order granting Probate was revoked vide order dated 17.02.2006, which was ultimately confirmed by the Hon'ble Supreme Court in Civil Appeal No.6067 of 2008. Parallely, he also filed a suit in C.S.No.772 of 2005 seeking declaration of his and his sister Sadana's title over the property situate at No.26, Solaiamman Koil Street, Purusawalkam, Chennai-600 007 based upon a settlement dated 12.08.1977.



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

(d). According to Mr.Gopal, the Propounder, even during the lifetime of the testator Ramakrishna Chetty, the above settlement deed was cancelled on 02.10.1991. It is in this background, the propounder prayed for an issuance of Probate of a Will dated 25.12.1984.

(e). In the above OP, as already referred, the first defendant Nagarathinam initially filed a Written Statement opposing for the grant of Probate. According to her, Mr.G.Ramakrishna Chetty never executed the Will much less than the Will dated 25.12.1984 and that the said Will is forged. It is also her specific submission that, though her name found place in the said Will as an identifying witness while registering, she never gone to the Registrar Office and never identified her father, while presenting the Will for alleged Registration.

(f). Similarly, the defendants 3 to 5, who were later impleaded, also filed a written statement disputing the very execution of the Will. It is their submission that the alleged cancellation of the settlement deed dated 12.08.1977 is *ipso facto* void as G.Ramakrishna Chetty did not have any right to unilaterally cancel the settlement deed, much less through a Marginal note made in the Will. Even otherwise, the Marginal Note dated 02.10.1991



OSA.Nos.427, 435 & 436 of 2018

is in contravention to Section 71 of The Indian Succession Act. As such, these defendants also prayed to dismiss the TOS.

C.S.No.772 of 2005

(g). The 4th defendant in TOS C.Bhaskar has filed a suit for declaration and also for vacant possession of Solaiamman Koil Property and for mesne profits. It is his contention that his maternal grandfather Ramakrishna Chetty was the absolute owner of the suit schedule property and that out of love and affection, he executed a settlement deed dated 12.08.1977 in his as well as his sister's favour. His further submission is that after the demise of his grandfather, his maternal uncle Mr.Gopal, who is the propounder of the Will in TOS.No.32 of 1999, had occupied the front portion of the suit property and continues to live there. He would further submit that upto the year 2005, he used to collect the rent from the tenant and would hand over to him, whereas since March 2005, he refused to pay rent on the premise of grant of Probate, which necessitated him to file a petition for revocation of Probate, and the present suit for declaration.

8. In the said suit, the propounder Gopal filed a written statement contending that his father was the absolute owner of the suit property.

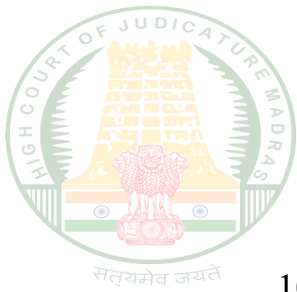


OSA.Nos.427, 435 & 436 of 2018

WEB COPY

However, he admits the execution of settlement deed dated 12.08.1977 by his father in favour of C.Bhaskar and his Sister Sadana. But, it is his specific contention that by virtue of Marginal Note of his father dated 02.10.1991 made in the Will dated 25.02.1984, the said settlement deed become cancelled. The reason assigned by the propounder of the Will, for the cancellation is the 4th defendant Bhaskar's objectionable conduct of attempt to outrage the modesty of his maternal aunt Nagarathinam. Apart from that, the propounder [Gopal] had also made a counter claim for the vacant possession of the “Minor Trustpuram property”, where the 4th defendant C.Bhaskar and his family have been in occupation. He also prayed for damages for use and occupation and for the expenditure incurred for upkeep and maintenance of the suit property.

9. The 2nd defendant-Chandrayya, the brother of the propounder has also filed a written statement disputing the Bhaskar's [D4] claim. In his written statement, he would submit that he is only concerned with the upstairs portion of the suit property, as it is the only property bequeathed to him through the Will dated 25.12.1984. Further, he also claimed adverse possession over the suit property qua ground floor portion of “Solaiamman Koil Street property”.



WEB COPY

10. For the counter claim made by the Propounder Mr.Gopal in C.S.No.772 of 2005, the 4th defendant Bhaskar (Plaintiff in C.S.No.772 of 2005) filed a reply statement reiterating his plaint pleadings.

11. Based upon the above pleading, the Trial Court framed the following issues:-

“TOS.No.32 of 1999

- i. *Whether the Will alleged to have been executed by one Mr.G.Ramakrishna Chetty dated 25.12.1994 at Madras is true, genuine and valid?*
- ii. *Whether the plaintiff is entitled to the probate as asked for?”*

“C.S.No.772 of 2005

- i. *Whether the plaintiff is entitled to declaration as prayed for?*
- ii. *Whether the first defendant is entitled to mesne profits, if so, to what extent?*
- iii. *Whether the settlement deed dated 12.08.1977 is a true and valid document?*
- iv. *Whether the settlement deed conveys title to the said plaintiff and if so, to what extent?*
- v. *Whether the respective parties are entitled to recovery of possession?*
- vi. *Whether the first defendant is entitled to damages if so, to what extent?*

[Extracted as it is]



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

12. At Trial, on behalf of the plaintiff, 3 witnesses were examined as PW1 to PW3, who are none other than the plaintiff Gopal, and a person who according to the plaintiff was acquainted with the signature of the testator Ramakrishna Chetty, and his Sister Nagarathinam. He also filed 5 documents as Exs.P1 to P5. On behalf of the defendants, Chandrayya was examined as DW1 and G.Bhaskar, who is the plaintiff in C.S.No.772 of 2005 was examined as DW2. On behalf of the defendants, 4 documents were marked.

13. The Trial Court, after having considered the oral and documentary evidence, ultimately found that the Will dated 25.12.1984 which is said to have been executed by Ramakrishna Chetty is surrounded with suspicious circumstances, hence, ultimately dismissed the TOS No.32 of 1999.

14. In respect of C.S.No.772 of 2005, a declaration was granted in favour of the 4th defendant (Bhaskar). Whereas the counter claim made by the propounder Mr.Gopal in C.S.No.772 of 2005 was dismissed, since the Will has not been proved. Aggrieved with the same, Mr.Gopal, who is the plaintiff in TOS.No.32 of 1999 and the first defendant in C.S.No.772 of 2005 preferred the present OSAs.



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

15. Heard Mr.Mr.R.Thiagarajan, learned counsel for the appellants and Ms.Y.Kavitha, learned counsel of M/s.P.V.S.Giridhar Associates, appearing on behalf of first respondent in OSA.Nos.427 & 436 of 2018 and the 4th respondent in OSA.No.435 of 2018.

16. The learned counsel for the appellants would vehemently contend that since the Testamentary Court is a Court of conscience, and not a Court of suspicion, the Court has to start with the presumption of due execution of Will. It is his further contention that the Marginal note dated 02.10.1991 is a clear proof about the cancellation of settlement deed dated 12.08.1977. The learned counsel would further contend that G.Bhaskar [4th defendant in TOS] has no caveatable interest in the property and therefore has no right to dispute the grant of Probate. The learned counsel would further contend that the learned Single Judge has not taken into consideration of the reason for execution of Marginal Note dated 02.10.1991. He would further contend that the non impleading of the sister of G.Bhaskar is incurable defect. The learned counsel would further contend that the filing of the suit without seeking a prayer for declaration on the settlement deed dated 12.08.1977, is in contravention to the settled legal principles. Thus, prayed to allow these OSAs.



WEB COPY

17. Per contra, the learned counsel appearing for the 4th defendant [Bhaskar] in TOS.No.32 of 1999 would vehemently contend that the Marginal Note of the Will dated 02.10.1991 is in contravention to Section 71 of The Indian Succession Act. He would further contend that though PW2 Mr.Seetharaman was examined to prove the signature of Ramakrishna Chetty, he did not speak about his nature of acquaintance. Furthermore, it is the specific contention of the 4th defendant that the evidence of Nagarathinam [PW3] before the Testamentary Court is contrary to her pleadings. It is also the specific submission of the learned counsel that there are various inherent suspicious circumstances including the variance of the testator's signature in the front page and in the 2nd page of the Will. Therefore, contended that the findings rendered by the learned Single Judge is well merited and does not require any interference.

18. We have given our anxious consideration to either side submissions.

19. From the submissions made by either side, the following points arise for our consideration in TOS.No.32 of 1999:-

- (i) Whether the Will alleged to have executed by one Ramakrishna Chetty dated 25.12.1984 is true, genuine and



WEB COPY

valid?

(ii) Whether the plaintiff is entitled to a Probate as prayed for?

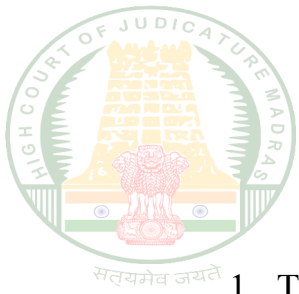
20. Similarly in C.S.No.772 of 2005, the following points arise for our consideration:-

- (I) Whether G.Bhaskar [plaintiff in C.S.No.772/2005] is entitled for a declaration as prayed for?
- (II) Whether Gopal [first defendant in C.S.No.772/2005] is entitled for a counter claim as prayed for?
- (III) Whether the respective parties are entitled for recovery of possession?
- (IV) To what other reliefs?

Point Nos.(i) & (ii) in TOS.No.32 of 1999

21. In order to decide all the issues, it is primordial to consider the genuinity of the Will said to have been executed by Ramakrishna Chetty. If the Will is proved, then Mr.Gopal, propounder and the plaintiff in TOS is entitled to have Probate, and his counter claim raised in C.S.No.772 of 2005.

22. Before we proceed further, it is appropriate to cull out the admitted position of the case.



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

1. The relationship between the parties are admitted.
2. It is further admitted that the settlement deed dated 12.08.1977 was executed by G.Ramakrishna Chetty.
3. There is a Marginal Note in Ex.P2-Will as if the above settlement deed was cancelled.
4. The attestors of Ex.P2-Will was not examined before the Court.

23. Let us start on the point of non examination of the attestors. According to PW1-Gopal, he did not know the whereabouts of the attestors. Here, we must also keep in mind that Section 68 of the Indian Evidence Act deals about the proof of execution of a document required by law to be attested.

24. In the present case, the propounder of the Will Mr.Gopal [PW1] took shortcut by simply deposing before the Court as if he did not know the whereabouts of the attestors. It is pertinent to mention here that in his chief examination, he did not refer as to what are all the attempts he made to secure the attestors. But, only during cross examination, he would state that he do not know the whereabouts of the attestor. For ready reference, Section 68 of The Indian Evidence Act is extracted hereunder:-

“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



WEB COPY

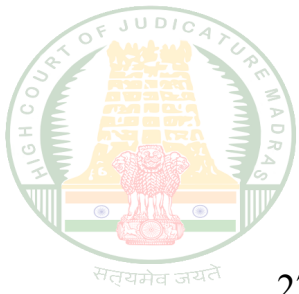
be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.”

According to Section 68, if a document is required by law to be attested, it shall not be used as evidence unless at least, one attesting witness is called for to prove the execution.

25. If the attestors are not found, then the document can be proved by invoking Section 69 of the Indian Evidence Act. For ready reference, Section 69 of the Indian Evidence Act is extracted hereunder:-

“69. Proof where no attesting witness found.- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

26. Thus, in view of Section 69 of the Indian Evidence Act, only when there is a clear proof that the attesting witnesses are not alive and could not be found, then Section 69 of the Indian Evidence Act will be put in service. In the case in hand, no independent evidences were placed to speak about the whereabouts of the attestors, except the PW1's *ipsi dixit*.



WEB COPY

27. In paragraph 12 of the plaint in TOS, the plaintiff Gopal had pleaded that both the attesting witnesses are no more and one Seetharaman, who knows the signature of the testator Ramakrishna Chetty has sworn an affidavit identifying the signature of the deceased. But, for the first time during chief examination, which was held on 14.02.2012, he deposed as follows:-

“..... The Will was executed in the presence of Mr.C.K.Nayar who has affixed his signature in the said Will and I do not remember the name of the other attesting witnesses. I do not know the whereabouts of the C.K.Nayar. I was informed that he has gone to back his native place at Kerala.”

28. The above statement is totally contradicting his plaint pleading. If really the attesting witness is no more, it is the duty of the propounder to produce at least his death certificate or examine some witnesses, who knew about the attestor's death. But, curiously and surprisingly having pleaded in the plaint that the attestors were dead, in contrast, he deposed before the Court that one attestor C.K.Nayar left to his native place Kerala, and he did not remember the name of the other attesting witnesses. Therefore, when



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

there is no clear proof about the non availability of attestor, the attempt made by the plaintiff to prove the Will through a person, who is allegedly acquainted with the signature of the testator is nothing but a futile attempt, without any foundational fact to have traction to invoke Section 69 of the Indian Evidence Act.

29. Apart from that, as rightly found by the learned Single Judge, PW2-Seetharaman, who proclaimed as if he was acquainted with the signature of the testator, did not say as to how he was acquainted with his signature. Therefore, at the first instance, there is no foundation to invoke Section 69 of the Indian Evidence Act, and the second is, as found by the learned Single Judge, PW2's version could not be believed as there is no explanation, about his acquaintance with the signature of the testator. Therefore, this Court finds that there are strong suspicions in respect of the execution of Ex.P2-Will.

30. The above suspicion is further vindicated through the variance of the testator's signature. In Ex.P2-Will, the signature found in the first page and the signature subscribed at the time of registration are differing. Except PW1, all other witnesses have admitted the variance of the testator's



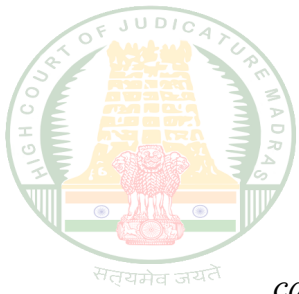
OSA.Nos.427, 435 & 436 of 2018

WEB COPY

signature. Even, on the mere perusal, this Court could find the variance in the testator's signature. But, to dislodge the above suspicion, the plaintiff examined PW3-G.Nagarathinam, who is the daughter of the testator and sister of propounder. According to her evidence, her father had signed the Will in her presence before the Registrar Office, and she had identified her father before the Registrar.

31. In this regard, we deem it appropriate to extract the cross examination of G.Nagarathinam:-

“It is correct to state that I have mentioned in my written statement Ex.C1 the signature found in the Will is not the signature of my father. It is also correct to state that I have mentioned in my written statement that I have not gone to registrar office to registered the Will. It is also correct to state that I have stated in my written statement that my father has not executed a said Will dated 25.12.1984. It is correct to state that I have also mentioned in my written statement that there is no cordial relation between my father and the plaintiff Gopal during the life time of my father and the plaintiff has filed several suit against the my father while he was alive. It is correct to state that I have not stated in my written statement Ex.C1 that Baskar has Misbehaved with me during the life time of my father. Witness adds: since it is a shameful act I have not mentioned in the written statement. The portion of



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

*cancellation in respect of the settlement deed mentioned in the Will
was known to me after the death of my father.”*

From the perusal of the above admission, it is amply clear that PW3's evidence is totally contradicting to her written statement.

32. At this juncture, it is appropriate to refer the past conduct of the triumvirate Mr.Gopal, Mr.Chandrayya and Mrs.Nagarathinam. In TOS.No.32 of 1999, they, without impleading the defendants 3 to 5, have obtained Probate, which was ultimately revoked by the Division Bench and such order was confirmed by the Hon'ble Supreme Court. It is in this background, the evidence of PW3-G.Nagarathinam supporting the execution of Will is highly untrustworthy, and further causes deep doubt about the execution of alleged Will.

33. We are deciding the genuinity of the alleged Will after the demise of the testator. Therefore, we cannot expect the testator to come and explain the legitimate doubts surfacing during trial. Accordingly, it becomes incumbent upon the propounder to dispel all the legitimate doubts. But, as discussed hereinabove, the propounder of the Will has miserably failed in his



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

attempt to dispel those legitimate doubts. Therefore, we are of the firm view that the plaintiff has miserably failed to prove the execution of the Will. As a consequence, the plaintiff is not entitled to have the Probate. Accordingly, the issue decided against the plaintiff.

Points 1 to 4 in CS.No.772 of 2005

34. Coming to the **Points 1 to 4** in C.S.No.772 of 2005, it is an admitted fact that Ramakrishna Chetty executed a settlement deed in favour of the plaintiff on 12.08.1977. But, it is the case of Gopal that the settlement deed was subsequently canceled through Marginal Note dated 02.10.1991 made in Ex.P2-Will. In Ex.P2-Will, it is stated as follows:-

“The rest of the portions in said premises was already settled in favour of my two grand children - daughter Sadana and boy Bhaskar of my eldest daughter Shrimathi C.Jamuna by a Registered Deed No.897 dated 12.08.1977 and they own the ownership of that portions of the premises.”

35. Near the above recital, there is a Marginal note of Ramakrishna Chetty dated 02.10.1991 with an endorsement “**Canceled**”. This is the only document, which had been produced by the plaintiff to prove the cancellation



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

of settlement deed dated 12.08.1977. The reason assigned by the plaintiff for such cancellation is the conduct of C.Bhaskar. According to the plaintiff Gopal, Mr.Bhaskar attempted to misbehave with his maternal aunt, who was examined herein as PW3. But, more strangely, PW3 in her chief examination, as well as in her written statement, did not refer to such conduct. It is still more curious that she did not file any written statement in C.S.No.772 of 2005, though she was arrayed as the 3rd defendant. Even on the perusal of the evidence of PW3, she was not examined as a party to the proceedings, but was examined on summons. Therefore, the reason assigned by the plaintiff Gopal for cancellation of the settlement deed also become doubtful.

36. Apart from that, it is settled legal principle that any unilateral cancellation of settlement deed becomes illegal and this position has been settled in plethora of judgments and it is useful to refer to the following judgments on the above points:-

- (i) *Latif Estate Line India Ltd., Vs. Hadeeja Ammal and others* reported in 2011 (2) CTC 1 [FB];**
- (ii) *D.V.Loganathan Vs. The Sub-Registrar* reported in (2014) 3 CTC 113.**



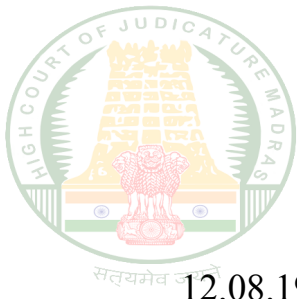
WEB COPY

Even if the defendant C.Bhaskar admits the Marginal Note, still, this is only an obliteration on an unproved Will, which can only be construed as a scrap of paper with some endorsement.

37. For Academic interest, it is relevant to refer Section 71 of the Indian Succession Act. The same is extracted hereunder:-

“71. Effect of obliteration, interlineation or alteration in unprivileged Will.- No obliteration, interlineation or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will have been thereby rendered illegible or undiscernible, unless such alteration has been executed, in like manner as hereinbefore is required for the execution of the Will.”

38. According to Section 71, if any obliteration made in a Will, it has to be attested like a Will. But, in the case in hand, for the alleged Marginal Note in Ex.P2-Will, there is no attestation. Therefore, even on this score, the defence of the propounder Gopal would fail. Thus, having admitted the execution of the settlement deed and failure to prove Ex.P2-Will, the undeniable conclusion would be that by virtue of a settlement deed dated



OSA.Nos.427, 435 & 436 of 2018

12.08.1977, Bhaskar is entitled for the declaration as prayed for in C.S.No.772 of 2005.

39. Yet another defence was raised by the plaintiff by relying upon the following judgments to buttress his point that the non joinder of Bhaskar's sister Sadana is fatal to the suit. The cited judgments are as follows:-

(i) *Mohanavelu Mudaliar Vs. Annamalai Mudaliar and Ors* reported in 1923 (44) MLJ 249;

(ii) *Thina Shanmuga Moopanar Vs. Mona Chuna Nana Subbayya Moopanar and others* reported in 1922 (42) MLJ 133,

(iii) *Pasumarthi Subbaraya Sastri Vs. Mukkamala Seetha Ramaswami* reported in AIR 1933 Mad 664;

(iv) *Debahari Kumbhar and Ors. Vs. Sribatsa Patra and others* reported in AIR 1994 ORI 86,

(v) *Laxmishankar Harishankar Bhatt Vs. Yashram Vasta (Dead) by LRs.* reported in 1999 (3) SCC 49 and

(vi) *Swaran Singh and others Vs. State of Punjab and others* reported in 1994 (3) SCC 544.

The facts of the above cited cases are not applicable to the present suit, further the above cases do not deal about the filing of the suit to protect the interest of the co-owner.



WEB COPY

40. In the case in hand, the 4th defendant Bhaskar admits the right of his sister Sadana and has filed the suit even to protect her interest. Therefore, when the co-owner files a suit to protect the property for himself and on behalf of other co-owner, who is not a party to the suit, such suit will not come within the parameter of non-joinder of necessary property. In this regard, it is useful to refer to the judgments in *Nachal and Another Vs. C.Arkimam and another* reported in *1996 (1) CTC 650* and *P.Subramaniam Vs. Family Manager Palaniappan* reported in *2017 SCC OnLine Mad 9656*. Therefore, we are of the firm view that the present suit will not hit by the principle of non joinder of necessary party.

41. We have already concluded that C.Bhaskar (plaintiff in C.S.No.772 of 2005) is entitled for a declaration. Therefore, the natural concomitant would be that he would also be entitled for the relief of possession as prayed for.

42. In respect of the Counter claim of the propounder Gopal, the entire claim rests upon the proof of Ex.P2-Will. Here, the Will has not been proved in a manner known to law. Therefore, his claim for counter claim would fail. In view of the above detailed discussion, we do not find any ground to deviate from the well considered findings of the learned Single Judge.



OSA.Nos.427, 435 & 436 of 2018

WEB COPY

Accordingly, all the issues are decided in favour of G.Bhaskar, plaintiff in

C.S.No.772 of 2005.

43. In the result, all the Original Side Appeals stand dismissed.

Considering the relationship between the parties, there is no order as to costs.

Consequently, connected CMPs are also closed.

(Dr.ANITA SUMANTH, J .) (C.KUMARAPPAN, J.)
24.04.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking order/Non speaking order
kmi

To
The Sub Assistant Registrar,
Original Side,
High Court of Madras.



WEB COPY



OSA.Nos.427, 435 & 436 of 2018

Dr.ANITA SUMANTH, J.
and
C.KUMARAPPAN, J.

kmi

Original Side Appeal Nos.427, 435 & 436 of 2018

24.04.2025