



S.A.(MD)No.245 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.245 of 2019

and

C.M.P.(MD)No.4564 of 2019

- 1.Pitchaiah @ Pitchumani
- 2.Avudaiammal @ Chinnaponnu
- 3.Rajasundari
- 4.Ramachandran
- 5.Maheswari

... Appellants

VS

- 1.Subbammal
- 2.Krishnammal
- 3.Meenakshi
- 4.Amma Ponnu
- 5.Varatharaja Gopal
- 6.Parvathi

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 04.07.2018 passed in A.S.No.93 of 2017 on the file of the III Additional District Court, Tirunelveli confirming the judgment and decree, dated 26.04.2017 passed in O.S.No.289 of 2011 on the file of the Principal Subordinate Court, Tirunelveli.



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For A1 : Mr.R.Balakrishnan
R1 : Died
For R2 and R3 : Mr.H.Arumugam
For R5 and R6 :No Appearance

JUDGMENT

The defendants 1, 3 to 5 and 7 are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 04.07.2018, passed in A.S.No.93 of 2017 on the file of the III Additional District Court, Tirunelveli, confirming the judgment and decree, dated 26.04.2017, passed in O.S.No.289 of 2011 on the file of the Principal Subordinate Court, Tirunelveli.

2.For the sake of convenience, the parties are referred to, as per their litigative status before the trial Court.

3.It is the case of the plaintiffs that originally, the first plaintiff, R.Sankaralingam, had filed a suit as against his son, the first defendant seeking for recovery of possession and also for damages for unlawful use and occupation. The first defendant is the first son born through the first wife. According to the first plaintiff, the suit property and other properties



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originally belonged to his father, Ramasamy Konar. The first plaintiff's daughter born through the second wife had filed a suit for partition in O.S.No.130 of 2004 as against the first plaintiff and also the first defendant. It is the further case of the plaintiff that in the said suit, the other defendants in that suit, who are the sons and daughters born through his first wife, remained *ex parte*. In the said suit, it had been held that the suit property and other properties are the separate properties of the first plaintiff, R.Sankaralingam. The said suit came to be dismissed on 04.01.2007 and the appeal preferred by the first defendant in A.S.No.53 of 2007 also came to be dismissed on 20.02.2008.

4. According to the first plaintiff, he is in occupation of the house bearing Door No.19A and 19B at Kulasekara Alwar Street for the past 25 years, as an owner. While so, the first defendant had occupied the suit property bearing Door No.19C, Kulasekara Alwar Street, during September 2003 by force without the consent of the first plaintiff. All the three houses are situated in one compound. The first defendant is residing in the upstairs bearing Door No.19C, which is illegal. The first plaintiff is paying the property tax to the Corporation for all the three houses. Since the first



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plaintiff suffered a damage of Rs.1,000/- per month and the possession of the first defendant was illegal, he issued a notice on 24.05.2011, which was even though received, not replied. As such the first plaintiff came up with the suit for eviction.

5.During the pendency of the suit, the first plaintiff died on 07.12.2013 and the plaintiffs 2 to 4, who are the second wife and two daughters of the first plaintiff, have been impleaded in the suit and they filed an amended plaint.

6.It is the case of the plaintiffs 2 to 4 that during the life time of the first plaintiff in a sound disposing state of mind and on his own volition and free will, the first plaintiff had executed a registered Will, dated 18.09.2012, bequeathing the suit property in favour of the plaintiffs 2 to 4. After the death of the first plaintiff, the Will came into effect and thereby, they became the lawful owner of the suit property.

7.After having themselves impleaded in the suit, in view of the objections raised, the plaintiffs 2 to 4 have taken steps to implead the other

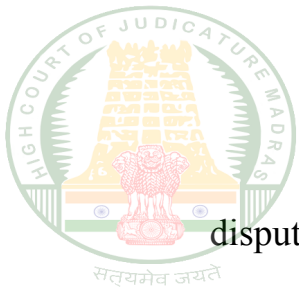


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legal heirs of the first plaintiff, namely, R.Sankaralingam, born through his first wife, Sivarama Krishnammal, as defendants 2 to 8. Though only the first defendant is in occupation of the suit property, since the right is claimed based on the Will, the other legal heirs have also been impleaded.

8.The first defendant resisted the suit by filing a written statement disputing that the plaintiffs have not disclosed as to whether the first plaintiff is the absolute owner of the suit property or it is his ancestral property. The first defendant had disputed the title and possession of the first plaintiff for the period of 25 years. It is the contention of the first defendant that he has been in possession and enjoyment of the suit property for nearly 30 years and he had spent and carried out repair works and also had spent money on several heads in respect of the suit property. It is the claim of the first defendant that the suit property belongs to him, as his ancestral property, since the suit property came to the first plaintiff through his grandfather, Ramasamy Konar and sought for dismissal of the suit.

9.Even though the plaintiffs 2 to 4 were impleaded and an amended plaint was filed claiming right through the Will, the first defendant had only



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disputed the identity of the property in the Will and it is only averred that all other aspects are denied.

10.The others legal heirs, namely, the defendants 2 to 8, born through the first wife of the first plaintiff, who were impleaded, have not chosen to file any written statement.

11.During trial, the plaintiffs 2 and 3 have examined themselves as PW-1 and PW-2 and have examined both the attestors to the Will as PW-3 and PW-4 and marked Ex-A1 to Ex-A12 and on the side of the defendants, the first defendant examined himself as DW-1 and examined one Ramachandran as DW-2 and marked Ex-B1 to Ex-B6.

12.The trial Court, after analysing the oral and documentary evidences, came to the conclusion that in view of the judgment and decree in Ex-A1 and Ex-A2, the deceased first plaintiff is the absolute owner and the Will executed by him in favour of the plaintiffs 2 to 4 on 18.09.2012 in Ex-A8 has been proved and they are entitled for a decree of eviction. The trial Court found that the suspicious circumstances have been dispelled by

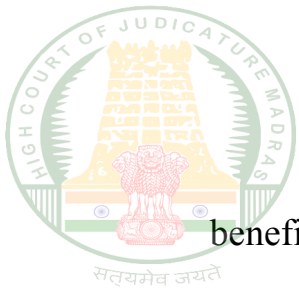


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the plaintiffs and accepted the Will. On appeal, the lower appellate Court also, by holding that the Will in Ex-A8 is genuine, in view of the cogent evidence given by the attestors, PW-3 and PW-4 and the Will being a registered holograph Will written by the testator himself, which has its own sanctity, dismissed the appeal confirming the judgment and decree of the trial Court. Assailing the concurrent finding on fact, the defendants 1, 3 to 5 and 7 have preferred the above Second Appeal.

13.The appeal has not been admitted and this Court by order, dated 30.04.2018 had only issued notice before admission.

14.The learned Counsel for the first defendant/first appellant argued that since there are suspicious circumstances, it is the duty of the propounder of the Will to dispel all the suspicious circumstances to prove the Will. By relying on the Will in Ex-A8, he further submitted that when admittedly, the testator has eight children born through his first wife, there is no mention of these legal heirs in the Will and there is no reason assigned for excluding these legal heirs and only made the plaintiffs 2 to 4, the second wife and the children born through the second wife, as the



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beneficiaries and disinheritance of the eight legal heirs itself is a suspicious circumstance and the plaintiffs have not dispelled the suspicious circumstance to prove the Will.

15.It is his vehement contention that when from the recitals of the Will in Ex-A8 itself, none of the legal heirs are even referred to and no reason is assigned why they are excluded, the Will is ought to be rejected in view of the suspicious circumstance, that arises. It is his further contention that one of the attestors in the Will, PW-3, was working as Principal of a College, in which one of the beneficiaries, who is the fourth plaintiff, Meena, was working as a Professor at that relevant point of time and therefore, he is an interested person, who would naturally support the claim of the plaintiffs. Further, the other attestor, PW-4, is none other than the own brother of the second plaintiff and therefore, the evidence of these two persons cannot be relied upon to accept the Will. The learned Counsel also further by citing the cross examination of PW-3 and PW-4, submitted that there are discrepancies in the evidences of the two attestors and therefore, execution of the Will has not been proved.



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16.It is also the further vehement contention of the learned Counsel that when the testator was the resident of Palayamkottai, Tirunelveli District, there was no occasion for the testator, the first plaintiff to come over to Madurai for the purpose of executing the Will in Ex-A8. This itself is a suspicious circumstance and by this document, the natural legal heirs, who are the defendants, cannot be excluded and denied the right in the properties of R.Sankaralingam. He also submitted that unless the suspicious circumstances are dispelled with, the Will cannot be taken as proved. He further submitted that the Courts below have not considered the evidences available in a proper perspective and the findings rendered are not based on the settled legal preposition and therefore, are perverse and sought for interference of this Court.

17.The learned Counsel for the first appellant in support of his contentions relied on the following judgments:

(1)1977 (1) SCC 369 [*Jaswant Kaur vs Amrit Kaur and others*]

(2)(2023) 9 SCC 734 [*Meena Pradhan and others vs Kamla Pradhan and another*]

(3)2002 (1) CTC 650 [*D.Kausalya vs S.Sankaran*]



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18.It is to be noted that the appellants 2 to 4, who are the defendants 3 to 5 and 7, had engaged a separate Counsel. However, he neither appeared nor placed any arguments.

19.Contending contra, Mr.H.Arumugam, learned Counsel for the respondents 2 and 3 argued that the testator, who worked as a Sheristadar in the District Court, had written the Will in Ex-A8 and the holograph Will has its own identity and the Will has also been registered. He further submitted that the Will has been executed by R.Sankaralingam in favour of the plaintiffs 2 to 4 pending suit. The learned Counsel further submitted that mere exclusion of any legal heirs alone could not be taken as a suspicious circumstance, when there are several reasons visible from the records. He submitted that the plaintiffs have duly examined both the attestors as PW-3 and PW-4, who had given cogent evidence in respect of the execution of the Will and through their witness, the Will has been proved, as per Section 68 of the Indian Evidence Act.



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20.He further submitted that even when the first plaintiff had issued a notice to the first defendant prior to the suit, the same has not been replied and therefore, adverse inference has to be drawn. Further, since R.Sankaralingam himself has filed a suit as against the first defendant seeking for eviction, the relationship being sour and the fact that the other legal heirs through the first wife were also not residing with him and the further fact that they have not chosen to dispute the Will clearly show the reason for exclusion of the other legal heirs and therefore, there was no suspicious circumstance surrounding the Will. He further submitted that the Courts below have rightly analysed the evidences and have arrived at a finding, which needs no interference and sought for dismissal of the appeal.

21.The learned Counsel for the respondents 2 and 3 relied on the following decisions in support of his submissions to the effect that holograph Will has its own identity, the suit pending against the legal heir itself is a valid reason for disinheritance and the mere exclusion of the legal heir or execution of the Will in some other place, other than the place of residence. would not itself be a suspicious circumstance:



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(1)1996 9 SCC 274 [Joyce Primrose Prestor (Mrs) (NEE VAS) vs

Vera Marie Vas (Ms) and others];

(2)(2009) 1 MLJ 1067 [Jega Industries and another vs Sulochana

Cotton Spinning Mills Private Limited]

(3)2015 (2) MWN (Civil) 415 [Selvasubramanian vs

Subburathinam]

(4)2023 5 CTC 561 [Mothi Periyakaruppan @ M.Maharajan vs

Mothi Ayyan Ambalam (Died) and others]

(5)2024 (4) CTC 271 [N.M.Narayana @ Muthucaruppan and

another vs M.Ramanathan and another]

22.Heard the rival submissions and perused the materials available on record.

23.The first plaintiff had filed the suit as against his first son, the first defendant seeking for eviction. Admittedly, the first plaintiff, R.Sankaralingam, had two wives, by name, Sivarama Krishnammal (first wife) and Subbammal (second wife/second plaintiff). Eight children were born through the first wife and two children were born through the second



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wife. The first wife had died. The second wife and the two children are the plaintiffs 2 to 4. The eight children born through the first wife are the defendants 1 to 8. The first plaintiff claims to be the absolute owner of the suit property. The first defendant alone had disputed the claim of the first plaintiff.

24. According to the first defendant, it is the ancestral property belonging to him through his grandfather, Ramasamy Konar. Earlier, a suit has been filed in O.S.No.130 of 2004 by the plaintiffs 3 and 4 as against the first plaintiff and all the defendants seeking for partition claiming that it is an ancestral property. By judgment and decree, dated 04.01.2007, in Ex-A1 and Ex-A2, the suit came to be dismissed holding that the first plaintiff, R.Sankaralingam, is the absolute owner of the suit property. The plaintiffs have also filed the copy of the judgment and decree in A.S.No.53 of 2007, dated 20.02.2011 in Ex-A3 and Ex-A4. Perusal of Ex-A3 and Ex-A4 would reveal that the first defendant alone had preferred an appeal and the appeal came to be dismissed confirming the judgment and decree of the trial Court holding that the suit property is the absolute property of the first plaintiff. There is no further appeal and the decision in A.S.No.53 of 2007, had



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attained finality. When the first defendant claims that the suit property is his ancestral property through Ramasamy Konar, he had not filed any document to substantiate the same. Further, from Ex-A1 to Ex-A4, it is clear and evident that the suit property is the absolute property of the first plaintiff, R.Sankaralingam and therefore, he had title to the suit property to seek for eviction as against the first defendant.

25.As referred earlier, pending suit, the first plaintiff died. The plaintiffs 2 to 4, who are the second wife and two daughters of R.Sankaralingam, have impleaded themselves in the suit based on the Will, dated 18.09.2012 in Ex-A8 executed by the first plaintiff in favour of the plaintiffs 2 to 4. Since the plaintiffs 2 to 4 claim title through Ex-A8, even though originally the suit was filed only as against the first defendant for eviction, subsequently, other seven legal heirs of R.Sankaralingam born through his first wife were impleaded as defendants in the suit.

26.Pursuant to the plaintiffs 2 to 4 having been impleaded in the suit, they have filed an amended plaint. The first defendant alone filed an amended written statement only disputing the identity of the property in the



Will. The first defendant had neither specifically disputed the Will nor had alleged any fraud, coercion or sound disposing state of mind of the testator.

It is to be noted that even though all the other legal heirs have been impleaded, as defendants 2 to 8, none of them had chosen to file any written statement disputing the Will.

27. Before advertng to the Will, it is useful to refer the decision of the Hon'ble Supreme Court in the case of *Meena Pradhan and others vs Kamla Pradhan and another* reported (2023) 9 SCC 734, where, the manner of execution, proof and the suspicious circumstances in a Will has been broadly dealt with. The Hon'ble Supreme Court held as follows:

“10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam [Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will



executed by him;

10.2. *It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

10.3. *A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:*

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. *For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the*



consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

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

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

11. *In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances.”*

28. Now keeping the above principle in mind, we would proceed to analyse the Will. The plaintiffs, in order to prove the Will, have examined PW-3 and PW-4, attestors in the Will, Ex-A8. It is now to be seen as to whether there are any suspicious circumstances and whether the evidences of the attestors, PW-3 and PW-4, support the case of the plaintiffs to prove the Will.



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29. The testator, who had executed the Will in Ex-A8, was working as Sheristadar in the District Court, who was aware of the legal proceedings. The testator, with his experience and knowledge, had written the Will himself. Ex-A8 is a holograph Will and the holograph Will has its own identity. Normally, a Will is prepared by a scribe based on the instructions of the testator and subscribed by the testator in the presence of two witnesses. In the case of a holograph Will, the testator himself writes the Will conveying his intention bequeathing his properties. In view of the very nature, a holograph Will has its own identity, credibility and trustworthiness. There is a greater presumptive value attached to the holograph Will, as held by the Hon'ble Supreme Court in **1996 9 SCC 274 [Joyce Primrose Prestor (Mrs) (NEE VAS) vs Vera Marie Vas (Ms) and others]**. The Paragraph Nos.15 and 18 of the said judgment reads as under:

15. While the presumption in the case of ordinary Wills is as stated above, in the case of "holograph Wills", the presumption is all the more — a greater presumption. Ex. P-1 is a "holograph Will". It is one which is wholly in the handwriting of the testator. The Calcutta High Court in Ajit Chandra Majumdar v. Akhil Chandra Majumdar [AIR 1960 Cal 551 : 64 CWN 576] (AIR Cal at p. 552) stated about such a Will, thus:

"The whole of this Will was written in the hand by the testator himself in English. The handwriting is clear and firm. The law makes a great presumption in favour of the genuineness of a



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holograph Will for the very good reason that the mind of the testator in physically writing out his own Will is more apparent in a holograph Will than where his signature alone appears to either a typed script or to a script written by somebody else.”

(emphasis supplied)

The writing of the Will and signature of the testator are admitted. There is also due and proper attestation in accordance with the relevant statutory provisions. No suspicious circumstance appears on the face of the document, Ex. P-1. The Will appears to be moderate and rational. Viewed from the above angle, there is a great presumption — even bordering on actual proof of the due execution and attestation of the Will.

.....

18. In applying the above general principles to particular cases, the nature of the Will, the pleadings of the parties in the case, facts admitted or proved and the presumptions available in law, will have to be carefully given effect to. The case of a “holograph Will” which is admittedly in the handwriting of the testator, is a special case which will require a different approach in considering the evidence in the case, to find whether the Will has been duly executed and attested. The approach to be made in such cases has been stated by the Constitution Bench in Shashi Kumar Banerjee case [AIR 1964 SC 529] , at p. 532 paragraph (5). In that case, the Court referred to certain undisputed preliminary facts as follows: The testator, a well-known wealthy lawyer, who died at the age of 97, had executed a Will when he was 93 years' old. He had made provision for his heirs by executing a number of documents, and the Will referred to the remaining property. The Will was witnessed by two persons. The entire Will was in the handwriting of the testator, corrected in various places and the corrections were initialled by him. It was admitted that the signature at the bottom of the Will was of the testator. The dispositions were very clear and detailed and it could not be said to be an unnatural document. There was no evidence to show that the propounders took any part in the execution of the Will. After stating these preliminary facts, the Court stated the approach to be made in the case of a “holograph Will”, thus:

“Further the fact that the Will is a holograph Will and admittedly in the hand of the testator and in the last paragraph of the Will the testator had stated that he had signed the Will in the presence of the



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witnesses and the witnesses had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. On these facts there is hardly any suspicious circumstance attached to this Will and it will in our opinion require very little evidence to prove due execution and attestation of the Will. There is no doubt about the genuineness of the signature of the testator, for it is admitted that the signature at the foot of the Will is his. The condition of the testator's mind is also not in doubt and he apparently had full testamentary capacity right up to March 1947, even though he was an old man of about 97 when he died on 1-4-1947. ... There is nothing to show that the dispositions were not the result of the free will and mind of the testator. Further, the propounders (namely, the appellants) had nothing to do with the execution of the Will and thus there are really no suspicious circumstances at all in this case. All that was required was to formally prove it, though the signature of the testator was admitted and it was also admitted that the whole Will was in his handwriting. It is in the background of these circumstances that we have to consider the evidence of the two attesting witnesses. ...”

30.However, even in case of a holograph Will, it is to be seen as to whether the testator was in a sound state of mind and the Will was executed by the testator. The evidence of the attestors in the Will becomes more crucial to decide the credibility of the Will.

31.PW-3, who was a retired Principal from Pettai M.D.D. Hindu College, in his evidence had deposed that he knew the testator, R.Sankaralingam and he had called PW-3 and informed that he is coming to Madurai on 18.09.2012 and he has to accompany him to the Sub Registrar



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Office. PW-3 had gone to the Sub Registrar Office at 10.30 am, where, the testator had brought the Will and the testator had signed the Will in the Sub Registrar Office in the presence of himself and PW-4. Thereafter, he had attested and then PW-4 had also attested. PW-3 had specifically deposed that the testator signed the Will in his presence and he had also attested in the presence of testator and PW-4. PW-3 had stood the cross examination of the defendants and nothing was elucidated adversely.

32.PW-4, the other attester to the Will had also clearly deposed in his evidence that the testator signed the Will in his presence and thereafter, PW-3 attested the Will and pursuant to which, in the presence of the testator and PW-3, he had attested the Will, as second witness. PW-4 had clearly deposed about execution and nothing adverse has been elucidated in the cross examination by the defendants.

33.From the evidence given by PW-3 and PW-4, it is clear that the testator had prepared the holograph Will and signed the Will in the presence of PW-3 and PW-4 in the Sub Registrar Office and the Will in Ex-A8 has been registered. In view of the cogent evidence given by PW-3 and PW-4, it



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is established that the Will has been executed by the testator on his own free will and volition and in a sound state of mind.

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34.It is the vehement contention of the learned Counsel for the first appellant that the Will is surrounded by suspicious circumstances and onus is on the plaintiffs to dispel the suspicious circumstances to prove the Will. According to the first appellant, since the legal heirs born through the first wife has been excluded, the disinheritance and non mentioning of the legal heirs in the Will in Ex-A8 is a suspicious circumstance. Further, since the testator was residing in Palayamkottai, Tirunelveli District and he had executed the Will and registered it at Madurai, there was no occasion for him to go to Madurai and therefore, it also a suspicious circumstance. It is also contended that PW-3 was working as a Principal in the College, at that point of time, when the fourth plaintiff was working as Professor in that College and therefore, he is an interested witness and all these are suspicious circumstances, which the plaintiffs have failed to dispel and therefore, the Will has to be rejected.



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35.First, it is to be noted that mere disinheritance of some of the legal heir by itself is not a suspicious circumstance. It is useful to refer to the decision of the Hon'ble Supreme Court in the case of ***Dhanpat vs Sheo Ram and others reported in (2020) 16 SCC 209***, wherein, the Hon'ble Supreme Court held as follows:

“32. In respect of an argument that some of the natural heirs were not even mentioned in the will, therefore, the will is surrounded by suspicious circumstances is again not tenable. Mr Rishi Malhotra, learned counsel for the appellant referred to the judgment of this Court reported as Rabindra Nath Mukherjee v. Panchanan Banerjee [Rabindra Nath Mukherjee v. Panchanan Banerjee, (1995) 4 SCC 459] wherein it had been held that the will was executed for the exclusion of the natural heirs. The suspicious circumstances found by the High Court to deprive the natural heirs by the testatrix was not found to be sufficient. The Court held as under : (SCC p. 461, para 4)

“4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full-blood sister, the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the will.”

36.Further, the Hon'ble Supreme Court in the case of ***Swarnalatha and others and Kalavathy and others***, reported in ***2022 SCC OnLine SC 381***, held as follows:



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“25.The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled and it needs no reiteration. It is enough if we make a reference to one of the recent decisions of this Court in Kavita Kanwar v. Mrs. Pamela Mehta¹ where this Court referred to almost all previous decisions right from H. Venkatachala Iyengar v. B.N. Thimmajamma². But cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned. This can be seen from the fact that almost all previous decisions of this Court referred to in Kavita Kanwar (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a Will.”

37.In view of the aforesaid decisions, mere disinheritance or non mentioning of the other legal heirs would not by itself be a suspicious circumstance. In the instant case, it is to be noted that there has not been cordial relation between the first plaintiff and the first defendant or other legal heirs born through the first wife. In this regard, PW-1 himself in his cross examination admitted that the defendants are not residing with the first plaintiff and they are residing elsewhere, when the plaintiffs 2 to 4 are residing in the suit property along with the first plaintiff. Further, it is to be noted that in the earlier round of litigation, only the first defendant had filed



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an appeal in Ex-A3 and Ex-A4 and in view of the strained relationship, the first plaintiff had filed the present suit as against the first defendant seeking to evict the first defendant from the suit property. When the relationship between the first plaintiff and the defendants is sour and when there had been no cordial relationship between the first plaintiff and any of the defendants born through the first wife, it is natural that the first plaintiff had executed the Will in favour of the second wife and his daughters, the plaintiffs 2 to 4, where, he had not mentioned about the defendants and they have been disinherited in the Will. In view of the soured relationship, which is evidenced by the adverse proceedings even from the present suit filed by the father, the first plaintiff, as against the first defendant, mere disinheritance of the defendants in the Will in Ex-A8 would not lead to any suspicious circumstances and the submission made in this regard is liable to be rejected.

38.Secondly, it is contended that since the testator was residing in Palayamkottai, Tirunelveli and the Will has been executed in Madurai, it leads to a suspicious circumstance. This argument is to be rejected for the simple reason that mere registration of the Will at a different place by itself



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would not lead to any suspicious circumstance. It is open to the testator to register a Will at a place of his choice for his own reasons. As referred earlier, the testator, when he was working as Sheristadar of the District Court, who had knowledge of these proceedings, had prepared the holograph Will and had intimated PW-3 and had brought PW-4 along with him to register the Will at Madurai. When there had been adverse proceedings with the first defendant, it is quite natural that the testator choose to execute the Will at a different place. PW-3 and PW-4 had spoken and given cogent evidence in respect of the testator intimating and coming down to Madurai and when Ex-A8 is a registered Will, the presence of the testator at the time of execution of the Will has been clearly demonstrated and proved. Mere execution of the Will at a different place cannot be taken as a suspicious circumstance.

39.It is also the vehement contention of the learned Counsel for the first appellant that since PW-3 was working in a College as a Principal, where, fourth plaintiff was working as a Professor and the PW-4 being the brother-in-law, they are interested witnesses and therefore, there are suspicious circumstances. It is to be noted from the evidence of PW-1 and



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PW-2, who had, in fact, did not have any knowledge of the Will at prior point of time. PW-3 had clearly stated that he was known to the testator for a long time and since PW-3 is a resident of Madurai and the testator, since having decided to execute the Will at Madurai, had intimated PW-3 and had come down to Madurai and executed the Will in the presence of PW-3 and PW-4. PW-4 had also clearly deposed that the testator, R.Sankaralingam had taken PW-4 along with him to come to Madurai and the Will was executed in the Sub Registrar Office in the presence of PW-3 and PW-4 and the same was registered.

40. When the Will is executed, it is usual that the testator calls close relative and trusted friend to be as witnesses. In this case, PW-3 being a retired Principal and PW-4 being his brother-in-law, had been called by the testator for execution of the Will. When the witnesses have given cogent evidences, there is nothing suspicion or untoward to reject the evidences of PW-3 and PW-4 simply on the ground that they are interested witnesses. When the attestors are not beneficiaries in the Will and the propounder had not taken part in the execution of the Will, there is no suspicious circumstance surrounding the Will and the Will has been executed and



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proved as per Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

41.It is to be noted that even after the defendants 2 to 8 have been impleaded in the suit, they have not chosen to file any written statement disputing the Will. Even when the fact remains that they would stand to gain in the event of suit being dismissed, but however, in spite of that, they have not chosen to contest the suit. After the suit has been decreed, some of the legal heirs alone had joined the first defendant and preferred the first appeal and the other legal heirs did not contest the appeal. After the appeal suit came to be dismissed, those legal heirs have joined the first defendant in preferring above appeal. In the Second Appeal, it is seen that when the first appellant/first defendant is represented by a separate Counsel, the appellants 2 to 6, who are defendants 3 to 5 and 7, had engaged a separate Counsel, but however, they have not chosen to argue the appeal. Therefore, it is evident and explicitly clear that none of the other legal heirs particularly, defendants 3 to 5 and 7, have come to support the stand of the first defendant or dispute the Will in Ex-A8 relied on by the plaintiffs and have not contested the claim.



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42. Even though earlier, the plaintiffs 3 and 4 had filed a suit as against the other legal heirs including the first plaintiff and the first defendant seeking for partition, still when the suit was dismissed in Ex-A1 and Ex-A2, the issue having been sorted out, the plaintiffs 3 and 4 did not chose to file any appeal, but however, only the first defendant had gone in appeal, which came to be dismissed in Ex-A3 and Ex-A4. In this regard, from the evidence and admission of PW-2 itself, it is clear that the plaintiffs are residing in the other two portions of the property covered in Ex-A8, which is the same premises of the suit property along with the first plaintiff, therefore, the earlier proceedings initiated by the plaintiffs 3 and 4 alone cannot be taken to be a suspicious circumstance to reject the Will.

43. In view of the above findings and also taking note of the fact that the first plaintiff himself had filed the suit as against the first defendant, who was alone in occupation of a portion of the property covered under the Will, which is the suit property, there is no suspicious circumstance surrounding the Will in Ex-A8 executed by the first plaintiff in favour of the plaintiffs 2 to 4.



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44.The other decisions relied upon by the appellant is not applicable to the facts and circumstances of the present case.

45.The Courts below have rightly considered the evidences in proper perspective and after holding that the Will in Ex-A8 has been proved, thereby, held that the plaintiffs are the absolute owner of the suit property and had decreed the suit for eviction.

46.In view of the above deliberations, this Court does not find any illegality or perversity in the concurrent findings of fact arrived at by the Courts below. There is no substantial question law that arises for the consideration of this Court.

47.Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

16.07.2025

Index :Yes/No
NCC :Yes/No
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To

- 1.The III Additional District Judge, Tirunelveli.
- 2.The Principal Subordinate Judge, Tirunelveli.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

cmr

Judgment made in
S.A.(MD)No.245 of 2019

16.07.2025