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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 8 of 2024

CNR:{HCMA010237422023}

AND

CMP NO. 1818 OF 2024

Case QR

S.K.Venkatesan

..Appellant(s)

Vs

K.S. Varadarajan

..Respondent(s)

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules r/w. Clause 15 of the Letters Patent against the order dated 24.08.2022 in T.O.S.No.24 of 2008.

For Appellant(s): M/s.C.S.Vedavalli

For Respondent(s): Mr.S.Rajendra Kumar
for Mr.S.Gurumoorthy

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

Challenging the decree and judgment of the learned Single Judge of this Court passed in T.O.S.No.24 of 2008, dated 24.08.2022, granting probate of the Will dated 22.11.2000 executed by one Dr.S.K.Srinivasan, the present Appeal has been filed by the defendant in the suit.

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2.The respondent is the beneficiary under the unregistered Will dated 22.11.2000 left by one Dr.S.K.Srinivasan. The respondent originally filed a petition in O.P.No.726 of 2007 for grant of probate of the Will. As the petitioner herein had entered caveat in the Original Petition, the same was converted into a testamentary suit in T.O.S.No.24 of 2008 and was tried.

3.For the sake of convenience, the parties will be referred to as per their ranking before the learned Single Judge.

4.Following are the brief facts of the case :

The testator Dr.S.K.Srinivasan was a former faculty of I.I.T., Madras. The plaintiff is his nephew. The defendant is one of the sons of the testator. According to the plaintiff, the testator has left an unregistered Will dated 22.11.2000 bequeathing 1/3rd share in the immovable properties in favour of the plaintiff and remaining 2/3rd share in favour of one S.K.Ramanujan, the eldest son of the testator. It is the further case of the plaintiff that, as per the Will, all the movable properties left by the testator shall be paid equally to all the four sons of the testator. Hence, the plaintiff filed the petition for probate of the Will, which was later converted as testamentary suit as stated above.

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5.The defendant, who is one of the sons of the testator, disputed the Will. The main defence set forth in the written statement filed by the defendant is that the plaintiff is in the habit of forging the signature of the testator and manipulating the records to suit his convenience. In a nutshell, it is his contention that the Will is a forged one. It is his further contention that the testator was not keeping good health and was not in possession of good mental faculties at the relevant point of time when the Will was allegedly executed. That apart, the plaintiff and his mother used to provide food to the testator and in that process, they had administered slow poison to the testator from the year 1995 to 2007. On coming to know about that, the testator shifted his residence to the First Floor of his house and he started cooking independently. The testator made several investments in ICICI Bank and all other companies, wherein, the defendant was made as a nominee. It is his contention that, in the investments in M/s.Anubhav Plantations Ltd., the plaintiff had forged the testator's signature and taken the cheque issued by the said company. Therefore, it is the contention of the defendant that the plaintiff is involved in criminal activities and misappropriation and he is squatting on the property and is taking undue advantage of the Will. It is his further contention that, though the Will names two Executors, the petition for grant of probate has been filed only by one of the Executors which is not maintainable in law. Mere consent affidavit given by the other Executor will not cure the procedural defect.

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Further, there are several other litigations in O.S.No.3556 of 2011 filed against the plaintiff by his own sisters. Hence, the defendant opposed the Will.

6.Based on the above pleadings, the learned Single Judge framed the following issues in the suit :

1. *Whether the Will dated 22.11.2000 is genuine ?*
2. *Relief and cost.*

7.On the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.P1 to P10 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.D1 to D61 were marked.

8.On the basis of the oral and documentary evidence on record, the learned Single Judge, by judgment and decree dated 24.08.2022, decreed the suit and granted probate of the Will in favour of the plaintiff.

9.Assailing the said judgment and decree of the learned Single Judge, the present Appeal has been filed by the defendant.

10.The main contention of the learned counsel for the appellant/defendant is that the Will is surrounded with suspicious circumstances and the very execution has not been established. The evidence of P.W.2 and P.W.3 is highly

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contradictory and inconsistent and their evidence clearly shows that the place of execution has been corrected in their affidavit. It is her contention that, while the original affidavit indicates as if the Will has been executed in the room of the testator, during the trial, it has been corrected as the room of P.W.2. This creates a suspicious circumstance with regard to the place of execution of the Will. Further, it is her contention that Exs.D3 to D16 documents show that the plaintiff has misappropriated the amount from M/s.Anubhav Plantation even after the death of the testator. All these facts clearly show that the plaintiff has forged the Will. The learned counsel would further submit that the testator died in the year 2006 due to severe health ailments. This itself shows that he would have been subjected to slow poisoning. Further, the deceased did not possess mental faculties at the time when the alleged Will came to be executed. Hence, she would pray for interference.

11.Whereas, the learned counsel appearing for the respondent/plaintiff would submit that the testator was a reputed faculty in I.I.T., Madras and the two attesting witnesses to the Will are none other than his students, who are also reputed Professors of I.I.T. Therefore, there is no reason for them to give false evidence. It is his contention that, merely because there is some correction in their evidence with regard to the place where the Will was executed, that itself is not sufficient to infer suspicious circumstances. P.W.2 and P.W.3 have clearly explained in detail about the testator signing the Will in their presence in

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their room and thereafter, about they attesting the Will. Their evidence with regard to the execution and attestation of the Will remains unshattered. Therefore, once two reputed Professors, in their evidence, have not only proved the execution, but also the attestation of the Will, in the absence of any suspicious circumstance brought on record, the learned Single Judge is right in decreeing the suit and granting probate of the Will. Further, it is his contention that, merely because one of the Executors has filed the petition, the suit cannot be said to be not maintainable, since there is no bar under law for seeking probate by one of the Executors. Therefore, he prayed for dismissal of the above Appeal.

12.In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

i. *Whether the suit filed by one of the Executors for grant of probate, is maintainable under law ?*
ii. *Whether the appellant/defendant has brought out any suspicious circumstance surrounding the Will ?*
iii. *If so, whether the respondent/plaintiff has dispelled the said suspicious circumstance(s) ?*
iv. *To what other relief ?*

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Point No.(i) **:**

13.With regard to the maintainability of the suit, it is admitted that the testator has appointed two Executors of the Will, viz., (i) plaintiff, who is none other than his nephew and (ii) his eldest son S.K.Ramanujan. It is not in dispute that the eldest son is in America. It is also not in dispute that he has given a consent affidavit to the plaintiff for seeking grant of probate.

14.Now, the question that remains to be answered is whether the suit filed by one of the Executors is maintainable. It is relevant to note that, even under Section 224 of the Indian Succession Act, 1925, when several executors are appointed, probate may be granted to them all simultaneously or at different times. Similarly, Section 311 of the Act deals with powers of several executors or administrators exercisable by one, which reads as follows :

> ***"311.Powers of several executors or administrators exercisable by one*** - *When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.*
>
> *Illustrations*
>
> *(i) One of several executors has power to release a debt due to the deceased.*
>
> *(ii) One has power to surrender a lease.*
>
> *(iii) One has power to sell the property of the deceased whether*

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moveable or immoveable.

(iv) One has power to assent to a legacy.

(v) One has power to endorse a promissory note payable to the deceased.

(vi) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.”

15.On a careful perusal of the Will, absolutely, there is no direction in the Will that all the Executors have to exercise the powers simultaneously. In the absence of any such direction, we are of the view that one of the Executors can file a petition/suit for grant of probate. Further, the other Executor has admittedly filed his affidavit of consent. Therefore, we are of the view that the contention of the appellant that the suit is not maintainable, has no legs to stand.

Point No.(i) is answered against the appellant.

<u>Point Nos.(ii) to (iv)</u> :

16.Admittedly, the testator was a former faculty of I.I.T., Madras. He is a reputed person and even till his lifetime, he has also undertaken several assignments as admitted by D.W.1 himself in his evidence. In fact, the testator has undertaken an assignment in marine engineering even after 2003. That apart, he has also conducted various symposiums/seminars and has released various books also. These facts clearly show that the testator was not a rusty

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ordinary man, but a reputed professor of I.I.T.

17.Ex.P2-Will written by the testator would clearly indicate that, out of his immovable properties, he has bequeathed his 1/3rd share to his nephew/plaintiff who is helping him in all times. Similarly, remaining 2/3rd share is bequeathed to his eldest son S.K.Ramanujan. It is further to be noted that the Will also clearly indicates that all the deposits and money due to the testator shall be received by S.K.Ramanujan and shall be equally divided by all his four sons. The very nature of the Will written by the testator Dr.S.K.Srinivasan indicates that none of his children has been excluded.

18.P.W.2 and P.W.3 (attesting witnesses), in unison voice, have clearly stated that, since they are the students of the testator, they continue to maintain relationship with the testator and due to such friendship, at his request, they witnessed the signing of the Will by the testator. P.W.2 and P.W.3 have stated in their evidence that, on 22.11.2000, the testator brought the Will and in their presence, he has signed the Will and both of them had seen the testator signing the Will and the testator had also seen the attesting witnesses attesting the Will. When their entire evidence is scanned, we find no suspicious circumstance, whatsoever. Their evidence not only satisfies the execution aspect but also the attestation as required under Section 63(c) of the Indian Succession Act.

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19.P.W.2 and P.W.3 have been cross-examined only with regard to some minor corrections made in the affidavit with regard to the place of execution of the Will by the testator. In the affidavit, originally, it has been typed as “in his room” whereas, the same has been corrected by P.W.3 as “in Avudainayagam’s room”, i.e., P.W.2’s room. He has given sufficient explanation in this regard also. Therefore, mere correction effected in the affidavit prepared by a lawyer’s clerk or lawyer, may not be a suspicious circumstance to discard the evidence of P.W.2 and P.W.3 in entirety. P.W.2 and P.W.3 are reputed professors of I.I.T. and there is no reason for them to give false evidence. Therefore, once execution as well as attestation have been clearly established, it is for the appellant/defendant to bring out any suspicious circumstance attached to the Will.

20.In the above background, when the entire evidence of P.W.2 and P.W.3 is scanned, it can be seen that they were never cross-examined with regard to the mental faculties of the testator at the relevant point of time. What is emphasized is only with regard to the correction made with regard to the place of signing the Will. Except that, there is no evidence to shatter the evidence of P.W.2 and P.W.3 in any manner.

https://www.mhc.tn.gov.in/judis

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21.Further, on a perusal of the Will, it is relevant to note that it is neatly typed and is very brief and shows the testator's intention to bequeath his immovable properties to the plaintiff and eldest son and to bequeath all the movable properties to all his four sons. The testator has not excluded any of his sons. Therefore, we do not find any suspicious circumstance on the face of the Will.

22.It is also pleaded as if the plaintiff used to forge the signature of the testator and in specific, the plaintiff has misappropriated the amount paid by M/s.Anubhav Plantations Ltd. Except pleading such forgery, absolutely, there is no material, whatsoever, placed on record to show that the plaintiff was in the habit of committing forgery. Further, it is the contention of the defendant that the Will also would have been forged by the plaintiff. When the execution and attestation of the Will has been clearly established, once a plea of forgery is taken, then the burden is on the person who sets up the plea of forgery to prove the same. The defendant has not discharged his burden to prove the plea of forgery. He has not even made any attempt, whatsoever, to show that the signature found in the Will is not that of his father. Such being the position, the plea of forgery, as taken out by the defendant, is nothing but purely academic.

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23.The other contention of the defendant is that the testator did not possess good mental faculties to execute the Will at the relevant point of time. However, this has been dispelled by the evidence of D.W.1. He himself has admitted that, even after execution of the Will in the year 2000, his father has undertaken an assignment in marine engineering in the year 2003 and has also conducted symposiums/seminars and released various books. The very admission of the defendant himself clearly shows that the testator was in good mental capacity to take a rational decision.

24.The other contention of the defendant is that the plaintiff and his mother had administered slow poison to the testator from the year 1995 to 2007, which also deteriorated the health condition of the testator. Except such a pleading, absolutely, there is no material in support of the said contention. Even in the cross-examination, the defendant has admitted that he has mentioned about such possibility which he had informed to the Doctor and one N.Ram.

25.Further, the very evidence of D.W.1 itself clearly indicates that his father has not even attended his marriage. This itself clearly shows that the relationship with the father and the son was not cordial. This may be one of the reasons to exclude his son from allotting immovable properties. Therefore, this fact cannot be ignored altogether. In any event, the defendant has not

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successfully brought out any suspicious circumstance attached to the Will.

26.When none of the suspicious circumstances as alleged by the defendant has been established, the question of dispelling the same by the plaintiff does not arise at all. Accordingly, ***Point Nos.(ii) to (iv) are answered against the appellant/defendant.***

27.Accordingly, we find no merit in this Appeal. As a result, this Original Side Appeal is dismissed, confirming the decree and judgment passed by the learned Single Judge. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K.,J.) (G.K.M.,J.)
03-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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N.SATHISH KUMAR J.
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MKN

OSA No. 8 of 2024

03-11-2026

https://www.mhc.tn.gov.in/judis