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A.S.No.335 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.335 of 2018

&

C.M.P.No.11597 of 2024

Tmt.Santhakumari

... Appellant

Versus

1. Thiru.D.Jayaprakash

2. Thiru.D.Dhararajan

3. Thiru.D.Sundarrajan

4. Tmt.D.Selvakumari

5. Tmt.D.Vasanthakumari

... Respondents

First Appeal filed under Section 96 read with Order 41 of Rule 1 of CPC to set aside the decree and judgment made in O.S.No.165 of 2011 on the file of V Additional District Judge, Coimbatore dated 22.12.2017.

For Appellant : Mr.S.Mukunth
Senior counsel
for Mr.A.Ramkumar

For Respondents : Mr.L.Mouli for R1 to R3



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No appearance for R4 and R5

JUDGMENT

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(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

Challenging the judgment and decree of the trial Court dated 22.12.2017 in O.S.No.165 of 2011 decreeing the suit in part and granting a preliminary decree only in respect of Item No.2 and dismissing the suit in respect of Item No.1, the plaintiff has filed the present appeal.

2. The plaintiff and defendants are the children of one Late Dass. Item Nos.1 and 2 of the suit property were originally purchased by said Dass and his friend one R.Rangasamy under registered sale deeds on 05.03.1965 (Ex.A1) and 21.01.1966 (Ex.A3) and later, said Rangasamy executed released deeds dated 24.11.1969 (Exs.A2 and A4) and therefore, said Dass become the absolute owner of the suit properties. He sold 9 cents of vacant site to one Krishnamoorthy and Ramadas and in the remaining portion, he put up a construction. According to the plaintiff, her father died intestate on 01.07.1999 leaving behind him, his wife, plaintiff and defendants as his legal heirs and later, her mother Ranjitham also died intestate on 20.01.2011. It is the case of the plaintiff that she is entitled to 1/6th share. It is the further



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contention of the plaintiff that her father was taking treatment for diabetes and high blood pressure and hence the alleged Will dated 03.02.1999 obtained by the first defendant is not valid in the eye of law. Hence, she sought partition of the suit properties.

3. The written statement filed by the third defendant was adopted by 1st and 2nd defendants. Though they are admitting the fact that the suit properties were originally purchased by their father and his friend, it is their case that their father had executed a Will on 03.02.1999 while he was in sound and disposing state of mind bequeathing Item No.1 of suit property in favour of Defendants 1 to 3. It is denied that their father was suffering from any disease at the relevant point of time and hence, it is their contention that the present suit has been filed to grab the property.

4. Defendants 4 and 5 sail with the plaintiff and they also dispute the registered Will dated 03.02.1999. The fourth defendant Selvakumari had also filed a suit in O.S.No.690 of 2011 challenging the aforesaid Will dated 03.02.1999 and partition effected between brothers besides challenging the release deeds.

5. Since the issue involved in both the suits were one and the same and the parties were also the same, both the suits were tried together and



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disposed of by a common judgment and decree dated 22.12.2017. The suit filed by the plaintiff, who is the appellant herein was partly decreed in respect of Item No.2 of suit property and in respect of other reliefs, suit was dismissed. It is to be noted that none has preferred any appeal against the judgment and decree passed in O.S.No.690 of 2011 and therefore, the same has attained finality and is binding on the parties. The plaintiff has preferred the present appeal as against the judgment and decree passed in O.S.No.165 of 2011.

6. In both the suits, the trial Court has framed the following issues and additional issues:

Issues in O.S.No.165 of 2011

1. Whether the Will dated 03.02.1999 is true, valid and binding upon the parties?

2. Whether the partition deed dated 02.12.2002 is binding upon the plaintiff?

3. Whether the release deed dated 23.04.2010 is true and binding upon the 5th defendant?

4. Whether the suit is barred by limitation?

5. Whether the plaintiff is entitled for 1/6th share in the suit properties?

6. To what other relief? If any is the plaintiff entitled?

Considering the relief sought by the plaintiff in O.S.No.165



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of 2011 with respect to the permanent injunction and mesne profit in respect of the suit properties, the following additional issues are framed for proper adjudication.

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed?

2. Whether the plaintiff is entitled for the mesne profit as prayed?

O.S.No.690 of 2011

1. Whether the plaintiff is having a share in the suit property?

2. Whether the plaintiff is entitled to the declarations as prayed for?

3. Whether the plaintiff is entitled to the injunction as prayed for?

4. To what other relief?

7. The trial Court recorded the common evidence. On the side of the plaintiffs, PWs 1 and 2 were examined and Exs.A1 to A15 and Exs.X1 to X3 were marked and on the side of the defendants, DWs 1 to 5 were examined and Exs.B1 to B25 were marked.

8. The trial Court, based on the oral and documentary evidence, decreed the suit in O.S.No.165 of 2011 in part granting preliminary decree for partition only in respect of item No.2 in favour of the plaintiff and the



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suit in respect of Item No.1 for partition and the declaration sought for with respect to Will dated 03.02.1999 and other subsequent documents as null and void was dismissed in entirety.

9. The common issue with regard to the validity of the Will, which has already been decided in O.S.No.690 of 2011 has reached finality and none has filed any appeal.

10. Be that as it may, the learned Senior counsel appearing for the appellant would submit that though the Will has been propounded by Defendants 1 to 3, the father was not keeping sound mind at the time of executing the Will and the evidence of DW5, one of the attesting witness, also does not inspire confidence. According to learned Senior counsel, the evidence of DW5 shows that he is very close to all the legatees, but he has not informed any one of the legatees about the execution of the Will, which creates some doubt about the Will. The learned Senior counsel submitted that one Dr.Raghupathy, was examined as PW2 on the side of plaintiff to show that the Executor, namely the father of the parties was not keeping good health and he was suffering from Paralysis. He very fairly submitted that PW2's evidence will not help the plaintiff because the Will was executed on 03.02.1999 and the executor was admitted in the hospital after



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four months. PW2 has not treated him and he has given evidence only based on the case records.

11. The learned counsel appearing for the respondents would submit that admittedly the status of the parties and the character of the properties are not in dispute. Items 1 and 2 of the suit properties were purchased by the father of the parties, namely one Dass and his friend and in respect of Item 1, a registered Will has been executed by the father of the parties in favour of Defendants 1 to 3. One of the attesting witness was aged about 86 years and at the time of examination, he has clearly spoken about not only the execution but also the attestation. His evidence does not show any artificiality and there is no suspicious circumstances whatsoever. Further, the attesting witness is a close friend of Executor and they worked together in a Company. Therefore, his evidence is reliable and as there is no artificiality attached and no suspicious circumstances brought on record, the trial Court has rightly upheld the Will.

12. In the light of the above submission, now the points which arise for consideration in this appeal is i) Whether the Will dated 03.02.1999 is free from suspicious circumstances and 2) In the absence of challenge made to the finding recorded in the connected suit, particularly with regard to the



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same Will ,whether the Appellant can challenge the Will?

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13. Since there was no dispute with regard to the character of the property, we will have to see whether the Will dated 03.02.1999 marked as Ex.B10 is executed by the father of the parties while he was in sound and disposing state of mind and he was in a position to take a rational decision. PW1 challenges the Will mainly on the ground that her father was suffering from Diabetes and High Blood Pressure and therefore, Defendants 1 to 3, taking advantage of the same, obtained the Will. Normally, the burden lies on the propounder of the Will to establish that the Will has been properly executed and testator executed the Will in the testamentary capacity at the relevant point of time and the Will is free from any suspicious circumstances. The burden lies on the propounder to dispel the suspicious circumstances attached to the Will.

14. In the present case, the Will is a registered one and the same has been registered on 03.02.1999. The recital in the Will clearly indicates that in Item No.1 of the suit property, the testator was running a workshop and the same has been bequeathed to three sons absolutely. The Registration of



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the document carry presumption of official act done properly. That apart, one of the attesting witnesses DW5, who is the close friend of the testator, was examined and he has deposed in his evidence that on 03.02.1999, the testator requested him to be a witness to the Will, accordingly he was present when the testator executed the Will. The testator has signed the Will in his presence and also one Nesa Sudamani. The execution is witnessed by both the attesting witnesses and the testator also seen the attesting witnesses signing the document. The evidence of DW5 not only proves the execution of the document by the testator but also the attestation.

15. The twin conditions required under Section 63 of the Indian Succession Act have been clearly spoken to by DW5. In entire cross examination of DW5, no suspicious circumstances whatsoever were brought on record either by any circumstances or inconsistency and the cross examination of DW5 clearly shows that he had close connection with the testator not only in respect of the business but also he was supplying spare parts to the workshop run by the testator. That apart, DW5 also worked along with the testator between 1952 and 1960 in Vijaya Foundry and there was no reason as to why DW5 has to give such false evidence. DW5 has



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clearly narrated the connection with the testator. Therefore, the presence of a person, who is a close friend of the testator and also had business connection, in our view is normal and no suspicious circumstances whatsoever have been brought on record to hold that the Will was not executed while the testator was in sound and disposing state of mind. Though it was admitted by the witnesses that the testator was suffering from Diabetes and High Blood Pressure, we are of the view that merely because one has diabetes and blood pressure due to old age, that will not affect the mental capacity of a person. Merely because a person is suffering from diabetes and blood pressure, it cannot be said that he /she is having mental fatigue. What is required to be seen is whether the testator was in a position to take a rational decision. A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests as per Section 12 of the Contract Act. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. Therefore, when a person is in a position to take rational



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decision and is not unsound mind, merely because he has diabetes and blood pressure issue, it cannot be said that he is wholly of unsound mind to execute such document. The evidence of DW5 clearly shows that testator was in sound mind and he has engaged a document writer to prepare the Will and executed the document in the presence of attesting witnesses. Not only the execution but also attestation required under law has been clearly established. Therefore, merely because the testator was admitted in the hospital after four months after the execution of the Will and treated for old age complications, as spoken to by PW2, that will not have any impact in rendering the document invalid. PW2 in his evidence has stated that testator was admitted in the hospital on 22.06.1999 due to paralytic attack and his evidence does not indicate that the testator had any such problem prior to his admission. Further, PW2 has not treated the testator and some other doctor has treated the testator, that too after four months of the execution of Will.

16. In such view of the matter, we do not find any suspicion attached to the Will and propounder has discharged his burden in not only proving the execution but also attestation by examining one of the attesting witnesses. Further, there is no suspicious circumstances whatsoever found. It is quite



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natural for any elder member to bequeath the property to the family members who are always with such member in the business and business to be carried out by such person. Therefore, executing the Will by bequeathing the business to the members of the family who are actually carrying business with him is quite normal. As the Will stands clearly established, the judgment of the trial Court in dismissing the suit in respect of Item No.1 is well balanced and does not warrant any interference by this Court. It is also to be noted that in the other suit in O.S.No.690 of 2011, one of the issues is also with regard to validity of the Will dated 03.02.1999 (Ex.B10). That suit is also dismissed. It is to be noted that common evidence was recorded. Subject matter of both the suits is mainly with regard to Will apart from other documents. When the trial court has given its finding believing the Will and dismissed the suit in O.S.No.690 of 2011 and such finding has not been challenged, the finding recorded with regard to Ex.B10 will also be binding on the parties to the suit .

17. In such view of the matter, we are of the view that the judgment and decree of the trial Court dismissing the suit in respect of Item No.1 does not require interference. Accordingly, this point is answered in favour of the respondents.



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In the result, this appeal is dismissed and the judgment and decree in

O.S.No.165 of 2011 passed by the V Additional District Judge, Coimbatore dated 22.12.2017 is confirmed. There shall be no order as to costs.

[N.S.K.,J.] [R.S.V.,J.]
06.01.2026

Index: Yes/No
Neutral Citation: Yes
gpa

To

V Additional District Judge
Coimbatore



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