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OSA No. 245 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
03.02.2026

PRONOUNCED ON
06.03.2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OSA No. 245 of 2018

1. K.Janakaraja
Petitioners 1 To 4 Are Residng At New
No.7(old No.3)shenrfudin St., Choolaimedu,
Chennai 600 094.
2. Mrs.I.Kumari
New No.7(old No.3)shenrfudin St.,
Choolaimedu, Chennai 94
3. I.Ramesh Mani
New No.7(old No.3)shenrfudin St.,
Choolaimedu, Chennai 94
4. Mrs.I.Dhanalakshmi
New No.7(old No.3)shenrfudin St.,
Choolaimedu, Chennai 94

..Appellant(s)

Vs

1. Mrs.G.Iyeswarialakshmi
No.8, Giri Squire, Anna Nagar
Pammal, Chennai 600 075.
2. Mrs.K.Iyeswaraiah(died)
Old Address No.22, Veerasami St., Thanga
Salai Ch-79
Now At Plot No.10, Ranganathan Salai,
Nallathambi Nagar, Medavakkam Chennai 100
3. D.Krishnamoorthy



9/740, Rangathanan Salai, Nallthambi Nagar,
Medavakkam, Chennai 600100.

4. D.Samayapoorma
9/740, Rangathanan Salai, Nallthambi Nagar,
Medavakkam, Chennai 600100.

..Respondent(s)

(Respondents R3 and R4 brought on record as Legal heirs of the deceased 2nd Respondent viz., (K.IYESWARIAM) Vide Court Order Dt. 06.04.2022 passed in CMP No. 4046/2022 in OSA No.245/2018)

PRAYER:- Original Side Appeal filed under Order XXXVI Rule 1 of the High Court, Madras Original Side r/w. Clause 15 of Letters Patent Act, to set aside the judgement and decree dated 03.01.2017 passed in T.O.S.No.22/2008 (O.P.No.221 of 2008) by this Honble Court.

For Appellant(s): Mr.T.R.Rajagopalan
Senior Counsel
for M/s.K.Bhanumathi

For Respondent(s): M/s.V.Manohar, for RR1, 3 & 4
R2- Died

JUDGMENT

(Judgment of the Court was delivered by K.Kumaresh Babu J.)

This Appeal has been preferred by the petitioner in T.O.S.No.22 of 2008 challenged the judgment and decree dated 03.01.2017, whereby the learned Single Judge dismissed the petition for grant of Letters of Administration on the ground that the genuineness of the Will had not been established.



2) The brief facts leading to the appeal are as follows. One Mrs. K. Saroja married Mr. R. Kothandaraman Pillai and had two sons (the petitioners herein) and two daughters (the respondents herein). The testatrix is stated to have executed a Will dated 14.07.2006 bequeathing her properties exclusively in favour of her sons. The petitioners are the sole beneficiaries under the said Will. The testatrix died on 11.07.2007 leaving behind the petitioners and respondents as her legal heirs.

3) The respondents contested the petition disputing the genuineness of the Will. It was alleged that the Will was brought about by fraud, misrepresentation and undue influence exercised by the sons. It was further contended that the Will was executed under suspicious circumstances, particularly when the testatrix was seriously ill and admitted in hospital.

4) During the pendency of the proceedings, the first petitioner died and his legal heirs were brought on record as petitioners 3 to 5.

5) Upon the pleadings, the learned Single Judge framed the following issues:



1) *Whether the plaintiffs are entitled for Letters of Administration in respect of the Will dated 14.07.2006 executed by the Testatrix Mrs.K.Saroja?*

2) *Whether the Will said to have been executed by the testatrix is not a genuine Will as alleged by the defendants?*

3) *Whether the Will said to have been executed by the testatrix was under fraud, misrepresentation and undue influence as alleged by the defendants?*

4) *Whether the testatrix was not in a sound state of mind at the time of executing the Will as alleged by the defendants?*

5) *To what reliefs the parties are entitled?*

6) Upon appreciation of the oral and documentary evidence, the learned Single Judge dismissed the petition holding that the Will was surrounded by suspicious circumstances and that the petitioners failed to dispel the same satisfactorily. Aggrieved by the said judgment and decree, one of the sons and the legal representatives of the deceased son have preferred the present appeal.

7) Heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing for M/s.K.Bhanumathi, learned Counsel appearing for the Appellants and Mr.V.Manohar, learned Counsel appearing for the Respondent 1, 3 and 4.



8) The learned Senior Counsel for the appellants contended that the judgment of the learned Single Judge is contrary to settled principles governing proof of Wills. It was submitted that the learned Single Judge erred in treating the execution and registration of the Will in the evening hours at the Sub-Registrar Office was under suspicious circumstance. According to the appellants, such reasoning is based on conjectures and not supported by legal principles.

9) It was further submitted that the marking found in the Will indicating the place of signature was erroneously treated as suspicious, though it was only a minor discrepancy. The learned Senior Counsel contended that the intention of the testatrix to bequeath her properties to her sons was clearly expressed in the Will (Ex.P8) and that the Court ought to have given due weight to her testamentary autonomy.

10) The appellants further relied upon Ex.P4, an agreement allegedly executed between the testatrix and the second respondent, under which the second respondent received Rs.2,00,000/- in cash, 20 sovereigns of jewels, $\frac{3}{4}$ kilogram of silver and other household articles towards her share. It was contended that the second respondent agreed not to initiate civil or criminal



proceedings against her brothers, but subsequently contested the Will. The learned Senior Counsel submitted that the learned Single Judge erred in holding that such an agreement was opposed to public policy.

11) It was also contended that the learned Single Judge wrongly proceeded on the assumption that the testatrix was in the ICU for three days, whereas the evidence did not support such finding. According to the appellants, the testatrix was suffering only from asthma and not from any serious mental ailment. The diagnosis of “*depression with monilial oesophagitis*” was misconstrued as mental incapacity, though it did not establish lack of testamentary capacity. It was further contended that the testatrix had obtained oral permission from the doctor before visiting the Sub-Registrar Office and that there was no serious ailment affecting her mental faculties. The appellants submitted that the execution of the Will was duly proved in accordance with Section 68 of the Evidence Act by examining the attesting witnesses and therefore the petition ought to have been allowed.

12) Per contra, the learned counsel for the respondents supported the judgment of the learned Single Judge. It was submitted that the Will was executed under highly suspicious circumstances. The testatrix was admitted in



hospital and allegedly under treatment in the ICU at the relevant time. The manner and timing of registration created serious doubt regarding the voluntariness of execution.

13) It was further submitted that the signatures of the testatrix found on each page of the Will appeared shaky and inconsistent. No medical endorsement was produced to show that the testatrix was conscious and in a sound disposing state of mind at the time of execution. The discharge summary (Ex.P5) indicated that the testatrix was discharged only on 19.07.2006, whereas the Will was registered on 14.07.2006, raising serious doubt about the circumstances under which she could have attended the Sub-Registrar Office.

It was contended that though the formal execution of the Will may have been proved, the surrounding circumstances created grave suspicion which the appellants failed to satisfactorily explain. Therefore, no interference with the well-reasoned judgment of the learned Single Judge is warranted.

14) We have considered the rival submissions and perused the materials available on record.



15) Before advertng to the issue on hand, it is pertinent to note that the relationship between the parties is undisputed. The controversy centres around the validity and genuineness of the Will dated 14.07.2006. The principal question that arises for consideration is whether the appellants, as propounders of the Will, have discharged the burden cast upon them in law.

16) It is well settled that the propounder of a Will must prove (i) its due execution in accordance with Section 63 of the Indian Succession Act, and (ii) its due attestation as required under Section 68 of the Indian Evidence Act. Where suspicious circumstances are alleged, the propounder must satisfactorily explain them so as to remove the legitimate doubts of the Court.

17) In the present case, the execution of the Will has been proved by examining the attesting witnesses. The signature of the testatrix has not been specifically denied. The Will is a registered document. The mere fact that the Will was executed and registered during evening hours, in the absence of any statutory prohibition or material contradiction in evidence, cannot by itself constitute a suspicious circumstance.



18) Considerable emphasis was placed on the fact that the testatrix was admitted in hospital at the relevant time. However, the evidence does not conclusively establish that she was incapacitated or in an unconscious state at the time of execution. The diagnosis of “*depression with monilial oesophagitis*” in the discharge summary, Ex.P5, does not ipso facto establish lack of testamentary capacity. There is no cogent medical evidence to demonstrate that the testatrix was mentally unsound or incapable of understanding the nature and effect of her disposition. Mere hospitalization, without proof of mental incapacity, does not negate testamentary capacity.

19) The alleged discrepancy regarding the marking of the place of signature and the exclusion of the daughters from the bequest cannot, in the facts and circumstances of the case, be treated as suspicious circumstances of such magnitude as to discredit the entire document. Testatrix is legally entitled to dispose of her property in any manner she deems fit, and unequal distribution among heirs is not per se a suspicious circumstance.

20) The learned Single Judge appears to have proceeded on presumptions rather than concrete evidence establishing coercion, fraud or incapacity. The



surrounding circumstances relied upon do not rise to the level of grave suspicion so as to displace the otherwise duly proved execution of the Will.

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21) It is also relevant to note that this Court, in ***Paneerselvam @ Nellappan (died) and others Vs. Amsavalli and another*** in ***A.S.No.521 of 2011***, relying upon the judgment of the Hon'ble Supreme Court in ***Metpalli Lasum Bai (since dead) and Others Vs. Metapalli Muthaih (D) by Lrs., Civil Appeal No.5921 of 2015***, has held that though registration of a Will by itself does not dispense with proof of its execution, a registered Will carries with it a circumstance supporting its genuineness. Applying the said principle, the registration of the Will in the present case lends assurance to its authenticity.

22) In view of the above discussion, this Court is satisfied that the appellants have proved the due execution and attestation of the Will and have sufficiently explained the alleged suspicious circumstances. The finding of the learned Single Judge to the contrary is unsustainable and liable to be interfered with.



23) Accordingly, the Appeal is allowed. The judgment and decree dated 03.01.2017 passed in T.O.S.No.22 of 2008 is set aside. The appellants are entitled to the grant of Letters of Administration in respect of the Will dated 14.07.2006. However, shall be no order as to costs.

(C.V.K.,J.) (K.B.,J.)
06.03.2026

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

GBA

To

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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

GBA

A Pre-Delivery order made in
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