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AS No. 223 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2026

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

AS No. 223 of 2014

1. S.Saroja
W/o Surendrababu
D/o R.C.Moorthy @ R.Chandra Moorthy
Flat No. E-10 Syndicate Residences 36
Dr.Thomas Rd, 1st St T.Nagar, Ch 17

Appellant(s)

Vs

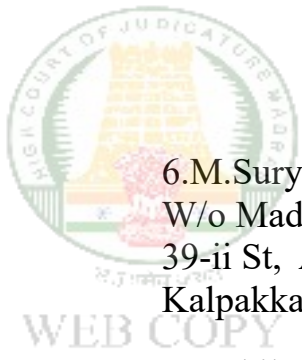
1. C.Ravichandran (Died)
S/O R.C.Moorthy @R.Chandra Moorthy Both Are Res At
A-3 Bharathi St, Swarnapuri Salem 4 R1 Died. As Per Memo
15.04.2021 (Lr's Wife Predeceased And Son Died) And Vide
Court Order Dated 2.6.2025 .. (Recorded) (Rsvj)

2.C.Ramesh@rameshbabu
S/o R.C.Moorthy @r.Chandra Moorthy

3.R.Banumathi
W/o V. Rajaram D/o R.C.Moorthy @r.Chandra Moorthy
2/208-d Vanniya Nagar Alagapuram, Periapudur Salem 636
016

4.Rajini
W/o S.V.Govindarajulu D/o R.C.Moorthy @r.Chandra
Moorthy 33/144 Sambandam St Advaita Ahsram Rd,
Fairlands Salem 636 016

5.Jamuna Rani
W/o Gunaseelan D/o R.C.Moorthy @r.Chandra Moorthy 5
Nadupalayam Rd, Chithode, Erode Dist 638 102



6.M.Suryakala

W/o Madheswaran D/o R.C.Moorthy @R.Chandra Moorthy
39-ii St, Avenue Opp To Play Ground D.A.E Colony
Kalpakkam Township Kalpakkam Po, Kanchipuram

7.Mahilmannan

S/o Theertha Gounder P.T.Vanigavalagam Three Rd,
Suramangalam Main Rd, Salem 5

Respondent(s)

PRAYER: Appeal Suit filed under Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree in O.S.No.85/2005 on the file of the II Additional District Court, Salem, dated 25.11.2013.

For Appellant : Ms.T.N.Sona for Mrs.V.Srimathi

For Respondent(s): Mr.N.Damodaran for R3
No appearance for R2 and R7

ORDER

The unsuccessful plaintiff has filed this appeal against the decree and judgment passed in O.S.No.85/2005 on the file of the II Additional District Court, Salem.

2. For the sake of convenience the parties are referred to as per their original rankings in the Original Suit.

3. The suit is filed for partition and for declaring the partition deed dated 22.03.2021 stands in the name of the defendants 1 and 2, as null and void and



for restraining the defendants 1 and 2 in any manner creating encumbrance over the suit property.

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4. The plaintiff's case in brief is as follows:

4.1 The plaintiff and the defendants 1 to 6 are the sons and daughters of one R.C.Moorthy @ R.Chandramoorthy and they have constituted a Hindu Undivided Joint Family. The said R.C.Moorthy @ R.Chandramoorthy is the Kartha of the joint family. The joint family indulged in a business. The said R.Chandramoorthy was one of the partners of Purshothaman and company and out of the income derived from the joint family business, the said R.Chandramoorthy is looking after the entire family affairs of the joint family. The suit schedule property was purchased in the name of R.Chandramoorthy as Kartha of the joint family under the registered sale deed dated 10.09.1951. The suit property has been purchased by the joint family out of the joint family nucleus and being enjoyed by all the joint family members without any hindrance. The said R.Chandramoorthy died intestate on 10.11.1981 leaving behind his wife Sakunthala and the plaintiff and the defendants as the legal heirs. The mother of the plaintiff, Sakunthala died on 01.09.1998 and the plaintiff and the defendants became the lawful owners of the suit schedule property and are in common possession and enjoyment of the same and as such, the plaintiff is entitled to 1 / 7th share in the suit schedule property.



4.2 After the death of Sakunthala, the defendants 1 and 2 who are the male legal heirs of R.Chandramoorthy started to behave indiscriminately against the plaintiff and the other defendants. Therefore the plaintiff and the defendants 3 to 6 have demanded partition of the suit joint family property. While so, during the first week of April, 2005, the plaintiff came to understand that the defendants 1 and 2, in order to defeat the lawful share of the plaintiff in the suit schedule property, are trying to alienate the same to one Duraisamy and when the plaintiff question about the unlawful activity, they behave in a disruptive manner and finally refused to accept her lawful share and trying to alienate the same as they are alone having right over the suit property. Hence the suit.

5. The case of the first defendant in brief:

5.1 The suit is false, frivolous and unsustainable in law. There was no joint family and the said R.Chandramoorthy was never the Kartha and was only the father and head of the family. There was nothing to constitute the joint family and the joint family did not indulge in any business and Purushothaman and Company was not a joint family business. The suit schedule property is a self acquired property of R.Chandramoorthy and it was allotted to his name in individual capacity. The said R.Chandramoorthy died testate on 10.11.1981 and left the registered Will dated 08.07.1981 bequeathing his properties in favour of his wife Sakunthala to be enjoyed by her till her lifetime and thereafter to the



defendants 1 and 2 who are the sons of R.Chandramoorthy. Sakunthala died on 01.09.1998. As per the Will, the defendants 1 and 2 have partitioned the suit schedule property on 22.03.2001 and the revenue records are also mutated in their names and they are in separate possession and enjoyment of the suit property.

5.2 The plaintiff and defendants 3 to 6 have no right to claim partition in the suit schedule property. There is no collusion between the defendants 1 and 2. The plaintiff and the defendants 3 to 6 were married and they are living at their husbands' house and the articles, seervarisai were offered to them at the time of marriage. The suit property is the self acquired property of R.Chandramoorthy and he has got every right to dispose his own property as his own wish. The Will is genuine and binding upon the plaintiff and the defendants 3 to 6 being aware of the same, the plaintiff and the defendants 3 to 6 have come forward with false claim and hence the suit is liable to be dismissed.

6. The case of the second defendant in brief:

There was no joint family and the said R.Chandramoorthy was never the Kartha and there was nothing to constitute the joint family and the joint family did not indulge in any business and Purushothaman and Company was not a joint family business. The second defendant has also taken the similar stand of the first defendant.



7. *The case of the third defendant in brief:*

The suit property is a joint family property and the father had only a share. Even if a Will is executed, he cannot make a Will for the whole of the property. Granting the property to be a self-acquired property of R.Chandramoorthy, what is the big privilege that the father enjoyed in the hands of the defendants 1 and 2 which necessitated the exclusion of all the female members, is not known. When the Will is silent about this aspect, it is a suspicious circumstances which the propounder must explain. The active part taken by the defendants 1 and 2 in the writing of the Will and all the benefits derived by them is yet another circumstances. On the date of Will, R.Chandramoorthy was not in a sound and disposing state of mind and body and was under the influence, coercion and misrepresentation about the writing of a Will. When the Will is surrounded with so many these circumstances, the burden of the propounder is very much heavier to prove the genuineness of the Will.

8. *The case of the fifth defendant in brief:*

The plaintiff's father R.Chandramoorthy joined hands with his father-in-law in the business and he had purchased the suit property in the year 1951 from the income derived from him as working partner in the Purushothaman and Company and the same cannot be treated as joint family business or the income



derived from the ancestral property. During the lifetime of R.Chandramoorthy, the suit property was not divided among the plaintiffs and the defendants and he died intestate leaving behind his wife, the plaintiff and the defendants as his legal heirs and they are in joint and constructive possession and enjoyment of the same without any partition. The plaintiff and the defendants are the lawful owners of the suit property and they are entitled to 1/7th share in the suit property. The suit property is not the self acquired property of R.Chandramoorthy and it was purchased out of the joint family nucleus and they are entitled to get the share in the suit property. The partition deed dated 22.03.2001 did not bind the defendants and hence the 5th defendant is entitled to get 1/7th share in the suit property.

9. The case of the seventh defendant in brief:

It is false to state that the plaintiff and the defendants constituted Hindu Undivided Joint Family. The plaintiff and the defendants 3 to 6 were married long ago by giving jewels and other seervarisai and as such they are living in their husband's house. While the matter is so, it is meaningless to allege that the plaintiff and the defendants 1 to 6 have constituted Hindu Undivided Joint Family. There was no joint family business also. The suit properties are all self acquired properties of the father and the defendants 1 and 2. The 7th defendant purchased half share in the entire suit property which was allotted to the first



defendant for a valuable consideration of Rs.28,00,000/- through a registered sale deed dated 14.06.2006. The 7th defendant is in possession and enjoyment of the suit property as the absolute owner. He had demolished the old building in the suit property subsequent to the purchase in order to construct a new building in the suit property. Mere praying for declaration of the partition deed dated 22.03.2001 is null and void and insufficient. The 7th defendant is not aware of the pendency of the suit at the time of purchase of the suit property. The plaintiff and the defendants 3 to 6 have come forward with the suit to gain illegally and threaten the 7th defendant.

10. Based on the above pleadings the trial Court has originally framed 9 issues and thereafter, the issues were recasted as follows:

“ i) Whether the suit property is the joint family property or the self-acquired property of R.C.Moorthy @ R.Chandramoorthy ?

ii) Whether the Will executed by R.C.Moorthy @ R.Chandramoorthy in favour of Sakunthula for lifetime and thereafter to the defendants 1 and 2, is genuine ?

iii) Whether the plaintiff is entitled to 1/7th share in the suit property ?

iv) Whether the sale deed dated 14.06.2006 stands in favour of 7th defendant is hit by doctrine of lis pendens ?

v) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?

vi) To what other the relief, if any, the plaintiff is entitled ?”



11. Before the trial Court, on behalf of the plaintiff, the plaintiff herself examined as P.W.1, one Eswaran was examined as P.W.2, one Shankar was examined as P.W.3, one Deivasigamani was examined as P.W.4 and Exs. A1 to A16 were marked and Ex.X1 to X4 were also marked. On the side of the defendants, the first defendant himself examined as D.W.1. One Sukumar was examined as D.W.2, one Venugopal was examined as D.W.3, one Rajaram was examined as D.W.4 and one Selvam was examined as D.W.5 and Exs.B1 to B18 were marked. Ex.C1 was also marked as Court document.

Findings of the trial Court:

12. The suit property is not a joint family property of the plaintiff. The suit property is the self acquired property of R.Chandramoorthy. The trial Court finds that that the genuineness of the Will was proved by the defendants 1 and 2 by calling one of the attestors of the Will. Non-inclusion of the daughters in the Will does not render the Will as invalid. The defendants 1 and 2 partitioned the suit property as per the recitals of the Will after the demise of their mother and therefore the plaintiff is not entitled to any share in the suit property. As per the Will, the first defendant has derived the title from the Will and thereafter, executed the sale deed in favour of the 7th defendant and therefore, the doctrine of *lis pendens* has no role to play at all.



13. The learned counsel for the appellant / plaintiff would submit that the document Ex.A15 – proof affidavit filed by A.T.Ramanathan, and Ex.A16 – Proof affidavit filed by Venugopal clearly shows that the Will (Ex.B2) is a fabricated and created one. The attestors of the Will as per the aforesaid documents (Ex.A15 and Ex.A16) absolutely denied the execution of the testament. D.W.3 through Venugopal, in his cross-examination, had categorically admitted the execution of Exs. A15 and A16 affidavits and also admitted that the document covered under Exs.A15 & A16 is not created under any force. His father A.T.Ramanathan, affixed his signature with the free will and volition and he made his signature under the dictation of his father. When the attestors of the Will clearly denied the genuineness of the Will, the presumption of the Court below regarding the genuineness of the Will in the absence of evidence is illegal. The suit property has been mutated in the name of Sakunthala, the mother of the plaintiff and defendants 1 to 6 as a successor of R.Chandramoorthy and she has managed the suit property for and behalf of the plaintiff and the defendants. During her lifetime the Will has not been noticed or made public at any point of time. That in itself should have created the suspicion in the mind of the Court against the Will. The Will under Ex.B2 has not been proved under Section 68 of the Indian Succession Act and Section 63 of Indian Evidence Act.



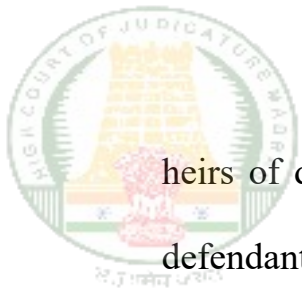
13.1. Further would submit that D.W.1 in his evidence categorically deposed the joint enjoyment of the suit property till the demise of Sakunthala and his sisters have usual arrival to the suit property and participated in the family functions. The plaintiff was informed that the testament through the reply notice dated 11.05.2005, it clearly shows the suspicious circumstances in execution of the Will. Since the alleged Will has been made public only after 24 years of demise of the testator, the Court below ought to have seen that the original Will – Ex.B2 has not been produced before the Court. It clearly shows that the Will has been created by the defendants 1 and 2. D.W.1 had categorically deposed that the original Will is in the second defendant's custody but at the same time the second defendant had not been examined as witness and therefore, adverse inference had been caused against him for not entering into the witness box. The learned counsel for the appellant would further submit that the document under Ex.A2 – Release deed would clearly shows that after the demise of R.Chandramoorthy, his property was in joint enjoyment of Sakunthala and the defendants 1 to 6 and they have released the property in favour of the third defendant and at that time no Will was in existence as alleged by the defendants 1 and 2.

13.2 The learned counsel further would submit that, Ex.B2 has not been in existence after the demise of the testator and on the contrary, the succession



has been opened. Therefore, the notional partition effected on the date of demise of R.Chandramoorthy. After the right in the property vested to the plaintiff, the defendants 1 and 2 cannot deny their share on the plaintiff after 24 years by taking into account of joint enjoyment. The court below failed to consider the fact that after the execution of testament under Ex.B2, the testator was alive for only three months. D.W.1 clearly admitted in his evidence that his father was in ailment for more than a year and he had affected with heart attack for three times. It clearly shows that the testator could not be in a sound mind at the time of execution of alleged Will.

13.3 The learned counsel for the appellant further submitted that the attesting witness D.W.3 clearly admitted the execution of Ex.A15, as it was executed with free will and volition of his father. When the third defendant disputed the signature of the testator in Ex.B5 = Ex.B2, comparing the signature in Ex.A13, the finding of the Court below that the third defendant did not take any steps to send the same for forensic experts and the burden of proof is on the third defendant to show before the court that the two signatures are different is contrary to the settled principles of law. The property acquired by Sakuntala, the mother of the plaintiff and defendants, had become her absolute property under Section 14(1) of the Hindu Succession Act. Therefore, the plaintiff and the defendants 1 to 6 are each having 1/7th share over the suit property as the legal



heirs of deceased Sakuntala. The Court below ought to have seen that the 7th defendant is well aware of the pendency of the suit proceedings which was admitted by D.W.1 in his evidence and it is subsequent to the paper publication of Ex.A5. The non-entering of the 7th defendant in the witness box for examining will cause adverse inference against him. The finding of the Court below as a bonafide purchaser is contrary to the evidence and admission of D.W.1. Therefore, the decree and judgment of the court below is unjust, illegal, erroneous and contrary to the principle of law and in any event liable to be set aside. To strengthen his contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in ***Vineetha Sharma Vs. Rakesh Sharma and others*** reported in ***AIR 2020 SC 3717***, to show that Section 6 of the Hindu Succession Act, 1956, confers status of coparcener on the daughter born before (or) after the amendment in the same manner as son with the same rights and liabilities. Another judgment of the Hon'ble Supreme Court in ***Leela and others Vs. Muruganantham and others*** reported in ***2025 INSC 10***, to show that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, 1872. Yet another judgment of the Hon'ble Supreme Court in ***Kavitha Vs. Mrs.Pamila Mehta and others*** reported in ***(2021) 11 SCC 209***, to show that the testamentary capacity and soundness of mind of the testatrix

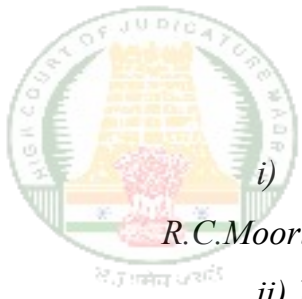


and his handwriting and also signatures on the Will in question are also to be proved in a manner known to law.

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14. The learned counsel for the third respondent / third defendant would submit that the suit schedule property is a joint family property and the father had only a share. Even if the Will is executed, the father cannot make a Will for the whole of the property. The Will does not show that any female members are excluded from the inheritance and when the Will is silent about this aspect in its suspicious circumstances, the propounder must explain. The Court below failed to appreciate that D.W.3 clearly admitted the execution of Exs.A15 and A16 and they were executed with free will and volition of his father, the first attester of the Will. It clearly proves that the testament under Ex.B2 – Will is a suspicious one and the propounder of the Will has not discharged his burden to remove the suspicions. The Court below ought to have seen the exclusion of female heirs, execution, attestation and sound disposing state of mind, not properly proved in accordance with law.

15. This Court considered the submissions made on either side and perused the materials available on records. The points for determination arises in this appeal is that:



i) *Whether the suit schedule property is the joint family property of R.C.Moorthy @ R.Chandramoorthy?*

ii) *Whether the defendants 1 and 2 proved the validity and execution of Will in Ex.B2?*

iii) *Whether the plaintiff is entitled to 1 / 7th share in the suit schedule property?*

Point No.1:-

16. It is the specific case of the plaintiff that the suit property is a joint family property and the same has been purchased by her father out of the income derived from Purushothaman and company and the joint family has constructed the house in the suit schedule property. It is the specific case of the defendants 1 and 2 that the suit property is the self acquired property of R.C.Moorthy and he had purchased the property in the year 1951. The said R.C.Moorthy has constructed the house in the suit schedule property and was living in the suit property along with his children. Further, the said R.C.Moorthy had executed the Will on 08.07.1981 in favour of his wife Sakuntala and she should enjoy the property during her lifetime and thereafter the absolute right has been created in favour of defendants 1 and 2. Purushothaman and company was run by the maternal grandfather of the plaintiff and the defendants 1 to 6 in which R.C.Moorthy was working as a partner and therefore, the property acquired by R.C.Moorthy could not be treated as ancestral property or joint family property.



17. The relationship between the parties are not in dispute. The plaintiff and the defendants 3 to 6 are daughters and defendants 1 and 2 are the sons of R.C.Moorthy @ R.Chandramoorthy and one Sakuntala. The suit schedule property was purchased by R.C.Moorthy under a registered sale deed under Ex.B1 dated 10.09.1951. A perusal of Ex.B1 shows that the suit property was a vacant site measuring 8873 sq.ft. and the same was purchased from the Housing Society. Further, it reveals that by virtue of allotment by Cooperative Housing Society, Swarnapoori executed a registered sale deed dated 10.09.1951.

18. According to the plaintiff, the suit property has been purchased by his father as Kartha and the joint family property consisting of the plaintiff and the defendants 1 to 6 and he has built the house in the said property and each one of them has contributed for the same. To prove the above said facts, plaintiff has not filed any documents.

19. The plaintiff herself has admitted that another property has been purchased by her father in the year 1979 and the same is a self acquired property of her father. The plaintiff has not filed any document to show that she had contributed money to construct the building in the suit schedule property. Ex.B8 is the power of attorney deed executed by the defendants. The recitals of



Ex.B8 shows that after the marriage of the daughters, they are living at various places and therefore, they were intended to execute the general power of attorney to sell the property of their mother which was inherited through the Will dated 05.06.1968 executed by one Pillammal @ Muniammal who is a maternal grandmother of the plaintiff in favour of her mother Sakuntala. From the recitals of the said Ex..B8 it shows that the daughters, after their marriage, are not living in the suit schedule property and they are living in their respective marital home.

20. In the plaint, it has been stated that the plaintiff's father was one of the partners of Purushothaman and Company and out of income from the joint family business, he is looking after the entire family affairs of the joint family. It is also stated that out of funds derived out from join family business, Purushothaman and Company has paid to purchase money for the suit property to the Society. It is pertinent to mention that the aforesaid facts are not stated in the legal notice Ex.A1 dated 09.05.2005, issued by the plaintiff with regard to joint family business about Purushothaman and Company and about purchase money paid. In this regard it is seen from Ex.B1, Sale deed dated 19.01.1951 stands in the name of the plaintiff's father wherein it has been mentioned that, he was a member of the Salem City Extension Co-operative House Building Society Ltd., and has applied to the Society and deposited a sum of Rs.2,640/-.



There is no mention anything about the purchase money paid from and out of joint family business and the income derived from Purushothaman & Company.

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21. P.W.1 in the cross-examination deposed that Purushothaman and Company belonged to the father-in-law of her father and her father was one of the partner. She deposed that after the death of his father in the year 1981, D1 and D2 alone are in possession and enjoyment of the suit property. She also deposed that after the death of her father, D1 and D2 alone paying Property Tax, Water Tax, House Tax and Electricity Consumption Charges but money was given by her mother.

22. P.W.2 – Thiru. S.Eswaran, who is working as Secretary in the Society from 1988, in his cross-examination deposed that the allotment order was stands in the name of Thiru. R.C.Moorthy and in the year 1965 entire debt has been repaid and the same has been reflected in the concern register also.

23. P.W.3 Thiru.Shankar, Auditor, deposed that he came to know about the functioning of Purushothaman and Company through his father-in-law and he produced the document pertains to who are all the partners in the said company and his father-in-law was also one of the partner in the company. He has not maintained any account for the said company after joining in the company as Auditor.



24. The property purchased by R.C.Moorthy from the income derived by him as a working partner in Purushothaman and Company and the same cannot be treated as joint family business or the income derived from the ancestral property. Since it is an admitted fact that the said R.C.Moorthy was a working Partner in Purushothaman and Company and the said company belongs to the maternal grandfather of the plaintiff as well as the defendants 1 to 6, the property belonged to the maternal grandfather and the income derived by her father could not be treated as a joint family income and the business run by them could not be treated as a joint family business. The point No.1 is answered accordingly.

Point No.2 and 3:-

25. According to the plaintiff the first and the second defendants have miserably failed to prove the Will in the manner known to law. There are several suspicious circumstances surrounded in the Will and the burden is caused upon the propounder of the Will to dispel the suspicion circumstances. It is the specific case of the defendants 1 and 2 that the suit property is a self acquired property and therefore, the said R.C.Moorthy had executed the Will in favour of his wife Sakuntala for her lifetime and after her demise, the defendants 1 and 2 have acquired the property. Admittedly, R.C.Moorthy died on 10.11.1981 and the Will came into force and thereafter, Sakuntala died on 01.09.1998. As per



the Will, the defendants 1 and 2 have partitioned the suit property on 22.03.2001.

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26. Ex.B3 is the partition deed executed between D1 and D2 dated 22.03.2001. It shows that 'A' schedule property was allotted to the share of the first defendant and 'B' schedule property was allotted to the share of the second defendant.

27. It is to be noted that the onus to prove the Will is always on the propounder and in the absence of the suspicious circumstances surrounding the execution of the Will, the proof of testamentary and the proof of the signature of the testator, as required by the law, has to be established. It is a well settled proposition that the duty of the propounder is to dispel the suspicion and the onus lies on the propounder to satisfy the conscious of the Court that the instrument is the last Will and the same was executed in a fit state of mind.

28. A perusal of Ex.B5, it is the copy of the registered Will dated 08.07.1981, it shows that one A.T.Ramanathan and his son one Venugopal were signed as attesting witnesses. It is not in dispute that the said A.T.Ramanathan one of the attestor of the Will died. Hence, Venugopal (D.W.3) was examined as attesting witness to prove the execution of the Will. Ex.A1 is the legal notice



dated 09.05.2005, issued by the plaintiff to D1, D2 and to one C.Doraisamy, calling up on D1 and D2 to divide the suit property into 7 equal shares and to allot 1/7th share to the plaintiff and not to create any encumbrance in favour of the said Doraisamy.

29. P.W.4 Thiru K.M.Deivasigamani, Advocate, deposed that he had attested the affidavits in Ex.A15 Signature of Thiru.A.T.Ramanathan and Ex.A16, signature of Thiru.Venugopal and both affidavits were attested on 16.08.2005. P.W.4 in his cross-exmaination deposed that he does not know directly about the said A.T.Ramanathan and one Venugopal and they were introduced by one Dr.Devrajan. The register in which the entries made with regard to Ex.A15 and A16 was destroyed and therefore, he could not be able to brought before the Court. The contents found in Ex.A15 and Ex.A16 are not prepared in his office and he does not know about the contents typed in the said affidavits.

30. It is relevant to refer the judgment of the Hon'ble Supreme Court with regard to the principles required for proving the validity and execution of the Will in the case of Meena Pradhan & others Vs. Kamla Pradhan & another reported in 2023 INSC 847 wherein the Hon'ble Supreme Court has held as under:



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“(10. Relying on *H. Venkatachala Iyengar v. B.N. Thimmajamma*, 1959 Supp (1) SCR 426 (3-Judge Bench). *Bhagwan Kaur v. Kartar Kaur*, (1994) 5 SCC 135 (3-Judge Bench), *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91(2-Judge Bench) *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*, (2009) 4 SCC 780 (3-Judge Bench) and *Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277 (3-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

- i. 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;
- ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.
- iii. 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:



iv. *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;*

v. *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;*

vi. *If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with:*

vii. *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;*

viii. *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.*

ix. *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;*

x. *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.*

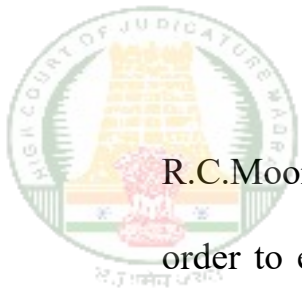
xi. *Suspicious circumstances must be 'real, germane and valid' and not*



merely 'the fantasy of the doubting mind'. Whether a facts as and particular feature would qualify 'suspicious' would depend on the circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a for. Example, circumstance suspicious signature, a feeble mind, an a shaky 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."

31. D.W.1 in his cross-examination deposed that after death of his father, the revenue records mutated in his mother's name with regard to the suit property and they paid taxes in his mother's name. The Will was declared open by his mother to all in the 30th day ceremony of his father. He admits that there is no mention about Ex.B2 Will in the partition deed in Ex.B3.

32. D.W.3, Thiru.T.R.Venugopal, stated in his proof affidavit that he knew about the plaintiff's family from childhood and his father Thiru.Ramanatha Chettiar was also one of the partner in the Purushothaman and Company. On 08.07.1981, Thiru.R.C.Moorthy called D.W.3 and his father to Salem house with regard to execution of a Will and he requested them to be a witness and the said information was conveyed by the said Moorthy to his father on 07.07.1981. Accordingly D.W.3 and his father gone to the house of R.C.Moorthy, at that time Shakunthala was also present. The said R.C.Moorthy informed that he intends to execute a Will in favour of his wife, after her lifetime, the house property will go to his two sons. Document Writer Sugumar was called by



R.C.Moorthy to his home and the said document writer came to his home. In order to execute the Will, R.C.Moorthy narrates the content and the same has been written by the document writer in a white sheet. Thereafter the Will was prepared and brought to the house of R.C.Moorthy. Then, R.C.Moorthy read over the same and signed in each page in English and the same was witnessed by him, D.W.3's father and wife of R.C.Moorthy. After that, D.W.3's father signed as first attesting witness and D.W.3 was signed as second attesting witness in the Will, the document writer also signed in the place of "Typed by".

33. D.W.3 in his cross-examination deposed that in Ex.B5 Will, he was signed as second attesting witness and his father was signed as first attesting witness and he knew the signature of his father. He admits that his signature is found in Ex.A16 affidavit and on the instruction given by his father, he had signed in Ex.A16. He did not know the contents stated in Ex.A16 and the same was typed one Rajaram and Surendra Babu. He deposed that in Ex.A16 he was not signed before any Notary Advocate (or) any of the witnesses. He does not know whose signature found in Ex.A15. He does not know about the witness one Devaraj. D.W.3 deposed that since the execution of the Will, he saw the Will for the first time in the Court only. At the time of execution of Will D.W.3's father, R.C.Moorthy and his wife alone were present. He never seen P.W.4 – Thiru.Deivasigamani, Advocate.



34. D.W.4, Thiru.Rajaram, who is the husband of the third defendant supported the case of the plaintiff. D.W.5, Thiru.Selvam, who is working as a Clerk in the Co-operative Society, deposed that after the death of R.C.Moorthy, based on the Will, the shares were transferred in favour of his wife Shakunthala as legal heir of deceased R.C.Moorthy and other documents are also changed in the name of Shakunthala.

35. A careful perusal of the relevant materials on record and applying the ratio laid down in the above judgment in ***Meena Pradhan & others Vs. Kamla Pradhan & another*** (cited *supra*) and applying the provisions, it is evident that the Will was duly executed by the testator in the presence of witnesses D.W.3 and his father out of his free will in a sound disposing state of mind. D.W.3 categorically states that the testator executed the Will in question and both he and the testator signed the Will in the presence of each other. The testator has expressed his clear intention bequeathing his property by giving life estate to his wife Sakunthala and only after the demise of his wife Sakunthala, his two sons viz. D1 and D2 can acquire the suit property. R.C.Moorthy died on 10.11.1981, his wife died on 01.09.1998 and the defendants 1 and 2 have partitioned the suit property on 22.03.2001. During the lifetime of Sakunthala (plaintiff's mother), the plaintiff has not sought any partition and has chosen to file the suit for partition only in the year 2005.



36. The rulings relied upon by the learned counsel for the appellant are also not supported her case, since the facts of the present case is different from those cases. There is no infirmity or perversity in the judgment and decree of the Court below. The Point Nos.2 and 3 are answered accordingly.

37. In view of the foregoing discussions, this Court finds no merit in this appeal and the same is liable to be dismissed.

In the result, the appeal is dismissed. The decree and judgment dated 25.11.2013 passed by the II Additional District Court, Salem in O.S.No.85 of 2005 is confirmed. No costs.

06-02-2026

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

To

The II Additional District Judge, Salem.



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AS No. 223 of 2



M.JOTHIRAMAN J.

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AS No. 223 of 2014

06-02-2026