



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-01-2026

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**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**AS No. 532 of 2017
and
CMP No.17367 of 2017**

Banumathi
W/o. John Britto,

Appellant(s)

Vs

1. Suseela
W/o. Late K.P. Dharmaraj,
- 2.Pradeep Inbaraj
S/o. Late K.P. Dharmaraj.
- 3.Brindha Rubini
D/o. Late K.P. Dharmaraj.
- 4.P. Shantha Kumari
W/o. Jayaraj,
- 5.Kalaiselvi
W/o. Late P. George,
- 6.Latha
D/o. Late P. George.
- 7.Sudha
D/o. Late P. George.
- 8.R. Nanjammal



9.G. Karuthapandi

10.Mahesh

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Respondent(s)

PRAYER

This Appeal Suit has been filed under section 96 r/w. Order 41 Rule 1 of the CPC, to set aside the judgement and decree passed in OS.No.381/2015, on the file of the I Addl.District Judge, Coimbatore, dated 22/08/2017.

For Appellant: Ms. K. Abhiramee
for Mrs.V.Srimathi

For Respondents Mr. V.G.Sureshkumar,
for R1 to R3

Mr. Siddharth Sridhar
for
Mr.R.Bharathkumar
for R5 to R7

R4, R8, R9, R10- N.A.

JUDGMENT

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

Challenging the judgment and preliminary decree of the Trial Court decreeing the suit for partition and allotting 1/4 share to the plaintiffs, the present appeal has been filed by the unsuccessful fifth defendants.



2. The fifth defendant in O.S.No.381 of 2015, on the file of the First Additional District Court, Coimbatore, is the appellant herein. The plaintiffs in the said suit are arrayed as respondents 1 to 3 herein, and the defendants 1 to 4 and 6 to 8 in the suit are arrayed as respondents 4 to 9 herein.

3. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

4. The brief fact of the plaintiff's case is as follows :-

The suit properties originally belonged to one Ponnayan, who died intestate on 26.09.1998, leaving behind his wife Jothiammal, three sons, namely, Dharmaraj, George, Albert Robinson and two daughters, namely, Shanthakumari and Banumathi. Thereafter, Jothiammal and three sons died one after another. Albert Robinson died as a bachelor and left no issues.

(ii) The plaintiffs are the wife and children of Dharmaraj, the first son of the Ponnayan. Defendant nos.1 and 5 are the daughters of Ponnayan. Defendant nos.2 to 4 are the wife and daughters of George, another son of Ponnayan



(iii) It is the case of the plaintiffs that after the death of the parents, all the legal heirs were entitled to $\frac{1}{5}$ share each in the suit properties. Since Albert Robinson died as a bachelor without leaving any issues, his $\frac{1}{5}$ share devolved upon his sisters and the legal heirs of his deceased brothers. Hence, claiming $\frac{1}{4}$ share in the suit properties, the suit came to be filed.

5. Whereas, it is the contention of the fifth defendant that after the death of Ponnayan, his sons and daughters are enjoying $\frac{1}{5}$ share each in the suit properties. Out of them, one of the sons, Albert Robinson, died as a bachelor. The said Albert Robinson executed a registered Will dated 09.01.2015 bequeathing his $\frac{1}{5}$ share in favour of the fifth defendant. Therefore, according to her, she is entitled to $\frac{2}{5}$ share in the entire properties.

6. The defendant nos. 2 to 4 while sailing with the plaintiffs for allotment of $\frac{1}{5}$ share each, contended that the Will propounded by the fifth defendant is neither genuine nor valid and that the said testator was suffering from cancer, was admitted in the hospital for a long period, besides having Ortho problems and was not even able to walk properly. Therefore, it is their contention that he could not have executed the Will.



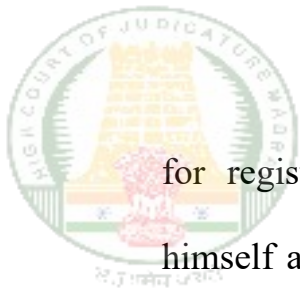
7. Based on the pleadings, the Trial Court framed the following issues:-

- (i) Whether the Will in favour of 5th defendant is true and valid?
- (ii) Whether the plaintiffs are entitled for 1/4 share or 1/5 share in the suit property?
- (iii) To what other relief?

8. On the side of the plaintiffs, no oral or documentary evidence has been adduced. On the side of the defendants, the fifth defendant examined herself as D.W.1 and two documents were marked as Ex.B.1 and Ex.B.2. One of the attesting witnesses to the Will was examined as DW2. The scribe of the Will was examined as DW3. The second defendant examined himself as DW4.

9. The Trial Court, disbelieving the Will, vide judgment and preliminary decree dated 22.08.2017, decreed the suit and thereby granted 1/4 share in the suit properties. Challenging the same, the fifth defendant is before this Court with the present appeal.

10. The main contention of the learned counsel appearing for the appellant is that the Trial Court has disbelieved the Will on flimsy grounds. According to her, the Will has been written on 09.01.2015 and was presented



for registration on 19.01.2015 at Negamam Registrar Office. The testator himself appeared and presented the document for registration, which was duly registered. One of the attesting witnesses, DW2 was examined, and the scribe was also examined. There were no circumstances creating suspicion with regard to the execution of the Will.

11. It is further submitted that the evidence of D.W.4 clearly indicates that the plaintiffs and others were not on good terms with the testator. In fact, the evidence of DW4 also establishes the fact that the plaintiffs have not even attended the last rites of the testator. Though there is evidence to the effect that the testator was suffering from cancer, absolutely there is no evidence to show that he had lost his mental faculties or he was not in a sound state of mind at the relevant point of time.

12. In the absence of any evidence to show that the testator was not possessing sound mental faculties at the relevant point of time. The testator has presented the document and registered the same in accordance with law, therefore presumption arises in favour of its validity. Hence, it is submitted that the Trial Court has given undue importance to minor discrepancies and erroneously negated the registered document.



13. Whereas, the learned counsel appearing for the respondents 1 to 3/plaintiffs would submit that DW2 is none other than the son of the beneficiary and that itself is one of the suspicious circumstances surrounding the Will. He further contended that the testator died on 28.01.2025, after a week of registration of the Will, which itself shows that the testator was not keeping good health. Admittedly, the testator was also suffering from cancer. Therefore, the Trial Court has rightly disbelieved the Will.

14. It is further submitted that admittedly the suit properties are situated at coimbatore, and fall within the jurisdiction of Coimbatore Sub-Registrar Office. There was no reason as to why the testator travelled about 40 kms and registered the document at the Negamam Sub-Registrar Office, which circumstance creates a doubt with regard to the execution of the Will. It is also submitted that there are two inconsistent versions of the attesting witnesses with regard to the execution of the document.

15. In the light of the submissions made on either side, the following issues arise for consideration :-

i) Whether the Will dated 09.01.2015 is genuine and validly executed by the testator ?

(ii) Whether any suspicious circumstances have been brought on record



to disbelieve the Will ?

iii) To what other relief?

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16. Points 1 to 3

It is not in dispute that all the legal heirs of Ponnayan were entitled to 1/5 share each in the properties left behind by him. It is also an admitted fact that one of the sons of the said Ponnayan, namely, Albert Robinson, died as a bachelor. The main dispute in this appeal revolves only around the share of the said Albert Robinson.

(ii) According to the fifth defendant, Albert Robinson executed a registered Will dated 09.01.2015 bequeathing his 1/5 share in favour of the fifth defendant. Though the other defendants disputed the Will, it is relevant to note that the plaintiffs, who claimed 1/4 share in the suit properties, did not enter the witness box, despite the existence of a specific pleading regarding the Will dated 09.01.2015 in the written statement filed by the fifth defendant.

(iii) Be that as it may, insofar as the Will is concerned, the initial burden is always on the propounder to prove its execution as well as attestation of the Will in the manner required under law. Once the execution of the Will is established in accordance with law and if there exists suspicious circumstances



surrounding the Will, it is for the propounder to dispel such suspicious circumstances.

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(iv) In the light of the above settled legal position, insofar as the execution of the Will is concerned, D.W.2 though one of the attesting witness and also the son of the beneficiary, has clearly deposed that the document has been written on 09.01.2015 and that the testator later presented the said document for registration on 19.01.2015. His evidence further clearly establishes that the testator has signed the document in the presence of both the attesting witnesses, and that the witnesses also signed the document in the presence of the testator. The said evidence is also clearly corroborated by DW3, the scribe of the Will.

(v) It is relevant to note that the document was originally prepared on 09.01.2015 as spoken to by both DW2 and DW3, and thereafter, the same has been presented for registration on 19.01.2015. The appearance of the testator before the Registration Office and the signing of the document before the Sub-Registrar, Negamam has also been witnessed by the attesting witnesses, which has been clearly established by evidence. Once the document has been duly registered in accordance with law, such registration carries with it a presumption that the official acts have been properly performed. When such



presumption attaches to the document, the burden shifts on the person disputing the same to bring on record circumstances giving rise to suspicion in order to disbelieve the document.

(vi) Except contending that the testator was suffering from cancer and the Will is not genuine, no material whatsoever has been placed to show that the testator lacked mental capacity or was not in a position to take a rational decision to execute the Will or any other document.

(vii) DW3, the advocate, who prepared the document has also clearly stated that testator was in possession of sound mental faculties and the Will was prepared strictly in accordance with the instructions given by him. Merely because the testator was suffering from cancer, it cannot be said that he had no mental capacity to execute the Will. It is not the case of either DW4 or the plaintiffs that the testator was immobilized or he was not in a position to take a own decision. Therefore, once it is established that the testator himself appeared before the Registration Officer, presented the document for registration and the execution is also spoken to by the witnesses, the mere fact that he was suffering from cancer at the relevant point of time that itself cannot be a suspicious circumstances to disbelieve the registered document.



(viii) Similarly it is relevant to note that though DW2 happened to be the son of the beneficiary, merely because the son of the beneficiary is one of the attesting witnesses, the same cannot be a ground to suspect the Will unless undue influence, coercion or fraud has been clearly established. It is not the case of the plaintiffs or the defendants 1 to 4 that the testator was under the influence of the fifth defendant or there existed any dominating position or active confidence compelling the testator to execute the Will. Once the facts are established on record, mere suspicion circumstances cannot be inferred. In this regard, the Hon'ble Supreme Court, in **2009 (11) SCC 1 (Rursingh(D) rep. By LRs., /vs/ Bachan Kaur)**, has held that merely because the beneficiary attested the Will, the same cannot be a ground to infer suspicious circumstances.

(ix) Similarly, the Will having been registered at the Sub Registrar Office, Negamam, which is about 40 kms away from Coimbatore, is also sought to be projected as a suspicious circumstance by the plaintiffs and the defendants 1 to 4. It is relevant to note that DW2, in his evidence, has clearly stated that the reason for registering the document away from Coimbatore was only to avoid others coming to know about the Will executed by the testator. The said explanation is also appears to be plausible for the simple reason that if such registration had taken place at Coimbatore, the testator would not have normally settled the matter quietly and that may also be one of the reasons for registering



(x) Be that as it may, such a circumstance, by itself, cannot be a ground to disbelieve the execution of the Will. The evidence of DW4 makes it clear that even for last rites of the testator, the plaintiffs did not attend. These facts clearly indicate that there was strained relationship between the plaintiffs and the fifth defendant and that they were not happily moved with the 5th defendant. That itself could also be one of the reasons for the testator having executed the document in favour of the fifth defendant and registering the same at a different Sub Registrar Office.

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17. In the result, the Appeal is allowed and the judgment and the preliminary decree dated 22.08.2017, passed in O.S.No.381 of 2015 by the learned First Additional District Judge, Coimbatore are set aside and modified as follows:-

- i) The plaintiffs together are entitled to 1/5 share in the suit schedule properties.
- ii) The 5th defendant/appellant is entitled to 2/5 share in the suit schedule properties.
- iii) the first defendant is entitled to 1/5 share and the defendants 2,3 and 4 together entitled to 1/5 share in the suit schedule properties.

Considering the nature of the relationship between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(N.SATHISH KUMAR J.) (R.SAKTHIVEL J.)
19-01-2026

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes

mrp

To

The I Additional District Court,
Coimbatore.



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