



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2026

PRONOUNCED NO : 30.04.2026

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CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OSA No. 404 of 2018

AND

CMP No. 18359 of 2018

1. P.Saroja Bai
2. R. Dhanalakshmi
3. R. Sankari

K.Rajendra Prasad (Deceased)

..Appellant(s) / 7 to 9
and 1 Defendants

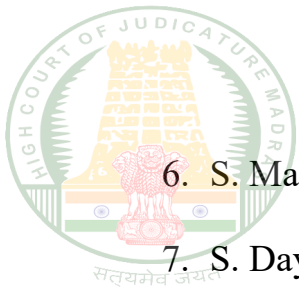
Vs

K.Govardhana Prasad(deceased)

1. G.Shreenivasa Prasad(deceased)
2. G. Savitha
3. Sumatra Prasad (Died)

R3-died, RR4 To 7 are LR's of R3 who are already on record. Memo Recorded vide Court order dated 02.02.2026 made in O.S.A.No.404 of 2018 (CVKJ & KBJ)

4. S. Shyam Prasad
5. S. Rajinikanth Prasad



6. S. Mahendra Prasad

7. S. Dayanand Prasad

8. S.Sujatha

W/o.G.Shreenivasa Prasad, (Deceased)
No.37, 3rd Floor, Honey Dew Apartments,
Kilpauk Garden, 2nd Street, Kilpauk,
Chennai - 600010

9. S.Sandeep

S/o.G.Shreenivasa Prasad,
Rep. by S.Sujatha (Mother/Natural Guardian)
No.37, 3rd Floor, Honey Dew Apartments,
Kilpauk Garden, 2nd Street,
Kilpauk, Chennai-600010

10.S.Poonam

S/o.G.Shreenivasa Prasad,
Rep. by S.Sujatha (Mother/Natural Guardian)
No.37, 3rd Floor, Honey Dew Apartments,
Kilpauk Garden, 2nd Street,
Kilpauk, Chennai-600010.

RR 8 to 10 brought on record as LR's of the
deceased R1 viz., G.Shreenivasa Prasad vide
Court order dated 13.01.2020 made in CMP
No.25619 of 2019 in O.S.A.No.404/2018
(MMSJ & KRJ).

..Respondent(s)

This Original Side Appeal filed under Order XXXVI Rule 1 of Original
Side Rules seeking to set aside the judgement and decree in TOS.No.6/2004 on
the file of this Court dated 11-07-2018.

For Appellant(s):

Mr.K.V.Subramaniam, Senior Counsel
For Mr.M.A.Abdul Wahab

For Respondent(s):

Mr.C.Uma Shankar For RR1, 2, 8 to 10
Mr.M.Selvam for RR3, 4, 6 and 7
No appearance for R5, R3-Died



JUDGMENT

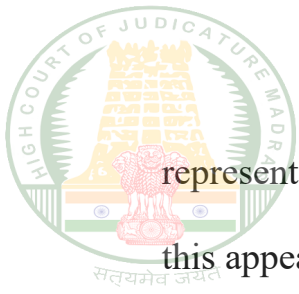
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(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The 7th and 9th defendants, who are the legal representatives of the deceased 1st defendant in T.O.S.No.6 of 2011 on the file of the Original Side of this Court aggrieved by the judgment and decree dated 11.07.2018 have filed the present Appeal.

2.The 1st petitioner, K.Govardhana Prasad had filed O.P.No.546 of 2003 under Section 222, 255 and 276 of the Indian Succession Act, 1925 seeking grant of Probate with respect to a Will dated 28.07.1978 said to have been executed by Kuppaiah Prasad who died on 16.06.1985. Pending the Original Petition, the 1st petitioner, K.Govardhana Prasad died and his legal representatives had been brought on record as 2nd and 3rd petitioners by an order dated 18.02.2014 in A.No.6258 of 2013.

3.In the Original Petition, he had also impleaded as respondents, the other legal representatives of Kuppaiah Prasad. They filed caveat and subsequently, O.P.No.546 of 2003 was converted to a Testamentary Original Suit and renumbered as T.O.S.No.6 of 2004. By judgment and decree dated 11.07.2018, the suit was decreed and probate was granted, necessitating the legal



representatives of the deceased 1st respondent therein K.Rajendra Prasad to file this appeal.

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TOS No:6 of 2004:

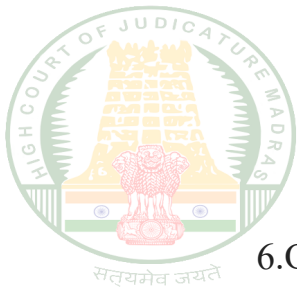
4.It had been stated in the plaint that the testator M.Kuppaiah Prasad was possessed of property and had executed a Will dated 28.07.1978 nominating his son K.Govardhana Prasad as his executor. He died on 16.06.1985. It had been further stated that his wife Mrs.Devaki predeceased him and died on 03.03.1983. He left behind as his legal heirs this three sons namely, Sathiyannarayana Prasad, Govardhana Prasad / executor / plaintiff and Rajendra Prasad / 1st defendant. It had been contended that the original Will was recently traced and immediately thereafter, the petition was filed seeking grant of probate. It had been further stated that the Will had been executed in the presence of witnesses who had also signed the Will witnessing execution. It had thus been sought that probate be granted with respect to the said Will.

5.The 1st defendant K.Rajendra Prasad had filed written statement claiming that the Will was not a true and genuine document. It was further contended that it was not written or executed by M.Kuppaiah Prasad. It had been further stated that the witnesses were not known to the family of the deceased. At the time of execution of the Will, the testator was more than 75 years and was not keeping good health and was hard of hearing and did not



have proper eye sight. He was not capable of going out without the assistance or help of others. He was senile. It was contended that it was highly improbable to

contend that he moved over from his house at Tondiarpet to go over to the office of the advocate at Armenian Street, Chennai, to execute the Will. It was therefore contended that the Will had not been executed by him and was a fabricated document. It was contended that the signature was also forged signature. It was further contended that he did not know to read and write. It was further contended that the testator was only under the care of the defendants and the plaintiff was living separately at Sowcarpet, Chennai. The plaintiff had not taken care to maintain the deceased during his lifetime. It was contended that the plaintiff came to reside in a portion of the property only after the death of the testator. It was further contended that the other son Sathyanarayana Prasad, whose legal heirs had been impleaded on his death as 3rd to 6th defendants was employed in Kolkatta till 1985. It was further contended that there was a delay of 18 years 2 months and 23 days in filing the Original Petition. It was further contended that the reasons given for the delay are not true. It was further contended that the recitals given relating to calculation of rent and maintenance of property itself raises serious doubt about the genuineness of the Will. It was also contended that the plaintiff did not file the plan said to have been enclosed along with the Will. In view of those facts stated, the 1st defendant contended that the suit should be dismissed.



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6. On the basis of the said pleadings, the following issues were framed:

“i). Whether the Will dated 28.07.1978 is valid and genuine?

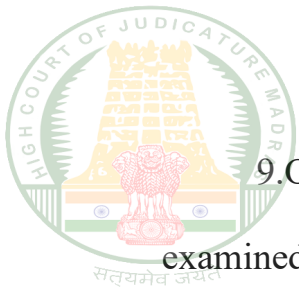
ii). Whether the plaintiffs are entitled to get grant of probate under the said Will dated 28.07.1978?

iii). Whether the Will was executed by the deceased Kuppiah Prasad?

iv). Whether the deceased Kuppiah Prasad was in sound and disposing state of mind to execute the Will dated 18.07.1978?”

7. During the pendency of the suit, the plaintiff died and his legal representatives were brought on records as 2nd and 3rd plaintiffs. The 1st defendant also died and the 7th to 9th defendants were brought on record as his legal representatives.

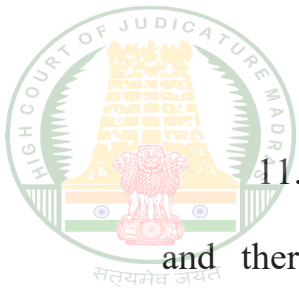
8. During trial, the 2nd plaintiff, G. Shreenivasa Prasad was examined as PW-1 and one of the attesting witnesses T.S. Sridharan was examined as PW-2. The plaintiffs marked Exs. P1 to P5. Ex. P1 was the original Will dated 28.07.1978 and Ex. P4 was the copy of the Legal Heirship Certificate of the testator Kuppiah Prasad. Ex. P5 was the plan of the property.



9. On the side of the defendants, the 1st defendant K.Rajendra Prasad examined himself as DW-1 and he marked two documents as Exs.D1 and D2.

Ex.D1 was the copy of the counter filed by the deceased 1st plaintiff in I.A.No.3438 of 2003 in O.S.No.914 of 2003 and Ex.D2 was the copy of the Sale Deed dated 08.03.1966.

10. On the basis of the pleadings and the oral and documentary evidence, the learned Single Judge held that the suit property belonged to the testator, Kuppaiah Prasad. He further observed that a perusal of Ex.P1/ Will would show that the testator had signed the same and the contents had also been explained on the date of execution / 28.07.1978 and two advocates had signed as attesting witnesses. One of the witnesses had been examined as PW-2. In his evidence, PW-2 stated that the Will had been prepared in his office under the instructions of the testator. Thereafter, the testator signed the Will. He further stated that the testator was in a sound state of mind. He also stated that the contents of the Will were properly explained to the testator before he signed the Will. It was further observed that during cross examination, a suggestion had been put to PW-2 that the testator had signed in a blank document and thereafter, the Will had been typed. The learned Single Judge inferred that therefore the defendants had admitted to the signature of the testator.



11. The learned Single Judge, held that PW-2 was a practising advocate and there were no infirmities in his evidence to invite any suspicious circumstance. The Will had been prepared in his office and the contents had also been explained to the testator. The property had also been bequeathed to all the three sons. It had been held that since execution and attestation of the Will had been proved, the onus shifted on the defendants to prove the suspicious circumstances. The learned Single Judge also observed the contention of the defendants that the reasons assigned by the testator in the Will were not correct, since at the time of acquiring the house the plaintiff and his brothers were only minors and could not have contributed any sum for acquiring the property. However, the learned Single Judge held that to substantiate such allegation no materials had been produced.

12. Further, it was also observed that the sons were more than 40 years at the time of execution of the Will. The probable age of the 1st plaintiff was also taken note of and it was held that there were no suspicious circumstances surrounding execution of the Will. It was also noted by the learned Single Judge that Ex.P4, plan had been filed.

13. The learned Single Judge had also examined the evidence of DW-1 who had also admitted that in accordance with Ex.P4 / plan, all the three sons were enjoying the property. It had therefore been contended that mere



allegations of suspicious circumstances were not sufficient to discard the Will.

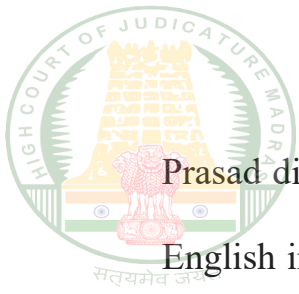
The learned Single Judge also examined the reason for delay in filing the petition and held that the reasons advanced were probable and acceptable. It was also noted that after the Will had come into force, all the families were residing in the property. In view all the above reasons, the learned Single Judge had decreed the suit as prayed for and granted probate of the Will.

O.SA No.404 of 2018:

14.Questioning the said judgement and decree, the 7th to 9th defendants who were the legal representatives of the deceased 1st defendant had filed the Appeal.

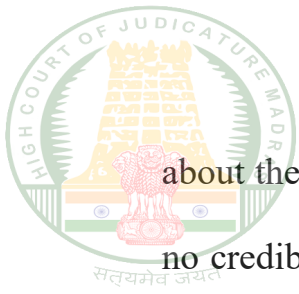
15.Heard arguments advanced by Mr.K.V.Subramaniam, learned Senior Counsel for the appellants and Mr.C.Uma Shankar, learned counsel for the 1st, 2nd, 8th and 10th respondents.

16.Mr.K.V.Subramaniam, learned Senior Counsel sought permission of the Court to inspect the Original Will. The learned Senior Counsel pointed out that the signature of the testator did not appear normal in the Will. It had been affixed in a slanted manner. A doubt was therefore raised that it was possible that signatures had been obtained in blank pages and later the contents had been typed. The learned Senior Counsel further argued that the testator M.Kuppaiah



Prasad did not know how to read and write and that the Will had been typed in English in the office of an advocate at Parry's Corner, nearly about 6 KM away from the residence of the testator. The learned Senior counsel pointed out that, even at the time of the execution of the Will, the testator was not keeping good health and was hard of hearing and did not have proper eye sight. He contended that he was not in a position to move out of the house without the assistance of others. It was therefore contended by the learned Senior Counsel that it was highly improbable that the testator moved over to the office of the advocate and had given instructions for the preparation of the Will. The learned Senior Counsel therefore contended that the Will was not executed when the testator was in a sound state of mind and in a position to understand the contents of the Will.

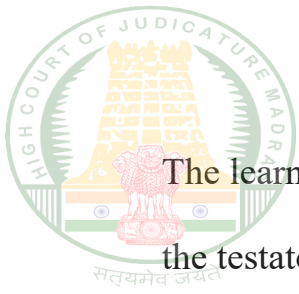
17. The learned Senior Counsel further pointed that though in the Will, it had been stated that, the contents had been translated into Tamil and read over to the testator, the veracity of such endorsement found in the Will was highly doubtful. The learned Senior Counsel also disputed the contents of the Will. He pointed out that there was unequal distribution of the property among the three sons of the testator. He also further pointed out that the testator had signed in the portions marked 'x' and therefore, contended that the document had been signed without the testator understanding the contents and mechanically in the places pointed to him to sign. It was therefore highly doubtful, whether he knew



about the contents of the Will. The learned Senior Counsel stated that there was no credible reason given for the delay in filing the petition. He pointed out that the delay was substantial, more than 18 years. He further argued that this delay itself is a suspicious circumstance.

18. With respect to the finding of the learned Single Judge, brushing aside the fact that the legatees were young children at the time of purchase of the property, the learned Senior Counsel pointed out that the property was purchased in the year 1935 and the age of the eldest son was only two years and therefore, he could not have contributed towards purchase of the property. He also pointed out that at Karunguzhipallam, the testator possessed only five grounds and therefore, he could not have given instruction to write a Will for seven grounds and stated that this was one further circumstance to hold that the Will was not a genuine document.

19. The learned Senior Counsel also pointed out that no explanation had been given as to why an advocate had been preferred to sign as an attesting witness over any friend or relative of the testator. The learned Senior Counsel further pointed out that Ex.P4 / plan had been prepared for the purpose of partition among the brothers and not prepared for the purpose of the Will. Additionally, the plan had not been produced at the time of filing of the petition.



The learned Senior Counsel further stated that no explanation had been given by the testator for unequal distribution of the property among his three sons.

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20. In view of all these reasons, the learned Senior Counsel contended that the judgment of the learned Single Judge should be set aside.

21. Mr. C. Uma Shankar, learned counsel for the respondents, however, disputed the said contentions. The learned counsel pointed out that the Will had been prepared by an advocate in the office of the advocate only because professional advice was required in the preparation of the Will. He pointed out the evidence of PW-2, the attesting witness, who clearly spoke about the circumstances surrounding the execution of the Will and the fact that the contents had been read over Tamil to the testator. He further pointed out that PW-2 had also spoken about the mental condition of the testator. The Will had been prepared under the instruction of the testator. The learned counsel stated that PW-2 had also withstood cross examination. The learned counsel was emphatic in his submission that the evidence of the attesting witness would establish that a Will had been executed in manner known to law and in accordance with law. He contended that the Will had been proved and the suspicious circumstance stated on behalf of the appellants have not been established by them. The learned counsel pointed out that the every object of any Will is to deviate from normal rules of succession and also with the normal



method under which a property would devolve among the legal representatives.

The learned counsel contended that the Will had been executed when the testator was in a healthy state of mind. He contended that the Will having been proved in manner known to law, the learned Single Judge had correctly rejected the suspicious circumstances and had decreed the suit. The learned counsel contended that the appeal should be dismissed.

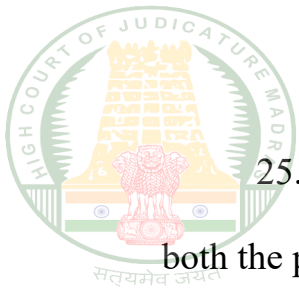
22. We have carefully considered the arguments advanced and perused the material records.

23. The entire appeal surrounds proof of a Will dated 28.07.1978 said to have been executed by M.Kuppaiah Prasad who was aged 72 years at the time of execution of the Will.

24. The points which arise for consideration are as follows:

“1. Whether the Will marked as Ex.P1 had been proved in manner known to law.

2. Whether the appellants had established the suspicious circumstances stated by them and if so, whether such suspicious circumstances warrant rejection of the Will.”



25. Since the evidence recorded with respect to both the points overlap, both the points are taken up for discussion and determination together.

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26. The deceased 1st respondent, K. Govardhana Prasad, had initially filed OP No. 546 of 2003 seeking probate of the Will dated 28.07.1978 said to have been executed by his father M. Kuppiah Prasad, who died on 16.06.1985. The wife of Kuppiah Prasad. Mrs. Devaki had predeceased him and died on 03.03.1983. Kuppiah Prasad was a resident of Tondiarpet in Chennai. The Will had been executed and signed in the office an Advocate, T.S. Sridharan at Armenian Street, Chennai.

27. It is the case of the appellants that the health of the testator, M. Kuppiah Prasad was failing and he was having bad eyesight and his hearing was also poor. It had been contended that it would not have been possible for him to move over to Armenian Street from Tondiarpet, keeping in mind the infirmities he suffered owing to his old age. The improbability of going over to the office of the advocate was also pointed out on behalf of the appellants.

28. The attester to the Will T.S. Sridharan was also examined as PW-2. He was a practising advocate in the High Court. In his chief examination, he stated that he had signed as a first attesting witness in the Will marked as Ex.P1 dated

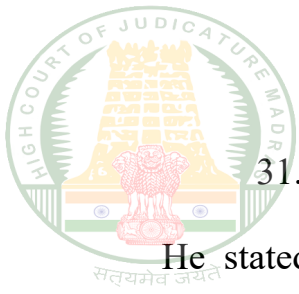


28.07.1978 executed by late M.Kuppaiah Prasad. He stated that the Will was prepared in his office on the instructions of M.Kuppaiah Prasad. The learned Senior Counsel for the appellants pointed out that the witness had not spoken as to who prepared the Will. We hold that the statement of the witness which is as follows:

“.... The said Will was prepared in my office on the instructions of M.Kuppaiah Prasad. ”

29.The above would only indicate that the witness prepared the Will in his office under the instructions of the testator. In the Will, PW-2 had affixed his signature and had also written down his name in capital letters, had given his profession as advocate and had also given his office address. There was yet another witness to the Will, who was also an advocate and having office at the same address.

30.We hold that it is not required to state as to who among the advocates present in the office had prepared the Will, which was dated 28.07.1978 and it would be highly improbable to give this specific information when the witness was examined in the year 2015 after 37 years. It is also not so significant to reject the Will.

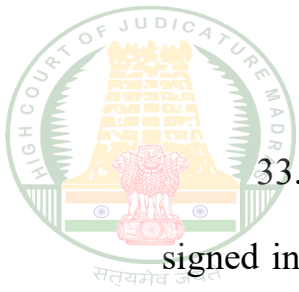


31.PW-2 was also cross examined at length on behalf of the defendants.

He stated in his cross examination when a question was raised as to who prepared the Will, that he drafted the Will initially and then the fair was typed.

He further stated that he did not hand over the draft to the testator but read over the Will and explained the same to the testator. This positive evidence had come out during cross examination. He further stated that Kuppaiah Prasad was not residing at Tondiarpet, but at Old Washermenpet. It is common knowledge that both the areas are adjoining to each other and this fact is not so compelling to reject the Will. He again reiterated that the Will was prepared and executed in his office. He then stated that the Will was signed in his presence and he had attested it and he had given his address and that the address was of his office. He then stated that he put the Will in a sealed cover and handed it over to the testator.

32.It had been contended on behalf of the appellants that this fact was not mentioned in the Will. It is highly improbable that this fact would be mentioned in the Will, since if it had to be mentioned, the sealed cover will have to be opened and the contents will have to be written and thereafter, the Will will have to be put back in the cover and resealed again. We reject the suggestion in this regard.



33.The witness was specifically put a suggestion that Kuppaiiah Prasad signed in blank sheets and thereafter, the contents were typed. This suggestion was denied. He further stated that he saw the plan. A further suggestion was put to the witness that he did not know Tamil and could not have translated the Will, which suggestion also he denied.

34.It is thus seen that the witness had withstood cross examination and had reiterated that he had prepared the Will under instructions of the testator and thereafter, he signed the Will in the presence of the testator and had thereafter handed over the original Will to the testator in a cover, which was later sealed.

35.Section 63(c) of the Indian Succession Act, 1925 is as follows:

“63.Execution of unprivileged wills:

....

....

(c) The will shall be attested by two or more witnesses, each of whom has 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 his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary



that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

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36. Section 68 of the Indian Evidence Act, 1872 / Section 67 of Bharatiya Sakshya Adhiniyam, 2023 is as follows:

“68. Proof of execution of document required by law to be attested.- *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

37. A careful perusal of the Will would show that the jurat portion had been given and stated in accordance with the requirement under Section 63(c) of the Indian Succession Act, 1925. Further, the attesting witness had been examined as PW-2 and he had very specifically stated that he had prepared the Will and signed as witness and had seen the testator signing the Will. We therefore hold that the Will had been proved in manner known to law.

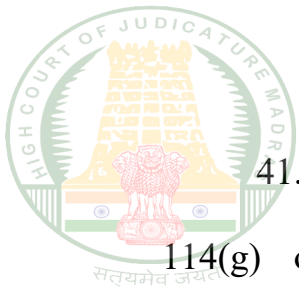


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38. The learned Senior Counsel for the appellants, however, pointed out the circumstances, which according to him were suspicious and called upon the Court to reject the Will. He stated that the physical and mental condition of the testator was not sound and therefore, he was not capable of giving instructions and understanding the contents of the Will.

39. On the side of the defendants, the 1st defendant alone had been examined as DW-1. Though in the proof affidavit, he had stated that the testator was not keeping good health, he also stated that he alone was residing with the testator till his death. If that be the case, he would have been in the best position to produce medical records of the testator, particularly, when he had stated that the testator was hard of hearing, did not have proper eye sight, could not move around without the assistance or help of others and was not in a position to go out of the house.

40. With respect to anyone of the aforementioned infirmities, the medical report or doctor's prescription or a certificate should have been produced and DW-1 was the best person to be in possession of such medical records, since admittedly, he was residing with the testator till the death of the testator, in the very same house. For the reasons best known to the witness, no such document had been produced.

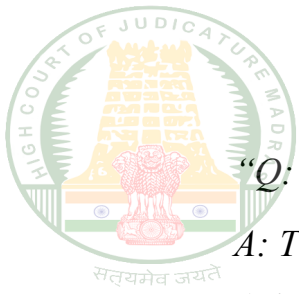


41. We naturally have to fall back on the presumption under Section 114(g) of the Indian Evidence Act, 1872 that such document had not been produced only because they were not available, which would indicate that the testator was in a position to understand and give instructions for the preparation of the Will or if the documents were available would speak adverse to the contentions of DW-1.

42. The other circumstance pointed by Mr. K. V. Subramaniam, learned Senior Counsel for the appellants, was the manner in which the property had been divided and it was stated that it was an unequal division of the property.

43. We hold that the manner in which a property should devolve is an exclusive wish of every testator and unless compelling suspicious circumstances are proved and established that the testator was directly influenced to write a Will in a particular manner, we can never step into the shoes of the testator to hold that the Will should be rejected owing to unequal division of a property.

44. As a matter of fact, Ex. P4 had also been produced and it is on evidence that PW-1 was questioned about the portion in which he residing. The questions and answers are as follows:



“Q: What is the extent of your portion in the suit property?”

A: The extent of my portion is 410 sq. Feet in the suit property.

(Plan is shown to the witness.)

Q: Kindly see the Plan of the suit property and can you identify your portion thereon?

A: I was staying in red marked portion in the plan and I am not admitting the signature found therein. Plan is marked as Ex.P5.

Q: Who were all living in the yellow marked and green marked portion coloured in Ex.P5?

A: Tenants were there but I do not know their names.

Q: Who were receiving rents from the tenants?

A: For two portions K.G.Prasad was receiving rents and for one portion Mr.K.S.Prasad was receiving rents.

Q. Can you identify the portions from the rents were received by K.G.Prasad and K.S.Prasad in Ex.P5?

A: Yellow marked portion was under K.G. Prasad and green marked portion was under K.S.Prasad.

Q: When did you enter into red marked portion under Ex.P5?

A: Originally I was residing in yellow marked portion of the plan under Ex P5, at that time first plaintiff, K.Govardhana Prasad wanted to perform his daughter's, the third plaintiff marriage then I shifted to red marked portion as it was vacant in the year 2006.”



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45. It was denied that he and his brothers occupied their respective portions as found in the Will after the demise of the father. But still, the evidence extracted above would show that the three beneficiaries were living in separate portions in the property and to a large extent had abided by the terms of the Will. The plan was actually marked through DW-1.

46. With respect to the physical condition of the testator, the following questions were put:

“Q: You have stated that your father was weak and unhealthy did he take any medical treatment?”

A: I used to bring Doctor to home and gave him treatment.

Q: Do you have any medical records for the same?

A: No.

Q: What was his ailment?

A: Old age ailments only. He could not walk.”

47. We hold that when a medical professional had examined the testator and had given treatment, naturally, records on that aspect should have been produced before this Court.

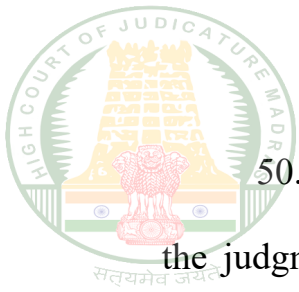


48. With respect to the issue of delay, PW-1 was cross examined and his answers were follows:

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“In para 3 of my proof affidavit, I have stated that after intensive search, it (Will dated 28.07.1978) was in the other papers of the deceased executor. In para 5 of the probate petition filed by my father, it is stated that the original Will of the Testator is not traced by the executor and it was in the other papers of the deceased executor. Only recently, the said original Will was traced from the records. The date of tracing is not mentioned in para 5.”

49. A careful perusal of the evidence recorded would show that the signature of the testator in the Will marked as Ex.P1 had not been denied by the appellants. They only contended that the signatures had been appended in blank pages. But however, the evidence of PW-2 is very convincing that he had prepared the Will under instructions of the testator and thereafter, had seen the testator had signing the Will and he had also signed the Will and that another witness had also signed the Will. The witness had withstood cross examination. We hold that the evidence of this witness is sufficient. We hold that the Will had been proved in manner known to law and the appellant had failed to establish any of the circumstances stated by them to be even suspicious, much less establish them as suspicious circumstances. The other aspects about the age of the beneficiaries or of the testator are only minor discrepancies.



50. The learned Senior Counsel for the appellants had placed reliance on the judgment of the Hon'ble Supreme Court in **2025 SCC Online SC 1466, Gurdial Singh (Dead) through Lr. Vs. Jagir Kaur (Dead) and Another**. In that judgment, the parameter to ascertain 'suspicious circumstances' vitiating a Will had been discussed. Paragraph Nos.13, 14 and 15 are as follows:

"13. There is no cavil when suspicious circumstances exist and have not been repelled to the satisfaction of the Court, the Court would not be justified in holding that the Will is genuine since the signatures have been duly proved and the Will is registered ones.

Parameters to ascertain 'suspicious circumstances' vitiating a Will:-

*14. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the disposition. In **Indu Bala Bose v. not a "suspicious" circumstance. Manindra Chandra Bose (1982) 1 SCC 20**, the Court held any and every circumstance is not a "Suspicious" circumstance.*

"8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

*The Court quoted the Privy Council's elucidation in **Hames v. Hinkson AIR 1946 PC 156** of suspicious circumstances as follows:*



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"17.....where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable Incredulity. He is never required to close his mind to the truth."

*It was again reiterated in **PPK Gopalan Nambier v. PPK Balakrishnan Nambiar, 1995 Supp (2) SCC 664** that suspected features should not be mere fantasies of a doubting mind.*

"5.....It is trite that it is the duty of the propounder of the will to prove the will and to remove all the suspected features. But there must be real, germane and valid suspicious features and not fantasy of the doubting mind."

15. It is from this prism, we need to examine whether the High Court was justified in reversing the concurrent findings of the Trial Court and the appellate court and holding the Will was vitiated due to existence of suspicious circumstances."

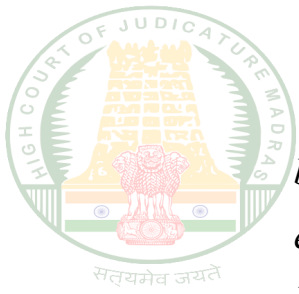
51. In the instant case, the circumstances pointed out cannot be termed as being grave enough to hold that the Will had never been executed by the testator. The evidence of PW-2 is convincing, credible and the witness had withstood cross examination.



52. The learned Senior Counsel for the appellant had also placed reliance on the judgment of the Hon'ble Supreme Court reported in **1992 2 SCC 507**,

Guro Vs. Atma Singh, wherein the Hon'ble Supreme Court had reversed the finding of the High Court that there were not suspicious circumstances surrounding the execution of the Will. In that case, the Hon'ble Supreme Court had listed out the suspicious circumstances in paragraph No.7 of the judgment. Paragraph No.7 is as follows:

“7. The High court, in our opinion, was not justified in reversing the findings of fact recorded the appellate court which were based on a proper appreciation of the evidence on record. In doing so, the High Court has failed to attach sufficient importance to the various suspicious features relating to execution of the will that were pointed out by the appellate court. The High court has not even noticed the fact that the testator had died within eight days of the execution of the will and there is a recital in the will that the testator lied been ill for a long time and was seriously ill at the time of execution of the will. In view of the said recital, it was necessary for the plaintiff-respondent 1 to adduce satisfactory evidence with regard to the nature of the illness of the testator and about his mental capacity to execute the will. The incorrect statements in the will with regard to testator having no sister and respondent i being his real brother have to be considered in this background. The circumstance that the testator had not put his signature and had put only his thumb impression on the will, has been



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brushed aside by the High court on the view that there is no evidence on record with regard to the literacy of the testator. We find that the scribe, Manohar Lal, Public Witness 1, has stated that Ganga Singh was literate person and had been writing receipts etc. even earlier. In the circumstances, it was necessary for the plaintiff-respondent to adduce satisfactory evidence to show why, instead of signatures, the thumb impression of the testator was obtained on the will. Another significant feature which has been brushed aside by the High court is about the role of respondent 1 in the execution of the will under which he is the sole legatee. It has been stated by Manohar Lal, Public Witness 1, that Tara Singh, the son of respondent 1 had come to call him. To the same effect is the testimony of Kehar Singh, Public Witness 2 and Surjan Singh, Public Witness 3. the attesting witnesses. The will was executed outside the residence of respondent 1 on a bahi brought by Tara Singh the son of respondent 1. Respondent 1 has made contradictory statements about his presence at the time of the will. The High court has ignored these contradictions in the statement of respondent 1, by a simple observation that this lapse on the part of respondent 1 may be due to faulty memory or maybe he was trying to avoid the criticism that he has tried to exercise some influence to get the will executed in his favour. Only two of the five attesting witnesses have been examined. Both of them, viz., Kehar Singh (Public Witness 2 and Surjan Singh (Public Witness 3 have made an effort to deny the illness of the testator at the time of the execution of the will and have also departed from their earlier statements recorded during the mutation

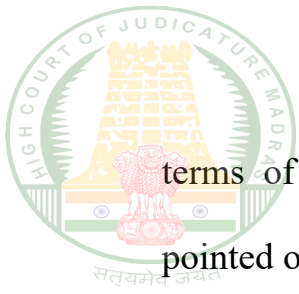


proceedings. In these circumstances, it was necessary that the other attesting witnesses should also have been examined by plaintiff-respondent 1 Taking into consideration the aforesaid features, we are of the view that the High Court was not justified in reversing the Findings of fact recorded by the appellate court that will is not proved to be a genuine document executed by Gang Singh and in holding that the execution of the will had been satisfactorily proved by respondent 1.”

53.In the instant case, DW-1 had admitted that he was residing with the testator and that he used to bring a doctor to examine the testator. The burden was on DW-1 to produce medical records to substantiate his contentions.

54.PW-2 has tendered convincing evidence that he had prepared the Will under the instructions of the testator. We hold that the suspicious circumstances pointed out by the Hon’ble Supreme Court in the aforementioned extract are not present in the instant case.

55.The suspicious circumstances pointed out had been enumerated by us and we hold that the Will had been executed when the testator was in a sound state of mind. He had knowledge of the nature of the bequeath under the Will. Further, DW-1 had admitted that the brothers were in possession of various portions in the property jointly and therefore, had also acted according to the



terms of the Will. We therefore hold that the suspicious circumstances, as pointed out, in this case do not warrant rejection of the Will.

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56. We hold that the learned Single Judge had correctly appreciated the evidence adduced and had rightfully decreed the suit. We find no reason to differ with the said findings.

57. In the result, the Appeal stands dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

(C.V.K.,J.) (K.B.,J.)
30-04-2026

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



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OSA No. 404 of 2



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

smv

Pre-delivery Judgment made in
OSA No. 404 of 2018

30-04-2026