



WEB COPY

A.S.No.747 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

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1. T.Shanmugasundaram
2.Smt.Rashida Banu @ Banumathi ... Appellants

Versus

1. Smt.Palaniammal
2. T.Ramakrishnan (Died)
3. Mrs.Rajeswari
4. Indian Overseas Bank
Cross Cut Road
Gandhipuram
Coimbatore – 641 012

5. S.Vasanthi
6. R.Jagan
7. R.Nandhini ... Respondents

(R2 Died, RR5 to 7 are brought on record as LR's of deceased R2 vide order of Court dated 28.02.2024 made in C.M.P.Nos.3582, 3587 and 3589 of 2024)

First Appeal filed under Section 96 read with Order 41 of Rule 1 of CPC against the judgment and decree made in O.S.No.718 of 2011 dated 1/30



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02.08.2018 on the file of I Additional District Judge, Coimbatore.

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For Appellant : Mr.N.Manokaran
for Mr.P.Chandrasekar

For Respondents : Mr.S.Mukunth
Senior counsel
of M/s.Sarvabhauman Associates
for R3, R5 to R7

Mrs.V.Rajeswari for R4
R1 and R2 (died)

JUDGMENT

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

Aggrieved over the judgment and decree of the trial Court granting preliminary decree for partition and allotting 1/4th share each to three plaintiffs and the first defendant, the present appeal came to be filed by the first defendant.

2. The parties are referred to by their respective ranks before the trial Court.

3. The suit properties originally belonged to one Thangaraj. First plaintiff is the wife and second and third plaintiffs are son and daughter respectively. The first defendant is the younger son of said Thangaraj. Second defendant is the wife of the first defendant. The suit properties are



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the self-acquired properties of Thangaraj. The said Thangaraj was running a sole proprietary concern in Item No.1 by name “TRS Enterprises” and he carried on the said business until his life time. Though the second plaintiff was associated with the business of his father, from the year 1999, he had his own business and was residing separately with his family since 2003. The said Thangaraj and his wife, namely the first plaintiff, were living in Item No.1 of the suit property. The third plaintiff is the only daughter of deceased Thangaraj. It is the case of the plaintiffs that the first defendant developed contact and intimacy with the second defendant, who belongs to Muslim community and ultimately married her without the knowledge of his parents and other family members and was residing separately. According to the plaintiffs, taking advantage of the sympathetic attitude of his mother, the first defendant began to reside in item No.1 of the property along with his parents. It is the case of the plaintiffs that after the death of deceased Thangaraj intestate, the properties devolved on the plaintiffs and the first defendant in equal shares. After the 16th day ceremony of said Thangaraj, the first defendant showed a xerox copy of a Will dated 07.02.2011 said to have been executed by the deceased Thangaraj and proclaimed that his father has bequeathed all the properties to him. According to the plaintiffs, the said



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Will is a fabricated and concocted one and brought out by the first defendant incorporating the recitals to suit his own convenience in connivance with his allies. There was no reason for the deceased Thangaraj to disinherit his wife, who is a heart patient, his elder son, who is a blood cancer patient and his daughter and recitals in the alleged Will by themselves throw a lot of doubt about its genuineness and veracity of the same. The recitals in the alleged Will shows as if provisions made in the Will for Plaintiffs 1 and 3, but they are in an unrealistic and unworkable manner. The alleged Will was an unregistered document and does not even contain a clause for revocation, which is the basic characteristic of a Will. The description of properties in the Will particularly the Item No.2 of the property is incorrect and even during his life time, the deceased Thangaraj had executed a gift deed in favour of Panchayat transferring 89 square meters of land, but the alleged Will mentions the total extent of 8.33 acres as an item of bequest. That itself shows that the Will is a created one. Disputing the alleged Will, the plaintiffs have filed a suit claiming a share in the suit properties.

4.The suit was resisted by the first defendant by filing a written statement containing the allegations which are in brief, as follows:

(i) The allegation that the testator Thangaraj died intestate on



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26.08.2011 is incorrect. It is the case of the first defendant that the testator had executed a Will dated 07.02.2011 in favour of first defendant bequeathing the plaint mentioned Items 1 and 2 of properties. The first defendant denies the allegation that he did not take care of his late father and states that he only accompanied his late father on the previous day of his death to attend the Court of Judicial Magistrate VII, Coimbatore. The first defendant also denied the allegation that the first defendant had stolen ammonium nitrate bags and appropriated the sale proceeds to himself. According to the first defendant, the third plaintiff was given in marriage in the year 1992 and at the time of marriage 120 sovereigns of jewels were given and his father spent about Rs.4 lakhs for the marriage. It is his further case that the third plaintiff's husband property situate in Thomas Street, Coimbatore and at the time of marriage, there was only ground floor and his father had renovated the ground floor with modern amenities and had also given Rs.5 lakhs for constructing the first floor measuring about 1500 sq.feet and due to the said improvement, the third plaintiff and her husband were able to earn about Rs.30,000/- as rent per month. It is the case of the defendants that first defendant's father also gave jewels to third plaintiff on several occasions and also gifted a bike to her husband and it was also



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directed in the Will to purchase a house property in the name of the third plaintiff.

(ii) It is the further contention of the first defendant that his father spent Rs.5 lakhs towards marriage expenses of the second plaintiff and also applied for a loan to the tune of one crore in Indian Overseas bank to promote a private limited company in the name of “T.R.S.Nitrium Private Limited” and also spent several lakhs for obtaining PAN Number, electricity connection and for converting the property into an industrial land by reposing good faith and belief in the second plaintiff but the second plaintiff did not cooperate with the father and started a separate business for manufacturing Ammonium Nitrate in the name of Jagan Enterprises at Kuniamuthur, Coimbatore and thereby caused loss to his father. It is the further contention of the first defendant that in the year 1997, the first defendant joined Coimbatore Aviation Training Academy to get commercial pilot licence but he was asked by his father to come out of the Aviation Training and assist him in carrying on the business in the 1st item of property. It is the case of the first defendant that from the said date he was helping his father in all aspects. According to the first defendant, the second plaintiff and said Thangaraj were never been in cordial terms till the latter



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died and the second plaintiff was responsible for not starting the business in the name of T.R.S.Nitrium Private Limited and said Thangaraj was forced to drop the idea of starting new business due to the adamant attitude of the second plaintiff and the second plaintiff also resigned from the father's company on 02.05.2001.

(iii) The first defendant further states that though his father was against his marriage, after a month, they started to reside with his father and the second defendant became a Hindu by conversion. It is averred that late Thangaraj was suffering from various health problems and only these defendants and their children were taking care of him and even the first plaintiff, who is the wife of late Thangaraj did not visit him while he was in the hospital and plaintiffs 2 and 3 also neglected their father. According to the first defendant, in view of the help and support rendered by the defendants, his father viz., late Thangaraj executed his last Will dated 07.02.2011 bequeathing the plaint mentioned Items 1 and 2 of the properties in favour of first defendant and after the death of his father, he had shown the Will executed by his late father on his own accord to the plaintiffs and plaintiffs made attempts to destroy the same but he was able to save the Will from the hands of the plaintiffs. It is the further case of the defendants that



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on the 16th day of his father's ceremony the plaintiffs took away the original sale deeds pertaining to item No.1 of suit property and the sale deed standing in the name of their grandmother Ranguthayammal, LIC Bonds and also the Maruthi Alto Car and gave a false complaint against the first defendant on 14.09.2011. Since the plaintiffs made attempts to disturb the peaceful possession and enjoyment of the suit properties, the first defendant filed a suit for permanent injunction in O.S.No.1595 of 2011 to protect his possession and the same is pending. It is also alleged that there are criminal cases pending between the parties. Therefore, it is the contention of the first defendant that the Will is genuine and it was executed by his father on his own accord.

5. In the reply filed by the plaintiffs, the plaintiffs denied the allegations made in the written statement.

6. Based on the above pleadings, the following issues were framed by the trial Court:

- i) *Whether the Will dated 07.02.2011 is genuine?*
- ii) *Whether the suit is properly valued?*
- iii) *To what relief?*



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7. Before the trial Court, on the side of the plaintiffs PWs 1 to 3 were examined and Exs.A1 to A37 were marked and on the side of the defendants, DWs 1 to 3 were examined and Exs.B1 to B52 and Exs.X1 to X10 were marked as witness documents.

8. The trial Court, based on the above pleadings and documents, disbelieved the Will propounded by the first defendant and granted a preliminary decree for partition allotting 1/4th share each to the plaintiffs and the first defendant in the entire suit properties. Aggrieved over the same, the present appeal came to be filed by the first defendant.

9. The learned counsel appearing for the appellants/defendants would mainly contend that the evidence of DWs 2 and 3 were not properly considered by the trial Court. Learned counsel submits that DW2 is one of the attesting witnesses of the Will and he has clearly spoken not only about the execution, but also the attestation of the Will and DW3, the scribe, who typed the Will, is none other than the lawyer of the testator and their evidence clearly prove the execution as well as the attestation as required under law. It is the contention of the learned counsel for appellants that there is no suspicious circumstances whatsoever to disbelieve the Will. Merely because the Will has not been registered, that cannot be a ground to



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reject the Will. In the Will itself provisions were made in favour of Plaintiffs

1 and 3. The recitals in the Will clearly show that the first defendant has to purchase a house to the third plaintiff and also make a deposit in favour of first plaintiff. Therefore, when sufficient safeguards were made, in respect of other legal heirs, merely because Plaintiff No.2 has been disinherited, the Will cannot be disbelieved. If the evidence of DW2 and DW3 is read in its entirety, the same would show that the Will is a genuine document. Further, the attesting witnesses were also very close to the family of the testator. Their evidence do not show any artificiality and proves the Will as required under law. According to the learned counsel, as there is no suspicious circumstances brought on record, the Will has to be accepted, but the trial Court has disbelieved the Will on erroneous grounds. In support of his contention, learned counsel relied on the judgment of a Division Bench of this Court in ***Dr.Shantha Vs. Sharada*** reported in ***2003 (4) CTC 470***.

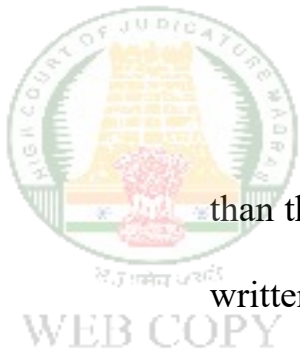
10. Per contra, the learned Senior counsel appearing for the respondent would submit that the Will propounded by the first defendant is nothing but a fabricated document and suspicious circumstances are inherent in the document itself. The manner in which the Will was projected itself shows that the propounder has not dispelled the suspicious circumstances



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which are inherent in the document itself. Attesting witnesses are none other than the close associates of Defendant No.1. DW2's evidence itself clearly shows that that testator was intended to write a Will in favour of his wife, daughter and younger son. However, after the draft has been prepared, it is seen that deceased Thangaraj's daughter, wife and his elder son were totally excluded.

11. According to learned Senior counsel, the evidence DW2 is highly artificial and so called draft Will written by DW3 has not seen the light of the day. Further writing the Will in unknown place is also highly doubtful. It is his further contention that if really the testator has bequeathed the entire properties by giving the description, he would have clearly mentioned about the Gift Settlement Deed dated 02.11.2010 executed in respect of some portion of Item No.2 under Ex.P30, whereas the Will has been written as if there was no transfer effected by the testator. It is further submitted by learned Senior counsel that one of the attesting witnesses already stood as a surety while executing anticipatory bail granted to first defendant as evidenced by Ex.A26 and similarly the other attesting witness along with first defendant had filed a suit in which DW3 was a lawyer for them. These facts will clearly lead to the inference that attesting witnesses are none other



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than the persons highly connected to DW3. If really the Will had been hand written as spoken to by DW2, the copy of the draft Will should have been produced but the same has not been produced. It is his further contention that the first plaintiff, namely the wife of the testator, was suffering from serious heart ailment as per Ex.A28 even two years prior to the alleged Will. Therefore, the husband disinheriting his own wife and not making any provision for her medical treatment itself creates a serious doubt about the Will.

12. It is further contended by the learned Senior counsel that admittedly the second plaintiff was also suffering from blood cancer, which is evident from the documents marked. Therefore, without making any provision for his medical treatment, the testator bequeathing the entire property in favour of one of the sons and ignoring his wife and another son, who is suffering from blood cancer, creates serious doubt about the Will (Ex.B1). The learned Senior counsel further submitted that there is no whisper about the Will dated 07.02.2011 in the caveats filed by DW3 under Exs.A9 to A17 on behalf of first defendant, though the caveats were filed on 10.12.2012. Therefore, it is his contention that only on the later date, the unregistered Will would have been created to suit the convenience of the



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first defendant. Therefore, the attesting witnesses being the close associates of first defendant and also client of DW3, the possibility of creating the will cannot be ruled out. Further, disinheriting his own wife, who was suffering from Heart ailment and son, who was suffering from blood cancer and without making any provision for their medical expenses also creates suspicion about the Will. The learned Senior counsel further submitted that there are some clauses in the Will to make it appear as if some provisions have been made, which is also one of the suspicious circumstances inherent in the document itself. In support of his contentions, the learned Senior counsel relied on the following judgments:

- i) ***D.Kausalya Vs. S.Sankaran*** reported in **2002 (1) CTC 650**;
 - ii) ***Shivakumar and Others Vs. Sharanabasappa and Others*** reported in **(2021) 11 SCC 277**;
 - iii) ***Balathandayutham and another Vs. Ezhilarasan*** reported in **(2010) 5 SCC 770**;
 - iv) ***N.Govindarajan Vs. N.Leelavathy*** reported in **2011 (5) CTC 287**;
13. In the light of the above submissions, now the points that arise for consideration in this appeal are as follows:

- i) Whether the unregistered Will dated 07.02.2011 is true



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and valid, if so, whether the propounder dispelled the suspicious circumstances attached to the Will?

ii) Whether the plaintiffs are entitled to partition as prayed for?

Points 1 and 2:

14. The relationship of the parties are not in dispute. The subject property was owned by one Thangaraj, the father of plaintiffs 2 and 3 and first defendant and husband of first plaintiff. The said Thangaraj died on 26.08.2011, after the alleged Will dated 07.02.2011. Though it is pleaded by the propounder that there was a strained relationship between the plaintiffs and the testator, however the same has not been substantiated in any manner by adducing evidence. It is an admitted fact that the second plaintiff was also residing with the testator initially. DW1 has also admitted in his evidence that all of them were residing in the same house and the second plaintiff was also helping his father in his business, but DW2 has pleaded feign ignorance about the health condition of the second plaintiff and admitted that though the second plaintiff started individual business, the same has been closed in the year 2011 itself. Further, he has admitted in his evidence that there was no evidence to show that the amount has been spent



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for construction of a house for Plaintiff No.3. His evidence also indicate that DW3-L.A.Rajkumar, who is a lawyer, had already filed a suit in O.S.No.444 of 2009 on behalf of the first defendant and one Prabhuram, one of the attesting witnesses. The plaint copy in the said suit has also been filed as Ex.A3. The said suit has been filed as against the Government officials in respect of vegetable market in the year 2009 itself. The above document viz., Ex.A3 makes it very clear that the first defendant and one of the attesting witnesses Prabhuram are the clients of DW3 from the year 2009. DW3 has actively participated in preparing Ex.B1-Will.

15. According to DW1, the Will has been prepared in the office of the Advocate. Though he has not accompanied his father on the said date, the execution of the Will has been informed later by his father. According to him, the Will has also been handed over by the lawyer later. If Ex.A7 is carefully seen, one of the attesting witness Prabhuram has already signed in a letter submitted to the police station. The evidence of one of the attesting witnesses clearly shows that attesting witness and first defendant are known to each other from the year 2009. Though the first defendant has already filed a suit in O.S.No.1595 of 2011 as per Ex.A8, prior to that caveats have been entered by the some lawyer under Exs.A9 to A17. Caveats have been



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entered on 10.12.2012. However, there is no mention whatsoever with regard to the existence of the Will at the relevant point of time. The initial burden lies on the propounder of the Will to prove not only the execution and attestation of the Will, but also to dispel the suspicious circumstances attached to the Will. Though the first defendant examined one of the attesting witnesses as DW2 to prove the Will, on a careful perusal of evidence of DW2, it is seen that the Will was written in the ground floor of the building known as “India Towers” and the contents have been dictated by the testator and the same have been written by DW3 in his own hand writing and thereafter, DW3 went to fourth floor of his office and typed Ex.B1-Will and later the Will has been signed by the testator in the presence of the attesting witnesses and attesting witnesses have also signed in the document. Though the chief examination of DW3 satisfies the parameters of law for proof of a Will, on careful perusal of the entire evidence, particularly the cross-examination clearly indicates that his evidence is highly artificial. Though DW2 is 30 years younger than the testator, according to DW2 he is known to the testator since his father was in close association with the testator. According to DW2, they know the entire family members. It is relevant to note that if really DW2 has known the



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entire family members, there is feign ignorance about the blood cancer suffered by plaintiff No.2. These facts create doubt about his closeness to the family members of the testator. His admission in the cross-examination clearly shows that Thangaraj has given instruction to his lawyer to write a Will in favour of his wife, Palaniammal, daughter Rajeswari and also his younger son. The relevant portion of his deposition is as follows:

“.....தங்கராஜ் அவரது மனைவி, மகள், மற்றும் இளைய மகள் ஆகியோர் பெயர்களுக்கு மட்டும் தான் உயில் எழுதவேண்டும் என்று சொன்னாரா என்றால், அவர் அவ்வாறுதான் சொன்னார். தங்கராஜ் சொல்ல சொல்ல ராஜ்குமார் உயிலை எழுதினார்...”

16. The above admission makes it clear that the testator was intended to write a Will to three persons viz., his wife, only daughter and younger son whereas it is seen from Ex.B1 that the entire property has been bequeathed only in favour of younger son. Recitals in Ex.B1 will show that the second plaintiff was doing business individually and since the first defendant was looking after the testator and his wife, the testator had intention to bequeath entire property to the first defendant. The recitals further indicate that after clearing the loan availed by the testator, the first defendant has to create

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some deposit in favour of first plaintiff, the wife of the testator. The recitals also indicate that the first defendant according to his capacity has to purchase one house to the third plaintiff. It is relevant to note that absolutely there is no recital in the Will with regard to the medical ailments suffered by the wife of the testator. Exs.A28 and A29 filed on behalf of the plaintiffs clearly show that the wife of the testator was suffering from heart ailments and she requires replacement of aortic valve. The medical advice has been given in the year 2009 itself. Ex.A29 shows that the second plaintiff was suffering from leukemia in chronic phase even in the year 2007. Absolutely there is no mention whatsoever about serious ailments of his elder son and also his wife. When admittedly strained relationship was not established between the husband and wife, it is the duty of prudent husband to make a provision for medical expenses of his wife who has been suffering from heart ailment. Though the second plaintiff, the elder son of the testator said to have started a new business, which is competitive to his father, the evidence of DW1 itself clearly indicate that the new business started by elder son was closed down and he was also suffering from blood cancer. As long as there was no strained relationship between elder son and his father, the normal conduct of a father was to make at least some provision for



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medical treatment of his son. Therefore, ignoring these facts and bequeathing the entire valuable properties to only one son, who is also initially married other religion person, creates serious doubt about the genuineness of the Will. Disinheriting the wife and elder son who were struggling for their life creates a serious doubt about genuineness of the Will.

17. Be that as it may, though recitals in the Will indicate as if the propounder viz., the legatee was taking care of the mother, when the evidence of DW1 in this regard is carefully perused, he does not even know whether his mother was admitted for heart ailment or suffering from any heart ailment and in fact he has admitted in his cross examination that he do not know the health condition of his mother after his father's death. These facts clearly create some serious doubt about the recitals in the Will that the first defendant was taking care of his mother in all aspects.

18. Now coming to the evidence of DW2 and DW3, it is the specific case of the DW2 that the recitals were dictated by the testator and draft has been prepared by DW3. DW2 and DW3 have spoken in unison that the draft has been prepared in the first floor of the building whereas the office of the third defendant situate in fourth floor. According to DW2 and DW3, initially the draft Will has been hand written by DW3, later he went to the



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fourth floor office, typed the Will and executed the same. Admittedly the third defendant is having office at fourth floor and when such being the case, drafting the Will in the ground floor is also highly doubtful. DW2 and DW3 never stated in their evidence that in whose presence the draft Will has been prepared. It is to be noted that vide Ex.A30, the testator has gifted an extent of 89 square meter of land in II item of suit property to Local Body by virtue of the Gift Settlement Deed dated 02.11.2010. Therefore, the testator having gifted said extent, certainly he would have given the details while drafting the Will whereas alleged Will proceeds as if there was no encumbrance or transfer of the property and the entire property including the property, which was already gifted by the testator, has been bequeathed. This aspect is also creates doubt about genuineness of the Will.

19. It is further to be noted that DW2 also admitted that second plaintiff was also helping his father and though DW2 claims that he is very close to the family of the testator, his evidence clearly indicate that he does not even know that second plaintiff was suffering from cancer and further his evidence also indicate that the first plaintiff Planaiammal was residing with her husband Thangaraj till his death. If really DW2 was close to Thangaraj and aware of the family members, he should have at least known



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the serious illness of second plaintiff. His evidence to the effect that he is a close friend of the testator creates a serious doubt whereas he was very close only to DWs 1 and 3. DW2's evidence further indicates that only DW2 stood as a surety while executing the bond for anticipatory bail obtained by the first defendant and DWs 1 and 2 are having close conduct and they used to go for horse riding together. It is relevant to note that DW3, the so called scribe said to have prepared Ex.B1-Will. According to him, the Will has been prepared in the Administrative Office of the India Tower. After preparing the draft Will, he went to his Office in the fourth floor and thereafter, he typed the Will. His evidence also clearly indicate that he has already appeared for first defendant and another attesting witness one Prabhuram and also filed a suit on their behalf earlier.

20. Further the evidence of DW3 also shows that he appeared for said Prabhuram in O.S.No.154 of 2011 filed by his mother. The Vakalat filed in the said suit has been marked as Ex.A18. However, he pleaded feign ignorance about who has brought the two attesting witnesses at the relevant point of time. The fact remains that DW2, one of the attesting witness is close associate of DW1 and he used to go for horse riding with DW1 and also stood as a surety for executing anticipatory bail obtained by DW1



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whereas another attesting witness is also client of DW3. These facts clearly indicate that attesting witnesses were brought only by DW3. If really DW2 was in close contact with the family of the testator, he should have at least known about the serious decease suffered by one of the family members of the testator, namely the second plaintiff. Further, as discussed above, DW1 also pleaded feign ignorance about his mother's heart ailment. Therefore, the very recitals in the Will that DW1 was taking care of his mother also creates serious doubt. Further, the father having executed the gift deed in respect of certain extent of the land in second item, once again including the entire property is also creates serious doubt. Further when the caveats were entered on behalf of the first defendant by DW3, on 10.12.2012, there was no whisper whatsoever with regard to the existence of the Will and the existence of the Will has been informed only later on the 16th day ceremony of their father whereas while filing the caveat there is no mention about the existence of the Will. These facts also creates serious doubt about the execution of the Will. Even assuming that the testator had an intention to execute a Will, the evidence of DW2 indicates that he had intention to bequeath the properties to three persons whereas Ex.B1-Will was prepared as if the entire property has been bequeathed only to one person.



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21. It is to be noted that testator's wife was suffering from heart ailment from the year 2009 and she was also advised to undergo aortic valve replacement surgery. Normal human conduct of any husband would be to make provisions for his wife's treatment whereas the recitals in the Will states that only after clearing the loan availed by the testator, the first defendant has to make some deposit, which appears to be artificial. Further, what is the nature of the loan availed by the testator is also silent in the Will. Ex.A26 also clearly shows that DW2, one of the attesting witnesses stood as surety in the criminal Court for Defendant No.1. All these facts clearly show that attesting witnesses were close to DW1 and DW3, who is a lawyer and already appeared for one of the attesting witnesses and Defendant No.1. The evidence of DW1 shows as if he was incharge of entire business of his father, namely the testator and he was taking care of him till his death. His evidence also clearly indicates that he was in active confidence and dominant position. Therefore, the entire burden lies on him to prove that there was good faith in transaction. Therefore, when a person who was very close to Defendant No.1 and also appeared for first defendant in a suit, written the Will separately in an unconnected building, later typed the said Will in the fourth floor, namely lawyer's office also creates serious doubt



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about the execution of the Will by the testator. Further, excluding the name of his wife and his elder son, who were struggling for their life and bequeathing the entire properties to the younger son also creates serious doubt. When the attesting witness was very close to the first defendant and the lawyer, who appeared for the first defendant in another suit and also for one of the attesting witnesses and the Will was initially hand written in an unconnected building and later typed in the fourth floor, namely in the lawyer's office would also create serious doubt about the execution of the Will by the testator. Though disinheriting one of the legal heirs itself is not a suspicious circumstance, but disinheriting the wife, who was suffering from heart ailment and not making any provision in the Will for her medical treatment itself creates serious doubt about the Will. Further, the recitals in the Will shows that there is a direction to the first defendant to purchase a house according to his capacity for the third plaintiff and after clearing the loan to make some deposit in the name of the first plaintiff exhibits attached artificiality. Therefore, the possibility of creating the Will later with the connivance of the attesting witnesses and DW3, the lawyer who appeared for the first defendant in the earlier suit cannot be ruled out and further bequeathing the entire property even without reserving the right of



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revocation also creates serious doubt about the Will. If the testator had an intention not to revoke the Will, DW3 being a lawyer would have advised for outright transfer by way of settlement instead of writing the Will without the revocation clause also shows attached artificiality. When the above suspicious circumstances are inherent in the entire transaction, we are not inclined to believe the Will particularly due to exclusion of aged wife who was also ailing. That apart, when there is no strained relationship between the testator and the other son, who is also suffering from cancer, excluding him from any of the properties also creates serious doubt about the Will. Therefore, merely because the execution and attestation stated to have been proved through the evidence of Dws 2 and 3, as the propounder has not discharged his burden dispelling the above suspicious circumstances pointed out by us we are not in a position to accept that Ex.B1-Will is a genuine document validly executed by the testator. We are also of the view that the facts of the case in ***Dr.Shantha Vs. Sharada*** (cited supra) referred to by the learned counsel for appellants does not come to his aid.

22. As far as the Will is concerned, Hon'ble Supreme Court in the case of ***Shivakumar and Others Vs. Sharanabasappa and Others*** (cited



supra) has summarized the principles governing the adjudicatory process concerning proof of a Will and the same reads as follows:

"12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a Will could be broadly summarised as follows:—

12.1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

12.4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus



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heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

12.5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a 43 normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’

12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted



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are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

12.9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will."

23. A Division Bench of this Court in ***D.Kausalya Vs. S.Sankaran*** (cited supra) has held that when the Executor of will did not state anything to show that there was strained relationship between testator and eldest daughter and giving preference to one heir and excluding another branch will constitute suspicious circumstance and such suspicion should be

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dislodged by the propounder.

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24. In the considered opinion of this Court, the evidence adduced by DWs 1 to 3 do not inspire the confidence of this Court to accept the validity of the Will.

25. In view of the above discussion, we do not find any infirmity in the judgment of the trial Court granting partition by disbelieving Ex.B1 Will. Hence, this appeal suit is dismissed and the judgment and decree of the trial Court dated 02.08.2018 made in O.S.No.718 of 2011 shall stand confirmed. However, considering the relationship of the parties, there shall be no order as to costs.

[N.S.K.,J.] [R.S.V.,J.]
19.01.2026

Index: Yes/No
Neutral Citation: Yes
gpa

To

I Additional District Judge
Coimbatore



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AND
R. SAKTHIVEL, J.,

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