2025 INSC 10

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7578 of 2023

Leela & Ors.

.... Appellant(s)

Versus

Muruganantham & Ors.

...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

1. The unsuccessful defendant Nos.1 to 3 in OS No.142/1992 which is a suit for partition and allotment of 5/7th share filed by respondent Nos.1 to 5 herein, filed this appeal against the judgment dated 15.11.2019 passed by the High Court of Madras, Madurai Bench in AS No.368/2002 whereby and whereunder the appeal was dismissed and the judgment and decree in O.S. No. 142 of 1992 dated 27.09.2001 on the file of the Additional Sub-Court, Tenkasi was confirmed. Essentially, the Trial Court and the High Court have concurrently declined to accept the case of the appellants based on the Will dated

06.04.1990. Hereafter in this appeal, for the sake of convenience, the parties are referred to, in accordance with their rank and status in the Original Suit, unless otherwise specifically mentioned.

2. The plaint averments, in brief is as follows: -

The suit schedule properties originally belonged to one Balasubramaniya Thanthiriyar. He married twice. Through his first wife, Rajammal (plaintiff No.4/respondent No.4), he got three sons, namely, Muruganandam (plaintiff No.1/respondent No.1), Ganesh Murthy (plaintiff No.2/respondent No.2) and Kannan (plaintiff No.3/respondent No.3) and one daughter by name Mahalakshmi (plaintiff No.5/respondent No.5). While the marriage with the first wife Rajammal was subsisting, Balasubramaniya married Leela (petitioner No.1/defendant No.1) and as such, she is an illegitimate wife. Sivakumar (petitioner No.2/defendant No.2) and Lt. Mageshwaran (petitioner No.2/defendant No.3) are the illegitimate sons of Balasubramaniya through Leela.

3. Earlier, Balasubramaniya Thanthiriyar instituted O.S. No.504/ 1986 against his first wife and children through her viz., plaintiff Nos.4, 1 to 3 and 5 respectively. Later, it was compromised at the instance of the elderly

villagers and partition of properties effected between them as per partition deed dated 04.12.1989. As per the partition deed, his properties were divided into four schedules. Properties described and contained in the first-schedule were allotted to himself by Balasubramaniya Thanthiriyar. The second-schedule properties consisting of 22 items were allotted to the share of plaintiffs/respondent Nos.1 to 3 herein viz., his sons through his first wife and the third-schedule properties were allotted to his first wife viz. plaintiff/respondent No.4. The fourth-schedule properties were allotted in the name of his minor daughter viz., plaintiff/respondent No.5. Balasubramaniya died on 28.11.1991.

4. In fact, the *lis* in the present suit viz., O.S. No.142/1992 is with respect to the several properties left to the share of Balasubramaniya Thanthiriyar as per the aforesaid partition deed and described as suit schedule properties. According to the plaintiffs, defendant No. 1 is not entitled to any share in the property of deceased Balasubramaniya Thanthiriyar being an illegitimate wife, in the sense that they married when the first wife was alive and that marriage was subsisting. It is the contention of the plaintiffs that they each have 1/7 share

and thus, totalling 5/7 share in the properties of Balasubramaniya Thanthiriyar and respondent Nos.2 and 3 too got 1/7 share each only in such properties. The first item of the schedule properties is shops buildings occupied by defendants 4 to 12, the tenants. Conspiring with them the defendant Nos.1 to 3 attempted to get the entire amount of rent from the defendant Nos.4 to 12 and to withdraw the bank deposit. Upon such developments the plaintiffs issued notices to defendant Nos.4 to 12 and then, filed H.R. C.O.P. No. 2 to 10 of the year 1992 in the Court of Tenkasi Rent Controller and deposited the rent amount. As relates to plucking of coconuts from the groves mentioned as items 18 to 21 the defendant Nos.1 to 3 created problems and were trying to appropriate the harvest with the help of the police. In short, the defendant Nos.1 to 3 are trying to create prejudice to their shares and also to create encumbrance on the shares of the plaintiffs. They also pleaded that the defendant Nos. 1 to 3 claimed execution of a Will in their favour by Balasubramaniya Thanthiriyar and if they created any such record, it is a wilful forgery. In short, according to the plaintiffs they and defendant Nos. 2 and 3 are in joint possession of the suit schedule properties as co-owners.

5. The first defendant/ the first respondent filed a written statement which was adopted by defendant Nos. 2 and 3/respondents 2 and 3. Now, respondent No. 3 is no more and he is represented by his legal heirs.

6. In the suit, the appellants herein/the defendants produced the Will dated 06.04.1990 which is an unregistered one. They filed a written statement stating that Balasubramaniya was being harassed and assaulted by the plaintiffs and it is due to that harassment that the partition deed dated 04.12.1989 was executed. The plaintiff/ respondents herein could not claim any right over the properties based on the partition deed. The plaintiffs got no right over the first-schedule properties which was allotted to Balasubramaniya. It is their contention that the first-schedule properties belonged to Balasubramaniya and, therefore, after his demise only the second and third defendants got entitlement.

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

> *"(i) Whether the plaintiffs are entitled to a share in the first schedule of the properties?*
> *(ii) Whether the will dated 06.04.1990 is valid?*
> *(iii) Whether the plaintiffs and defendants 2 and 3 are in joint enjoyment of the suit properties?*

(iv) Whether the plaintiffs are entitled to 5/7th share 1n the property?
(v) What are the reliefs available to the plaintiffs?"

8. On the side of the plaintiffs, PW-1 was examined and Ext.A1 was marked. On the side of the defendants, DW-1 and 2 were examined and Ext.B1 and B2 were marked. The Trial Court decreed the suit in favour of the plaintiff and against which the defendant/appellant Nos.1 to 3 preferred first appeal. It is contended that the Trial Court failed to recognise the significance of Ext.A1 which clearly reveals absence of joint family consisting of father and the plaintiffs. It was also the contention that the Trial Court failed to attach due importance to Ext.B2-Will.

9. Based on the such pleadings the Appellate Court framed the following issues: -

"(i) Whether the will, dated 06.04.1990, is valid?
(ii) Whether the respondents are entitled for 5 /7th share in the suit properties?
(iii) Whether the appeal is to be allowed?"

10. The High Court considered the materials on record and after hearing the parties declined to accept the Will and dismissed the appeal. In this appeal the appellant

assails the judgment of the High Court as also the judgment and decree of the Trial Court which was confirmed by the High Court, raising various grounds.

11. As noticed hereinbefore, deceased Balasubramaniya Thanthiriyar, while alive, effected a partition on 04.12.1989. The bone of contention in the appeal is with respect to the shares allotted thereunder in favour of Balasubramaniya Thanthiriyar by himself. When the partition is not in dispute and also the factum of allotment of the properties under the first schedule thereunder to Balasubramaniya Thanthiriyar, it has to be treated that the properties allotted to him were his self-acquired properties. Even otherwise, with respect to his exclusive title and ownership over the properties, none of the parties raised any dispute. While the plaintiffs contend that they are to partitioned 1/7th each among them, five in number and the two children of Balasubramaniya Thanthiriyar through the first appellant/first defendant-Leela; Concurrently, it was found that the plaintiffs are entitled to 5/7 shares (1/7th each) and the two sons born to Balasubramaniya Thanthiriyar through Leela, though illegitimate, are entitled to 1/7th share each. The concurrent finding in that regard requires interference if only the finding on

the validity and enforcement of the alleged Will dated 06.04.1990 is interfered with in this proceeding.

12. The learned Senior Counsel appearing for the appellants would contend that the Courts below have erred in arriving at the finding that the said Will is not genuine and shrouded with suspicious circumstances. It is the submission that the appellants/defendant Nos.1 to 3 had succeeded in establishing its execution in terms of Section 63 of the Indian Succession Act, 1925, by examining two attesting witnesses and Section 68 of the Indian Evidence Act, 1872. It is also the contention that both the Trial Court and the High Court have failed to consider that initially there was a dispute on the entire property belonging to Balasubramaniya Thanthiriyar between him, on the one side and his first wife and children through her born to him on the other side viz., O.S. No.504 of 1986 filed by Balasubramaniya Thanthiriyar himself. It is the further contention that later, he effected a partition of the said properties through a partition deed dated 04.12.1989 into four schedules and except the first schedule the others were given in favour of the plaintiffs and only thereafter the property allotted to him was bequeathed as per the Will

dated 06.04.1990 to the appellants herein. The said Will was attested by two witnesses, satisfying the statutory requirement under Section 63 of the Indian Succession Act. In such circumstances, according to the learned Senior Counsel the irresistible conclusion could have been and should have been that Balasubramaniya Thanthiriyar wanted to give properties to his second wife and the children born through her and it is the realisation of his intention in that regard which resulted in execution of the said Will dated 06.04.1990. It is also the contention that a scanning of the suspicious circumstances in the light of the innumerable decisions on the validity of Will, especially touching the question of suspicious circumstances which would make a proven Will in the sense, as executed unworthy to act upon, would reveal that the circumstances relied on by the Courts in the case in hand to hold the Will as not genuine being shrouded with suspicions are absolutely unsustainable as they were not sufficient to cast a suspicion on the genuineness of the validly executed Will dated 06.04.1990.

13. The learned counsel appearing for the respondents would submit that there cannot be any doubt with respect to the settled position that mere proof

of an execution of a Will in terms of the requirement under Section 63 of the Succession Act and Section 68 of the Evidence Act, though would go to show that the Will concerned was executed but, that by itself cannot make the said Will genuine and worthy for acting upon. It is further submitted that the Courts below have rightly found concurrently that the said Will is not genuine as it is shrouded with suspicious circumstances.

14. We are of the considered view that the fate of this appeal depends upon the decision on the genuineness and the question whether the suspicious circumstances are removed/explained to the satisfaction of this Court. The Will is executed on the stamp papers bought in the name of petitioner No.1, who was examined as DW-1. Still, DW-1 categorically denied the case of having played a role in the execution of the said Will. Before looking into the alleged and upheld suspicious circumstances, it is only apposite to refer to the settled position that though it is the propounder to establish the execution of the Will and once the same is discharged, it is for the objector to pinpoint the suspicious circumstances. It is also the settled position that upon such objection, it is for the propounder to remove such

suspicious circumstances. (See the decision of this Court in ***Derek A.C. Lobo v. Ulric M.A. Lobo (Dead) by LRS***.[1]), in one among us (C.T. Ravikumar, J.) is a party.

15. Now, we will refer to the suspicious circumstances pointed out by the Courts below: -

(i) That the first appellant (DW-1) one of the beneficiaries and the mother of the other beneficiaries played active role in the execution of the Will in question and concealed this fact before the Court;

(ii) Contradictory recitals on the health of the testator in the Will and the evidence of DW-1 herself strengthening the same;

(iii) Non-matching of the signature of the testator in Ext.A1-partition deed and Ext.B2-Will dated 06.04.1990;

(iv) Non-examination of the person who typed the Will;

(v) Non-examination of the Scribe;

(vi) Incongruity with respect to the place of execution of the Will.

[1] 2023 SCC OnLine 1893; 2023 INSC 1093

(vii) Failure to prove that the testator executed the Will after understanding its contents.

16. At the outset, it is to be stated that legitimacy or illegitimacy of the second wife and the children born through the second wife is not a matter of relevance for consideration in the case on hand as the question is not in relation to partition of ancestral properties. So also, the fact of non-inclusion of the first wife and children through her is not of much relevance in view of the admitted position that Balasubramaniya Thanthiriyar on 04.12.1989 partitioned his entire properties into four schedules and allotted three, out of the four, schedules to them and allotted on the first schedule to himself. Therefore, the first question is whether the appellants who claimed under the Will dated 06.04.1990 proved its execution in accordance with law and if so, still the question is whether it is shrouded with suspicious circumstances.

17. There is a concurrent version with respect to the place of the execution of the Will. Though, the recitals in the Will would show that with respect to the health of Balasubramaniya Thanthiriyar contradictory versions appear in the said Will. In one part of the Will it is stated,

"*with full conscious, with good memory and without instigation by anyone*" and at the same time in another part it is stated, "*I suffer from heart disease and got treatment from several doctors*". The Court also took note of the fact that defendant No.1 herself stated that the health of her husband was in bad condition and as there was a danger to his life, he executed the Will at Madurai and had no role in the preparation of the Will. The Courts found that two pages of the stamp papers were bought in the name of defendant No.1 from Tenkasi and still defendant No.1 contended that she did not participate in the execution of the Will. DW-1 stated in her written statement that till the partition in 1989, when the properties were enjoyed jointly, no problem had occasioned to him. It is taken that the said statement of DW-1 itself would reveal that the properties were jointly enjoyed.

18. The Courts below on appreciation of the evidence concurrently found that the version of DW-1 that she had not participated in the execution of the Will and that she was not aware of the execution of the Will, is incorrect.

19. In the light of the rival contentions and the evidence discussed in detail by the Trial Court and then

by the High Court, the question is whether the appellant succeeded in proving the execution of the Will and if so, whether the appellants who disputed its execution and also challenged the Will on the ground of existence of suspicious circumstances would make the same unreliable and not worthy for proceeding further.

20. There can be no doubt with respect to the manner in which execution of a Will is to be proved. In the light of plethora of decisions including the decisions in ***Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, through Lrs.***)[2] and in Derek AC Lobo's case (*supra*) this position is well settled that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. It is not the case of the appellant that the Will dated 06.04.1990 is a registered one.

21. Now, Section 63 of the Succession Act reads thus:-

> *"63.* ***Execution of unprivileged wills****.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a*

[2] 2023 SCC OnLine SC 1488; 2023 INSC 1004

mariner at sea, shall execute his will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(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 an d 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."

22. Section 68 of the Evidence Act makes it clear that at least one attesting witness has to be examined to prove execution of a Will. It is true that in the case at hand DW2 was the attesting witness who was examined in Court. Therefore, the question is whether they had deposed to the effect that the Will in question was

executed in accordance with sub-rules (a) to (c) thereunder.

23. The Trial Court rightly held that the propounder of the Will has to establish by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound disposing state of mind and that he understood the nature and effect of the dispositions and put his signature out of his own free will.

24. The first appellant, who was defendant No.1 and the propounder of the Will, was examined as DW1. Her categoric case is that Balasubramaniya Thanthiriyar was not living with the plaintiffs. In her written statement she stated that he had executed the unregistered Will dated 06.04.1990 without instigation from anyone when had good memory. Her deposition would reveal that she herself and her sons viz., defendant Nos.2 and 3 were the beneficiaries of the Will. She did not divulge the fact that two pages on the stamp papers on which the Will was typed were bought in her name from Tenkasi. Still, she deposed that she had not played any role in the execution of the Will. DW2 who is the attesting witness to the Will in question is the brother of DW1, the first appellant. Going by her oral evidence, it was DW1, her

brother who had brought the same to her. She had also deposed that in 1990 her husband, the testator was unwell and was under treatment in Madras and his health was in bad condition. Add to it, she deposed that his and her life was in danger from the sons of his first wife. Thus, if DW1 is to be believed the testator's physical and also mental conditions were not in sound disposition, as held by the Trial Court and appreciating the evidence the Courts have found that there is no such circumstance of threat as alleged and attempted to be proved by the first defendant (DW1) necessitating the testator to execute the Will.

25. Now, going by DW1, she had no role in the preparation of the Will. But the undisputed and proven fact is that two stamp papers on which the Will was typed were brought in the name of the first defendant from Tenkasi. In this context, it is also to be seen that the attesting witness who was examined as DW2 in Court is admittedly the brother of the first defendant viz., DW1 and further that it is her case that the Will in question was given to her by DW2 in Tenkasi.

26. Now, another circumstance which was taken into account by the Courts below is that nothing is on record

to show that the testator had executed the Will after understanding its contents. Though DW2 deposed that the notary public read over the Will and then Balasubramaniya signed it. The Courts below correctly took note of the fact revealed from the very Will that such noting that it was read over to the testator is absent there. Another situation crops up for consideration if DW2 is believed. If the testator was in good health and Will was prepared at his direction and he himself was able to dictate it why it should be read over to him before putting signature. The deposition of DW2 was thus: -

> *"…the notary public read it over and Balasubramania Thanthiriar signed it."*

27. Though in normal circumstances there was no necessity to examine the scribe and the non-examination of the scribe cannot be a suspicious circumstance, it was taken note of by the Courts in the circumstances explained above.

28. The circumstances under which DW2 came into the possession of the Will is also a matter which was exponable either by DW1 or DW2. This is because according to DW1, her brother-DW2 gave the same to her in Tenkasi and the noting in the Will and the

evidence of DW2 would go to show that it was executed at Madurai.

29. In the circumstances, paragraph 21 of the impugned judgment also assumes relevance. It reads thus:-

> *"21. On the side of the respondents, it is stated that the will executed in a far away place from where the testator used to reside and the attesting witness not known to the testator are suspicion circumstance to disprove the will. It is stated that the will is stated to have been executed at Madurai whereas the testators residence was at Tenkasi and that the evidence of D.W.1 and D.W.2 was that D.W.1 was not present at Madurai and the evidence of D.W.1 was that she was not aware that her husband was going to execute a will at Madurai and that the stamp papers were purchased in the name of the first defendant at Tenkasi and these circumstance creates suspicion regarding the execution of the will."*

30. The very case of the first defendant viz., DW1 is that the testator was being looked after by her. She was residing at Tenkasi and if the testator used to stay there with her and her deposition is to the effect that she was not aware that her husband was going to execute a Will at Madurai and then, the proven fact is that two stamp papers, on which 2 pages of the Will were typed, were

purchased in the name of the first defendant from Tenkasi, create some suspicion. As noted earlier, the health of testator was in bad condition and if so, the case that the execution of the Will was at a far away place from Madurai is also a matter casting suspicion. Evidently, it was taking into consideration all the aforesaid and such other circumstances that the High Court arrived at the finding that the execution of the Will itself was not proved. The circumstances surrounding the Will were also concurrently held as suspicious.

31. In the circumstances, the evidence of DW2 cannot be taken sufficient to prove the execution of the Will in question in the manner it is required to be proved and to accept it as genuine. It can only be held that the defendants have failed to prove that the testator executed the Will by putting his signature after understanding its contents. In such circumstances, when the findings are concurrent how can the findings on the validity and genuineness of the Will in question by the Trial Court and the High Court be interfered with. There is no reason to hold that the appreciation and findings are absolutely perverse warranting appellate interference by this Court. It is also to be noted that the

defendant Nos.2 and 3 also got 1/7th share each in the suit schedule properties.

32. For all these reasons the appeal has to fail. Consequently, it is dismissed. In the circumstances, there is no order as to costs.

……, J.
(C.T. Ravikumar)

……, J.
(Rajesh Bindal)

New Delhi;
January 02, 2025.