IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2025

PRONOUNCED ON : 08 .12.2025

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

A.S.No. 521 of 2011

1. Paneerselvam @ Nellappan (died)
S/o. Subramaniya Mudaliyar

2. Murugavel
S/o. Subramaniya Mudaliyar

3. Thillaiyammal
W/o. Paneerselvam

4. Subhashini
W/o. Balamurugan

5. Anand
S/o. Pannerselvam

6. Suganya
W/o. Prabhu

... Defendants/Appellants

Vs

1. Amsavalli
W/o. V.Subramanian

2. Rajeshwari
W/o. Ganavel ... Plaintiffs/Respondents

PRAYER: Appeal filed under Order XLI Rule 1 read with Section 96 C.P.C., against the Judgment and Decree dated 27.04.2011 made in O.S.No. 149 of 2008 by the learned Additional District Judge, (FTC-2), Cuddalore.

***

For Appellants : Mr. T.S.Baskaran

For Respondents : Mr. D.Baskar
for Mr.R.Gururaj

JUDGMENT

(Order of the Court was made by **C.V.KARTHIKEYAN, *J*.**)

The defendants in O.S.No. 149 of 2008 on the file of the Additional District Court / Fast Track Court No.II at Cuddalore are the appellants herein.

2. During the pendency of the Appeal, the first appellant died and his legal representatives have been brought on record as third to sixth appellants. It is to be noted that the first and second appellants are the brothers of the first and second respondents.

3. The first and second respondents had filed O.S.No. 149 of 2008 seeking partition and separate possession of their ½ share in the suit schedule property. The suit schedule property was land and building measuring 3150 square feet at Door No. 5-B/245 at Gangaikondan, Vridhachalam Taluk, Cuddalore. By Judgment dated 27.04.2011, a preliminary decree was passed granting partition of the suit schedule properties. Questioning that Judgment and Preliminary decree, the defendants had filed the present appeal.

O.S.No. 149 of 2008 – Additional District Court/Fast Track Court -II, Cuddalore:

4. The plaintiffs, who are sisters of the defendants claimed that the suit schedule property belonged to their father, Subramania Mudaliar. After the death of the father intestate, it was claimed that the plaintiffs and the defendants were each entitled to an undivided 1/4th share in the suit schedule property. It had been claimed that the defendants denied the right of the plaintiffs to seek partition and under that circumstance filed the suit seeking partition and separate possession of their ½ share in the suit schedule property.

5. In the written statement filed, the relationship among the parties was admitted. It was contended that the plaintiffs were leading a comfortable life after marriage. It was further contended that the father had executed a Will on 08.05.2003 duly executed and attested bequeathing the property to the defendants. The reason why such bequeath was made was also stated in the Will. It was claimed that the defendants were therefore in lawful possession of the suit schedule property.

6. A reply statement had been filed by the plaintiffs stating that the Will was not genuine and was forged. They denied the execution and valid attestation of the Will. It was stated that the Will was concocted. The relief of partition was again sought.

7. On the basis of the above pleadings, the following issues were framed for trial:-

> *"(i) Whether the plaintiffs were entitled to an undivided 1/4th share each in the suit schedule property?;*
>
> *(ii) Whether the claim of the defendants that their father Subramania Mudaliar had executed a Will dated 06.05.2003 and therefore, the property stood vested with the defendants was correct?;*
>
> *(iii) Whether the plaintiffs are entitled to a preliminary decree is claimed in the plaint?; and*
>
> *(iv) To what other reliefs are the parties entitled to."*

8. During trial, the first plaintiff was examined herself as PW-1 and marked Exs. A-1 to A-6. Ex.A-6 was a copy of a Will dated 03.06.1997 executed by Subramania Mudaliar. On the side of the defendants, the first defendant examined himself as DW-1 and also examined three other witnesses as DW-2, DW-3 and DW-4. One document, Ex.D-1, the original of the Will dated 08.05.2003 was marked.

9. The learned trial Judge on appreciation of the evidence adduced had stated that the Will marked as Ex.D-1 dated 08.05.2003 had not been proved in manner known to law and therefore granted preliminary decree of partition and separate possession as prayed for by the plaintiffs.

10. Challenging that Judgment and Preliminary Decree, the defendants have filed the present Appeal.

A.S.No. 521 of 2011:

11. It had been contended by the learned counsel for the appellants that Ex.B-1 the Will dated 08.05.2003 had been proved in manner known to law and that the Judgment suffers from improper appreciation of the evidence. The learned counsel contended that to prove the Will, the appellants had examined both the attesting witnesses as DW-2 and DW-3 and the scribe as DW-4. It was contended that during the cross examination of DW-1, on the side of the respondents, Ex.A-6 was marked which was claimed to be an earlier Will executed by Subramania Mudaliar dated 03.06.1997. The signatures of the testator in each of the pages of Ex.A-6 were marked as Ex.A-3, A-4 and A-5. It was contended that during cross examination of the defendants witnesses both the Wills were interchangeably showed thereby creating confusion in the minds of the witnesses. The learned counsel pointed out that on an over all appreciation of the evidence adduced, the Court should have held that the Will had been proved in manner known to law and executed in accordance with law. He

also pointed out that the Will was registered which could lead to a presumption of genuinety. The learned counsel insisted that the Will in Ex.D-1 had been proved as required under law and therefore, urged that the Appeal should be allowed and the suit should be dismissed.

12. The learned counsel for the respondents however disputed these contentions. The learned counsel stated that mere registration of the Will would not indicate proof of the Will. The learned counsel pointed out that the Will should be proved in accordance with the requirements under Section 68 of the Indian Evidence Act, 1872 / 69 of BSA 2003 and in accordance with Section 63(c) of the Indian Succession Act 1925. The learned counsel contented that the witnesses for the appellants had miserably failed in establishing the proof of the Will and had contradicted themselves during their evidence. He therefore stated that the Appeal should be dismissed and the Will in Ex.B-1 should be declared as not having been proved and that therefore the preliminary decree should be upheld.

13. We have carefully considered the arguments advanced and perused the materials available on record.

14. This is a suit filed by two sisters against their two brothers seeking partition and separate possession of one property left behind by their father and claiming an undivided 1/4th share each in the said property. The said property is a residential house. They claimed that their father died intestate.

15. In the written statement, the appellants however projected a registered Will said to have been executed by their father dated 08.05.2003 by which the property was bequeathed by two separate shares to the two appellants/defendants. The respondents however denied the genuinity of the said Will and claimed that it was forged.

16. The original of the Will dated 08.05.2003 had been marked as Ex.B-1 during the chief examination of DW-1. A perusal of the same shows that it had been registered and was also attested by two witnesses S.Rajaram

and S.Elangovan. S.Rajaram had examined been as DW-2 and S.Elangovan had been examined as DW-3. The scribe of the Will was S.Selvam and he was examined as DW-4. It is thus evident that the appellants had marshalled the required witness to speak about the Will dated 08.05.2003 marked as Ex.B-1. In his chief examination, DW-2 identified the Will and stated that he had signed as first witness. He also gave the name of the second witness to the Will. He also gave the name of the scribe of the Will. During his cross examination, he stated that he was running a medical shop and that the testator Subramania Mudaliar would come to the shop often and that therefore, he came to know him. He however stated that he did not know, who was the other person, who signed as witness to the Will and that he was not present at that time. He stated that he affixed the signature and went away. He also stated that he did not know whether the Will was registered or not. He was also not definite whether the signature in Ex.A-6 was the signature of Subramania Mudaliar. He however denied that the signature in Ex.B-1 was not that of Subramania Mudaliar.

17. It is to be noted that during his cross examination, both the Wills, Ex.A-6 and Ex.B-1 were shown alternatively and questions were put to him.

18. DW-2, the other attesting witness S.Elangovan in his cross examination stated that he came to know Subramania Mudaliar through real estate business. He also stated that he also went over to the shop of Subramania Mudaliar often. He identified his signature in Ex.B-1. He was however shown Ex.A-6, the Will dated 03.06.1997 and asked to identify the signatures of the testator. He identified those signatures. He also identified his signature in Ex.B-1. He denied that Subramania Mudaliar had not signed Ex.B-1 Will.

19. The scribe of the Will, S.Selvam, was examined as DW-4. He stated that he prepared Ex.B-1 Will under instructions of Subramania Mudaliar. He stated that when Ex.B-1 was prepared both DW-2 and DW-3 were present. He was also alternatively shown both Ex.A-6 and Ex.B-1 Wills. He stated that Subramania Mudaliar was in a sound state of mind. He knew Subramania Mudaliar for nearly 15 years.

20. The point which arises for consideration is w*hether Ex.B-1, Will had been proved in manner known to law?*.

21. It is to be noted that Ex.B-1 had been marked during the chief examination of DW1. The earlier Will, about which there was no mention in the plaint and dated 03.06.1997 was shown to DW1 during cross examination and that Will was marked as Ex.A-6. During the cross examination of DW2, DW3 and DW4, both the documents were interchangeably shown and the signatures were asked to be identified. DW-2 was not so firm in his evidence. But however, DW-3 and DW-4 withstood this type of cross examination. All the three witnesses however denied the suggestion that Subramania Mudaliar had not signed Ex.B-1. They identified their signatures. DW-2 alone stated that he had affixed signature and thereafter left the place. It must also be pointed out that though Ex.B-1 was dated 08.05.2003, DW-2 was cross examined on 06.04.2011 nearly 8 years after the date of execution of the Will. DW-3 was cross examined on 07.04.2011 and DW-4 was cross examined on 19.04.2011.

22. The learned counsel for the respondents had placed reliance on the Judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 6377 of 2012 [Ramesh Chand (D) through LRS., Vs. Suresh Chand and another]***. Specific reference had been placed on the observations in paragraph No.27 wherein it had been observed that the Will whose validity was put to challenge before the Hon'ble Supreme Court had been upheld by the trial Court without any discussion as contemplated under Section 63 of the Indian Succession Act 1925 and Section 68 of the Indian Evidence Act 1872. The Hon'ble Supreme Court had laid stress on the fact that the stipulations in the above two provisions should have been followed during the execution of the Will and during the proof of the Will.

23. The learned counsel for the respondent also placed on the Judgment of the Hon'ble Supreme Court in ***Civil Appeal No.3351 of 2014 [Meena Pradhan and Others Vs. Kamla Pradhan and another]***, wherein the Hon'ble Supreme Court had laid down the principles required for proving the validity and the execution of the Will. They were as follows:-

"i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

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

iii. A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

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

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier. ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of

execution; testator executed the Will while acting on his own free Will;

ix. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc. "

24. It was thereafter held in paragraph No. 11 as follows:-

> *"11. In short, apart from statutory compliance, broadly it has to be proved that*
>
> *(a) the testator signed the Will out of his own free Will,*
> *(b) at the time of execution he had a sound state of mind,*
> *(c) he was aware of the nature and effect thereof and*
> *(d) the Will was not executed under any suspicious circumstances."*

25. The Hon'ble Supreme Court had held that a Will is required to be in compliance of all the formalities required under Section 63 of the Indian Succession Act 1925 and to prove the execution atleast one of the attesting witness should be examined, who should speak about the signatures of the testator but also about the other witness to the Will. It had been also held that even if one witness speaks to the proper attestation and execution of the Will, such evidence would be sufficient. It had been

further held that the testator should have signed the Will out of his own free Will and when he was on a sound state of mind and was aware of the nature of the Will and it should be proved that it was not executed under any suspicious circumstance.

26. 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 acknowledgement of his signature or mark, or 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. "*

27. The directions of the Hon'ble Supreme Court and also the provision under Section 63(c) of the Indian Succession Act 1925, make clear that one of the attesting witness should speak about the execution of the Will.

28. In the instant case, though the evidence of DW-2 cannot be said to inspire confidence to the fullest extent, still the witness had denied the suggestion that the signature in Ex.B-1 was not that of Subramania Mudaliar. It must again be kept in mind that during the cross examination, two separate Wills namely Ex.A-1 and Ex.B-1 executed by Subramania Mudaliar were shown to the witness and they were asked to identify the signatures alternatively in both the Wills. Moreover nearly 8 years and above have crossed by the time, the witnesses were cross examined. Some leverage should therefore be granted to the witnesses for not remembering minute details surrounding the execution of the Will. DW-3 had also spoken about the execution of the Will. DW-4 had very specifically stated that he had prepared the Will under the directions of Subramania Mudaliar.

Both DW-2 and DW-3 also stated that they had affixed the signatures under the instructions of the testator. We therefore hold that there has been compliance of the stipulations required under Section 63(c) of the Act. The witnesses had also spoken about the execution of the Will.

29. The additional factor to be considered is that the Will, Ex.B-1 is a registered Will. Even though registration of a Will cannot be considered as proof of the Will, still a presumption could be drawn about the genuinity of the Will.

30. In ***Metpalli Lasum Bai (since dead) and Others Vs. Metapalli Muthaih(D) by Lrs., in Civil Appeal No. 5921 of 2015,*** the Hon'ble Supreme Court while examining the effect of the registration of the Will had held that when the Will is a registered document, it creates a presumption regarding genuineness thereof. It had been also held that *"as the Will is a registered document, the burden would lie on the party, who disputed its existence, to establish that, it was not executed in the manner as alleged or that there were suspicious circumstances which made the same doubtful."*

31. In the instant case, except for stating that there was an earlier Will in the year 1997 about which there was no mention in the plaint and which will the plaintiffs had not also marked during their evidence, no other suspicious circumstances had been raised by the respondents. They claimed that they have been disinherited by Ex.B-1 but a reading of Ex.B-1 shows that the testator had also stated that both the respondents are married and provided for sufficiently and there was no reason to beaqueath any portion of the property to them.

32. It is also to be noted that having filed a suit claiming their father died intestate, and still producing Ex.A-6 Will claimed to have been executed by the father would only show that the respondents/plaintiffs have approached the Court with unclean hands, which also would non-suit them for the relief sought for.

33. In view of the above reasons, we hold that the learned Trial Judge had misdirected himself regarding the evidence adduced relating to the proof of the Will and should have taken a considered view of the

evidence adduced by DW-2, DW-3 and DW-4 and should not have rejected Ex.B-1 as not having been proved in manner known to law.

34. The point framed for consideration is answered that the Will under Ex. B-1 has been proved as required under law.

35. In view of the above reasons, the Appeal stands allowed. The Judgment and Decree of the Trial Court is set aside. No order as to costs.

[C.V.K., J.] **[K.B., J.]**

08 .12.2025

Index: Yes/No
Internet:Yes/No
Neutral Citation: Yes/No

To:

1. Additional District Court, (FTC-2), Cuddalore.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

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

vsg

Pre-Delivery Judgment made in

A.S.No. 521 of 2011

08.12.2025