

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05 / 08 / 2025

JUDGMENT PRONOUNCED ON : 07 / 04 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.674 OF 2016

AND

CIVIL MISCELLANEOUS PETITION NO.20593 OF 2016

J.Naveen ... Appellant /
3rd Defendant

Vs.

1.B.Sasikala ... 1st Respondent /
Plaintiff

2.Lalitha
3.S.V.Jayaprakash ... Respondents 2&3 /
Defendants 1&2

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated April 29, 2016 passed in O.S. No.81 of 2005 by the II Additional District and Sessions Court, Salem.

For Appellant : Mr.L.Mouli

For Respondent-1 : Ms.V.Srimathi

For Respondent-2 : Mr.R.Krishnaswamy

For Respondent-3 : Ms.Zeenath Begum

* * *



JUDGMENT

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Feeling aggrieved by the Judgment and Decree dated April 29, 2016 passed in O.S. No.81 of 2005 by 'the II Additional District and Sessions Court, Salem' ['Trial Court' for brevity], the third defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Properties originally belonged to V.Leela wife of M.Vaiyapuri by virtue of Sale Deeds dated November 29, 1971 and October 31, 1994. She passed away intestate on January 12, 2005 leaving behind her two daughters and one son who are the plaintiff and the defendants 1 and 2, as her legal heirs. Her husband - M.Vaiyapuri predeceased her on July 16, 1996. As such, the plaintiff and the defendants 1 and 2 have succeeded to her estate and each are entitled to 1/3 share in the Suit Properties. The plaintiff is in joint possession of the Suit Properties along with the defendants. The second defendant leased out the Suit Properties for commercial purpose and received rents from the tenants. The



plaintiff is entitled to 1/3 share in the rent amount received from the tenants as well. The plaintiff reserves her right to take steps against the tenants separately. As such, the plaintiff demanded defendants 1 and 2 for partition through mediators and allot her 1/3 share. The demands were last made on April 20, 2005 and on April 25, 2005. The defendants 1 and 2 were not inclined to partition the suit properties and made attempts to create encumbrance over the suit properties with a view to defeat and defraud the legitimate share of the plaintiff. Hence, the Suit for partition and separate possession.

SECOND DEFENDANT'S CASE

4. The second defendant filed written statement in September 2005 denying the allegations made by the plaintiff in the plaint. According to the second defendant, the plaintiff is not entitled to 1/3 share in the Suit Properties and the rent amount as alleged.

4.1. According to the second defendant, at the time of the plaintiff's marriage, movable properties, jewels and cash worth Rs.14,94,000/- were given to the plaintiff by M.Vaiyapuri and V.Leela. Similarly, the first defendant was given cash and jewels to the value of Rs.16,35,000/-. Since the plaintiff and the first defendant have received cash, jewels and



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properties as stated above, M.Vaiyapuri and V.Leela were willing to settle the Suit Properties in favour of the second defendant and hence, the mother of second defendant -V.Leela executed Will dated December 23, 2004 in favour of second defendant's son / her grandson - minor Naveen and appointed second defendant's wife - Mekala as Guardian for minor Naveen. In the said Will, V.Leela bequeathed her entire properties in favour of minor Naveen, which is her last will. The Will has been acted upon and Mekala took possession of the suit properties after the demise of V.Leela. Hence, neither the plaintiff nor the defendants are entitled to any share in the suit properties. Further, the suit properties are dwelling houses. Hence, the Suit is barred under Section 23 of the Hindu Succession Act, 1956. Thus, the second defendant sought to dismiss the Suit.

FIRST DEFENDANT'S CASE

5. The first defendant filed written statement in November 2006 denying the allegations made in the plaint by the plaintiff. The first defendant admitted the averment that the suit properties belonged to their mother - V.Leela by virtue of two Sale Deeds as stated in the plaint. The first defendant denied that the suit properties were leased out for rent. The first defendant further averred that the second defendant is not a necessary



party to the Suit. It is true that M.Vaiyapuri and V.Leela are the biological parents of the second defendant. However, at the age of 7 months, second defendant was adopted by one Sithayammal and her husband -Venkatachalam as their son. Since then, he has been living with his adopted parents. Hence, the second defendant has no interest or title over the Suit Properties. The second defendant intentionally suppressed the factum of adoption in his written statement. As such the plaintiff and the first defendant alone have succeeded to the estate of V.Leela and each is entitled to common $\frac{1}{2}$ share in the suit properties. The Will alleged to have been executed by V.Leela is a false and fabricated one created collusively with the plaintiff to defeat and defraud the rights of the first defendant. Accordingly, the first defendant sought to dismiss the Suit.

THIRD DEFENDANT'S CASE

6. Initially, the third defendant, who is the second defendant's son represented by his mother filed a written statement in November 2007 and thereafter, filed another written statement in November 2011 upon attaining the age of majority. He also filed an additional written statement in March 2015. He reiterated the averments made by second defendant in



respect of Will and the bar under Section 23 of the Hindu Succession Act, 1956. Hence, there is no need to repeat the same.

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TRIAL COURT

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

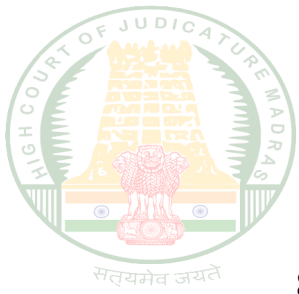
- '(i) Whether the Will dated December 23, 2004 is true and valid?*
- '(ii) Whether the plaintiff is entitled to the relief as prayed for in the plaint ?*
- '(iii) To what other relief?'*

7.1. On December 28, 2007 the Trial Court framed the following additional issues:

- '(i) Whether Tmt.Leela executed the Will dated December 23, 2004 in favour of the third defendant?*
- '(ii) Whether the said Will is acted upon?'*

7.2. Subsequently, on January 12, 2016, the Trial Court framed the following issue as additional issue:

- '(i) Whether the Suit is not maintainable in view of Section 23 of Hindu Succession Act?'*



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8. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.10 were marked. On the side of the defendants, the defendants 1 to 3 were examined as D.W.1, D.W.5 and D.W.4 respectively and two independent witnesses were examined as D.W.2 and D.W.3 and Ex-B.1 to Ex-B.12 were marked.

9. After full-fledged trial, the Trial Court came to the conclusion that the alleged Will dated December 23, 2004 is surrounded by suspicious circumstances. The propounder of the Will has not proved the Will after removing the suspicious circumstances. Accordingly, the Trial Court concluded that the Will is not proved, decreed the Suit as prayed for by granting 1/3 share in the Suit Properties to the plaintiff and accordingly, passed a Preliminary Decree in favour of the plaintiff.

10. Feeling aggrieved, the third defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

11. Heard Mr.L.Mouli, learned Counsel appearing for the appellant / third defendant; Ms.V.Srimathi, learned Counsel appearing for the first respondent / plaintiff; Mr.R.Krishnaswamy, learned Counsel appearing for



the second respondent / first defendant; and Ms.Zeenath Begum, learned Counsel appearing for the third respondent / second defendant.

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12. Mr.L.Mouli, learned Counsel appearing for the appellant/third defendant submitted that V.Leela had executed a Will dated December 23, 2004 in favour of her grandson- Naveen / third defendant, who was then a minor. The third defendant, being the beneficiary under the said Will, examined two attesting witnesses, among whom one was also the scribe of Ex-B.6 - Will, to substantiate its execution. Learned counsel contended that the evidence of the attesting witnesses are cogent, consistent and trustworthy. They categorically deposed that at the time of execution of Ex-B.6 - Will, the testatrix was hale, healthy and in a sound and disposing state of mind. Despite being subjected to cross-examination, nothing material could be elicited to discredit their testimony. It was further submitted that, one of the attesting witnesses was residing at a distance of 7 kilometres from the residence of the testatrix, which mere fact alone cannot be construed as a suspicious circumstance surrounding the execution of the Will. According to the learned Counsel, the Trial Court failed to properly appreciate the oral and documentary evidence adduced on behalf of the third defendant. The Trial Court ought to have held that



the Will dated December 23, 2004 had been duly proved in accordance with law. Accordingly, he prayed to allow the Appeal Suit and set aside the Judgment and Decree of the Trial Court.

13. *Per contra*, Ms.V.Srimathi, learned Counsel appearing for the first respondent / plaintiff submitted that the second defendant had been given in adoption to Venkatachalam and Sithayammal. In this regard, she pointed out that the second defendant himself had instituted an Original Suit in O.S. No.390 of 2001 (Ex-A.1) on the file of the Additional Sub Court, Salem, seeking a declaration that he is the adopted son of Venkatachalam and Sithayammal. Learned counsel further submitted that the newspaper publication (Ex-A.7) issued by the second defendant also clearly states that he had been given in adoption to the said Venkatachalam and Sithayammal. Further, the Family Card (Ex-A.8) would reveal that the name of the second defendant is reflected in the Family Card of Venkatachalam and Sithayammal, thereby corroborating the factum of adoption. She also drew the attention of this Court to Ex-A.10, the medical records, which disclose that the testatrix - V.Leela was admitted in the hospital on December 8, 2004 for treatment relating to diabetes and heart disease and discharged only after 8 days on December 16, 2004. It was



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further submitted that Leela passed away on January 12, 2005 while proceeding to Bangalore. During the relevant period, she was under the care and custody of the plaintiff, which fact has also been admitted by the second defendant. In the above circumstances, learned Counsel contended that the alleged Suit Will is a fabricated document. According to her, the defendants have failed to dispel the suspicious circumstances surrounding the execution of the Will and have not proved the Will in the manner known to law. The Trial Court, upon proper appreciation of the entire facts and evidence on record, had rightly disbelieved the Will. There is no infirmity or illegality in the findings so rendered warranting interference by this Court. Accordingly, she prayed for dismissal of the Appeal Suit and sustain the Judgment and Decree passed by the Trial Court.

14. Mr.R.Krishnaswamy, learned Counsel appearing for the second respondent / first defendant submitted that the second defendant had been given in adoption to Venkatachalam and Sithayammal. Upon adoption, he is uprooted from the family of M.Vaiyapuri and V.Leela and becomes a legal heir of Venkatachalam and Sithayammal. Learned counsel further contended that the alleged Will is a fabricated document, created solely for the purpose of the Suit. According to him, in view of the adoption of the

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second defendant, only the plaintiff and the first defendant are entitled to succeed to the suit properties as legal heirs of the deceased -V.Leela.

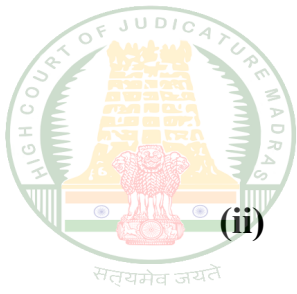
Accordingly, he prayed to dismiss the Appeal Suit and modify the decree of the Trial Court by enhancing the share of first defendant from 1/3 to 1/2.

15. Ms.Zeenath Begum, learned Counsel appearing for the third respondent/second defendant, adopted the submissions advanced by the learned counsel for the appellant/third defendant. She supported the case of the appellant and prayed that the Appeal Suit be allowed and the Judgment and Decree of the Trial Court be set aside.

POINTS FOR CONSIDERATION

16. This Court has considered the submissions made on either side and perused the materials available on record. The points that arises for consideration in this Appeal Suit are as follows:

- (i) Whether the second defendant was given in adoption to Venkatachalam and Sithayammal when he was 7 months old as alleged ?



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(ii) Whether Ex-B.6 - Will dated December 23, 2004 is true, valid and genuine and whether it is proved as per law?

(iii) Whether the Judgment and Decree is liable to be interfered with?

DISCUSSION AND DECISION

Point No.(i): *Whether the second defendant was given in adoption to Venkatachalam and Sithayammal when he was 7 months old as alleged ?*

17. According to the plaintiff and first defendant, their biological brother - second defendant had been given in adoption to Venkatachalam and Sithayammal. In support of the said contention, reliance was placed upon Ex-A.1 which is the plaint in O.S. No.390 of 2001 filed by the second defendant before the Sub Court, Salem, wherein he sought for a declaration that he is the adopted son of deceased Venkatachalam and deceased Sithayammal. On the strength of the said pleading, it was contended that the second defendant is estopped from taking a contradictory stand. Reliance was also placed on Ex-A.7 - Newspaper Publication given by second defendant that he is the adopted son of Venkatachalam and Sithayammal as well as on Ex-A.8 - Family Card of Venkatachalam and Sithayammal wherein second defendant is shown as a

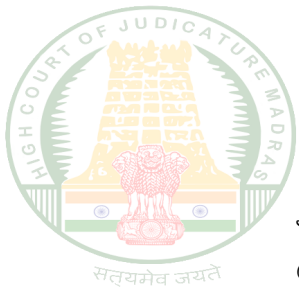
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member. To be noted, Sithayammal is none other than the sister of M.Vaiyapuri (father of plaintiff and defendants 1 and 2) *i.e.*, Sithayammal is first defendant's aunt. The second defendant in his cross-examination admitted Ex-A.1 -Plaint, Ex-A.7 - Newspaper Publication and Ex-A.8 - Family Card, and went on to explain that he was the foster son of Venkatachalam and Sithayammal and not their adopted son. The relevant portion of his evidence (D.W.5) reads thus:

‘. . . முதலாவது கூடுதல் சார்பு நீதிமன்றத்தில் தாக்கல் செய்யப்பட்ட O.S.No.390/2001 வழக்கில், என்னுடைய வழக்கறிஞர் பெயர் திரு.T.முத்துகிருஷ்ணன் ஆவார். இந்த வழக்கில் நான் வாதி. இந்த வழக்கை, கோபால் மற்றும் 15 நபர்கள் மீது தாக்கல் செய்துள்ளேன். இந்த வழக்கில், நான் வெங்கடாஜலம் என்பவரின் சுவிகார மகன் என்று விளம்புகை செய்ய வேண்டும் என்று பரிகாரம் கேட்டுள்ளேன். O.S.No.390/2001 வழக்கில் கண்ட அனைத்து பரிகாரங்களையும் நான்தான் கேட்டுள்ளேன். நான், வெங்கடாஜலம் குடும்பத்திற்கு சுவிகாரமாக சென்றது, என் தாயார் சொல்லிதான், 2001-ஆம் வருடம் எனக்கு தெரியும். வெங்கடாஜலத்தின் மனைவி பெயர் சித்தாயி. இவர், என்னுடைய தந்தையின் அக்கா ஆவார். வெங்கடாஜலம், சித்தாயி ஆகியோர்களின் குடும்ப அட்டையில் என்னுடைய பெயர் உள்ளது. இந்த விவரம், 2001-ஆம் வருடம் O.S.No.390/2001 வழக்கு தாக்கல் செய்யும் போதுதான் எனக்கு தெரியும். அதுதான் இந்த குடும்ப அட்டை, அந்த குடும்ப அட்டை ஏற்கனவே Ex.A.8 ஆக குறியீடு செய்யப்பட்டுள்ளது.

வெங்கடாஜலத்தின் வளர்ப்பு மகன் என்ற அடிப்படையில்தான், பொது அறிவிப்பு கொடுத்துள்ளேன்.



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அந்த அறிவிப்பு ஏற்கனவே Ex-A7 ஆக குறியீடு செய்யப்பட்டுள்ளது. நான், என் குடும்பத்தை விட்டு, வெங்கடாஜலம், சித்தாயி குடும்பத்திற்கு சவிகார மகனாக சென்றுவிட்டேன் என்று சொன்னால் சரியல்ல. . . . ?

18. In this regard, it is apposite to mention that an admission made by a party in pleadings is a judicial admission admissible in evidence under Section 17 read with Section 58 of the Indian Evidence Act, 1872. O.S. No.390 of 2001 which is the Suit instituted by the second defendant claiming to be the adopted son of Venkatachalam and Sithayammal (Ex-A.1 - Plaintiff) was dismissed for default and non-prosecution on July 4, 2018. In the present Suit, as stated *supra*, the second defendant has explained that he is the foster son of Venkatachalam and Sithayammal and only on that capacity he filed the Suit in O.S. No.390 of 2001. The admission made in Ex-A.1 - Plaintiff being a judicial admission is indeed admissible in evidence and is of utmost relevance. However, the same cannot be taken as conclusive evidence when the plaintiff and the first defendant are not parties thereto and when the second defendant has assigned an explanation as stated above. Further, though in the said Suit the second defendant had sought a declaration regarding his status as the adopted son of Venkatachalam and Sithayammal, no adjudication on merits

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had taken place. Therefore, mere filing of such a Suit which ended in dismissal for default, would not by itself conclusively establish the factum of adoption. In this regard, reference may be made to the Judgment of Hon'ble Supreme Court in ***Basant Singh -vs- Janki Singh***, reported in ***AIR 1967 SC 341***. Relevant portion from the Judgment thereof reads thus:

"5.The High Court also observed that an admission in a pleading can be used only for the purpose of the suit in which the pleading was filed. The observations of Beaumont, C.J. in Ramabai Shrinivas v. Bombay Government lend some countenance to this view. But those observations were commented upon and explained by the Bombay High Court in D.S. Mohlte v. S.I. Mohile. An admission by a party in a plaint signed and verified by him in a prior suit is an admission within the meaning of Section 17 of the Indian Evidence Act, 1872, and may be proved against him in other litigations. The High Court also relied on the English law of evidence. In Phipson on Evidence, 10th Edn, Article 741, the English law is thus summarised:

"Pleadings, although admissible in other actions, to show the institution of the suit and the nature of the case put forward, are regarded merely as the suggestion of counsel, and are not receivable against a party as admissions, unless sworn, signed, or otherwise adopted by the party himself."

Thus, even under the English law, a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In Marianski v. Cairns



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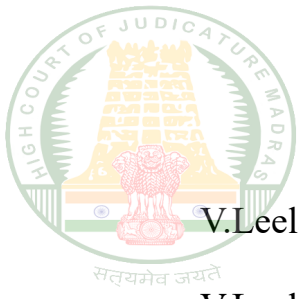
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the House of Lords decided that an admission in a pleading signed by a party was evidence against him in another suit not only with regard to a different subject-matter but also against a different opponent. Moreover, we are not concerned with the technicalities of the English law. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true."

[Emphasis supplied by this Court]

19. Moreover, the plaintiff has filed the death certificates of M.Vaiyapuri (Ex-A.4) and V.Leela (Ex-A.5) as well as legal heir certificate of V.Leela dated February 28, 2005 (Ex-A.6). In Ex-A.6 - Legal Heir Certificate, second defendant along with the plaintiff and first defendant has been shown as the children of V.Leela. The defendants' side has marked the legal heir certificate of father - M.Vaiyapuri dated July 31, 1996, as Ex-B.1. It shows the second defendant as the deceased's son; plaintiff and first defendant are shown as daughters and V.Leela is shown as wife. Further, the second defendant's marriage invitation card has been marked as Ex-B.2. The date of marriage is June 3, 1991. In Ex-B.2, second defendant has been described as the son of the couple - M.Vaiyapuri and

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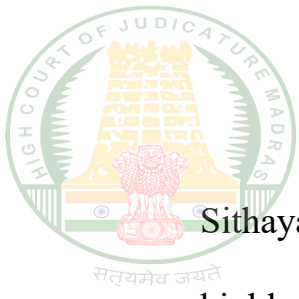
V.Leela. Further, Ex-B.5 is a mortgage deed dated May 17, 1995 whereby

V.Leela, M.Vaiyapuri, defendant Nos.1 and 2 and plaintiff jointly mortgaged Suit 'B' schedule property. The recitals in Ex-B.5 describes the plaintiff and defendants 1 and 2 as the children of M.Vaiyapuri and V.Leela

['...1,2 இலக்கமிட்டவர்களின் மக்களாகிய சுமார் 32 வயதுள்ளவரும் மேற்படி சங்கத்தின் 1088 இணை உறுப்பினருமான லலிதா (3), ஷை சங்கத்தின் 1089 நெ. இணை உறுப்பினருமான S.V.ஜெயப்பிரகாஷ்(4) . . . ']

Further, Ex-B.9 is another mortgage deed. It was executed jointly by V.Leela and the second defendant on April 17, 2002 in respect of Suit 'A' schedule property. In Ex-B.9, V.Leela has been described as the wife and the second defendant has been described as the son, of M.Vaiyapuri. In view of these documents, the admissions made in Ex-A.1 - Plaint and Ex-A.7 - Newspaper Publication, and the entry in Ex-A.8 - Family Card cannot be considered as conclusive proof of adoption.

20. The burden squarely lies upon the plaintiff and the first defendant to prove that the second defendant had been validly given in adoption to Venkatachalam and Sithayammal. In the present case, there is no satisfactory or legally acceptable evidence on record to substantiate such adoption. D.W.5 / second defendant has deposed in his evidence that



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Sithayammal is the sister of his father and she is his aunt. Hence, it is

highly probable that the second defendant was brought up by

Venkatachalam and Sithayammal. The same could be the reason behind the

entry in Ex-A.8 - Family Card showing second defendant as a member of

Venkatachalam and Sithayammal's family. However, mere upbringing or

association would not constitute a valid adoption in the eye of law.

Accordingly, this Court is of the view that the plaintiff and the first

defendant have failed to establish that the second defendant was given in

adoption to Venkatachalam and Sithayammal. The Trial Court observed

that the issue of adoption has to be decided in the (then) pending Suit in

O.S. No.390 of 2001 and thus, did not deal with the question of adoption.

Such a course is not correct, as the plaintiff and the first defendant were

not parties to the Suit in O.S. No.390 of 2001. Further, the adoption being

a disputed fact and there being pleadings and evidence in this regard, the

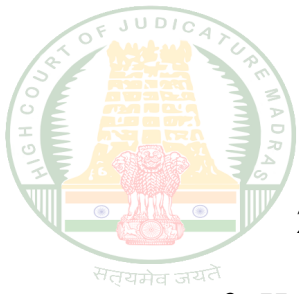
Trial Court ought to have framed issue(s) in this regard and should have

decided the same. ***Point No.(i) is answered accordingly in favour of***

second defendant and against the plaintiff and the first defendant.

Point No.(ii): *Whether Ex-B.6 - Will dated December 23, 2004 is true,*

valid and genuine and whether it is proved as per law ?



21. At the outset, this Court deems fit to cite hereunder the Judgment of Hon'ble Supreme Court in *H.Venkatachala Iyengar -vs- B.N. Thimmajamma*, reported in *1958 SCC OnLine SC 31*, which is considered as *locus classicus* when it comes to law regarding proof of Will:

"18.What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is



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meant by the expression “a person of sound mind” in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19.However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the

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proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends

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to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."

22. The testatrix - V.Leela was 63 years old at the time of her demise. Ex-A.10 - Discharge Summary would show that she was suffering from Diabetes Mellitus and some heart diseases. On December 8, 2004, she was admitted in a private hospital for complaints of chest pain, severe sweating and giddiness. She was then discharged on December 16, 2004. The doctor prescribed a review with some test reports after seven days of discharge. Ex-B.6 - Will is dated December 23, 2004 *i.e.*, six days after the discharge, and it is an un-registered one. It is stated that V.Leela passed away on her way to Bangalore. Her date of demise is January 12, 2005. She has passed away shortly after the discharge, about one month later.

23. On the side of the defendants, the attesting witnesses of Ex-B.6 - Will were examined as D.W.2 and D.W.3. One of them *viz.*, D.W.3, is also the scribe to Ex-B.6 - Will. D.W.2 when questioned about the testatrix's

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medical condition and her being admitted in hospital for treatment, he answered that he is not aware of the same. Further, while the first defendant deposed that she passed away. Interestingly, first defendant examined herself as D.W.1 on March 1, 2016 and D.W.2 was examined on March 9, 2016 *i.e.*, eight days later. He further deposed that he does not know the scribe of Ex-B.6 - Will and the other attesting witness thereto. He also deposed that he does not know the plaintiff and that he is not related to the testatrix. Coming to D.W.3 who is the scribe-cum-attestor, he has deposed that at the time of him reciting the contents of Ex-B.6 - Will to the testatrix, no one else other than the testatrix was present. D.W.3 also deposed that he does not know about the medical conditions, treatment and partially bed-ridden state of the testatrix. D.W.5 / second defendant has deposed that one Tahsildhar by name Ahmadullah informed him that the plaintiff and the first defendant took the testatrix to Bangalore from Salem Hospital in an Ambulance and that the testatrix passed away on the way. He further deposed that he does not know in which hospital the testatrix was admitted for treatment, as well as about her earlier treatments as an in-patient. However, he deposed that the testatrix was obtaining treatment (out-patient) for Diabetes Mellitus and admits the medical records found in Ex-A.10 series. When questioned about the testatrix's coronary diseases, he

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deposed that she might have been suffering from them. Admittedly, he was not residing along with the testatrix during the relevant period. What could be understood from the evidence of D.W.5 / second defendant is that it is only the plaintiff and the first defendant who took care of the testatrix during her final phase of life and that the D.W.5 / second defendant did not play much of a role. By applying the arm-chair rule, this Court wonders whether the testatrix would have excluded the plaintiff and the first defendant who took care of her in the last phase of her life and bequeathed her properties in favour of her son - first defendant who never even visited her when she was admitted in the Hospital in December 2004 in a serious condition. When it is the plaintiff and the first defendant took care of the testatrix during the final phase of her life and the second defendant was least involved, it is unnatural that the testatrix bequeathed her properties in favour of the second defendant's minor (then) son - Naveen.

24. Yet another reason that creates suspicion around the execution of Ex-B.6 - Will is her medical condition at the material point of time. On the side of the plaintiff, it has been established through documentary evidence that the testatrix was admitted in the hospital from December 8, 2004 to December 16, 2004 for treatment relating to heart disease and other ailments. Shortly thereafter, she passed away on January 12, 2005. The



proximity between the alleged execution of the Will and her deteriorating health condition assumes significance. In such circumstances, the burden lie heavily upon the propounder to establish that V.Leela had executed the Will while she was in a sound and disposing state of mind. In view of the aforesaid circumstances, particularly the serious ailments of the testatrix shortly prior to the execution of Ex-B.6 - Will and her demise shortly thereafter, this Court is of the view that the propounder of the Will has failed to prove that the testatrix was in a sound and disposing state of mind at the time of execution of Ex-B.6 - Will.

25. In view of the surrounding suspicious circumstances, this Court is of the considered opinion that the execution of Ex-B.6 - Will (un-registered) has not been proved in the manner known to law, after dispelling all suspicious circumstances surrounding the same.

26. The Trial Court, upon a thorough consideration of the oral and documentary evidence available on record, has rightly concluded that Ex-B.6 - Will has not been proved in the manner known to law and that the suspicious circumstances surrounding its execution have not been satisfactorily dispelled. Hence, there is no need to interfere with the



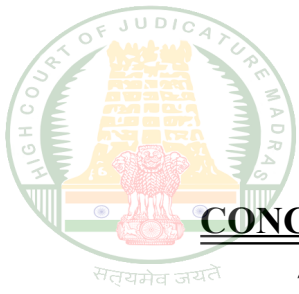
findings of the Trial Court in this regard. ***Point Nos.(ii) is answered***

accordingly.

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Point No.(iii): *Whether the Judgment and Decree is liable to be interfered with?*

27. Admittedly, Suit 'A' and 'B' schedule properties are house properties. Section 23 of the Hindu Succession Act, 1956 was omitted by the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005). Hence, there is no bar against female members claiming partition of dwelling houses. The Trial Court rightly held so. As stated *supra*, there is no reason to interfere with the findings of the Trial Court *qua* proof of Will. This Court does not find any perversity, illegality, or infirmity in the appreciation of evidence by the Trial Court warranting interference. The findings rendered are based on proper evaluation of the materials placed before it. Having regard to the facts and circumstances of the case, this Court is of the considered view that there is no reason to take a view different from that of the Trial Court. Accordingly, there is no necessity to interfere with the Judgment and Decree passed by the Trial Court. ***Point Nos (iii) is answered accordingly.***



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CONCLUSION:

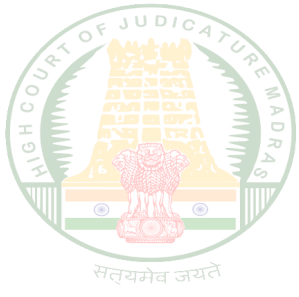
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28. In view of the discussions and reasons assigned hereinabove, this Court finds no merit in the Appeal Suit and the same is liable to be dismissed. Accordingly, the Appeal Suit is dismissed and the Judgment and Decree passed by the Trial Court are hereby confirmed. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

07 / 04 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To
The II Additional District and Sessions Court
Salem.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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