



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2026

PRONOUNCED ON : 30.04.2026

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THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR JUSTICE K. KUMARESH BABU

OSA No. 150 of 2025

AND

CMP Nos.9199 & 15778 of 2025

Sitalakshmi Ramanathan (Deceased)

Indira Jayaraman

..Appellant /
2nd defendant

Vs

R.Nagarajan

..Respondent /
Plaintiff

This appeal filed under Order XXXVI Rule 9 of CPC read with Clause 15 of the Letters of Patent Act to set aside the Judgement and decree of this Court dated 04.12.2024 in T.O.S.No.34 of 2015.

For Appellant(s): Mr.A.Muthukumar

For Respondent(s): Mr.C.A.Diwakar



JUDGMENT

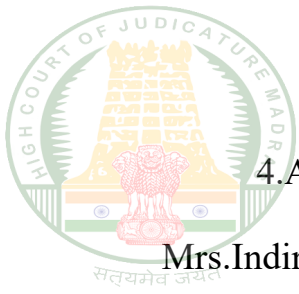
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(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The 2nd defendant / Indira Jayaraman in T.O.S.No.34 of 2015, aggrieved by the judgment and decree dated 04.12.2024 passed by a learned Single Judge of this Court, is the appellant herein.

2.The respondent, R.Nagarajan, had filed O.P.No.22 of 2015 before the Original Side of this Court under Sections 232 and 276 of the Indian Succession Act, 1925 seeking Letters of Administration to be granted to administer the estate of K.Ramanathan who died on 05.11.1996 leaving behind a Will dated 04.02.1985 executed and registered at the Sub-Registrar Office, Anna Nagar, Chennai.

3.In the Original Petition, the respondent, R.Nagaraj who was the petitioner had impleaded his mother Mrs.Sitalakshmi Ramanathan, Mrs.Prema Sitaraman and Mrs.Indira Jayaraman and also Mrs.Usha Chandrasekar, Mr.Karthik Chandrasekar and Mrs.Niranjana Chandrasekar the legal representatives of C.R.Chandrasekar his deceased brother as respondents.

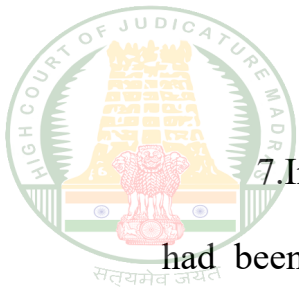


4. Among the said respondents, Mrs. Sitalakshmi Ramanathan and Mrs. Indira Jayaraman had filed caveat raising objections for the grant of Letters of Administration and consequently O.P.No.22 of 2015 was converted as T.O.S.No.34 of 2015 by order of a learned Single Judge of this Court dated 07.09.2015. The petitioner, R.Nagarajan, was termed as the plaintiff and the respondents, Sitalakshmi and Indira Jayaram were termed as the defendants.

5. During the pendency of T.O.S.No.34 of 2015, the first defendant, Sitalakshmi, died and the 2nd defendant was recognized as her legal representative as per order dated 23.06.2022 in A.No.1838 of 2022.

T.O.S.No.34 of 2015:

6. The plaintiff claimed that his father K.Ramanathan had executed a Will dated 04.02.1985. He had however not appointed any executor and that he and his brother C.R.Chandrasekar were the two beneficiaries. Under the Will, the 1st defendant, Sitalakshmi, was granted right to enjoyment of the property at Old No.5, New No.9, 8th Cross Street West, Shenoy Nagar, Chennai – 600 030 and after her lifetime, the ground floor was bequeathed to C.R.Chandrasekar and the first floor to the plaintiff R.Nagarajan. It was further contended that C.R.Chandrasekar died and his legal representatives had been impleaded in the Original Petition. It was also contended that the delay in filing the petition was neither wilful nor wanton, but only because the Will was not available with the plaintiff.



7. In the written statement, the 1st defendant contended that the property had been purchased by K.Ramanathan from Housing Board. It was further stated that the 2nd defendant's husband had passed away in the year 1998 and no reason had been given in the Will as to why she had been disinherited from a share in the property. It was further contended that the plaintiff had never taken care of her and only the 2nd defendant had taken care of her. The 2nd defendant had also spent monies towards renovation and maintenance of the property. It was further contended that K.Ramanathan had poor eyesight and his hearing was affected and therefore could not have written the Will out of free consent. It was further contended that there was considerable delay in filing petition seeking Letters of Administration. It was also contended that the existence of the Will was never informed to anyone and there was no reference about the same in any of the subsequent documents, particularly a settlement deed. It was further contended that the relationship between the plaintiff and his father K.Ramanathan was not cordial. It was contended that the Will should be proved in manner known to law.

8. On the basis of the above pleadings, the following issues were framed:

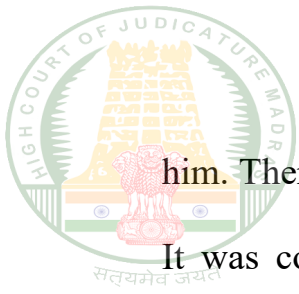
1. *Whether the Will dated 04.02.1985 is true and genuine?*
2. *To what other reliefs the plaintiff is entitled?*



9. During trial, the plaintiff examined six witnesses as PW-1 to PW-6 and marked 14 documents as Exs.P1 to P14. Among the witnesses, the plaintiff examined himself as PW-1 and examined the 5th respondent Karthik Chandrasekar as PW-2 and the 4th respondent Usha Chandrasekar as PW-3 and the 2nd respondent Prema Sitaraman, as PW-4 and two other witnesses K.Rangaraj and R.Venkatraman as PW-5 and PW-6. The Will dated 04.02.1985 was marked as Ex.P1. The letter written by the testator to the plaintiff dated 09.07.1996 was marked as Ex.P4. The settlement deed executed by the 1st defendant in favour of the plaintiff dated 19.08.2010 was marked as Ex.P7. The notices exchanged between the 2nd defendant and the plaintiff were marked as Exs.P10 and P11.

10. The defendants did not examine any witness and did not mark any documents.

11. On the basis of the evidence and the pleadings, the learned Single Judge held that the plaintiff had examined PW-5 K.Rangaraj to prove the signature of the second attesting witness and PW-6 R.Venkatraman, the cousin of the testator, to prove the signature of the testator. It was further held that the second attesting witness K.S.Padmanabhan who was a neighbour of the plaintiff had informed about the Will and thereafter, the plaintiff had made enquiries with the 1st defendant / his mother and she then handed over the original Will to



him. Thereafter, he filed the Original Petition seeking Letters of Administration.

It was contended that the delay in filing the petition had been satisfactorily explained. The learned Single Judge observed that under the Will the 1st defendant was granted right to enjoy the property till her lifetime and thereafter, the property would devolve to the plaintiff and the other brother C.R.Chandrasekar.

12.It was also observed that both the attesting witness D.Swaminathan and K.S.Padmanabhan were alive at the time of filing of the Original Petition and had also filed their affidavits as required. It was also noted that one of the attesting witness K.S.Padmanabhan subsequently died and his son K.Rangaraj was examined as PW-5 to confirm his signature. It was also noted that the daughter of the testator, Prema Sitaraman who was examined as PW-4 had filed her consent affidavit and the legal representatives of C.R.Chandrasekar who were examined as PW-2 and PW-3 had also filed their consent affidavits. It was further observed that the defendants had not grazed the witness box to tender evidence and thereby had not subjected themselves for cross examination. In view of the above reasonings, the Suit was decreed.

13.Challenging the said judgment and decree the 2nd defendant had filed the present appeal.

**OSA No.150 of 2025:**

14.It had been contended by the appellant that the Will was not a true and genuine document and that the testator was not in a sound and disposing state of mind. It was contended that the plaintiff had obtained a settlement deed from the 1st defendant relating to her undivided one-half share in the suit property and it was claimed that when he was the beneficiary under the Will there was no necessity to obtain such a settlement deed. It was further pointed out that one of the attesting witness was alive and an Advocate Commissioner had also been appointed to record his evidence, but was not permitted to do so. The appellant further contended that PW-5 and PW-6 did not have direct knowledge about the execution or registration of the Will. It was also contended that PW-4 had stated that the plaintiff had promised to pay a sum of Rs.50/- lakhs to her and such evidence would itself show that the Will was not true and genuine and it was contended that the evidence of the said witness should be rejected by this Court.

15.Heard arguments advanced by Mr.A.Muthukumar, learned counsel for the appellant and Mr.C.A.Diwakar, learned counsel for the respondent.

16.Mr.A.Muthukumar, learned counsel for the appellant, in his arguments also pointed out the above said facts. He further argued that the respondent had not taken effective steps to examine both the attesting witnesses when they were alive. He further pointed out that one of the attesting witness K.S.Padmanabhan



was alive and an application had been taken out to record his evidence by an Advocate Commissioner. However, the Advocate Commissioner was prevented from recording the evidence. Later, the plaintiff had examined PW-5 K.Rangaraj, the son of K.S.Padmanabhan as a witness. The learned counsel pointed out that neither of the two attesting witnesses had been examined and argued that it must therefore be held that the Will had not been proved in manner known to law. The learned counsel also pointed out the delay in filing the petition seeking Letters of Administration and argued that the delay had not been properly explained. He further pointed out that the appellant had lost her husband and there was no reason why the testator had not granted her any share in the property. He further pointed out that the respondent was instrumental in influencing the deceased 1st defendant to execute a settlement deed with respect to her undivided share in the suit schedule property and it was pointed out that when he was the beneficiary under the Will, there was no necessary to call upon the 1st defendant to execute the settlement deed.

17.The learned counsel also took the Court through the evidence adduced by the parties and stated that PW-4 had admitted that the respondent had undertaken to pay a sum of Rs.50/- lakhs to her and it was therefore argued that the witness had been purchased and her evidence must be rejected. The learned counsel contended that the testator was not in a sound state of mind. He had poor vision and his hearing was also impaired. The learned counsel therefore



contended that there was every possibility of the Will being procured by exercising influence and coercion by the respondent.

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18.The learned counsel also relied on the judgment of a learned Single Judge of this Court reported in **2024 (2) CTC 218 (Mad), Kamalam (died) and others Vs. Sasikala and others**, wherein, the learned Single Judge had observed that when the attesting witnesses did not state that the Will had been signed in the presence of both witnesses and that the testator saw the other attesting witness sign the Will and one of the attesting witness stated that he did not see the other attesting witness sign the Will, it must be held that the will had not been proved. The learned Single Judge had also examined the stipulations under Section 69 of the Indian Evidence Act, 1872 and had held that unless the propounder satisfies the Court that both the attesting witnesses are not found, resort cannot be taken to the procedure contemplated under Section 69 of the said Act.

19.The learned counsel pointing out the ratio laid in the aforementioned judgment argued that, in the instant case also, the Will had not been proved since neither of the two attesting witnesses had been examined during trial.



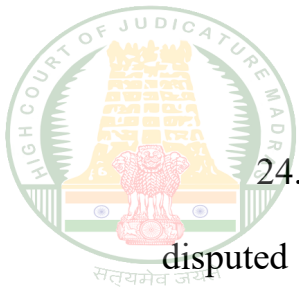
20. The learned counsel further placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2021) 2 SCC 718, Iqbal Basith and Others**

Vs. N.Subbalakshmi and Others, wherein, it had been observed that when the defendant did not appear to depose and to be cross examined and no explanation was given as to why he did not graze the witness box, an adverse presumption had to be drawn under Section 114(g) of the Indian Evidence Act, 1872.

21. The learned counsel pointed out that, in the instant case, even though one of the attesting witness was alive, he had not been examined as a witness and though it is contended that the other attesting witness had died no documents had been produced before the Court to establish the said fact.

22. The learned counsel also placed reliance on the judgment of the Division Bench of this Court reported in **2026-1-L.W.123, S.P.Vijaykumar Vs. Smt.Padmavathy and others**, wherein, it had been held that, when one of the attesting witness was found and not examined, there was no ground to invoke Section 69 of the Indian Evidence Act, 1872.

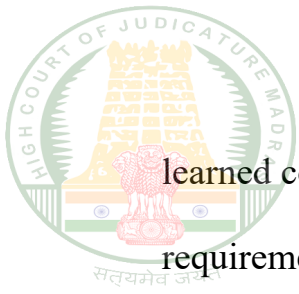
23. It was therefore contended by the learned counsel that the appeal should be allowed and the Court should declare that the Will had not been proved in manner known to law and that therefore, the judgment and decree of the learned Single Judge should be set aside.



24. Mr. C.A. Diwakar, learned counsel for the respondent, however, disputed the said contentions. The learned counsel contended that it was the specific case of the respondent that he was not aware of the execution of the Will and that when he came to know about the Will from one of the attesting witness, K.S. Padmanabhan, he had enquired about the same with his mother who then produced the original Will. The learned counsel contended that immediately, thereafter, the petition had been filed seeking Letters of Administration. He pointed out that the Will was a registered Will and therefore a presumption should be drawn about its genuineness.

25. With respect to the two attesting witnesses, he pointed out that both the attesting witnesses had filed their affidavits at the time when the Original Petition was presented before the Court. However, subsequently, one of the attesting witness died. The other attesting witness was a senior citizen of advanced age. The respondent had therefore taken steps to examine him through an Advocate Commissioner, but the day before the Commissioner could record his evidence, the witness fell sick and therefore, his evidence could not be recorded. The learned counsel pointed out that his son had been examined as PW-5 and he had identified the signatures found in the Will.

26. Additionally, the respondent had also examined PW-6, a close relative of the testator who identified the signature of the testator in the Will. The



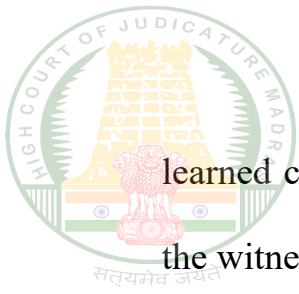
learned counsel therefore argued that there has been sufficient compliance of the requirements under Section 68 of the Indian Evidence Act, 1872.

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27. The learned counsel further pointed out the evidence of PW-2, PW-3 and PW-4 who were initially arrayed as respondents in the Original Petition and had stated that they had no objection for grant of Letters of Administration. The learned counsel stated that the settlement deed which had been executed by the mother was executed voluntarily by her and that the respondent had no role in the execution of the said settlement deed. He pointed out that the mother knew about the Will and had still executed the settlement deed.

28. The learned counsel was emphatic in his submission that the Will had been executed when the testator was in a sound and disposing state of mind. He therefore stated that the Court should hold that the Will had been duly proved in manner known to law and should dismiss the appeal.

29. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in **2025 SCC OnLine SC 1488, Metpalli Lasum Bai (Since Dead) and Others Vs. Metapalli Muthaih (D) by Lrs.**, wherein, it had been held that if a Will was a registered document, the burden would lie on the party who disputed its existence who or who contended that it was not executed in manner known to law to prove the alleged suspicious circumstances. The



learned counsel stated that in the instant case, the appellant did not even graze the witness box to tender evidence about any suspicious circumstance.

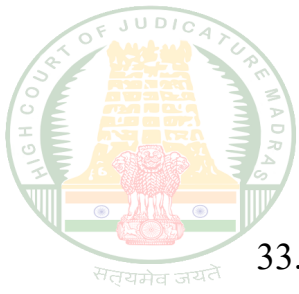
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30. The learned counsel further pointed out the judgment of the Hon'ble Supreme Court reported in *(2023) 19 SCC 448, Ashutosh Samanta (Dead) by Mrs. and others Vs. Ranjan Bala Dasi and Others*, wherein, the Hon'ble Supreme Court had placed reliance on an earlier judgment of the Hon'ble Supreme Court reported in *(2021) 16 SCC 543, V.Kalyanaswamy Vs. L.Bakthavatsalam* with respect to proof of a Will within the meaning of Section 69 of the Indian Evidence Act, and had held that what is to be proved is that the attestation of one of the attesting witness is in his handwriting. He argued that in the instant case such proof had been established by examination of witnesses, particularly PW-5 and PW-6. The learned counsel therefore argued that the judgment and decree of the learned Single Judge should be upheld and the appeal should be dismissed.

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

32. The following point arises for consideration

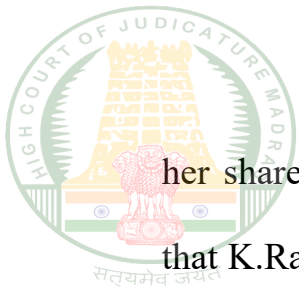
“Whether the registered Will dated 04.02.1985 said to have been executed by K.Ramanathan had been proved in manner known to law?”



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33.The respondent herein, had initially filed O.P.No.22 of 2015 seeking Letters of Administration of a registered Will dated 04.02.1985 claimed by him to have been executed by his father K.Ramanathan who died on 05.11.1996. The Will had been marked as Ex.P1 during trial. The respondent had impleaded all the legal representatives of K.Ramanathan as respondents in the Original Petition. Among them, his mother Sitalakshmi Ramanathan and one of his sisters, Indira Jayaraman lodged caveat raising objections for grant of Letters of Administration. The Original Petition was therefore converted as Testamentary Original Suit and numbered as T.O.S.No.34 of 2015. The respondent was categorized as the plaintiff and the caveators who raised objections were categorized as 1st and 2nd respondents.

34.The 1st defendant had filed written statement. In her written statement, she disputed the genuineness of the Will and also disputed the claim that the testator was in a sound and disposing state of mind at the time of execution of the Will. She pointed out that the respondent herein, was never in good terms with the testator. She further pointed out that the 2nd defendant in the suit, Indira Jayaraman, had lost her husband and there was no reason why the testator had not granted her any share in the property. She further stated that there was no mention about the Will by K.Ramanathan during his lifetime. She further stated that the respondent herein had obtained a Settlement Deed from her relating to



her share in the property and in the Settlement Deed, it had been covenanted that K.Ramanathan had died intestate. Pointing out these facts, she had disputed the claim that K.Ramanathan had executed the Will out of free consent.

35.The 2nd defendant in the suit, had merely adopted the said written statement.

36.In *2025 SCC OnLine SC 1488, Metpalli Lasum Bai (Since Dead) and Others Vs. Metapalli Muthaih (D) by Lrs.*, the Hon'ble Supreme Court examined the proof of a registered Will and the burden of the party who questioned such a registered Will. It had been held as follows:

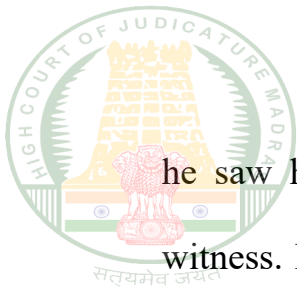
“9..... The Will, is a registered document and thus there is a presumption regarding genuineness thereof. The trial Court accepted the execution of the Will based on the evidence led before it. As the Will is a registered document, the burden would lie on the party who disputed its existence thereof, who would be defendant-Muthaiah in this case, to establish that it was not executed in the manner as alleged or that there were suspicious circumstances which made the same doubtful. ”



37. The dictum laid is of extremely significant so far as the facts of this case are concerned. Ex.P1 is also a registered Will. It had been attested by two witnesses. K.S.Padmanabhan and D.Swaminathan. Both the attesting witness had filed their affidavits as required under Form 56 of the Original Side Rules as provided under Order XXV Rule 4(d) of the Original Side Rules.

38. It is the very specific case of the respondent herein that one of the two attesting witnesses D.Swaminathan had died pending the judicial proceedings. It is the contention of the learned counsel for the appellant that the Death Certificate in that regard, had not been produced. But however, the appellant herein had not grazed the witness box to question that fact or to tender evidence about the suspicious circumstances stated in the written statement. It is not in dispute that D.Swaminathan had actually died.

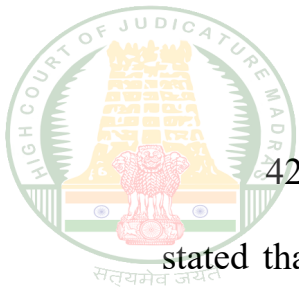
39. The other attesting witness K.S.Padmanabhan was a senior citizen of very advanced age. The respondent herein had taken out an application in A.No.6495 of 2023 to record his evidence through an Advocate Commissioner. The said application was also allowed. The Advocate Commissioner was also appointed. But however, the Advocate Commissioner was not able to record the evidence. She had filed a memo stating that the second attesting witness K.S.Padmanabhan was aged about 94 years and that his son did not permit her to record evidence. His son, K.Rangaraj was examined as PW-5. He stated that



he saw his father signing the affidavit confirming that he was the attesting witness. He further stated that a day prior to the date fixed for the recording of evidence by the Advocate Commissioner, there was a sudden set back in the health of his father and he was not able to tender evidence. He had therefore refused permission to examine his father as a witness in that case.

40. With respect to the Will, he identified and confirmed the signature of his father K.S.Padmanabhan. He also produced a Supplemental Agreement dated 10.04.1975 executed by his father to exhibit the signature of his father for the sake of comparison. During his cross examination, he again identified the signature of his father in the Will.

41. During cross examination, he stated that it was the respondent who gave instructions to the counsel to prepare his proof affidavit. This aspect was pointed out by the learned counsel for the appellant who stated that the proof affidavit was therefore not filed voluntarily by the witness. But however, the witness had been subjected to cross examination and during cross examination had affirmed the signature of his father. We hold that the evidence of the witness is credible and there is no reason to reject the same. He had identified the signatures of his father.

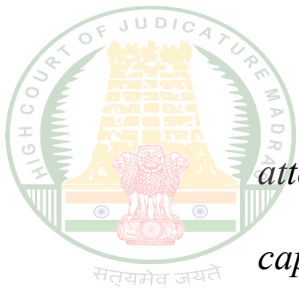


42. The respondent herein had also examined PW-6 R.Venkataraman who stated that his education fees were paid by the testator K.Ramanathan and he used to accompany him to the bank and was therefore well acquainted with his signature. He also identified the signature of the testator K.Ramanathan in Ex.P1 Will. During cross examination, questions relating to the family of the testator were asked and he was able to answer all the questions. He was asked about the deceased brother of the respondent, he was asked about the properties in Gomal Village. He also stated the educational qualification of the testator K.Ramanathan. He stated that he came to know about the Will sometime in the year 1985 and 1986. He withstood cross examination.

43. It is thus seen that the respondent had examined the son of one of the attesting witness and another witness to speak about the signature of the testator in the Will. It is to be noted that the other attesting witness had died.

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

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



attesting witness alive, and subject to the process of the Court and capable of giving evidence:

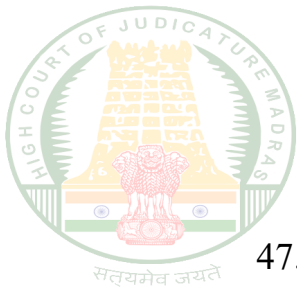
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Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless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

45. Section 69 of the Indian Evidence Act, 1872 / Section 68 of the Bharatiya Sakshya Adhiniyam, 2023 is as follows:

“69. Proof where no attesting witness found.- *If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”*

46. The provisions required that one attesting witness should be examined and if the attesting witnesses are not available, another witness who is able to identify the signatures and writings of the attesting witness must be examined.



47.The respondent in the instant case had complied with such condition.

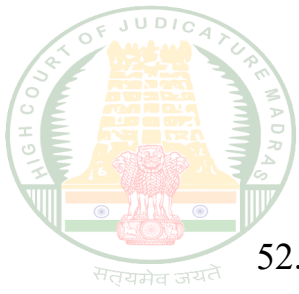
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48.We also take judicial notice of the fact that the Will was a registered Will. This raises a presumption of genuineness of the Will. But however, it should still be proved. In *(2021) 16 SCC 543, V.Kalyanaswamy* referred supra it had been held that in a case covered under Section 69 of the Indian Evidence Act, the attestation of the one of the attesting witness in his handwriting must be proved.

49.In the instant case, the signature of not only the attesting witness but also of the testator had also been proved. Additionally, the affidavit of the other attesting witness had also been filed at the time of filing of the Original Petition.

50.All these facts establish that the Will had been duly proved in manner known to law. Very specifically, the conduct of the appellant in avoiding to graze the witness box is very significant, as the Will being a registered Will. Any suspicious circumstance should be dispelled only by the party putting forth such suspicious circumstance.

51.In the absence of any evidence on the side of the appellant, we hold that the Will had been duly proved in manner known to law.



52. We also taken the judicial note of the fact that PW-2, PW-3 and PW-4 had also affirmed the execution of the Will and had not raised any objections for grant of Letters of Administration. The statement of PW-4 that the respondent had offered Rs.50/- lakhs would not imply that K.Ramanathan had not executed the Will. It would only indicate about the agreement between the two of them and can never be stretched to indicate that the Will had not been executed by K.Ramanathan.

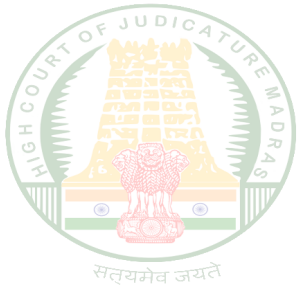
53. For all the reasons stated, we answer the point framed that the Will dated 04.02.1985 had been proved in manner known to law.

54. In view of the above reasons, the judgment and decree of the learned Single Judge in T.O.S.No.34 of 2014 dated 04.12.2024 is confirmed. The Original Side Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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

smv

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



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OSA No. 150 of 2



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

smv

**Pre-delivery Judgment made in
OSA No.150 of 2025**

30-04-2026