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OSA No. 170 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-09-2026

CORAM

THE HON'BLE MR. JUSTICE P. VELMURUGAN

AND

THE HON'BLE MR. JUSTICE GK. MUTHUKUMAAR

O.S.A.No.170 of 2022

CNR: {HCMA013098392018}

1. N.Durgabai (Died)
W/o.Late K.Neelakandan



Case QR

2. N.Uvarajan
S/o.Late K.Neelakandan
Both residing at
No.12, Gopal Reddy Colony,
3rd Cross Street,
Jawahar Nagar,
Chennai – 600 082.

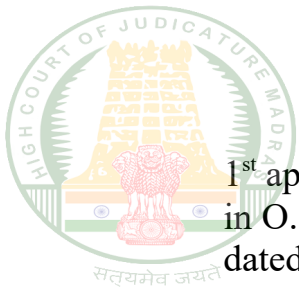
..Appellant(s)

Vs

1. Mrs.C.S.Pandari Bai
W/o.Mr.Chandra Sekar,
No.15, Gopal Reddy Colony,
East Main Road,
Sembium,
Chennai – 600 082.

2. Mrs.Sasikala
W/o.Mr.Subramani,
No.25/51, Portuguese Church Street,
Seven Wells,
Chennai – 600 001.

3. N.Thirunavukkarasu
S/o.Late K.Neelakandan,
No.12, Gopal Reddy Colony,
3rd Cross Street, Jawahar Nagar,
Chennai – 600 08
(RR1 to 3 are recorded as LR's of the deceased)



1st appellant vide Court order dated 16.09.2019
in O.S.A.SR.No.30235 of 2018 as per memo
dated 04.04.2019 by this Court)

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..Respondent(s)

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent, praying to set aside the Judgment and Decree dated 27.02.2017 passed in T.O.S.No.22 of 2010 and to allow the above said Original Side Appeal.

For Appellant(s):	Mr.M.Balasubramanian
For Respondent(s):	Mr.R.Chakkaravarthy for R1 and R2 R-3 – No appearance

JUDGMENT

GK. MUTHUKUMAAR, J.

This Original Side Appeal has been preferred by the unsuccessful plaintiffs challenging the Judgment and Decree dated 27.02.2017 passed in T.O.S.No.22 of 2010 by the Learned Single Judge of this Court, dismissing the plaintiffs' relief seeking for grant of Letters of Administration with regard to the registered Will dated 19.12.1983 of Late K.Neelakandan which has been marked in the suit as Ex.P1.

2.The parties are referred to as per the array in the Testamentary Original Suit.

3.The case of the plaintiffs is that the Late K. Neelakandan had executed a registered Will dated 19.12.1983 with respect to three items of his property,



which are the subject matter of the said Will Ex.P1. The said Neelakandan (Testator) died on 18.1.1992, whereupon this Will came into effect.

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3.1.The first plaintiff is the wife of the Testator. Plaintiffs 2 and 3 are his sons, while defendants 1 and 2 are his daughters. The plaintiffs claim right to three items of properties bequeathed to them under the said Will. No executors have been appointed under the Will. Upon the death of the Testator, the plaintiffs filed an Original Petition in O.P.No.160 of 2008 before this Court, praying for the grant of Letters of Administration with the said Will annexed, to the plaintiffs. The said Original Petition was contested by the defendants, and in view of which, it was converted into a Testamentary Original Suit and renumbered as T.O.S.No.22 of 2010.

3.2.The defendants contested the Testamentary Original Suit by filing a written statement, whereby they denied the execution of the alleged Will by the Testator. Further, they contended that, during the period of execution, the Testator was not of stable mind and that the plaintiffs had obtained the Will by fraudulent means, coercion, and misrepresentation.

4.During trial, two witnesses were examined as PW1 and PW2 on the plaintiffs' side, and Exs.P1 to P7 were marked. On the defendants' side, the second defendant examined herself as DW1, and no documents were marked.



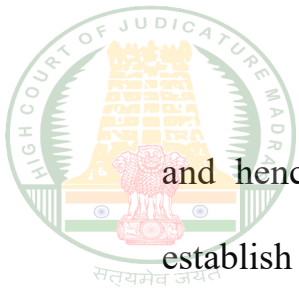
PW1 is the second plaintiff, while PW2 is one Mr.P.M.Ganesh, who had been examined to identify the Testator's signature and execution of the Will and for the purpose of Section 69 of the Indian Evidence Act, 1872 (Evidence Act).

5.Upon consideration of the pleadings, and evidence, and documents on record, the Learned Single Judge, by order dated 27.02.2017, dismissed the Testamentary Original Suit mainly on the ground that the plaintiffs had not established the signatures of the attesting witnesses either under Section 68 or under Section 69 of the Evidence Act, and hence, held that the plaintiffs had not proved the Will Ex.P1 in the manner known to law.

6.Being thus aggrieved, the plaintiffs have preferred this Original Side Appeal challenging the dismissal of the Testamentary Original Suit.

7.We have heard the detailed arguments of Mr.M.Balasubramanian, Learned Counsel for the appellants, and Mr.R.Chakkaravarthy, Learned Counsel for the respondents 1 and 2.

8.The main contention of the Learned Counsel for the appellants is that the execution of Will Ex.P1 has been established in view of the oral testimony of one Mr.P.M.Ganesh, who was examined as PW2. He would also contend that, since the attesting witnesses are not available, they could not be examined



and hence recourse had been taken to Section 69 of the Evidence Act to establish the attestation of the Will by the attesting witnesses to the Will by

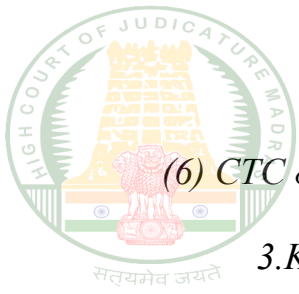
examining PW2 to identify the signatures of the attesting witnesses in the Will.

He drew the attention of this Court to the evidence of PW1, PW2, and DW1 to substantiate his contention. He would further contend that, though the defendants plead coercion, misrepresentation, and fraudulent means being employed by the plaintiffs to get the Will executed, there is absolutely no evidence to this effect and hence, in the absence of evidence, this attack of the defendants on the Will fails. He would also rely on the proof affidavit of one R. Natesan, about whom PW1 has spoken in the proof affidavit of PW1, as having been present at the time of execution and registration of the Will by the Testator. He would also rely on a registered Mortgage Deed, Ex.P4, to establish the genuineness of the signature of the Testator. He would therefore contend that the Learned Single Judge dismissed the petition for the grant of Letters of Administration without proper consideration of the oral and documentary evidence that was on record and hence, prayed that this Original Side Appeal may be allowed and Letters of Administration be granted to the plaintiffs.

8.1.The Learned Counsel for the appellants would rely on the following citations in support of his contentions:

1.*Janaki Devi vs. R.Vasanthi & others* reported in 2005-1-L.W.455;

2.*Ganesan (D) through LRs. vs. Kalanjiam and Others* reported in 2019



(6) CTC 85;

3. *Karpagam and Another vs. E.Purushothaman and Others* reported in

2010-3-L.W.282;

4. *Savithri and Others vs. Karthyayani Amma and Others* reported in

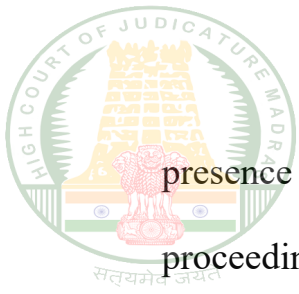
(2007) 11 SCC 621.

9. Per contra, the Learned Counsel appearing for the defendants would submit that none of the attesting witnesses were examined as per the mandatory requirement of Section 68 of the Evidence Act. He would contend that PW2 only identifies the signature of the Testator, while there is no evidence as regards the identification of the signature of the attesting witnesses. As such, he would submit that the requirement under Sections 68 or 69 of the Evidence Act has not been met.

10. Upon considering the arguments of both the Learned Counsel, the pleadings, and the oral and documentary evidence on record and the law on this aspect, this Court finds that the only issue which arises for consideration in this appeal is as to whether the requirements of Sections 68 and 69 of the Evidence Act with regard to the identification of the signatures of the attesting witnesses in the Will Ex.P1 have been established.



11. From the materials on record, we find that the Testator, Neelakandan, is said to have executed a Will dated 19.12.1983, and that the same was registered. The said Will has been marked as Ex.P1. The Will came into effect upon the death of the Testator on 18.01.1992. In the suit, the execution of the Will by the Testator has been established by the examination of PW1 and PW2. Their evidence has not been dislodged in cross examination. However, we find that none of the two attesting witnesses, viz., M.Munuswamy and R.Subramani have been examined. The plaintiffs have not given any convincing reason as to why any of the two attesting witnesses have not been examined. On the other hand, there is a contradiction as regards the availability of the attesting witnesses. In the Original Petition, at Para 4, it has been stated that the attesting witnesses are no more, meaning that they are dead. Moreover, the second plaintiff, who examined himself as PW1, in his proof affidavit dated 27.01.2016, would state that the whereabouts of the attesting witnesses are not known since they left their residence long back in view of the closure of Binny Mill where they were working. However, in his cross-examination, PW1 would clarify this inconsistency by stating that what was stated in the Original Petition is wrong and that the correct statement is that the attesting witnesses Subramani and Munuswamy were not found at the address mentioned in the Will Ex.P1. In this regard, it is seen that, the plaintiffs have not taken any steps to find out the whereabouts of the two attesting witnesses and present them for examination. No summons have also been taken out at their instance so as to secure the



presence of the attesting witnesses for the purpose of giving evidence in these proceedings so as to prove the Will. We also find that even the scribe has not been examined and it is stated that he is no more.

12.It is therefore seen that both PW1 and PW2 identify the signature of the Testator in the Will Ex.P1. This identification has not been dislodged by the defendants in cross-examination. PW2 also speaks about the visit by the Testator along with four others to the Sub-Registrar's Office for the purpose of registration of the Will. The execution of the Will by the Testator by affixing his signature on it is established. However, this by itself is not sufficient to hold that the execution of the Will has been duly proved. This is because the law mandates that the signature / handwriting of the attesting witness also has to be proved, in addition to proving the signature of the Testator in the Will.

13.In this regard, the provisions of Section 63(c) of the Succession Act are relevant. Section 63 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 mariner at sea, shall execute his Will according to the following rules:—



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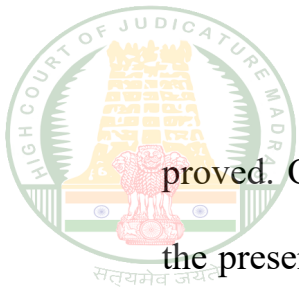
(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(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 and by the direction of the testator, or has received from the testator a personal acknowledgement 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.

13.1.From the above, particularly Section 63 clause 'c', it is clear that not only should the Testator sign the Will in the presence of both the witnesses, but both the witnesses have to attest the Will only in the presence of the Testator. This is a statutory requirement. Only when this is satisfied, can it be said that the Will has been duly executed and is valid.

14.In view of the above, it is amply clear that it is not sufficient if the signature of the Testator in the Will and the execution by the Testator alone are



proved. On the other hand, the attestation of the Will by both the witnesses in the presence of the Testator will also have to be proved and for which purpose, as per mandatory requirement of Section 68 of the Evidence Act, at least one of the attesting witnesses has to be examined. Section 68 which is extracted hereunder:

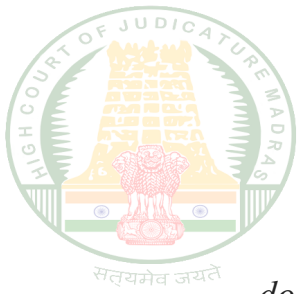
68. Proof of execution of document required by law to be attested-

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:

[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.]

15. In this instant case, it is seen that there are no attesting witnesses available for examination. So in a situation where no attesting witnesses can be found, as in the present case, then resort can be had to establish the handwriting/ signature of the attesting witness in the Will, in accordance with Section 69 of the Evidence Act.

15.1. Section 69 of the Evidence Act reads thus:



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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.

16.The judgment of the Hon'ble Supreme Court in the case of **Ramesh Chand (D) through LRs vs. Suresh Chand and another** reported in **2025 INSC 1059** is of relevance on this point. The relevant paragraph of the said Judgement is extracted hereunder:

“27.....There is not an iota of discussion about the validity of the Will as contemplated under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 and yet, the validity of the Will has been upheld. This is contrary to law. Even the High Court, while evaluating the validity of the Will, has gone on a different tangent and has erroneously held that the requirement of examining the attesting witnesses springs into action only in cases of disputes between legal heirs. Such an observation is quite contrary to law, for Section 68 of the Evidence Act makes it mandatory to examine at least one of the attesting witnesses of the Will....”

17.From the above, we find that when the attesting witness is not available, as in the instant case, then as per the mandate of Section 69, the handwriting of atleast one of the attesting witnesses and the signature of the executant (Testator) has to be proved as being that of the Testator or the



attesting witnesses.

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18. Therefore from the above, it is seen that even if the execution of the Will by the Testator is not in dispute, still, as per the requirements of Section 63 of the Indian Succession Act, 1925 (Succession Act) and Section 68 of the Evidence Act, the examination of at least one of the attesting witnesses or proving his signature is a mandatory requirement and the same cannot be dispensed with.

19. Now, in the backdrop of the legal propositions and the law laid down by the Hon'ble Supreme Court as extracted above, in the instant case, we find that though the signature of the Testator on Ex.P1, its execution, and registration have been proved, as is evident from the evidence of PW1 and PW2, and these aspects have not been dislodged in the cross-examination, still, non-examination of the attesting witnesses and not proving the handwriting/ signature of the attesting witnesses on the Will is fatal to the case of the plaintiffs. Though PW2 speaks about the Testator affixing his signature in his presence in Ex.P1 and identifies the signature of the Testator in Ex.P1, there is no specific identification of the two attesting witnesses by him. Further, the names of the attesting witnesses are not spoken to by PW2. That apart, neither PW2 nor PW1, in express terms, identify the handwriting and signature of the attesting witnesses to the Will Ex.P1.

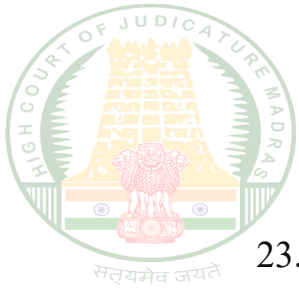


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20. Therefore, in a case of this nature, where, though the signature and signing of the Will by the Testator have been established, non-examination of the attesting witnesses as mandated under Section 68 of the Evidence Act or, in their absence, not proving the handwriting/signature of at least one of the attesting witnesses in the Will as mandated under Section 69 will lead to the Will not being proved in the manner known to law. Therefore, we find that, despite establishing the signature and execution by the Testator, since the plaintiffs have failed to establish the signature of the attesting witnesses in the Will, they have failed to comply with the requirements of Section 63(c) of the Succession Act, and Sections 68 and 69 of the Evidence Act, which are mandatory requirements that have to be strictly complied with.

21. In view of the above findings, we find that the Judgments relied upon by the Learned Counsel for the appellants do not address the issue on hand which we have discussed above, and hence, the same does not support the contentions of the plaintiffs.

22. Therefore, we concur with the findings of the Learned Single Judge in this regard, that the Will Ex.P1 has not been proved in the manner known to law, and hence, the Will, Ex.P1 cannot be said to be a valid Will capable of being granted Letters of Administration under law.



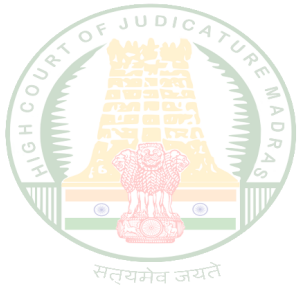
23. For these reasons, we find no infirmity in the order of the Learned Single Judge, and hence, we confirm the same. In view of the same, this Original Side Appeal is dismissed.

23.1. In the facts and circumstances of this case, the parties are directed to bear their own costs.

(P.V.,J.) (GK.M.,J.)
28-09-2026

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

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**P. VELMURUGAN, J.
AND
GK. MUTHUKUMAAR, J.**

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