REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).5901-5902 OF 2009

GANESAN (D) THROUGH LRS. ...APPELLANT(S)

VERSUS

KALANJIAM AND OTHERS ...RESPONDENT(S)

O R D E R

The appellant filed a suit claiming share in the suit properties asserting them to be joint family properties. The Trial Court held that the suit property was the self-acquired property of the deceased who died intestate and genuineness of the Will had not been established in accordance with the law, entitling the appellant to 1/5th share. The appeal of the defendant was allowed holding that the signature of the testator was not in dispute and the testator was of sound mind. The Will was executed in accordance with Section 63 (c) of the Indian Succession Act, 1925 (hereinafter called "the Act") and proved by the attesting witnesses DW 3 and DW 4. The second appeal by the appellant was dismissed.

2. Section 63 (C) of the Indian Succession Act, 1925 reads as follows :

"**63 (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."

3. Learned counsel for the appellant submitted that the Will was not signed by the testator in presence of the two attesting witnesses. Neither had the attesting witnesses signed together in presence of the testator. Therefore, the genuineness of the Will cannot be said to have been established in accordance with the provisions of Section 63 (c) of the Indian Succession Act, 1925.

4. Learned counsel for the defendant contended that the attesting witnesses had received from the testator a personal acknowledgement of his signature on the Will. The Will was duly registered and the attesting witnesses had signed simultaneously in presence of the Sub-Registrar after the testator had signed.

5. The appeals raise a pure question of law with regard to the interpretation of Section 63 (c) of the Act. The signature of the testator on the will is undisputed. Section 63 (c) of the Succession Act requires an acknowledgement of execution by the testator followed by the

attestation of the Will in his presence. The provision gives certain alternatives and it is sufficient if conformity to one of the alternatives is proved. The acknowledgement may assume the form of express words or conduct or both, provided they unequivocally prove an acknowledgement on part of the testator. Where a testator asks a person to attest his Will, it is a reasonable inference that he was admitting that the Will had been executed by him. There is no express prescription in the statute that the testator must necessarily sign the will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the will simultaneously at the same time in presence of each other and the testator. Both the attesting witnesses deposed that the testator came to them individually with his own signed Will, read it out to them after which they attested the Will.

6. In ***H. Venkatachala Iyengar vs. B.N. Thimmajamma and others,*** AIR 1959 SC 443, it was observed :-

> "……. 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."

7. In ***Pachigolla Venkatarao and others vs. Palepu Venkateswararao and others,*** AIR 1956 Andhra 1, it was observed as follows :-

> "There is nothing wrong, as was thought by the learned Subordinate Judge, for a testator to get the attestation of witness after acknowledging before them that he had executed and signed the Will. It is not always necessary that the attesting witness should actually see the testator signing the Will. Even an acknowledgement by him would be sufficient."

8. The appeals lack merit and are dismissed.

.....J.
(Ashok Bhushan)

.....J.
(Navin Sinha)

New Delhi,
July 11, 2019.

ITEM NO.110 COURT NO.12 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5901-5902/2009

GANESAN (D) THR LRS. Appellant(s)

VERSUS

KALANJIAM & ORS. Respondent(s)

Date : 11-07-2019 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. S. Mahendran, AOR

For Respondent(s) Mr. K. K. Mani, AOR
Ms. T. Archana, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed reportable order.

Pending application, if any, stands disposed of.

(MEENAKSHI KOHLI) (RENU KAPOOR)
COURT MASTER COURT MASTER

[Signed reportable order is placed on the file]