



A.S.(MD)Nos.176 and 177 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.08.2023

PRONOUNCED ON:08.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)Nos.176 and 177 of 2015

and

M.P.(MD)Nos.1 and 1 of 2015

A.S.(MD)No.176 of 2015:

VE.Arunachalam : Appellant/7th Defendant

Vs.

1.M.Mookayee(died)

(Memo presented in Court and recorded
as R.1 died and R.2 to R.9 who were already
on record are recorded as LR's of
the deceased R.1, vide order dated
08.08.2019)

2.M.Prema

3.K.Muthuramalingam @ Muthu

4.K.Parimala

: Respondents 1 to 4/Plaintiffs

5.M.Dharmalingam

6.K.Anandhavalli

7.Ashokan

8.Meena

9.Saranya



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10.Nagarajan

: Respondents 5 to 10 /
Defendants 1 to 6

PRAYER:- Appeal Suit filed under Order 41 Rule I C.P.C., r/w Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 26.03.2015 made in O.S.No.5 of 2009, on the file of the District Court, Sivagangai.

For Appellant : Mr.R.Sundar Srinivasan

For Respondents :Mr.V.S.V.Venkateswaran
for R.2 to R.4, R.6 to R.9
: No Appearance for R.5
: R.10 - exparte

A.S.(MD)No.177 of 2015:

M.Dharmalingam : Appellant/1st Defendant

Vs.

1.M.Mookayee(died)

(Memo presented in Court and recorded as R.1 died and R.2 to R.9 who were already on record are recorded as LR's of the deceased R.1, vide order dated 08.08.2019)

2.M.Prema

3.K.Muthuramalingam @ Muthu

4.K.Parimala

: Respondents 1 to 4/Plaintiffs



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5.K.Anandhavalli
6.Ashokan
7.Meena
8.Saranya
9.Nagarajan
10.Ve.Arunachalam

: Respondents 5 to 10/
Defendants 2 to 7

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 26.03.2015 made in O.S.No.5 of 2009, on the file of the Principal District Court, Sivagangai.

For Appellant : Mr.H.Lakshmi Shankar
For Respondents : Mr.R.Sundar Srinivasan
for R.10
: Mr.V.S.V.Venkateswaran
for R.2 to R.8

: No Appearance for R.9

COMMON JUDGMENT

These Appeal Suits are directed against the judgment and decree passed in O.S.No.5 of 2009, dated 26.03.2015, on the file of the District Court, Sivagangai.



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2. The relationship not in dispute are that the first plaintiff Mookayee is the wife of one Mariyappa Pillai, that the third plaintiff – Muthuramalingam @ Muthu and the first defendant – Dharmalingam are the sons and the second plaintiff – Prema, fourth plaintiff – Parimala, second defendant – Anandhavalli and the deceased Nagarathinam are the daughters of the first plaintiff and Mariyappa Pillai and that the third defendant is the husband and the defendants 4 and 5 are the daughters of the deceased Nagarathinam. It is not in dispute that the suit property was owned by the deceased Mariyappa Pillai.

3. The case of the plaintiffs is that the said Mariyappa Pillai died on 12.06.1995 leaving behind the plaintiffs, the defendants 1 and 2 and the said Nagarathinam as his legal heirs, due to kidney failure and coma stage and therefore, the plaintiffs and the defendants 1 and 2 are entitled to get 1/7th share each and the defendants 3 to 5 are jointly entitled to get 1/7th share in the suit property, that after the death of the said Mariyappa Pillai, the plaintiffs 1 and 3 had been residing in the suit property, that the first defendant has not taken care of the first plaintiff and that since the attitude of the first defendant has become hostile, the plaintiffs have invited the first defendant for amicable partition, for which the first



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defendant has given evasive reply, that since the first defendant was attempting to sell the suit property secretly in favour of the sixth defendant and to demolish the existing old building in the suit property, the first plaintiff was forced to lodge a police complaint on 17.12.2008, that the plaintiffs came to know that the first defendant has filed a caveat and wherein he has taken a stand that he has become the owner of the suit property under a Will dated 05.06.1995 said to have been executed by the said Mariyappa Pillai, that the said Mariyappa Pillai has neither executed any such Will nor had intention to give the suit property exclusively to the first defendant excluding his aged, helpless wife and his younger son and other daughters, that the alleged Will must be created by the first defendant by illegal means and it is not genuine and must be a forged one and that since the first defendant has taken hurried arrangements to sell the suit property to the defendants 6 and 7, the plaintiffs were constrained to file the above suit for partition and allotment of 4/7 shares to the plaintiffs.

4. The defence of the first defendant is that his father Mariyappa Pillai executed the Will dated 05.06.1995 in a sound and disposing state of mind, that his father was aged and affected with kidney problem and



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seems to have thought it fit to execute the Will in favour of the first defendant, as the first defendant celebrated the marriage of his two daughters at his expenses and also supporting the family, that after the demise of the said Mariyappa Pillai, the Will came into force and the first defendant has become the absolute owner of the suit property, that the first defendant is always ready to take care of his mother and brother, but they are in the clutches of the second plaintiff and the suit was filed only at the instance of the second plaintiff, that a third party has already purchased the suit property and he is the absolute owner of the suit property and that therefore, the plaintiffs are not entitled to claim partition and as such, the suit is liable to be dismissed.

5. It is the specific case of the first defendant that he has executed a Power of Attorney deed in favour of one Shanthi, wife of the sixth defendant and that the said Shanthi as Power Agent of the first defendant has sold the suit property in favour of the seventh defendant, vide sale deed dated 11.03.2009.

6. The seventh defendant has filed a written statement raising more pleas than that of the first defendant in support of the first defendant.



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7. The learned trial Judge, upon considering the above pleadings, has framed the following issues:

- (1) Whether the Will dated 05.06.1995 is valid and true?
- (2) Whether the plaintiffs No.1 & 3 are entitled for maintenance as per the provisions of the Will against the defendant No.1?
- (3) Whether the court fee paid is correct?
- (4) Whether the suit is barred by limitation?
- (5) Whether the plaintiffs are entitled to 4/7th share in the schedule property?
- (6) To what other relief, the plaintiffs are entitled to?

8. During trial, the plaintiffs have examined the second plaintiff – Prema as P.W.1 and exhibited 15 documents as Exs.A.1 to A.15. The first defendant has examined himself as D.W.1 and examined two other witnesses Thiru.Sakthivel and Thiru.Govindarajan as D.W.2 and D.W.3 respectively and exhibited 25 documents as Exs.B.1 to B.25. The defendants 2 and 6 had remained exparte. The defendants 3 to 5 adduced neither oral nor documentary evidence. The seventh defendant has examined himself as D.W.4 and exhibited three documents as Exs.B.26



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to B.28. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing both sides, has passed the impugned judgment and decree dated 26.03.2015, holding that the first defendant has failed to prove the Will in accordance with law and Mariyappa Pillai had died intestate, has granted the preliminary decree as prayed for and thereby declaring that the plaintiffs are entitled to 4/7th shares in the suit property. Aggreived by the said judgment and decree, the first defendant has preferred an appeal in A.S.(MD)No.177 of 2015 and the seventh defendant has preferred another appeal in A.S.(MD)No.176 of 2015.

9. Pending appeal, the first plaintiff had died and since her representatives are already on record, no steps were taken.

10. The learned Counsel for the appellant in A.S.(MD)No.177 of 2015 would submit that the first defendant – D.W.1 would say that since his father Mariyappa Pillai was not physically well, on his instructions he arranged an Advocate for preparing the Will and that aspect cannot be taken as an active participation or involvement of the beneficiary in the execution of the Will, that the evidence of D.W.1 to D.W.3 would clearly show that the Will was prepared based on the instructions of the testator



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Mariyappa Pillai and the first defendant had no active role to play in that, that though D.W.1 was cross-examined at length, nothing was elicited to invalidate the Will or prove it to be a forged one or to prove the lack of mental capacity of the father, that D.W.2 – one of the attestors to the Will would clearly depose about the execution of the Will by Mariyappa Pillai and also the fact that he was in good state of mind and D.W.3 – Advocate / scribe was brought into the house of the first defendant as instructed by Mariyappa Pillai to prepare the Will and the Will was prepared by the Advocate and the same was executed and attested on the next day, that D.W.3 / scribe would also clearly depose about his visit to the house of the first defendant, where he was instructed by Mariyappa Pillai to prepare the Will and his preparation of the Will and the execution of the same on 05.06.1995, that the evidence of D.W.2 and D.W.3 would prove the due execution of the Will and the mental capacity of the testator, that no suspicious circumstances are brought into existence from the evidence available on record about the execution of the Will and mental capacity of the testator, that the plaintiffs did not let in any evidence to rebut the evidence of D.W.2 and D.W.3 to show that the signatures in the Will are forged and he was in coma stage at the relevant point of time, that the discrepancies pointed out in the evidence of D.W.1 to D.W.3 who were



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examined in the year 2013, nearly 18 years after the execution of the Will, are quite natural due to the lapse of time and fading memory and that the second plaintiff is fuelling the litigations and the other plaintiffs and defendants are mere pawns.

11. The learned Counsel for the appellant/7th defendant in A.S. (MD)No.176 of 2015 would submit that the trial Court ought to have found that it has been established that the said Mariyappa Pillai has left behind him a Will dated 05.06.1995 and the said Will has been proved in accordance with law and the circumstances for execution of the said Will has also been made out and on that basis, should have dismissed the suit as the plaintiffs are not entitled to any share in the suit property, that the trial Court has attached unwarranted importance to the minor discrepancies in the evidence on the side of the appellant, that the first defendant has proved that he alone had taken care of his father Mariyappa Pillai when he was ailing and had spent huge amounts for his treatment, that the trial Court has failed to consider that the suit property has been purchased by the appellant from the first defendant, who is the ostensible owner, that the trial Court ought to have found that the seventh defendant is the bonafide purchaser for value and that the plaintiffs are



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legal heirs of the testator have been completely disinherited, that there is absolutely no reason for Mariyappa Pillai to exclude his wife and children to get the property and to give the only property in favour of the first defendant, that the propounder has taken a leading part in giving instructions for the preparation and in procuring its execution, that the attester D.W.2 did not know whether the testator had any disease and kidney failure, that though the Will was allegedly executed on 05.06.1995, the same was concealed for more than 13 ½ years and after a long gap, the first defendant filed a caveat petition against the plaintiffs on 19.01.2009 and that therefore, the trial Court has rightly granted the preliminary decree and there is nothing to intervene and the appeals are liable to be dismissed.

13. The points for determination are:

(1) Whether the learned trial Judge erred in rendering a finding that the first defendant has failed to prove the Will dated 05.06.1995, despite proving the same through the evidence of an attester - D.W.2, scribe – D.W.3 and the contradictions / discrepancies pointed out in the evidence of witnesses are quite natural due to the lapse of time and fading memory?



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(2) Whether the Will dated 05.06.1995 alleged to have been executed in favour of the first defendant by his father Mariyappa Pillai is true, valid and is proved in accordance with law?

(3) Whether the impugned judgment and decree dated 26.03.2015 passed O.S.No.5 of 2009 is liable to be interfered with?

(4) To what reliefs, the parties are entitled?

Points 1 to 4:

14. It is the specific case of the plaintiffs that since Mariyappa Pillai had died intestate, they are entitled to get 1/7th share and subsequent to the demise of their mother, they are entitled to get 1/6th share each, totally 1/2 share in the suit properties. The main defence of the first defendant is that his father Mariyappa Pillai while in a sound disposing state of mind, has executed a Will on 05.06.1995, bequeathing the suit property and after the demise of Mariyappa Pillai, he has become the absolute owner of the suit property and that subsequently he sold the suit property in favour of the seventh defendant through his Power Agent and that the seventh defendant has been in possession and enjoyment of the suit property as its absolute owner.



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15. As rightly contended by the learned Counsel on either side, in case if the first defendant is able to prove the Will allegedly executed by his father, then the plaintiffs are not entitled to claim any partition in respect of the suit property, but on the other hand, if the first defendant fails to prove the Will in accordance with law, then the plaintiffs and the defendants 1 and 2 and the legal representatives of the deceased Nagarathinam are all entitled to get shares in the suit properties.

16. Let us consider the genuineness and validity of the Will. Before entering into factual aspects, it is time to consider the legal position with regard to the Wills.

17. The learned Counsel for the appellant/first defendant has relied on the following decisions:

1. 2022 SCC OnLine SC 381 : (Swarnalatha and Others Vs. Kalavathy and Others):

“25. The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled



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and it needs no reiteration. It is enough if we make a reference to one of the recent decisions of this Court in [Kavita Kanwar vs. Mrs. Pamela Mehta and Ors.](#)(AIR 2020 SC 544) where this Court referred to almost all previous decisions right from [H. Venkatachala Iyengar vs. B.N. Thimmajamma](#)(AIR 1959 SC 443). But cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned. This can be seen from the fact that almost all previous decisions of this Court referred to in [Kavita Kanwar](#) (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply [Article 14](#) to dispositions under a Will.”

2. AIR 2005 SC 780 (Sridevi and Others Vs. Jayaraja Shetty and

Others):

“11. It is well settled proposition of law that mode of proving the will does not differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by [Section 63](#) of the Indian



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Succession Act, 1925. The onus to prove the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances have to be judged in the facts and circumstances of each particular case.

14. The propounder of the will has to show that the will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. DW-2, the scribe, in his testimony has categorically stated that the will was scribed by him at the dictation of the testator. The two attesting witnesses have



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deposed that the testator had signed the will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the will in their presence and they had signed the will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been show that they were in any way interested in the propounders of the will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the Scribe (DW-2) and the two attesting witnesses (DWs. 3 & 4) is fully corroborated by the statement of hand-writing expert (DW-5). The will runs into 6 pages. The testator had signed each of the 6 pages. Hand-writing expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the will are that of the testator. In our view, the will had been duly executed.”

3. AIR 2008 SC 300 (Savithri and Others Vs. Karthyayani Amma and Others):

“14. The legal requirements in terms of the said provisions are now well- settled. A Will like any other document is to be proved in terms of the provisions of the [Indian Succession Act](#) and the [Indian Evidence Act](#). The



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onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.

.....

17. Therein, this court also took into consideration the decision of this Court in H. Venkatachala Iyengar (supra), wherein the following circumstances were held to be relevant for determination of the existence of the suspicious circumstances :

- (i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will;*
- (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;*



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(iii) *Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.*

18. We do not find in the fact situation obtaining herein that any such suspicious circumstance was existing. We are not unmindful of the fact that the court must satisfy its conscience before its genuineness is accepted. But what is necessary therefor, is a rational approach.

19. Deprivation of a due share by the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. For the said purpose, as noticed hereinbefore, the background facts should also be taken into consideration. The son was not meeting his father. He had not been attending to him. He was not even meeting the expenses for his treatment from 1959, when he lost his job till his death in 1978. The testator was living with his sister and her children. If in that situation, if he executed a Will in their favour, no exception thereto can be taken. Even then, something was left for the appellant.

.....

22. There is no dispute in regard to the proposition that the conscience of the court must be satisfied. In the instant case, the High Court has considered the relevant factors. It has been found that the Will was the product of the free will. He had executed the Will after knowing and understanding the contents thereof.”



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4. (2002)2 SCC 85 (*Madhukar D.Shende Vs. Tarabai Aba*

Shedage):

“8. The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the Jury in R v. Hodge 1838, 2 Lewis CC 227 may be apposite to some extent "The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected hole; and the more



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ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete." The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict positive or negative.

9. It is well-settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will



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being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance.”

18. The learned Counsel for the plaintiffs have relied on the following decisions in support of their contentions:

1. 2018(6) CTC 188 (K.R.Subramanian Vs. C.R.Susila):

“10. When a person is suffering various ailments definitely he/she cannot be able to understand the nature of things. Since the testatrix Tmt. K. Vijayalakshmi was suffering from ulcer, forefoot Chronic, Kidney disease, Coronary Artery Disease, Hypertension etc., it cannot be concluded that she was sound state of mind at the time of execution of the Will. In this regard the judgment of mine in K. Iyeswaran and others v. G. Iyeswarialakshmi and another reported in [MANU/TN/0017/2017 : 2017-1-L.W. 268] is as



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follows: "17. In this context, it is useful to refer Section 12 of Indian Contract Act, 1872, which reads as follows: "What is a sound mind for the purposes of contracting: A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind." From the above section, it is clear that to infer the sound mind of the person, there must be an evidence to show his/her capability of understanding the nature of things and able to make rational judgment about his/her interest."

12. In Shashi Kumar Banerjee v. Subodh Kumar Banerjee, [MANU/SC/0278/1963 : AIR 1964 SC 529] the Supreme Court stated that the onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Even



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where there are no pleas of undue influence, fraud and coercion or such circumstances giving rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair or there might be other indications in the Will to show that the testator's mind was not free and in such a case, the Court would naturally expect that all legitimate suspicion is removed by the propounder before the document is accepted as the last Will of the testator.

18. The Court sitting in the arm chair of the testatrix after carefully analysing the entire facts particularly the serious ailments suffered by the testatrix, in the manner in which the Will came to be executed is not convinced itself about the genuineness of the Will. As the suspicious circumstances are attached with the Will, the petitioner is not entitled for grant of Letters of Administration. Therefore, this court has come to the conclusion that Will is not true, valid and proved in the manner known to law. The point is answered accordingly.”

2. 2020(4) CTC 429 = AIR 2020 SC 2614 (Kavita Kanwar Vs.

Pamela Mehta and Others):

“15.2. However, thereafter, the Trial Court took into account various circumstances which appeared to be suspicious. In the



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first place, the Trial Court referred to the decisions in [H. Venkatachala Iyengar v. B.N. Thimmajamma](#): AIR 1959 SC 443, [Indu Bala Bose v. Manindra Chandra Bose](#): (1982) 1 SCC 20 and [Surendra Pal v. Dr. Saraswati Arora](#): (1974) 2 SCC 600 and observed that if propounder of the Will takes an active part in the execution of the Will and receives substantial benefit under it, then such a circumstance is generally treated as suspicious one. As regards the facts of the case at hand, the Trial Court found that the appellant played an active role in execution of the Will in question and at the same time, she was the major beneficiary thereunder where she was not only given the first floor but also the terrace rights and all other portions of the property in question.

17.1 that as per settled law, mere proof of signatures on the Will was not sufficient to prove its due execution; and it was the duty of the party seeking probate to satisfy the conscience of the Court as regards due execution of the Will by the testator and for that matter, the Court can probe deeper into the matter to satisfy its conscience that the testator/testatrix had duly executed the Will after understanding its contents. The High Court, thus formulated the point for consideration as under:-



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“28. The question for consideration is whether the evidence led by the appellant i.e., propounder satisfies the conscience of the court that the Will in question was duly executed.”

27. As noticed, there has not been any question on the testamentary capacity and soundness of mind of the testatrix; and her handwriting as also signatures on the Will in question are also beyond controversy. However, the Trial Court and the High Court have concurrently found some such suspicious circumstances which are of material bearing and which have remained unexplained. Put in a nutshell, the unexplained suspicious circumstances so found are: (a) that appellant, the major beneficiary, played an active role in execution of the Will in question and attempted to conceal this fact before the Court; (b) that there had not been any plausible reason for non-inclusion of the only son and other daughter of the testatrix in the process of execution of the Will and for excluding them from the major part of the estate in question; (c) that there was no clarity about the construction supposed to be carried out by the appellant; (d) that the manner of writing and execution of the Will with technical and legal words was highly doubtful; and (e) that the attesting witnesses were unreliable and there were contradictions in the statements of the witnesses. Because of these major circumstances coupled with various supplemental factors, the Trial Court and the High Court felt dissatisfied on the root question as to whether the testatrix duly executed the



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Will in question after understanding its contents.

28. *There is no doubt that any of the factors taken into account by the Trial Court and the High Court, by itself and standing alone, cannot operate against the validity of the propounded Will. That is to say that, the Will in question cannot be viewed with suspicion only because the appellant had played an active role in execution thereof though she is the major beneficiary; or only because the respondents were not included in the process of execution of the Will; or only because of unequal distribution of assets; or only because there is want of clarity about the construction to be carried out by the appellant; or only because one of the attesting witnesses being acquaintance of the appellant; or only because there is no evidence as to who drafted the printed part of the Will and the note for writing the opening and concluding passages by the testatrix in her own hand; or only because there is some discrepancy in the oral evidence led by the appellant; or only because of any other factor taken into account by the Courts or relied upon by the respondents. The relevant consideration would be about the quality and nature of each of these factors and then, the cumulative effect and impact of all of them upon making of the Will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all the factors together, conscience of the Court is not satisfied that the Will in question truly represents the last wish and propositions of the*



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testator, the Will cannot get the approval of the Court; and, other way round, if on a holistic view of the matter, the Court feels satisfied that the document propounded as Will indeed signifies the last free wish and desire of the testator and is duly executed in accordance with law, the Will shall not be disapproved merely for one doubtful circumstance here or another factor there.”

19. At this juncture, it is also necessary to refer the judgment of the Hon'ble Supreme Court in ***M.R.Ramesh (Dead) by L.Rs Vs. K.M.Veeraje Urs (Dead) by L.Rs and others*** reported in **2013(7) SCC 490**, wherein it has been held as follows:

“1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the ease of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since [section 63](#) of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by [section 63](#) of the Evidence Act, 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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3. *Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.*

4. *Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion*



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of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution' of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

20. It is settled law that a Will has to be proved in terms of Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act. It is also settled law that the person who claims any benefit under



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the Will (propounder) has to prove and the onus is on the propounder of the Will to satisfy the conscience of the Court that it is the last Will of a free and capable testator and that he has to remove the suspicious circumstances surrounding the Will.

21. The Hon'ble Supreme Court, in Kavita Kanwar's case above referred, while narrating the submissions made by the learned Counsel with regard to the expression “suspicion” has held that suspicion permits the Court to realistically imagine any doubtful or distrustful fact of the cases; and in testamentary jurisdiction, the Courts are permitted to ferret out doubtful circumstances, which cannot be described as conjecture or surmise.

22. Bearing the above legal position in mind, let us proceed with the case on hand. Admittedly, the said Mariyappa Pillai died on 12.06.1995. According to the first defendant, the Will was allegedly executed on 05.06.1995. It is the specific case of the plaintiffs that Mariyappa Pillai was suffering from Kidney failure and died while he was in coma. The first defendant has specifically admitted that his father Mariyappa Pillai was suffering from kidney failure and was taking



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treatment. It is admitted by both parties that the said Mariyappa Pillai, at the time of his death, was aged about 85 years. D.W.1 would admit that his father had died only due to the kidney failure. In his evidence, he would further admit that his father, one week prior to his death, was in his house at Karaikudi and was taking treatment. He would further say that while his father was taking treatment in his house, the Will dated 05.06.1995 was executed. But during the subsequent cross-examination, D.W.1 would say that his father was in the suit property at Kanadukathan till his death and the relevant portion portion is extracted hereunder:

“என் தகப்பனார் சாகும்வரையில் கானாடுகாத்தாவில் தாவாச் சொத்தில் றேந்து றேந்து ுபானார்.””

23. It is not in dispute that Mariyappa Pillai's 80th birthday as Sathabishekam was celebrated by his family. The first defendant, though admitted that his father's 80th birthday was celebrated, to a specific question put to him during his cross-examination as to whether an invitation for Sathabishekam was printed, he would say that they were not in cordial relationship and he was not aware as to whether invitation was printed or not. Even according to the first defendant, there was a strained relationship between him and his father, while his father was at



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24. Though the first defendant has all along been saying that his father along with his mother and brother were residing in the suit property, he has come out with a specific stand that he was looking after his father 20 or 25 days, one week prior to his death and at that time only, the alleged Will came to be executed. Admittedly, the first defendant has not produced any medical records to show that his father was given medical treatment during his stay in the house of the first defendant. The first defendant in his evidence would say that since his father had expressed apprehension that he can breathe his last at any time and requested him to drop him in the suit property, he had taken his father on the night of 05.06.1995, the date on which, the alleged Will was executed and left him in the suit property.

25. Considering the above, as rightly contended by the learned Counsel for the plaintiffs, a very serious suspicion has arisen. The first defendant has not stated anything as to when his strained relationship with his father got normalised, why he had taken his father to his house only for 20 to 25 days and that while the treatment was in progress, why



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he had sent his father to the suit property on that night itself.

26. It is admitted by both the parties that the third plaintiff – brother of the first defendant is not alright, physically and mentally. It is also not in dispute that the third plaintiff has been suffering from epilepsy and he is not in a position to do his work by himself. Admittedly, the suit property is the only property left by the deceased Mariyappa Pillai. According to the first defendant, the entire suit property was given to him as per the Will, by excluding the other legal heirs of the deceased Mariyappa Pillai. As already pointed out, he had a wife, two daughters and two sons and the legal heirs of the deceased daughter. In the written statement, the first defendant has taken a stand that since the daughters of Mariyappa Pillai have been already provided for and the first defendant had spent for the marriages of two of his sisters, his father has executed the Will in his favour. During trial, he has taken another stand that his father in the Will had directed him to take care of his wife and son (the plaintiffs 1 and 3) and with that obligation, the suit property was given to him.

27. But D.W.1, in his cross-examination would say that his father



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was not having any hatred against his mother or brother at the time of execution of the Will. He would also admit that except the suit property, their family is not having any other property. But in subsequent cross-examination, he would say that his father at the time of his death, was having resentment with his mother, not with his brother, that his brother had no bad habits and he is a selfless good person. He would say that his father has not informed him, on what ground he was having resentment with his mother. D.W.1 would say that his father believing that he would take care of his mother and brother, had given the suit property by executing the Will. But he would add that his father has imposed a duty on him in the Will itself to take care of his mother and brother and the relevant portion is extracted hereunder:

“ எனது தகப்பனார் எனக்கு எழுதி வைத்த உயிலிஸ்ய என் தாயாருக்கும் என் தம்பிக்கும் அவர்களது பராமரிப்பிற்காக வழிவகை செய்துள்ளார். என் தகப்பனார் எனக்கு எழுதி வைத்த உயிலிஸ்ய தாவாச்சொத்தினை நான் அடைந்து கொண்டு என் சுகாதாரருக்கும் என் தாயாருக்கும் அதனை கொண்டு பராமரித்து உதவி செய்யு வண்டும் என்று குறிப்பிட்டுள்ளார். என் தகப்பனார் தாவாச்சொத்தினை எனக்கு முழுமையாக கொடுத்துவிட்டு என் தாயாரையும் என் தம்பியையும் பராமரிக்கு வண்டும் என்ற கடமையை என்



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உரிமையுடன் கேணத்துள்ளார்.”

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28. But, it is pertinent to note that the Will under Ex.B.25 does not contain any such recital or condition or duty imposed on the first defendant. No doubt, the Hon'ble Supreme Court in ***Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee and Others*** reported in ***AIR 1964 SC 529***, has observed that the suspicious circumstances may be as to genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indication in the will to show that the testator's mind was not free and in such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator.

29. The Hon'ble Supreme Court in ***Ram Piari Vs. Bhagwant and Others*** reported in ***AIR 1990 SC 1742*** has observed that disinheritance among heirs of equal degrees and without providing any reason for exclusion of daughter also amounts to a suspicious circumstance. The



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Hon'ble Supreme Court in Kavita Kanwar case referred above, considering the various decisions including the decision referred in the present paragraph has held that an unfair disposition of property or an unjust exclusion of the legal heirs, particularly the dependants, is regarded as a suspicious circumstance and the appellant therein has failed to assign even a wee bit reason for which the testatrix would have thought it proper to leave her widowed daughter in the heap of uncertainty as emanating from the Will in question.

30. The above decision is squarely applicable to the case on hand. As already pointed out, as per Ex.B.25 -Will, his wife aged about 75 years at that time and a son who was not alright physically and mentally are not given anything. The only explanation offered by the first defendant is that his father has imposed a condition or duty on him to take care of his mother and brother. But as already pointed out, such a recital does not find place in the Will and as such, this Court has no hesitation to hold that the first defendant has miserably failed to offer any reason or explanation for excluding the aged wife and the son with ill-health.



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31. The first defendant, in his evidence, would say that at the time of executing the Will, his father was with him and was taking treatment and that his mother who was in the suit property used to visit the house of the first defendant for seeing his father. In cross-examination D.W.1 would say in clear terms that neither his mother nor his brother nor his sister was present at the time of execution of the Will. But in subsequent cross-examination, he would say that at the time of executing the Will except the persons who signed in the Will, himself, the first defendant, his wife and mother were present and the relevant portion is extracted hereunder:

“ ுமற்கண்டவாறு என் பெயரில் உயில் தயார் செய்யும்பாது
என் தாயாரா தம்பியா சுகாதாயா லேலை. ுமற்படி
உயில் தயார் செய்யும்பாது உயிலில் கையொப்பம் செய்தவர்களை
தவிர நான்இ என் மனைவிஇ என் தாயார் ஆகியார் நேந்தாம்.”

32. D.W.2 attesor in his chief examination itself would say that when he visited the house of the first defendant, he had seen Mariyappa Pillai along with his wife. In cross-examination, he would say that when he visited the next day to the house of Mariyappa Pillai, the first defendant and his wife and their family members were not available and



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the relevant portion is extracted hereunder:

“..... அதன் பின்னர் வழக்கறிஞர் உயிலை தயார் செய்து எடுத்து வந்தார். அப்பாது தர்மலிங்கம் வீட்டில் லேலை. தர்மலிங்கம் மனைவிஇ லேலை. அவர்கள் குடும்பத்தார்கள் யாரும் லேலை. அவர்கள் எட்கு ுபானார்கள் என்று எனக்குத் தெரியாது. மாரியப்ப பிள்ளை மனைவி உயிலை படித்துப் பார்க்கவில்லை.”

33. D.W.2 would also say “வழக்கறிஞர்இ தர்மலிங்கம் வீட்டில் சுமார் 1 மணி ுநரம் றேந்தார். அந்த சமயத்தில் மாரியப்ப பிள்ளையும் அவர் மனைவி மட்டும்தான் அட்கு றேந்தார்கள்.”” He would again reiterate, “ உயில் தயார் செய்யப்பட்ட சந்தர்ப்பத்தில் அவரது மனைவிஇ வழக்கறிஞர்இ நான் மற்றும் தனி:ராஜ் றேந்தாம்.”

34. D.W.3 – Advocate in cross-examination would say “ உயில் தயாராக றேப்பதாக கூறினன். தகவல் கொடுத்த அன்று நான்இ 2 சாட்சிகள்இ முத்தையாபிள்ளைஇ அவரது மனைவி ஆகியார்கள் றேந்தனர். நான் அவர் வீட்டுக்கு செல்லும்பாது மாரியப்பபிள்ளை (முத்தையா பிள்ளை)இ அவரது மனைவி ஆகியார் றேந்தனர். உயில் யாருக்காக தயார் செய்துனா அவருடைய குடும்பத்தார்கள் யாரும் அந்த டேத்தில் லேலை.”



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35. As rightly contended by the learned Counsel for the plaintiffs, considering the above evidence, there existed material contradictions between the evidence of D.W.1 and the evidence of D.W.2 and D.W.3 as to whether the first plaintiff – wife of Mariyappa Pillai was staying with Mariyappa Pillai in the house of the first defendant and was available at the time of giving instructions to prepare the Will and at the time of execution of the Will.

36. The first defendant in his evidence would say that since his father was not well at that time and as per his instruction, he arranged an Advocate for preparing and execution of the Will and according to him, he had brought two witnesses as directed by his father. In subsequent cross-examination, D.W.1 would admit that the Will attesting witnesses were known persons to him and his father. He would say that the two attesting witnesses to the Will are his friends and the relevant portion is extracted hereunder:

“நான் ுவலை பார்த்த வகையில் எனக்கு நேவரும் அறிமுகம். அந்த வகையில் என் நண்பர்கள்.”

D.W.2, in his chief examination affidavit would say that the deceased Mariyappa Pillai and his wife – first plaintiff were known to him and that



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the second attesting witness to the Will informed him that he was called by Mariyappa Pillai. In cross-examination, D.W.2 would say that the first defendant was not a known person and that while he was studying in Polytechnic, he approached Mariyappa Pillai for project work. D.W.2 would further say that he has not seen D.W.3-Advocate before the execution of the Will. D.W.2 would further say that the second attesting witness – Danush Raja was working with him and he alone had taken the second witness.

37. As already pointed out, D.W.2 in chief examination would say that he was approached by the second attesting witness as directed by the deceased Mariyappa Pillai. But in cross-examination, he would say that Mariyappa Pillai had sent his worker Sudhakar for inviting D.W.2 to their house. In subsequent cross-examination, D.W.2 would say that he met the first defendant for the first time prior to three years and came to know that he was the son of Mariyappa Pillai. D.W.3 would say that the deceased Mariyappa Pillai was not known to him, but he had acquaintance with D.W.2. D.W.3 would further say that he does not know about the first defendant.



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38. It is pertinent to note that D.W.2 in his evidence would say that since himself and Danush Raja were working under Mariyappa Pillai, they have subscribed their signatures as directed by him. As already pointed out, though the first defendant has stated that D.W.2 and Danush Raja were his friends, D.W.2 has disowned that version and deposed that he does not know the first defendant earlier or at the time of executing the Will.

39. D.W.1 in his evidence would say that D.W.3 – Advocate, after getting instructions from his father, has prepared the draft Will and gave it to the Will witnesses for typing the Will and only on that basis, the witnesses had brought the typed Will and the relevant portion is extracted hereunder:

“அந்த உயிலை தயார் செய்த வழக்கறிஞர் என் வீட்டிற்கு வந்து என் தகப்பனாரிடம் விபரங்கள் கூட்டுக்கொண்டு அதன் அடிப்படையில் உயில் வரைவு தயார் செய்தார். மூற்படி வழக்கறிஞர் கையால் வரைவினை தயார் செய்து அதனை சாட்சிகளிடம் கொடுத்து டைப் செய்து கொண்டு வரச்சொன்னார். அதன் அடிப்படையில் சாட்சிகள் டைப் செய்து கொண்டு வந்ததை கொண்டு நீத உயில் தயார்



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செய்யப்பட்டது. ஆவண்களை ஏதும் பார்க்காமல் என் தகப்பனார் வாய்மொழியாக கூறிய விபரங்களின் அடிப்படையில் உயிலுக்காக சொத்து விபரம் வழக்கறிஞரால் தயார் செய்யப்பட்டது.”

40. D.W.3 would say that Mariyappa Pillai has given some notes for preparing the draft, that Mariyappa Pillai has given written particulars with regard to the property and that the Will was typed in his office by his clerk and the relevant portion is extracted hereunder:

“மாரியப்பிள்ளை வரைவு தயார் செய்வதற்கு குறிப்புகள் கொடுத்து அனுப்பினார். சொத்துக்கள் சம்பந்தப்பட்ட குறிப்புகளை மாரியப்பிள்ளை எழுதிக்கொடுத்திருந்தார். சொத்துக்களை யார் யாருக்கு கொடுக்கப்படுவண்டும் என்பதை வாய்மொழியாக என்னிடம் கூறினார். மாரியப்பிள்ளை கொடுத்த குறிப்புகளையும் நான் தயார் செய்த வரைவையும் நான் வைத்துக்கொண்டேன்.”

41. As rightly contended by the learned Counsel for the plaintiffs, according to the first defendant, the witnesses and other persons came to his house in the morning itself and all the activities were completed in the afternoon. But D.W.2 in his cross-examination would say that as directed by D.W.3, he visited the house of Mariyappa Pillai by



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06.00p.m., on 05.06.1995 and that all the activities with regard to the execution of Will were completed between 06.30p.m., and 07.30p.m., on 05.06.1995. D.W.3, in his cross-examination, would say that he visited the house of Mariyappa Pillai by 08.00p.m., on 5th and in subsequent cross-examination, would say that the execution of the Will proceedings were started by 07.00p.m., on 5th and completed by 08.00p.m. It is the specific case of D.W.2 that as per the instructions of Mariyappa Pillai, he visited him at 07.00p.m., on 04.06.1995 and as per the instructions, he brought D.W.3 – Advocate on that day itself and again they went to the house of Mariyappa Pillai on 05.06.1995, the day on which the Will was executed. But in cross-examination, he would say that he had taken the Advocate to the house of Mariyappa Pillai between 06.00p.m., and 07.00p.m., on 03.06.1995.

42. As already pointed out, it is the specific case of the first defendant that he executed the Power of Attorney deed under Ex.B.24 in favour of the wife of the sixth defendant on 29.01.2009 and in pursuance of the same, the sale deed was executed in favour of the seventh defendant under Ex.B.26 on 11.03.2009. It is pertinent to note that Ex.B. 25 – Will through which the first defendant is claiming title over the



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property, was not at all referred either in Ex.B.24 – Power of Attorney deed or in Ex.B.26 – sale deed. Admittedly, the first defendant has not offered any valid reason or explanation for not whispering about the Will in the said documents. Moreover, as rightly contended by the learned Counsel for the plaintiffs, though the Will was allegedly executed in 1995, the first defendant for the first time, has mentioned about the Will only in the caveat laid under Exs.A.6 and A.7 on 19.01.2009, nearly after 14 years, since the execution of the Will. One other important aspect to be noted is that even according to the first defendant, he had taken active participation in the preparation as well as in the execution of the Will. As already pointed out, though D.W.2 and D.W.3 have deposed that the first defendant was not at all present either at the time of getting instructions from Mariyappa Pillai or at the time of executing the Will, D.W.1 has stated that he was very much available at that time.

43. In *Kavita Kanwar's case* above referred, the Hon'ble Apex Court has specifically observed that if the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory



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evidence. In the case on hand also, the first defendant is the only beneficiary under Ex.B.25 – Will. As already pointed out, even according to him, he had taken part in the execution of the Will, but offered no explanation.

44. At this juncture, it is necessary to refer the judgment of the Hon'ble Apex Court in ***Leela Rajagopal and Others Vs. Kamala Menon Cocharan and others*** reported in ***2014(15) SCC 570***, wherein the Hon'ble Apex Court summarised the principles that ultimately, the judicial verdict in relation to a Will and suspicious circumstances shall be on the basis of holistic view of the matter with consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature and the relevant paragraph is extracted hereunder:

“10. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features



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and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.”

45. In the present case also, there are lot of unexplained suspicious circumstances and to put it in nutshell:

(1) that the first defendant, the major beneficiary played an active role in the execution of the Will in question;

(2) that the Will was concealed for nearly 14 years and for the first time referred in the caveat laid by the first defendant in 2009;

(3) that no plausible reason has been shown for non-inclusion of the aged wife and unwell son by the testator in the Will in question;

(4) that the Will attesting witnesses, even according to the first defendant, are his friends and they are close with the propounder;



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(5) that no provisions for aged wife, unwell son and the other daughters were made by the testator in the Will and thereby excluding them;

(6) that no acceptable evidence to show that the testator was staying in the house of the first defendant at the relevant point of time and was taking treatment;

(7) that the attesting witness D.W.2 and scribe – D.W.3 are unreliable as there were material contradictions in the statement of the above witnesses;

(8) that the non-mentioning of the Will in question in Ex.B.24 – Power of Attorney deed and Ex.B.26 – sale deed.

Because of these major suspicious circumstances coupled with other factors above referred and the failure of the propounder to remove the suspicions surrounding the Will in question, this Court has no hesitation to hold that the first defendant has miserably failed to prove the Will in question and as such, the finding of the trial Court in this regard cannot be found fault with. Consequently, the trial Court has granted preliminary decree declaring that the wife, sons and the daughters of the deceased Mariyappa Pillai are entitled to get 1/7th share each. Since the



46. Admittedly, the seventh defendant is the purchaser *pendente lite*. Since the first defendant himself was not entitled to get the suit property through the Will canvassed by him, the seventh defendant being the purchaser from the first defendant, cannot claim any better right than that of the first defendant. It is settled law that any alienation pending suit is hit by the doctrine of *lis pendence* as contemplated under Section 52 of the Transfer of Property Act and as such, the same is subject to the result of the suit. Hence, the appeal preferred by the seventh defendant is also devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.



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47. In the result, both the Appeal Suits are dismissed and the preliminary decree is passed declaring that the plaintiffs 2 to 4 are entitled to get 1/2 share in the suit property. Consequently, the connected Miscellaneous Petitions are also dismissed. The parties are directed to bear their own costs.

08.12.2023

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. The District Court, Sivagangai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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08.12.2023