

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

RFA.No. 278 of 2006 ()

AGAINST THE ORDER/JUDGMENT IN OS 12/1997 of DISTRICT COURT,KOTTAYAM
DATED 25-03-2006

APPELLANT(S)/PLAINTIFF::

JOSEPH, AGED 53 YEARS,
S/O. LATE FRENCHU, CHALIL HOUSE, AMANA KARA
RAMAPURAM VILLAGE, RAMAPURAM.

BY ADVS.SRI.K.P.SREEKUMAR
SRI.P.M.SATHEESH
SRI.GIREESH VARMA R.
SRI.PRAKASH PUTHIADAM

RESPONDENT(S):DEFENDANTS

1. MONCY, W/O. AUGUSTHY, (DIED)
ERUMPOOZHICAL HOUSE, AMANAKARA, RAMAPURAM VILLAGE
RAMAPURAM P.O.
2. FRENCHU ALIAS PAPPACHAN, (DIED)
CHALIL HOUSE, CHEMPUKADAVU P.O., CALICUT.
3. MARIYAKKUTTY CYRIAC, ALATT HOUSE,
VIMALAGIRI P.O., IDUKKI DISTRICT.
4. THRESSIAKKUTTY, W/O. KUNJU,
ASARIPARAMBIL, KODENCHERI P.O., KOZHIKODE.
5. LILLY KURIEN, THURUTHIKKARA VEEDU,
ELANJI P.O., ERNAKULAM DISTRICT.
6. GRACY GEORGE, NADUVILE KIZHAKKE,
OONNUKALLIL P.O.
7. MONICCA JOSEPH (DIED)
KALLETTU HOUSE, MANJAPARA P.O., IDUKKI DISTRICT.
8. JOSEPH, CHALIL HOUSE, CHURULI P.O. IDUKKI DISTRICT. (DIED)
9. MARIYAKKUTTY JAMES, NADUVILEMAKKAL, ANAKKATTU PAYAL,
KOZHIKODE. (DIED)
10. C.C. THOMAS, CHALIL HOUSE, MARYGIRI P.O., IDUKKI DISTRICT.

11. C.C.DEVASSIA, CHALIL HOUSE, ALAPRA P.O., IDUKKI DISTRICT.

12. MATHAI, S/O. CHACKO, CHALIL HOUSE, RAMAPURAM P.O. (DIED)

13. TRESSIA, W/O. LATE AUGUSTHY, CHALIL HOUSE,
AMANAKARA P.O., RAMAPURAM. (DIED)

ADDL.R14.CHINNAMMA MATHAI, AGED 75 YEARS, W/O. MATHAI,
CHALIL HOUSE, RAMAPURAM P.O.

15. MOLLY MATHEW, VATTUKUNNEL, AGED 50 YEARS, DO.

16.JAMES MATHEW, AGED 50 YEARS, DO.

(ADDL.R14 TO R16 IMPEADED AS THE LEGAL HEIRS OF THE DECEASED R12 AS
PER ORDER DATED 20.9.2014 IN IA 575/2012)

APPELLANT EXEMPTED FROM SUBSTITUTING THE LEGAL REPRESENTATIVES OF THE
DECEASED SECOND RESPONDENT AND THE DECEASED SEVENTH RESPONDENT AS PER
ORDER DT.20.9.2014 IN IA 3505/2011

APPELLANT EXEMPTED FROM SUBSTITUTING THE LEGAL REPRESENTATIVES OF THE
DECEASED FIRST RESPONDENT AND THE DECEASED EIGHTH RESPONDENT AS PER
ORDER DT.20.9.2014 IN IA 3606/2011

IT IS RECORDED THAT R13 DIED AND THAT THE APPELLANT IS THE LEGAL
REPRESENTATIVE OF THE DECEASED 13TH RESPONDENT VIDE ORDER DATED
20.9.2014 IN IA 854/2014

APPELLANT EXEMPTED FROM SUBSTITUTING THE LEGAL REPRESENTATIVES OF THE
DECEASED 9TH RESPONDENT AS PER ORDER DT.16.1.2015 IN IA 1375/2012

R,R10,11,12 BY ADV. SRI.K.R.MICHAEL
R,R10,R11,R12 BY ADV. SRI.FRANCIS JOSEPH KURISUNKAL
R13 BY ADV. SRI.R.S.KALKURA
R13 BY ADV. SRI.M.S.KALESH
R13 BY ADV. SMT.A.V.PRIYA
R13 BY ADV. SRI.HARISH GOPINATH
R10 & 11 BY ADV. SRI.A.V.THOMAS (SR.)
R11,R ADDL 16 BY ADV. SMT.M.M.JASMIN
R11,R ADDL 16 BY ADV. SRI.NIDHI SAM JOHNS

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N. Ravindran &
Anil K. Narendran, JJ.**

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R.F.A.No.278 of 2006
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Dated this the 7th day of October, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the plaintiff in O.S.No.12 of 1997 on the file of the Court of the District Judge of Kottayam. Respondents 1 to 13 are the defendants therein. The first respondent, the first defendant in the suit passed away on 29.12.2000, before the impugned decree and judgment were passed. Her legal heirs were however not brought on record in the suit. The application filed by the appellant in this court as I.A.No.3606 of 2011 under Order XXII Rule 4(4) of the Code of Civil Procedure to exempt him from the necessity of substituting the legal heirs of the deceased first respondent on the averment that she was set ex-parte by the trial court and had not entered appearance and filed a written statement, was allowed by a Division Bench of this court, to which one of us (P.N. Ravindran, J.) was a party, by order passed on 20.9.2014. By the same order, I.A.No.3550 of 2011 was allowed and the appellant was exempted from the necessity of substituting the legal heirs of the deceased second respondent, the deceased seventh respondent and the deceased eighth respondent who also died before the suit was disposed of and whose legal heirs

had not been brought on record in the court below. After this appeal was filed, the 12th respondent passed away on 5.12.2007 and thereupon, his legal heirs were impleaded as additional respondents 14 to 16 in the appeal, by order passed by a Division Bench of this court on 20.9.2014 in I.A.No.575 of 2012. While the appeal was pending, the 13th respondent passed away on 19.11.2013 and thereupon, on application filed by the appellant as I.A.No.854 of 2014 he was recorded as the legal heir of the deceased 13th respondent in view of the settlement deed dated 27.2.2013 executed by the 13th respondent on 14.3.2013. The appellant has, in the affidavit filed in support of I.A.No.854 of 2014, averred that as per the aforesaid settlement deed, the deceased 13th respondent has gifted her undivided half share in the disputed properties to him and therefore, he may be recorded as her legal heir.

2. The suit instituted by the appellant is one for grant of letters of administration in respect of Ext.A2 Will dated 1.1.1969 stated to have been executed by Augusthy, S/o. Chacko. Initially, the appellant along with the 13th respondent (Thressia, W/o. Late Augusthy) filed O.P.(L.A.)No.43 of 1997 on the file of the Court of the District Judge of Kottayam wherein they prayed for the grant of letters of administration in respect of Ext.A2 Will. Upon receipt of

notice, the 12th respondent in O.P.(L.A.)No.43 of 1997 (Mathai, S/o. Chacko) entered appearance through counsel and filed an affidavit dated 10.7.1997 on his own behalf and on behalf of respondents 10 and 11 denying and disputing the genuineness of Ext.A2 Will and contending that it is a fabricated document. In view of the contest raised by respondents 10 to 12 to the genuineness of Ext.A2 Will, O.P.(L.A.)No.43 of 1997 was converted as a suit and renumbered as O.S.No.12 of 1997, on 30.9.1997. The appellant had in O.P.(L.A.)No.43 of 1997 instituted by him jointly with the 13th respondent, averred that he is the son of the brother of the testator, that the testator has executed a Will on 1.1.1969, that he and the second plaintiff (the 13th respondent in the instant appeal) are the sole legatees under the Will and that they are entitled to the properties scheduled to the petition. Issues in the suit were framed on 24.10.1997. The first plaintiff was examined as PW1 and Exts.A1 to A8 were produced and marked on 28.11.2000. The trial of the suit was adjourned to 18.12.2000 and later to 22.1.2001 for cross examination of PW1. On 22.1.2001 PW1 was cross examined in part and for further cross examination of PW1 the trial was adjourned to 8.2.2001, thereafter to 24.2.2001 and still later to 7.3.2001. On that day, the cross examination of P.W.1 was completed and Exts.A9 and B1 and B2

were marked through him. The trial of the suit was thereafter adjourned to 5.4.2001 for further evidence on the side of the plaintiff and still later to 25.5.2001. On that day P.W.2 who is the scribe and also an attesting witness to the disputed Will, was examined in chief and for his cross examination the trial was adjourned to 7.6.2001. On 7.6.2001, the second plaintiff (the 13th respondent herein) who was personally present in the court handed over a petition dated 5.6.2001 to the Presiding Officer stating that the petition was filed without informing her that it relates to a Will executed by her husband, that her husband not executed a Will and that she does not want to proceed with the petition. The contents of the said petition are extracted below in full:

കോട്ടയം ജില്ലാജഡ്ജി അവർകൾ മുമ്പാകെ

1977ൽ അസ്സൽ 12.

ടി കേസിൽ 2-)0 ഹർജിക്കാരിയായി എഴുതി കാണുന്ന രാമപുരം വില്ലേജ് അമനക്കര കരയിൽ ചാലിൽ തെങ്ങും പള്ളിൽ ആഗസ്തിയുടെ വിധവ ത്രേസ്യ ഡോഡിപ്പിക്കുന്ന ഹർജി

1. എന്റെ ഭർത്താവ് എഴുതിയതാണെന്ന് പറഞ്ഞ ഒരു വിൽപ്പത്രം ഹാജരാക്കിക്കൊണ്ട് ഞാനറിയാതെ 1-)0 വാദിയായ ഫ്രഞ്ചു ജോസഫ് ഈ കേസ് ഫയൽ ചെയ്തതാണ്. ഈ വിവരം ഞാൻ ഇപ്പോൾ അറിഞ്ഞതേയുള്ളൂ.

2. എനിക്ക് ഈ കേസ് ആവശ്യമില്ല. എന്റെ ഭർത്താവ് ഒരു വിൽപത്രവും എഴുതിയിട്ടുമില്ല.

3. ഈ വിവരം അഡ്വക്കേറ്റ് ശ്രീ പി.വി.തോമസ്സിനോടു പറഞ്ഞപ്പോൾ പറയാൻ ചെന്നയാളെ അദ്ദേഹം ഇറക്കി വിട്ടതല്ലാതെ എന്നെ കാണാൻ കൂട്ടാക്കിയില്ല.

ആകയാൽ കോടതിയിലെ ദയവുണ്ടായി എന്നെ കേസിൽ നിന്നും ഒഴിവാക്കി ഉത്തരവ് ഉണ്ടാകണമെന്ന് അപേക്ഷിക്കുന്നു.

കോട്ടയം

5/6/2001.

ത്രേസ്യ ആഗസ്തി

3. The Presiding Officer thereupon brought the contents of the said petition to the notice of the learned counsel appearing on

either side. Thereafter, the cross examination of P.W.2 was completed and the trial of the suit was adjourned to 30.6.2001. On that day, the first plaintiff filed I.A. No.758 of 2001 under Order I Rule 10 read with section 151 of the Code of Civil Procedure praying that the second plaintiff may be transposed as the 13th defendant. The said application was allowed and the second plaintiff was transposed as the 13th defendant. On the very same day the trial court ordered notice to the 13th defendant and the suit was adjourned to 7.8.2001 for return of the notice issued to the 13th defendant. The 13th defendant entered appearance through counsel and filed a written statement dated 5.6.002, on 7.6.2002 along with I.A. No.865 of 2002 wherein she prayed that the written statement filed by her may be accepted. The said application was heard and allowed by order passed on 7.6.2002. The 13th defendant thereafter filed I.A.No.1045 of 2002 on 18.7.2002 wherein she prayed that the evidence in the case may be reopened and P.Ws.1 and 2 recalled for cross examination by her counsel. The said application was allowed by order passed on 25.7.2002. By that order, the court below directed P.W.1 to be present for cross examination on 12.8.2002. Since P.W.2 was reported to be ill, the 13th defendant was directed to take steps to examine him on commission. For want of time and for other reasons, PW1 could be

cross examined by the counsel for the 13th defendant only on 26.11.2002. In view of the submission made by the learned counsel appearing for the 13th defendant that she does not want to cross examine P.W.2, the plaintiff's evidence was closed and the suit was adjourned for the defendants' evidence. Thereupon, the 12th defendant was examined as D.W.1, the 11th defendant as D.W.2 and the 13th defendant as D.W.3. Thereafter, the application filed by defendants 10 to 12 as I.A. Nos.1446 of 2003 and 1532 of 2003 to send the signatures of the testator occurring in Ext.A2 will and in Ext.B1 settlement deed and Ext.B4(a) sale deed for comparison with his admitted signatures, was allowed and the disputed Will was sent to the Forensic Science Laboratory, Thiruvananthapuram for opinion. The report dated 31.10.2005 received from the Forensic Science Laboratory was marked as Ext.C1 by consent.

4. The court below considered the rival contentions and the evidence oral and documentary on record and dismissed O.S.No.12 of 1997 by judgment delivered on 25.3.2006. The court below held that the suspicious circumstances surrounding the execution of Ext.A2 Will considered in the light of Ext.C1 report, would lead to the irresistible conclusion that Ext.A2 is not a genuine Will executed by late Augusthy. The court below also held that there was delay

in propounding the Will. The court below held that the plaintiff is therefore not entitled to a letters of administration in respect of Ext.A2 Will. The plaintiff has, aggrieved thereby, filed this appeal.

5. We heard Shri K.P. Sreekumar, learned counsel for the appellant and Shri A.V. Thomas, learned Senior Advocate appearing for respondents 10 and 11. Shri K.P. Sreekumar, learned counsel for the appellant contended that the court below has non-suited the plaintiff mainly on the ground that there was delay in propounding the Will, that the 13th defendant who is the wife of the testator, has been disinherited and thereby the natural line of succession has been disturbed, that the execution of the Will has been consciously kept out of the knowledge of the 13th defendant and that when the testator was capable of preparing a draft, there was no reason as to why he should seek the services of a scribe. Learned counsel contended that a reading of the impugned judgment will show that the court below has proceeded on the basis that the Will is not genuine, that it is fraudulent and that the plaintiff must remove all the suspicious circumstances surrounding the execution of the Will. Learned counsel invited our attention to Ext.A3 plaint in O.S.No.249 of 1993 on the file of the Court of the Munsiff of Pala which was instituted on 28.6.1993 by the 12th defendant and contended that though the testator died on

5.9.1970, the near relations of the testator did not institute a suit for partition for nearly 23 years, that the said fact is a pointer to the fact that they were aware of the execution of Ext.A2 Will, that there was no occasion for the plaintiff to put forward the Will or propound it for the reason that the 13th defendant (initially the second plaintiff) had a life estate in the property, that she passed away only on 19.11.2013, long after the instant appeal was instituted and therefore, it is reasonable to presume from the conduct of the parties and the attendant circumstances that the challenge to the Will is an afterthought. Learned counsel contended that under the law governing the parties, the wife of the testator had only a half share in the property, the remaining half share goes to the near relations, that the very purpose of executing a Will is to disturb the line of succession, that in the instant case the testator had provided for a life estate to his wife, the 13th defendant and therefore, the court below erred in proceeding on the basis that the disinheritance of the wife of the testator is a suspicious circumstance surrounding the execution of Ext.A2 Will. Learned counsel also submitted that as the demand for partition was made for the first time only in the year 1993 when O.S.No.249 of 1993 was instituted, that was the earliest opportunity or point of time at which the Will could have been propounded and therefore,

the court below erred in proceeding on the basis that there was delay in propounding the Will. Learned counsel lastly submitted that while the testator was alive, the appellant had in the year 1968 constructed a shop building in 10 cents of land forming part of the plaint schedule property, that later in the year 1984-1985 he had reconstructed the building and put up a cement concrete structure, that P.W.1 had, in his chief examination deposed to the said fact, that the said evidence has not been challenged in cross examination, that the defendants had not objected to the building being constructed or being reconstructed after the death of the testator and therefore, for that reason also, the finding entered by the court below that the execution of the Will is surrounded by suspicious circumstances, is liable to be set aside.

6. Per contra, Shri A.V.Thomas, learned senior counsel appearing for respondents 10 and 11 submitted that PW1 had in his chief examination deposed that the Will was executed at the residence of PW2 the scribe, who is also one among the attesting witnesses, that P.W.2 had, in his chief examination and also during cross examination deposed that the Will was executed at the residence of the testator and that it is evident from the testimony tendered by the plaintiff who was examined as PW1 and the scribe who was examined as P.W.2 that the execution of the Will is

shrouded in mystery. Inviting our attention to the testimony tendered by P.W.2, learned senior counsel for respondents 10 and 11 submitted that P.W.2, the scribe of the disputed Will has admitted that he is not sure as to whether Ext.A2 is a genuine document or not and that he had not mentioned anything about the execution of Ext.A2 Will to the 13th defendant, though he is a near relation of the testator. Referring to the contents of Ext.C1 report and inviting our attention to the signatures occurring in Exts.A2, B1 and B4(a), learned senior counsel submitted that there is vast disparity between the admitted signatures of the testator occurring in Exts.B1 and B4(a) and the disputed signatures occurring in Ext.A2 Will, that the expert has, in Ext.C1 report opined that the questioned and standard signatures show differences in general writing characteristics such as speed, skill, rhythm and movement, that these differences in writing characteristics found between the questioned and standard signatures are significant and are beyond the range of natural variation and that the questioned signatures show signs of forgery such as defective line quality, imitated designs with incorrect movement of connective letters, careful joining of parts, pen stop at unusual places, overwritings, etc., that the expert has also opined that the person who wrote the admitted signatures marked

A1 and A2 most probably did not write the questioned signatures marked as Q1 to Q5 and that it is evident from Ext.C1 report as also a mere look at the disputed and admitted signatures that Ext.A2 Will is a forgery.

7. Learned senior counsel finally submitted that though Ext.A2 will is dated 1.1.1969 and the testator passed away on 5.9.1970, it was propounded only on 15.10.1996, when the plaintiff along with the 13th defendant filed Ext.A5 written statement in O.S.No.249 of 1993, that the plaintiff had not at any point of time prior to the filing of Ext.A5 written statement, put forward the Will before any authority, that he has not even applied for effecting mutation in the revenue records, that the evidence of P.W.2 establishes the fact that not even the wife of the testator (the 13th defendant) was aware of the execution of the Will, that though the wife of the testator had initially joined as the second petitioner when O.P.(L.A.) No.43 of 1997 was filed, later she filed a petition before the learned District Judge to the effect that it was without knowing the fact that a Will stated to have been executed by her husband is produced along with the petition, that she had joined as a party to the said original petition, that she had later filed a written statement dated 5.6.2002 contending that Ext.A2 Will is a forgery and also deposed to that effect when she was

examined as D.W.3. and therefore, no exception can be taken to the finding entered by the trial court that Ext.A2 Will is a forgery. Referring to the contents of I.A.No.1920 of 2013 and the document produced along with it as also the averments in the affidavit filed by the appellant in support of I.A.No.854 of 2013 wherein he had prayed that he may be recorded as the legal heir of the 13th respondent, learned senior counsel submitted that the 13th respondent who passed away on 27.2.2013 had executed a settlement deed settling her undivided half share in the plaint schedule properties on the appellant, that the appellant has accepted the said settlement deed and therefore, he cannot any longer contend that he is entitled to succeed to the properties of the testator on the strength of Ext.A2 Will. Learned senior counsel submitted that it is only if the appellant admits the title of the donor, the 13th defendant who would derive title only if there is no valid Will, that the 13th defendant can execute a settlement deed.

8. We have considered the submissions made at the Bar by the learned counsel on either side. We have also gone through the pleadings and the materials on record. Ext.A2 Will is dated 1.1.1969. The testator passed away on 5.9.1970. The 13th defendant is admittedly his wife. The first defendant is the sister of the testator. The appellant/plaintiff and defendants 2 to 6 are the

children of the testator's brother Frenchu. The rest of the defendants, viz. defendants 7 to 12 are the children of the testator's father Chacko in his second wife Thressia. P.W.1 has in his chief examination deposed that Ext.A2 Will was executed at the residence of P.W.2, the scribe who is also a near relation of the testator. P.W.2 has in his chief examination deposed that the Will was executed at the residence of the testator and that when the testator affixed his signature, the 13th defendant was present in the house, though she was in the kitchen. He had deposed that the Will was drafted by an advocate and based on that the original was prepared. In his cross examination also he stuck to the same stand. He had however conceded the fact that he had not, till recently, informed the 13th defendant about the execution of the Will. He had also deposed that he cannot say with certainty as to whether Ext.A2 is genuine or not. He had also deposed that the 13th defendant had questioned him as to why he had fabricated a Will in collusion with the plaintiff. It is also relevant in this context to note that the Will which is stated to have been executed on 1.1.1969 was propounded for the first time only on 15.10.1996 when the appellant/plaintiff who was the 4th defendant in O.S.No.249 of 1993, filed Ext.A5 written statement therein. The plaintiff has no case that the Will was put forward before any

authority at any point of time prior to the filing of Ext.A5 written statement. He had admittedly not taken steps to effect mutation in the revenue records. The case spoken to by him is that the testator had entrusted the original of the Will with his father Frenchu who passed away in the year 1990 and that shortly before his death, his father had handed over the original of the Will to him. The appellant/plaintiff attained the age of majority before 1.1.1969, the date on which the disputed Will is stated to have been executed. Even according to his version, he had put up a commercial building in 10 cents of land forming part of the plaint schedule property, in the year 1968 with the permission of the testator and later during the year 1984-1985 he had reconstructed the building. If that be so, one fails to understand the reason why the testator did not trust him to keep custody of the Will or as to why his father thought it fit that he should have custody of the Will till 1990. There is no acceptable explanation from the side of the plaintiff as to the reason why he did not put forward Ext.A2 Will at any point of time prior to the filing of Ext.A5 written statement. For nearly 26 years, he did not choose to propound the Will. Though an attempt was made to contend that the delay in instituting the suit would tantamount to acceptance of the Will by the defendants, we are not persuaded to accept the said submission. It was the

legatee's duty to propound the Will at the earliest opportunity. He has no case that the contents of the Will were brought to the knowledge of the 13th defendant. On the other hand, it is evident from the petition filed by the 13th defendant before the learned District Judge and the contents of the written statement filed by her that it was without disclosing the fact that the Will stated to have been executed by her husband is the subject matter of the petition, that her signature was obtained in O.P.(L.A.)No.43 of 1997. Under the law as it stood in the State of Kerala on the date of execution of Ext.A2 Will and on the date of death of the testator, the Will was required to be probated or a Letter of Administration obtained. It is only by a local amendment to the Indian Succession Act, 1925 which was brought about by the Indian Succession (Kerala Amendment) Act, 1996 that section 213 of the Indian Succession Act was amended dispensing with the need for obtaining a probate or letters of administration in respect of a Will executed by an Indian Christian. The disputed Will is dated 1.1.1969. The testator passed away on 5.9.1970. The Will was propounded for the first time when the appellant filed Ext.A5 written statement dated 15.10.1996 in O.S.No.249 of 1993 on the file of the Court of the Munsiff of Pala. The appellant/plaintiff has no explanation whatsoever either in the plaint or in the instant

appeal memorandum as to the reason why he did not take steps to propound the Will by applying for mutation in the revenue records or by getting it probated or apply for a letters of administration prior to 1997. It is evident from the materials before us that it was only when he received notice in O.S.No.249 of 1993 on the file of the Court of Munsiff at Pala that he had put forward Ext.A2 will. From the evidence on record and the attendant circumstances including the conduct of the appellant in not propounding Ext.A2 will and the opinion given by the fingerprint expert, we are persuaded to agree with the trial court that the appellant has not succeeded in proving that Ext.A2 will is the last Will executed by late Augusthy.

9. The 13th respondent passed away on 19.11.2013. She had, on 27.2.2013 executed a settlement deed registered as document No.376 of 2013 of the Sub Registrar's Office, Ramapuram settling her undivided half share in the plaint schedule property on the appellant. An affidavit sworn to by her on 14.3.2013 to that effect and attested by a notary has been placed on record along with I.A.No.1920 of 2013. After the 13th respondent died, the appellant filed I.A.No.854 of 2014 praying that he may be recorded as her legal heir. He has, in paragraph 2 of the affidavit filed on 24.3.2014 in support of I.A.No.854 of 2014

stated that the 13th respondent has executed a settlement deed registered as document No.376 of 2013 on 27.2.2013 whereby she gifted her undivided half share in the plaint schedule property to him. He has in the said affidavit, averred as follows:

“The 13th respondent had executed document number 376 of 2013 on 27.7.2013 by which her ½ share in the plaint schedule properties was gifted in favour of the appellant. This document was produced before this Hon'ble Court as per I.A.No.1920 of 2013. It is submitted that as on the death of Augusthy his one half share was devolved on his wife deceased Thressia and the remaining half if the will executed by Augusthy is found invalid will devolve on respondents 1 to 6 who are the children of Frenchu.”

10. The 13th respondent, who is the donor has in the gift deed asserted that she has ½ share in the plaint schedule property. The appellant has accepted the gift and has on the strength of the gift deed, got himself recorded as the legal heir of the deceased 13th respondent. The appellant has by accepting the gift deed admitted the title of the 13th respondent over the plaint schedule property. The acceptance of the gift by the 13th respondent was unconditional and therefore for that reason also, the appellant cannot question the title of the donor over the plaint schedule property.

For the reasons stated above, we hold that there is no merit in

the instant appeal. The appeal fails and it is accordingly dismissed. Having regard to the fact that the parties are near relations, we deem it appropriate to direct that the parties shall suffer their respective costs.

(P.N. Ravindran, Judge.)

(Anil K. Narendran, Judge.)

kav/