

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&**

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

RFA.No. 315 of 2013 ()

**(AGAINST THE JUDGMENT AND DECREE IN OS.NO. 17/2010 OF I ADDL.SUB
COURT, ERNAKULAM DATED 31-10-2012)**

APPELLANT(S)/PLAINTIFFS:-

- 1. C.G. RAVEENDRAN,
S/O.GOVINDAN, AGED 64 YEARS,
SREEVALSAM, NADAMA SOUTH VYMEEDHI ROAD,
TRIPUNITHURA P.O., ERNAKULAM DISTRICT, PIN - 682 301.**
- 2. C.G.RATHI, W/O.T.K.UDAYAPPAN,AGED 60 YEARS,
THACHIRUPARAMBIL HOUSE, EROOR NORTH,
TRIPUNITHURA P.O., ERNAKULAM DISTRICT, PIN - 682 306.**
- 3. C.G.RAMACHANDRAN,S/O.GOVINDAN, AGED 48 YEARS,
RAGHUL NIVAS, KULASEHARAMANGALAM P.O.,
VAIKOM, KOTTAYAM DISTRICT, PIN - 686 608.**

**BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SRI.K.B.VIPIN KUMAR
SMT. VANDANA MENON**

RESPONDENT(S)/DEFENDANTS:-

- 1. C.G. GOPI, S/O.GOVINDAN, AGED 55 YEARS,
MARAMKULANGARAYIL HOUSE, EROOR NORTH P.O.,
ERNAKULAM DISTRICT, PIN - 682 306.**
- 2. C.G.MURALEEDHARAN,S/O.GOVINDAN, AGED 45 YEARS,
MARAMKULANGARAYIL HOUSE,EROOR NORTH P.O.,
ERNAKULAM DISTRICT, PIN - 682 306.**
- 3. C.G.RADHA, D/O.GOVINDAN,AGED 54 YEARS,
MARAMKULANGARAYIL HOUSE, EROOR NORTH P.O.,
ERNAKULAM DISTRICT, PIN - 682 306.**

**BY ADVS. SRI.M.S.UNNIKRISHNAN
SMT.JAYASREE MANOJ
SRI.JITHIN PAUL VARGHESE
SRI.K.SUNIL**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 02-06-2015,THE COURT ON 01-07-2015 DELIVERED THE
FOLLOWING:**

RFA.NO.315/2013

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX A PHOTOGRAPHS OF THE BUILDING.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.S.TO JUDGE

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**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

R.F.A. No.315 OF 2013

Dated this the 1st day of July, 2015

JUDGMENT

Sunil Thomas, J.

The plaintiffs in O.S.No.17/2010 of the Sub Court, Ernakulam, aggrieved by the dismissal of the suit for partition, has preferred this appeal.

2. The plaintiffs and defendants are the children of late Govindan and Bhanumathi. Govindan died on 28/8/1994 and Bhanumathi on 18/5/2004. The plaint schedule properties belonged to Govindan. He had constructed a building therein and was residing there with his family till his death. The plaintiffs got married to persons of their choice and hence, they have been keeping away from the company of the remaining family members. The first defendant is a married person with a child and second defendant is a divorcee and third one a spinster. They are residing in the plaint

schedule property. According to plaintiffs, after the death of Govindan, the right on the properties have devolved on the plaintiffs and the defendants equally and they are entitled to inherit. However, the plaintiffs came to know about a registered Will bearing No.15/85 of SRO, Tripunithura, allegedly executed by Govindan, on receipt of a copy of petition in O.P.No.4/2009 of the Principal Munsiff Court, Ernakulam. The plaintiffs are not aware of any such Will. The Will is a fabricated one and Govindan had no occasion to execute such a Will. During the period of execution of Will, Govindan was mentally ill and was undergoing treatment for partial paralysis. He has not executed the Will and was allegedly executed under suspicious circumstances. Hence the suit was filed seeking a declaration that the Will was null and void and for a consequential partition of the properties.

3. The defendants filed a joint written statement traversing the various allegations. It was admitted that deceased Govindan had acquired the properties and had constructed the building therein. Govindan, had executed the Will validly, with due application of mind and with full testamentary capacity. The defendants, their mother and brother of Govindan have been

residing in the house. There were stipulations regarding payment of money to the other legal heirs. Since they refused to accept the money, O.P.No.4/2009 was instituted. The allegation that Govindan was mentally ill was incorrect. The signature and the thumb impression seen in the Will are that of the deceased Govindan.

4. On the basis of the above pleadings, the parties adduced evidence. The Court below on an evaluation of the oral testimony of PW1 and Exts.A1 to A5 on the side of the plaintiffs and the oral evidence of DWs1 to 5 and Exhibits B1 to B6 on the side of the defendants held that Ext.B2 Will was validly executed by Govindan. Consequently, the prayer for partition was declined. This is assailed in this appeal.

5. Heard the learned senior counsel for the appellants and the learned counsel for the respondents.

6. The points that arise for consideration are:

- i). Whether Ext.B2 Will was validly executed by Govindan during his life time, with full testamentary capacity.
- ii). Whether the judgment and decree of the court below is legally sustainable.

7. Points 1 & 2: The relationship between the parties and the title of Govindan over the plaint schedule properties are not

in dispute. It is admitted that the defendants are residing in the plaintiff schedule property and that the plaintiffs, after getting married of their choice were keeping away from Govindan. Though the plaintiffs had sought for a declaration that the Will was not genuine, since the defendants propounded the Will, they were called upon to lead the evidence.

8. One of the ground of attack of the defendants was that Govindan lacked testamentary capacity during the relevant period. It has come out in evidence that prior to the alleged execution of Ext.B2, Govindan had executed another registered Will numbered as 86/1983 dated 5/7/1983, a copy of which was marked as Ext.B1. It was in supersession of the above Will, that Ext.B2 Will was executed. The allegation of the plaintiffs was that during the relevant time, Govindan was suffering from depression and was mentally deranged. It was also alleged that he was paralysed and had been laid up for six years prior to his death. DW1 in his evidence denied the above allegation and asserted that Govindan was in a fit state of mind. According to him, father was admitted in the hospital with fever and breathlessness and thereafter died in the hospital. To substantiate the above version, DW3, a neighbour of Govindan,

was also examined. He claimed to be very close to Govindan and deposed that Govindan had no ailment. He further deposed that six days prior to his death, Govindan was found travelling in a bus, had alighted at the bus stop and went to a clinic. He was referred to Medical Trust Hospital, wherein he was admitted and died after few days.

9. The first plaintiff, as PW1, also admitted that his father was admitted in the hospital with fever and breathlessness. He claimed that he had gone to the hospital and seen the father who was in the ICU. He also referred to the name of the Doctor who treated his father. There is absolutely no evidence on his side to show that Govindan was incapable of executing the Will. The further allegation that Govindan did not have the physical and mental testamentary capacity during the life time, is also not proved by any evidence. Since the plaintiff was aware of the doctor who was treating Govindan, and the hospital where he was treated, he could have summoned the hospital records to prove that Govindan did not have sufficient physical or mental testamentary capacity. Hence, it is only to be held that the plaintiffs miserably failed to prove that Govindan did not have the testamentary capacity during the relevant time, to execute

the Will.

10. Another contention of the plaintiffs was that Govindan, by executing Ext.B2 Will has excluded the plaintiffs, who are his children , which itself was a suspicious circumstance to doubt the genuineness of Ext.B2 Will. The plaintiffs have virtually admitted the execution of Ext.B1 Will and the dispute was only regarding the subsequent Will, Ext.B2. According to the plaintiffs, Ext.B1 provided an equitable distribution of property and there was no circumstance for Govindan to execute Ext.B2 and thereby to exclude the children from inheriting the property. However, even the plaint discloses that plaintiffs had married against the wish of their father . PW1 admitted that he had married a lady, who was already married and had two children. He admitted that his father did not participate in his marriage. He also admitted that father did not attend the marriage of the third plaintiff also. All the three plaintiffs had married of their own choice, which was strongly objected by Govindan, as disclosed by the evidence of DW2, DW3 and DW5. According to DW5, Govindan had even stipulated that his dead body should not be shown to the plaintiffs. He further deposed that due to the mental agony caused to Govindan by

the plaintiffs, he excluded the plaintiffs from inheriting. Even the version of PW1 show that when he had gone to see the dead body of his father, the defendants physically prevented him. The above facts lead to a definite conclusion that the relationship between the plaintiffs and Govindan was strained, which justified the conduct of Govindan in superceding his earlier Will and executing Ext.B2 Will. Ext.B1 shows that even by that will, 1st plaintiff was completely excluded on the ground that he had already been given property. 2nd plaintiff was entitled for Rs.3,000/- and 3rd plaintiff entitled for B schedule property. The substantial change in Ext.B2 was disinheriting the 3rd plaintiff from B schedule property. Ext.B2 shows that still Govindan had made some dispositions in favour of the plaintiffs. He had stipulated that Rs.2,000/- each shall be paid by the defendants to the plaintiffs. A reading of Ext.B2 coupled with the attending circumstances indicate that though there were sufficient reasons to justify the exclusion of the plaintiffs from inheriting his immovable property, still the plaintiffs were not completely excluded from succeeding to the estate. Hence the contention of the plaintiffs, that they were unjustifiably excluded from succeeding to the estate, and that it casts cloud on Ext.B2, is

factually not sustainable. Even otherwise, disinheriting any one or more of natural heirs by itself cannot be a suspicious circumstances, since the whole idea behind the the execution of a Will is to deviate from the normal flow of estate by succession.

11. According to the plaintiffs, the signature seen in Ext.B2 Will was not that of Govindan. To prove the due execution of Ext.B2 Will, the defendants relied on the oral testimony of the first defendant and that of DW2 and DW5. The first defendant, as DW1, deposed that Govindan had given instructions to the document writer Parameswaran. He deposed that the said Parameswaran was a close friend of his father. He was also the first witness to the Will and had signed the document with the intention to be an attesting witness. The second witness was also known to the father. Identifying witness Mukundan was a neighbour and friend of his father. DW1 asserted that each of the above person saw the other person affixing his signature. The witness further deposed that the signatures seen on Exts.B1 and B2 were that of deceased Govindan. To support his contention that Ext.B2 Will contained the signature and thumb impression of his father, DW1 relied on various

contemporaneous documents said to have been executed by father during the relevant period. They are Exts.B4, B5 and B6. Ext.B4 was the attested copy of the application given by the father, for the electricity connection. Ext.B4 was obtained by the defendants under the Right to Information Act. Ext.B5 was a copy of an application submitted to the Special Tahsildar, on 6/4/1989 under the Land Reforms Act. He relied on the above documents contending that it contained the admitted signature of the father and made it available to the Court for a judicial evaluation of genuineness of Ext.B2 Will.

12. DW1 in his evidence further deposed that the Will was in the possession of his mother and had seen it even 14 to 15 years back. He deposed that he had informed the plaintiffs about the Will during the period of 1994 - 95. Regarding the actual execution of the will, version of DW1 was that he was present when the draft was prepared. According to him, he had heard the father giving instructions to the document writer. He further deposed that scribe Parameswaran and witness Padmanabhan Nair are no more.

13. Identifying witness Mukundan was examined as DW2. He is the witness relied on by the defendants to prove the

execution of Ext.B2 as contemplated under the statute. DW2 deposed that he was the identifying witness to the document and identified his own signature. According to him, it was affixed at the Sub Registrar's office, Tripunithura. He identified the signature and thumb impression of Govindan. He asserted that he was present at the time of signing of the Will by Govindan. In the cross examination, he deposed that he had signed Ext.B2 on the direction of Padmanabhan Nair and Govindan. He admitted that he did not see Govindan signing the document, but saw Govindan affixing his thumb impression. DW5 claimed himself to be a friend of Govindan. In cross examination when Ext.B2 was shown to him, he identified signatures in Ext.B1 and B2.

14. The contra evidence let in PW1 was in the nature of his own oral testimony. He stated that father had executed two Wills. He admitted that the second Will modified the earlier one. Virtually he indirectly admitted the execution of the Wills. However, his version was that both the witnesses to Ext.B2 document were professional witnesses. He further admitted that father did not have any ailment worth mentioning, during the period of 1983 - 85.

15. The above evidence has to be evaluated to decide the genuineness of Ext.B2. It is pertinent to note that Ext.B2 is a Registered Will. In the absence of any serious challenge regarding registration, it must be presumed that the Will was registered after complying with all the statutory formalities. Registration of a Will is a piece of evidence confirming its genuineness and can confer it a higher degree of sanctity. There seems to be a consensus in the judicial pronouncements that, though there is no requirement that Will should be registered, but if registered, it adds to its authenticity (**Pargat Singh v. Aas Kumar** (1997 (3) RCR(Civil) 193 (P&H), **Gurupal Singh v. Darshan Singh** (1997 (3) RCR (Civil) 485 (P&H). However, the Hon'ble Supreme Court in **Rani Purnima Devi v. Kumar Khagendra Narayan Deb & another** (AIR 1962 SC 567) cautioned. "There is no doubt that if a will has been registered that is a circumstance, which may, having regard to the circumstances prove, its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it, where suspicion exists, without submitting the evidence of registration to a close examination." Hence, Ext.B2 can be appreciated with a higher degree of

probative value in the light of its registration.

16. The oral testimony of DWs 1,2 and 5, has to be evaluated to consider whether the defendants have succeeded in proving the due execution of Ext.B2, as warranted under Sections 63 of the Indian Succession Act 1925 and proved in accordance with Section 68 of the Indian Evidence Act,1872.

17. Section 68 of the Indian Evidence Act, provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. In the present case, the attesting witnesses are Parameswaran and Padmanabhan Nair. Parameswaran himself was the scribe. There is no legal bar in scribe himself being an attesting witness, provided he has actually seen the executant signing or affixing his mark or has received a personal acknowledgment from the executant and has consciously affixed his signature as an attesting witness, as a token of having witnessed the executant signing or affixing his mark. Evidence should prove that the scribe, apart from being so, had signed for the purpose of testifying to the signature of the executant and had the animus attestandi. This view gets support from the decisions in

M.Venkatasubbaiah v. Subbamma & others (AIR 1956 AP 195) , **Dhruba Sahu v. Paramananda Sahu** (AIR 1983 Orissa 24), **Nirode Mohan Roy v. Charu Chandra** (AIR 1950 Calcutta 401) and **Parama Siva Udayan v. Krishna** (AIR 1918 Mad. 491). PW1 in his chief examination has stated that scribe Parameswaran, attested the document as a witness with necessary intention to be an attesting witness. It is not seen challenged in the cross examination. DW1 has deposed that Govindan sat in front of Parameswaran and the father signed first. Ext.B2 shows that Govindan has signed on all pages. Thereafter, beneath the caption “witnesses”, Parameswaran and Padmanabhan Nair have signed. This is followed by the details of the scribe and thereafter Parameswaran has signed again. This clearly shows that Parameswaran, apart from being the scribe, had consciously signed as the attesting witness.

18. It is on record that both the attesting witnesses are no more alive. Hence, Section 68 of the Indian Evidence Act can not apply. The provision that governs the field can only be the Section 69 of the Indian Evidence Act. It deals with a situation wherein no attesting witnesses can be found, and in such cases it will have to be proved in the manner mentioned in Section 69.

Though the Statute prescribes that Section 69 applies when the witness is not found, in the absence of any other provision dealing with cases wherein the presence of witnesses cannot be procured for various other reasons, like death of both attesting witness, out of jurisdiction, physical incapacity, insanity etc. Section 69 should apply and can be extended to such cases. Hence, the word “not found” occurring in Section 69 of Evidence Act should receive a wider purposive interpretation than its literal meaning and should take in situation where the presence of the attesting witness cannot be procured. This view gets its support from **Venkataramayya v. Kamiseti Gattayya** (AIR 1927 Madras.662) and **Ponnuswami Goundan v. Kalyanasundara Ayyar**(AIR 1930 Madras.770).

19. It is settled that mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed by Section 63 of Indian Succession Act. Section 69 imposes a twin fold duty on the propounder. It provides that if no such attesting witness can be found, it must be proved that attestation of one attesting witness at least is in his handwriting and also that the signature of the person executing the document

is in the handwriting of that person. Hence, to rely on a Will propounded in a case covered by Section 69 the propounder should prove i) that the attestation is in the handwriting of the attesting witness and ii) that the document was signed by the executant. Both the limbs will have to be cumulatively proved by the propounder. Evidently, the section demands proof of execution in addition to attestation and does not permit execution to be inferred from proof of attestation. However, Section. 69 presumes that once the handwriting of attesting witness is proved he has witnessed the execution of the document. The twin requirement of proving the signature and handwriting has to be in accordance with Section 67 of the Indian Evidence Act.

20. DW2 was examined to prove the above two ingredients. DW2 in his deposition had identified the signature of the attester as well as his own signature. He specifically deposed that he was present when Govindan had signed the Will. However, in the Cross Examination, he admitted that he did not see Govindan signing, but added that he saw Govindan affixing his thumb impression. The above version of DW2 shows that though he was physically present, he did not exactly see

Govindan signing, but saw the thumb impression being affixed. He did not also depose that he had seen the attesting witnesses affixing their signature .

21. The learned senior counsel Sri.T.Sethumadhavan strenuously contended that since the witness specifically deposed that he did not see either the executant affixing his signature or the attesting witnesses affixing their signature, it does not satisfy the twin ingredients, as contemplated under Section 69. Evidentially, the first limb of Section 69. is not proved through DW2. Section 67 of Evidence Act does not prescribe any particular mode of proof regarding execution of document. Execution conveys the whole operation of signature by the executant and the attestation by the subscribing witnesses. Section 67 only contemplates that handwriting must be proved to be that of Paramewsaran for which any mode not prohibited by law can be resorted to. In **Ramachandra v. State of Uttar Pradesh** (AIR 1957 SC 381), the Hon'ble Supreme Court accepted the authorship of certain documents with the aid of external and internal evidence. Subsequently the Bench in **Mobarik Ali Ahmed v. State of Bombay** (AIR 1957 SC 857) held:

“The proof of genuineness of a document is proof of authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or signature being affixed. It may be proof of the handwriting of the contents or of the signature. It may also be proved by internal evidence afforded by the contents of the documents”

22. In the light of above and **Fakruddin v. The State of Madhya Pradesh** (AIR 1967 SC 1326) and **State (Delhi Administration) v. Pali Ram** (AIR 1979 SC 14), the mandatory requirement of proving a Will can be complied with by producing the signature of attesting witness on some admitted document and make both signatures available for comparison by Court. However, such a document is not forthcoming in this case. Regarding the second limb, the version of DW2 only proved that the signature of the person executing the document was in the handwriting of that person. The witness though admitted that he did not see the executor signing, categorically identified the signature of the executor. Evidently, only in the case of proving attestation through attesting witness the Law

insist that the attesting witnesses should speak that he had seen the executant affixing his signature or must have received a personal acknowledgment from the executant and in turn, executant must see the attesting witness affixing his signature.

23. However, when a witness is called to prove a Will under Section 69, it is not warranted that he should specifically say that he had seen the executant affixing his signature, but it will be sufficient if it is proved that the signature was in the handwriting of the person affixing it. This seems to be the essential difference in the quality and nature of evidence required under Section 68 and that under Section 69 . In the case of former, the genuineness of a document required by Law to be attested is proved by adducing evidence of due attestation, whereas in the case of latter it is genuineness of the document which is to be established.

24. The legislative intention and the reason for conscious difference in the quality of evidence as required from the above provision gets its support, from Section 71 of the Evidence Act, which is as an exceptional provision where under even if attesting witness denies the execution or does not recollect the execution, the Will is not thrown out as not proved. Under this

special provision, the propounder can still prove the Will by other evidence. The rationale behind this provision is obvious and clear that the Will being a solemn document and forms a specie by itself, unlike other documents, speaks from the death of testator and the maker of the document himself is never available for proving its genuineness. Evidently, the trend of Law is in favour of searching for proof in favour of the Will, rather than rejecting it. Hence, law leans in favour of Will and not against it.

25. The above evidence shows that though DW2 proved the signature, he did not actually see the executant affixing the signature as mentioned above. However, it is not warranted under Section 69 of Indian Evidence Act. What is required is the proof that the document is in the handwriting of the person who had signed it. That seems to be satisfied by DW2 and to that extent, his version appears admissible in evidence.

26. It is pertinent to note that even though he deposed that he did not see the actual affixture of signature, he had seen the executant affixing his thumb impression. Section 3 of the Transfer of Property Act and Section 63 of Indian Succession Act deals with attestation, as two or more witnesses having

witnessed the executant signing or affixing his mark to the instrument. It is clear that even affixture of mark will be sufficient. Hence, in the light of the above definition, requirement of Law of attestation can be achieved in case of signature by the executant by proving that the attesting witness had seen the executant affixing his signature and in case where he has affixed his thumb impression, by the attesting witness deposing that he had seen the executant affixing his thumb impression and in case both signature and thumb impression are affixed, by proving that attesting witness has seen either of them or both.

27. However, a perusal of Ext. B2 show that on the relevant pages of the Will there is no thumb impression of Govindan. However, on the reverse of the first page of Ext.B2, the thumb impression purported to be that of Govindan is affixed. Beneath it, DW2 and one Baby have affixed the signature as identifying witnesses. This is counter signed by the Sub Registrar. Evidently, that signature is for the purpose of registration of the document and not in relation to the execution of the Will. The proof of affixing the thumb impression for the purpose of registration of the document cannot be considered as

one for the purpose of execution of the Will. Both being two separate acts, affixing of thumb impression for the purpose of registration cannot be deemed as satisfying the process of execution of the document as contemplated under Section 63 of the Indian Evidence Act. Though such evidence can lead to a rational presumption that one may not affix signature for the purpose of registration unless he had executed the document himself, but that independently falls short of proof required for the purpose of execution of the document. However, it can be used along with other evidence to prove the due execution of the document.

28. In the case at hand, though the evidence of DW2 is insufficient to prove the first requirement under Section 69 of the Indian Evidence Act, the evidence of DW1 appears to satisfy the above requirement. DW1 in his evidence in the chief examination itself, stated that the attesting witnesses Parameswaran and Padmanabhan Nair had affixed their signature. It was also stated that they have consciously affixed their signature with the intention of being attesting witnesses. DW1 further asserted that he himself was present at the time of preparation of the draft by the scribe and at the time of actual

execution of the document. The version of DW1, that he had seen the execution of the document, is sufficient proof to the effect that the signatures of the attesting witnesses are in their handwriting. This assumes significance since this version of DW1 is not seen challenged in cross examination.

29. Apart from the oral testimony of DW2, to further prove the second limb of Section 69, the defendants relied on Exts.B4, B5 and B6. Exts.B4 and B5 are copies of the documents containing the admitted signature of Govindan, obtained under the Right to Information Act. Ext.B6 is a letter purported to be in the handwriting of Govindan. The genuineness of Exts.B4 and B5, though the attested copies under a statute are not seen challenged. Hence, they can be brought in aid for the limited purpose of comparing with the signature of the attestor in the disputed document.

30. The Courts in large number of cases have held that the Courts can compare the disputed signature with that of admitted signature with the aid of Section 73 of the Evidence Act. In the nature of quality of proof required as contemplated under Section 69, the court below was justified in comparing the signature and holding that the signature of Govindan seen to

have been executed in Ext.B2 is genuine. Further the oral testimonies of DW1 and DW5 also prove the signature of Govindan.

31. On an evaluation of the entire inputs, it is clear that there are sufficient materials to show that Ext.B2 has been proved to be a genuine document. The defendants have succeeded in removing the cloud alleged to have shrouded the genuineness of Ext.B2. The available materials further prove that Ext.B2 was executed by late Govindan with full testamentary capacity, consciously and uninfluenced by any extraneous consideration. Hence, the property is not available for partition. The judgment and decree of the court below, to the above extent, is liable to be confirmed. Points answered.

32. In the light of the above findings, the judgment and decree of the Court below is confirmed.

The appeal is dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

