

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.1585 of 2002

Date of Reserving the Judgment	Date of Pronouncing the Judgment
02.06.2015	11.06.2015

1.Muniammal (Deceased)
W/o.Konaiyan

2.Muniyappan
S/o.Late Konaiyan

3.Tmt.Santha
D/o.Late Konaiyan

4.Annadurai
S/o.Late Konaiyan

5.Tmt.Rajammal
W/o.Late Perumal

6.Ranjithkumar
S/o.Late Perumal

7.Tmt.Kavitha
D/o.Late Perumal

8.Illaiyaraja
S/o.Late Perumal

(Appellants 2 to 8 brought on record as LRs of the deceased
sole appellant vide order of the Court dated 28.01.2015
made in C.M.P.No.9 of 2015)

... Appellants/Respondents/Defendants

Vs

1.Chinamma
W/o.Buddan

2.Gundan
S/o.Buddan

3.Lakshmi
D/o.Buddan

4.B.Nanjappan
S/o.Buddan

5.Ellamma
D/o.Buddan

6.Subramani
S/o.Buddan

7.Munilakshmi
D/o.Buddan

... Respondents/Appellants/Plaintiffs 2 to 8

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree dated 10.04.2002 made in A.S.No.30 of 2001 on the file of the Second Additional District Sessions Judge cum Chief Judicial Magistrate at Krishnagiri, reversing the judgment and decree dated 27.02.2001 in O.S.No.371 of 1996 on the file of the Subordinate Judge, Hosur.

For Appellants : Mr.N.Manokaran,
for Mr.S.Doraisamy

For Respondents: Mr.P.Mani, for R1 to R7

J U D G M E N T

The second appeal arises out of the judgment and decree dated 10.04.2002 made in A.S.No.30 of 2001 on the file of the Second Additional District Sessions Judge cum Chief Judicial Magistrate at Krishnagiri, reversing the judgment and decree dated 27.02.2001 in O.S.No.371 of 1996 on the file of the Subordinate Judge, Hosur.

2. The averment made in the plaint are as follows:

The suit properties along with other properties originally belong to Mookan @ Karthigan and his three brothers. In the year 1965, when oral partition took place between Mookan @ Karthigan and his brothers, viz., Buddan, Ponnusamy and Muni Ellagan, the suit properties were allotted to Mookan @ Karthigan. Since the plaintiff/Buddan is the son of Mookan @ Karthigan and the suit properties are ancestral properties, the plaintiff is entitled to $\frac{1}{2}$ share in it. Further, the defendant/Muniammal is the daughter of Mookan @ Karthigan. After the death of Mookan @ Karthigan in the year 1981, the plaintiff and the defendant were claiming right over his properties. In the year 1985, as the plaintiff was suffering from ill-health, the defendant started taking care of the suit properties

and in the year 1989, the defendant transferred the patta in her name by colluding with the officers of the revenue department. When the plaintiff questioned the same, the defendant claimed that she bequeathed the properties on the basis of Ex.B.6/Will alleged to have been executed by the said Mookan @ Karthigan. However, it was claimed on behalf of the plaintiff that no such Will was executed by his father during his life time and the Ex.B.6/Will is not true and genuine. Since Mookan @ Karthigan died intestate, the plaintiff is entitled to $\frac{3}{4}$ share in the properties and the defendant is entitled to $\frac{1}{4}$ share. Hence, the plaintiff prayed for a preliminary decree of partition of $\frac{3}{4}$ share in the suit properties.

3. Resisting the same, the respondent filed written statement stating that Buddan is not the son of Mookan @ Karthigan. Further, it was stated that in the year 1956 when oral partition took place between Mookan @ Karthigan and his brothers, the suit properties was allotted in favour of Mookan @ Karthigan. From then on, Mookan @ Karthigan is the absolute owner of the properties. The defendant/Muniammal is the only daughter of Mookan @ Karthigan and so, he along with his wife was residing in the house of the defendant. On 10.08.1968, the said Mookan @ Karthigan had also executed a Will bequeathing the properties in favour of his daughter Muniammal. Thus, the defendant prayed for dismissal of the suit.

4. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence dismissed the suit against which the respondent herein as appellant has preferred an appeal in A.S.No.30 of 2001. The said appeal in A.S.No.30 of 2001 came to be allowed, against which the present second appeal has been preferred by this appellants/defendants.

5. At the time of admission, the following question of law has been framed.

"1. Whether the execution of a Will can be disbelieved on the ground that the beneficiaries have not proved that the attested witnesses were dead?

2. Whether the evidence of the son of the deceased writer of the document that he can identify the handwriting of his father is not sufficient for proving the execution of the Will?

3. For a suit for partition whether the plaintiff is not bound to prove that he is the legal heir from whom he claims the right of property?"

6. The learned counsel for the appellants would submit that the respondents herein as plaintiffs 2 to 8 had filed the suit for partition and for separate possession of $\frac{3}{4}$ share in the suit

properties stating that the properties are ancestral properties of Mookan @ Karthigan who got the same by way of partition between himself and his brothers viz., Buddan, Ponnusamy and Muni Ellagan. The said Mookan @ Karthigan dies intestate, leaving behind the plaintiffs and his sister Muniammal. So, he is entitled to $\frac{3}{4}$ share in the suit properties. The learned counsel further submitted that the deceased has executed a will which is true and genuine. The defendant has filed the written statement stating that the plaintiff is not the son of the said Mookan @ Karthigan and so he is not entitled to any share in the suit properties. The Trial Court after framing necessary issues has decreed the suit against which an appeal has been preferred. The said appeal also came to be allowed.

7. The learned counsel for the appellant would submit that the Trial Court has correctly held that Muniammal is the only daughter and there is no other legal heir for the said Mookan @ Karthigan. The Will has been executed on 10.06.1968 and he died only on 14.11.1981. The Will is also a registered document. Further, the Trial Court has held that the Will was proved in accordance with law. The attestors of the Will and the scribe had died. Only the son of the scribe and the brother of one of the attesor has been examined as D.W.3. Since Ex.B.6/Will is a registered document, a staff from the Sub-Registrar Office has been examined as D.W.2. So, the genuineness document has been proved. However, the first appellate Court has failed to consider the same. The learned counsel would further submit that since Ex.B.6/Will is a registered document, reliance can be placed on the same. For the said preposition, the learned counsel relied upon the decision reported in 2008 (4) CTC 589, Muniammal v. Annadurai (Deceased) and 7 others.

8. The learned counsel further submitted that the document filed by the plaintiff is not sufficient to hold that he is the son of Mookan @ Karthigan. Ex.A.1/Legal Heir Certificate is not a correct document and Ex.A.2/Patta assignment has been issued only on 28.03.1981. Ex.A.3/Death Certificate has been issued only on 03.02.1998 and Ex.A.4/Voter list came into existence only in the year 1988, after the death of Mookan @ Karthigan. During the life time of Mookan @ Karthigan, the plaintiff/Buddan has not claimed any right in the properties. However, now the plaintiff/Buddan claims right in the properties of Mookan @ Karthigan only on the compulsion of other brothers of Mookan @ Karthigan. This aspect was rightly considered by the Trial Court, but the First Appellate Court has failed to consider. Hence, the learned counsel prayed for allowing of the appeal. To substantiate his argument, the learned counsel for the appellant relied upon the following decisions:

1. 2003 (4) CTC 470, Dr.Shantha v. Sharada.
2. 2005 (1) CTC 11, Janaki Devi v. R.Vasanthi and others.
3. AIR 1982 Supreme Court 133, Smt.Indu Bala Bose and others v. Manindra Chandra Bose and another.
4. 2005 (1) CTC 443, Sridevi and others v. Jayaraja Shetty and others.

5. 2001 (3) CTC 283, Corra Vedachalam Chetty v. G.Janakiraman.

9. Resisting the same, the learned counsel appearing for the respondent would submit that to prove that he is the son of the deceased Mookan @ Karthigan, Ex.A.1/Legal Heir Certificate has been marked and the villagers had been examined as witnesses P.W.3 and P.W.4. to prove that the plaintiff/Buddan is the son of Mookan @ Karthigan. P.W.2/Ponnusamy, who is the junior paternal uncle had also deposed that Buddan is the son of Mookan @ Karthigan. The learned counsel would further submit that the Will has not been proved in accordance with law. The first appellate Court had considered all these aspects in proper prospective and came to a correct conclusion. Hence, the learned counsel for the respondents prayed for dismissal of the appeal.

10. Considered the rival submissions made by both sides and perused the typed set of papers.

11. The admitted facts are that one Thambigan had four sons viz., Mookan @ Karthigan, Buddan, Ponnusamy and Muni Ellagan. The properties mentioned in the suit had been purchased by Mookan under Ex.B.2 to Ex.B.4 which is not disputed. Ex.B.5/Panchayat Muchalika, dated 16.10.1956 has been marked and by the said document, the properties had been divided in the panchayat. The first question that has to be decided is whether the plaintiff has proved that he is the son of the deceased Mookan @ Karthigan? It is an admitted fact that the said Mookan @ Karthigan died on 14.11.1981. Even though the plaintiff has stated that Mookan @ Karthigan died intestate, the defendants had put forth the argument that during his lifetime, her father Mookan @ Karthigan had executed Ex.B.6/Will. So, this Court has to consider whether Ex.B.6/Will has been proved in accordance with law? It is pertinent to note that during the pendency of the suit, the plaintiff/Buddan had died and his LR's were impleaded as plaintiffs 2 to 8. The first appellant/Muniammal had died after the filing of the appeal and her LR's were impleaded as appellants 2 to 8. For the sake of convenience, the names of the respective parties were mentioned.

Question of law 1 & 2

12. It is an admitted fact that Muniammal is the daughter of Mookan @ Karthigan. The disputed fact is that the plaintiff/Buddan is the son of the said Mookan @ Karthigan. Even in the Ex.B.6/Will, it has been specifically stated that except his daughter Muniammal, Mookan @ Karthigan has no other male heir. So, it is the duty of the plaintiff/Buddan to prove that he is the son of the deceased Mookan @ Karthigan. A2/Patta assignment has been issued only on 28.03.1981 and A4/Voter list came into existence only in the year 1988, after the death of Mookan @ Karthigan. It is pertinent to note that no iota of evidence which came into existence during the life time of Mookan @ Karthigan had been filed. Furthermore, before the filing of the suit, the plaintiff/Buddan has filed Caveat No.52 of 1989, wherein he has

stated that he is the son of Mookan @ Karthigan. Ex.B.10/Plaint in O.S.No.508/1993 filed by one Buddan @ Raman against his brothers viz., Ponnusamy and Muni Ellagan @ Gowsilgan, the plaintiff/Buddan, the defendant/Muniamma, Perumal, Muniappa and Annadurai claiming partition and separate possession of ¼ share in the suit properties. In the said plaint, it has been specifically mentioned that Muniammal is a stranger to the family. But subsequently the suit has not been proceeded with. While so, now Ponnusamy had deposed that the plaintiff is the son of Mookan @ Karthigan. Further, a perusal of the evidence of P.W.3 and P.W.4 would reveal that their evidence is not reliable. The first appellate Court without considering those aspects had accepted their evidences.

13. As already stated, the plaintiff has not filed any scrap of paper which came into existence during life time of his alleged father Mookan @ Karthigan, who died on 14.11.1981 to prove that Mookan @ Karthigan is his father. Furthermore, during the life time of his father, the plaintiff has not claimed any right over his properties or he has taken care of his father. So, no reliance can be placed on Ex.A.4/Voter list which came into existence after the death of Mookan @ Karthigan. So, Buddan had been compelled by the brothers of Mookan @ Karthigan to file the suit. As already stated, Ex.A.1/Legal Heir Certificate is not a genuine document as the same was obtained only after the death of Buddan. The legal heirs mentioned therein itself would speak volumes. So, the said document is not reliable. So, except the ipse dixit of P.W.3 and P.W.4, no other evidence is available. Further, in the evidence of P.W.1 to P.W.3, they have not mentioned the name of the mother of Buddan. In such circumstances, I am of the view that the first appellate Court, without any material has held that the deceased plaintiff Buddan is the son of Mookan @ Karthigan, S/o.Thambigan.

14. Furthermore, at the time of filing the suit in the year 1996, the age of the plaintiff is 70 years. The partition is said to have taken place in the year 1956 and at that time, he is 30 years old. However, he is not the attester of the document viz., Ex.B.5/Panchayat Muchalika, dated 16.10.1956. Further in the Ex.B.6/Will, Mookan @ Karthigan had specifically stated that "you are my daughter and I have no male children. Since I am getting old and my brothers are not willing to maintain, I am in the care and custody of you for the past 10 years and so, I wanted to bequeath my properties in your favour. It is appropriate to incorporate the relevant portion of the Ex.B.6/Will.

“2லக்கமிட்ட 1 லக்கமிட்ட என்னிட குமாரத்தி எனக்கு ஆண் சந்ததி கிடையாது. எனக்கு வயதாய்விட்ட காரணத்தால் கதாவில் சாகுபடி செய்து ஜீவிக் க சக்தியில்லாததாலும் என்னை இந்த வயதில் ஆதரிக்க என் சகோதரரில் யாரும் முன் வராததாலும் சுமார் 10 வருஷ காலமாய் 2 லக்கமிட்ட உன்னிட ஆதரவில் இருந்து வந்து வருகிறேன். இனியம் என்னையம் என் பெண்ஜாதிய ,ம் உன்னிட தாயாருமான முடி என்பவளையம் எங்கள் ஆயுள் வரையில்

ஆதரித்து வருவாய் என்கிற முழு நம்பிக்கை இருக்கிறது. இந்த காரணங்களால் அடியில் ஷேஷ்டியூல் விவரம் கண்ட ரூபாய் 5,000/- மதிப்பள்ள தாவா சொத்து எனக்கு பிராஜிதமாய், பாக முலமாய், பாத்தியப்பட்டு என்னிட சுவாதீன அனுபவத்திலிருந்து வரும் சொத்தை 2 லக்கிமிட்ட உன்னிட பேருக்கு இந்த உயில் சாசனத்தை எழுதி கொடுத்து இருக்கிறேன்."

15. In the year 1968, no father will say that he has got no male heir if really he had a son. Further, it has been specifically stated that his brothers are not willing to take care of him which shows that if really the plaintiff is the son of Mookan @ Karthigan, he must have taken care of him. Furthermore, it is not the case that the said Mookan @ Karthigan has executed the Will in his death bed. The Ex.B.6/Will had been executed on 10.06.1968 and he died on 14.11.1981, after a period of 13 years. In such circumstances, I am of the view that the first appellate Court without considering all those aspects had held that the deceased Buddan is the son of Mookan @ Karthigan. So, this Court is of the view that the deceased Buddan has failed to prove that he is the son of Mookan @ Karthigan. Once he has not proved that he is the son of Mookan @ Karthigan, he is not entitled to any share in the estate of the deceased Mookan @ Karthigan. The third substantial question of law is answered accordingly.

16. It is also pertinent to note that all the original documents have been produced only by the defendants and not by the plaintiff. If really the plaintiff is the son, he must have possessed all the documents. Furthermore, the suit has been filed in the year 1996, after 15 years from the date of the death of Mookan @ Karthigan. In such circumstances, the first appellate Court has committed an error in holding that the plaintiff/Buddan is the son of Mookan @ Karthigan.

17. It is pertinent to note that the substantial question of law 1 and 2 reads as to whether the execution of a Will can be disbelieved on the ground that the beneficiaries have not proved that the attested witnesses were dead and whether the evidence of the son of the deceased writer of the document that he can identify the handwriting of his father is not sufficient for proving the execution of the Will? D.W.3/Duraisamy who is the son of the scribe Seshadri Iyengar and brother of the attester Srinivasan has been examined. Furthermore, there is no reason for discarding his evidence.

18. At this juncture, it is appropriate to consider the decisions relied on by the learned counsel for the appellant.

18.1. In the decision reported in 2003 (4) CTC 470, Dr.Shantha v. Sharada, it was held that the evidence of the attesting witness can also be trusted unless the allegation of suspicious circumstances was not established through satisfactory material evidence. It is appropriate to incorporate paragraphs 9 and 10 of the said decision:

"9. We will now take up the first contention of the learned counsel that the signature found in Ex.P.1 is not the usual signature of the testator. According to the learned counsel, as we stated earlier, the testator, P.Sundaramurthy, used to sign as P.S.Murthy and no document was produced before the Court to indicate that he used to sign as P.Sundaramurthy, whereas in Ex.P.1, the will, it is seen signed as P.Sundaramurthy. According to him, the signature, P.Sundarmurthy, therefore, is an unusual signature and it is a suspicious circumstance. In support of his plea, he relies upon the two documents, Exs.P.5 and P.13. Ex.P.5 is a letter dated 15.11.1957 addressed to the respondent/plaintiff and Ex.P.13 is a greeting sent by him on 25th December, 1978. We have perused both the documents. On going through the documents, it could be seen that the two letters were addressed to his daughter and the testator, Sundaramurthy, therefore, would have signed them as P.S.Murthy instead of putting his complete signature as P. Sundaramurthy. The two documents are personal documents, one, a letter addressed to the daughter enquiring about her health and other details and the other, a greeting sent by him and there was no need for Sundaramurthy to have put his full signature in the two documents. In this connection, we cannot but refer to Ex.P.18, the case sheet. At the hospital, he was asked to give his consent for an operation and after giving his consent for an operation under general anaesthesia, he has affixed his signature as P.Sundaramurthy. This shows that whenever an official document was signed, the testator was putting his full signature and whenever he addressed private letters to his daughters and others, he was not putting the full signature. It is not the case of the appellant/defendant that the signature found in Ex.P.1 is a forged signature. In fact, even in the written statement of the appellant/defendant, he did not make any allegation that the signature found in Ex.P.1 is a forged signature and the only statement made therein is to the effect that the signature found in the will is not his "usual signature". In the absence of any allegation that the signature found in Ex.P.1 is not that of P.Sundaramurthy and in view of our above discussion, we are unable to hold that the full signature of P. Sundaramurthy found in Ex.P.1 is a suspicious circumstance leading to a presumption that Ex.P.1 is not a genuine document.

10. The second contention of the learned counsel is that the testator of the will has disinherited two of his legal heirs and that therefore, it is a suspicious circumstance. As we stated earlier, the learned counsel vehemently contends before us that since in the said will he has not mentioned any reason for disinheriting two of

his legal heirs and gave the entire property to the respondent/ plaintiff, it is to be treated as a suspicious circumstance. Even at the outset, we may say that we are unable to accept the said contention of the learned counsel. At this stage, a useful reference can be made to the judgment of the Supreme Court in PPK GOPALAN NAMBIAR vs. PPK BALAKRISHNAN NAMBIAR AND OTHERS (A.I.R. 1995 SUPREME COURT 1852), wherein the Supreme Court has held that whole of estate given to son in exclusion of daughter is not sufficient to generate suspicion about the genuineness of the will. The said view was, later, reiterated in SADASIVAM vs. K.DORAISAMY [(1996) 8 SUPREME COURT CASES 624], wherein the Supreme Court has held that divesting of close relations being the purpose of execution of Will, this is normally not a suspicious circumstance and that apart, good reason existed for bequeathing the property to the respondent - the same being his having been brought up by Karuppanna. The Supreme Court in S.SUNDARESA PAI AND OTHERS vs. SUMANGALA T.PAI (MRS.) AND ANOTHER [(2002) 1 SUPREME COURT CASES 630] has held that uneven distribution of assets amongst children, by itself, cannot be taken as a circumstance causing suspicion surrounding the execution of the will. Therefore, the purpose of the will itself is to bequeath the property to a particular person and disinheritance of one or the other legal heir, by itself, cannot be a suspicious circumstance. In the light of the above judgments, we have perused the will, Ex.P.1 and considered the recitals found therein. In the said will, the testator has stated that his son has received necessary education and he is well equipped with the educational qualification and is employed and that he has married without his consent and has chosen to lead his own life. In the said will, while referring to the appellant/defendant, he has stated that she is well placed in life and that she has no issue either male or female and while referring to the plaintiff/respondent, has stated that she has been caring and looking after him and his wife with love and affection in their old age and therefore, she is entitled to the property after the life time of his wife, Babu Ammal. Therefore, the recitals in Ex.P.1 show that the testator had taken into consideration several aspects and then, decided to create life estate for his wife and then, absolute right to the daughter, Sarada, the respondent/plaintiff. This shows that while he executed the will, he was in proper mental frame of mind. The fact that in the said will, after the words Sow.Sarada, letters "W/o. Ikram" found written in ink is, by itself, no reason to say that the will is not a genuine one. It is to be remembered that the will was executed on 6th of December, 1980 and was registered on the same day. We, therefore, reject the second contention also."

18.2. In the decision reported in 2005 (1) CTC 11, Janaki Devi v. R.Vasanthi and others, it was held that the registration of Will by itself does not prove due execution, but on facts of case, the endorsement made on Will by the registering authority can be taken as evidence. It is appropriate to incorporate paragraph 25 of the said decision:

"25. In an unreported decision of this Court in Maria Stella v. Joseph Catherine, in C.M.A. No. 1020 of 1990 dated 11.7.2002, one of us (K. Govindarajan, J.) has held, considering the previous decisions, as well as the effect of Section 68 of the Indian Evidence Act and the factum of registration of the Will, that it is clear that it is not necessary to give positive evidence to prove that the testatrix did see the attesting witnesses put their signatures or that attesting witnesses saw the testatrix sign the document. Where there is proof of signature, everything else is implied till the contrary is proved. In the absence of witnesses who are either dead or cannot be brought to Court or cannot recollect the facts, the second evidence is permitted. It is also further observed, relying on a Division Bench of this Court in Irudayammal v. Salayath Mary, 1972 (2) MLJ 508, that it is true that registration, by itself, in all cases, is not proof of execution, but if no other evidence is available, the certificate of registration is prima facie evidence of its execution and the certificate of the registration officer under Section 60 of the Registration Act is relevant for proving execution."

18.3. In the decision reported in AIR 1982 Supreme Court 133, Smt.Indu Bala Bose and others v. Manindra Chandra Bose and another, it was held 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. It is appropriate to incorporate paragraph 8 of the said decision:

"8. Needless to say that any and every circumstance is not a 'suspicious' circumstance. A circumstance would be 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. Learned counsel relied on the decision of this Court in the case of Rani Purnima Devi and Another v. Kumar Khagendra Narayan Dev and Another. In this case the will in question gave the entire property by the testator to a distant relation of his to the exclusion of the testator's widow, sister and his other relations, and even his daughter, who would be his natural heirs, but subject, of course, to the condition that the legatee would maintain the widow and the sister of the testator. The testator's

signatures were not his usual signatures, nor in the same ink as the rest of the will; the testator used to sign blank papers for use in his cases in court and he used to send them to his lawyer through his servants; the testator did not appear before the Sub-Registrar for the purpose of registration of the will but the Sub-Registrar sent only his clerk to the residence of the testator for the purpose of registration; there were 16 attesting witnesses who attested the will, but of them, only 4 interested witnesses were examined to the execution of disinterested witnesses. The above are undoubtedly suspicious circumstances, circumstances creating doubt in the mind of the Court. In spite of these circumstances, it was held by the Trial Court that the will was duly executed and attested. On appeal, the High Court affirmed the order of the Trial Court. On further appeal, this Court held that the circumstances were suspicious and were not satisfactorily explained and hence held that "the due execution and attestation of the will were not proved.""

18.4. Even in the decision reported in 2005 (1) CTC 443, Sridevi and others v. Jayaraja Shetty and others, it was held that 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 the signature of the testator as required by law is sufficient to prove the Will. It is appropriate to incorporate paragraphs 11 and 18 of the said decision:

"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 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.

...
...

18. At the time of registration of the will on 11.9.1980, the scribe and the two attesting witnesses had been produced before the Registrar. Their statements were

recorded and only after satisfying himself, the Registrar registered the will. The statements of the scribe and the two attesting witnesses before the Registrar are in harmony with the statements made by them in the court. Another circumstance which was stressed during the course of the arguments by the counsel for the appellants was that although it was not necessary to get the will registered, but still the respondents got it registered after a period of 4 years only to lend authenticity to the will. According to Respondent No. 13, the will was got registered on the advice of a lawyer to enable them to produce it before various authorities. Since we have come to the conclusion that the daughters were present at the time of execution of the will by the testator and the execution of the same was disclosed at the time of final obeisance ceremony of the testator and that the will had also been brought to the notice of the appellants in the year 1978 during the proceedings before the forest authorities, the registration of the will in the year 1980 by itself does not cast a doubt regarding the execution of the will in the year 1976."

18.5. In the decision reported in 2001 (3) CTC 283, Corra Vedachalam Chetty v. G. Janakiraman, it was held that the object of probate proceedings is not to render will ineffective but to make it effective and render terms of will operative. It is appropriate to incorporate paragraph 25 of the said decision:

"25. The testamentary Court is a Court of conscience. It is not a Court of suspicion. It is not the law that, whenever a Will is sought to be proved in the Court, the Court should start with the presumption that the Will is not genuine, that it is fraudulent and that the person who chooses to probate the Will must remove all such suspicions even they are not unreal. The object of the probate proceedings is not to render the testamentary document ineffective but to make it effective and render the terms of that Will operative. In doing so, the Court has to take note of the fact that the testator is not available to the Court to state as to whether the document in fact was his or her last Will or as to whether he or she had signed the same and whether the attestors had signed receiving an acknowledgment from him about the execution of the Will. It is for that reason that the Courts should be cautious while dealing with the evidence placed before them in relation to the executions and attestation, of the Will as also the disposing state of mind of the testator."

18.6. In the decision reported in 2008 (4) CTC 589, Muniammal v. Annadurai (Deceased) and 7 others, the learned counsel relied upon paragraphs 27 and 28 and the same is usefully extracted here under:

"27. The learned Senior Counsel for the defendants would cite the decision of the Hon'ble Apex Court reported in

2006(2)LW 658 SC [Pentakota Satyanarayana & others vs. Pentakota Seetharatnam & others]. An excerpt from it would run thus:

"25. A perusal of Ex.B9 (in original) would show that the signatures of the Registering Officer and of the identifying witnesses affixed to the registration endorsement were, in our opinion, sufficient attestation within the meaning of the Act. The endorsement by the sub-registrar that the executant has acknowledged before him execution did also amount to attestation. In the original document the executants signature was taken by the sub-registrar. The signature and thumb impression of the identifying witnesses were also taken in the document. After all this, the sub-registrar signed the deed. Unlike other documents the Will speaks from the death of the testator and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his Will or not and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and the testament of departed testator.

26. In the instant case, the propounders were called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document on his own freewill. In other words, the onus of the propounder can be taken to be discharged on proof of the essential facts indicated above. It was argued by learned counsel for the respondent that propounders themselves took a prominent part in the execution of the Will which will confer on them substantial benefits. In the instant case, propounders who were required to remove the said suspicion have let in clear and satisfactory evidence. In the instant case, there was unequivocal admission of the Will in the written statement filed by P.Srirammurthy. In his written statement, he has specifically averred that he had executed the Will and also described the appellants as his sons and Alla Kantamma as his wife as the admission was found in the pleadings. The case of the appellants cannot be thrown out. As already noticed, the first defendant has specifically pleaded that he had executed a Will in the year 1980 and such admissions cannot be easily brushed aside. However, the testator could not be examined as he was not alive at the time of trial. All the witnesses deposed that they had signed as identifying witnesses and that the

testator was in sound disposition of mind. Thus, in our opinion, the appellants have discharged their burden and established that the Will in question was executed by Srirammurthy and Ex.B9 was his last will. It is true that registration of the Will does not dispense with the need of proving, execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. The Registrar has made the following particulars on Ex.B9 which was admitted to registration, namely, the date, hour and place of presentation of document for registration, the signature of the person admitting the execution of the Will and the signature of the identifying witnesses. The document also contains the signatures of the attesting witnesses and the scribe. Such particulars are required to be endorsed by the Registrar along with his signature and date of document. A presumption by a reference to Section 114 of the Evidence Act shall arise to the effect that particulars contained in the endorsement of registration were regularly and duly performed and are correctly recorded. In our opinion, the burden of proof to prove the Will has been duly and satisfactorily discharged by the appellants. 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. In such circumstances, the onus shift to the contestant opposing the Will to bring material on record meeting such prima facie case in which event the onus 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.

27. It is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the view taken by this Court in *Sridevi & Ors vs. Jayaraja Shetty & Others*, (2005) 2 SCC 784 = 2005-2-L.W.89. In the said case, it has been held that 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 the proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case.

28. Mr.Narsimha, learned counsel for the respondents submitted that the natural heirs were excluded and legally wedded wife was given a lesser share and, therefore, it has to be held to be a suspicious circumstance. We are unable to countenance the said submission. The circumstances of depriving the natural heirs should not raise any suspicion because the whole idea behind the execution of the Will is to be interfered in the normal line of succession and so natural heirs would be debarred in every case of the Will. It may be that in some cases they are fully debarred and some cases partly. This is the view taken by this Court in Uma Devi Nambiar and Others vs. T.C.Sidhan.

28. The aforesaid cited decision is very much applicable in the facts and circumstances of this case and a mere perusal of it would indicate the same, as Ex.B.1 is a registered Will and in fact, execution of the Will was on 20.10.1964 and the Will was presented for registration on 05.11.1964. As such, the time gap between the execution and the registration of the Will further strengthens the genuineness of the Will, as it would indicate that there was no hustling through in the process of executing the Will as well as in getting the Will registered. Normally if there is any fraud or coercion involved in the execution of the Will, naturally there would be element of urgency and hustling through and it would be writ large. But in this case, such elements are totally missing which exemplifies that in the normal course the testator executed the Will and got it registered. Simply because one of the attesting witnesses attested it on 04.11.1964, that would not detract the genuineness of the Will. No doubt, before the trial Court adequate explanation was not given about such belated attestation by A.Govinda Raj. Even de hors the attestation of A.Govinda Raj, the Will stands proved in view of the evidence as set out supra to the effect that the other attesting three witnesses clearly and categorically spoke about the due execution of the Will by the testator and the attestation of the Will by the witnesses."

19. Considering the facts of the present case in the light of the above decisions along with the evidence of D.W.2/Sivakumar, Staff of

the Sub-Registrar Officer and also the evidence of D.W.3/Duraisamy, son of the scribe Seshadri Ayyangar and brother of one of the attester viz., Srinivasan, I am of the view that Muniammal has proved that the Ex.B.6/Will is true and genuine and also dispelled the suspicious circumstances. Furthermore, D.W.4/Muniappan was examined to prove that the deceased Mookan @ Karthigan is having only one daughter alone. Once the Ex.B.6/Will is proved to be true and genuine, applying the armchair theory i.e., the intention of the testator that he has bequeathed his properties to his only daughter, I am of the view that the appellant propounder has proved the Will and dispelled the suspicious circumstances. But already in the substantial question of law, it was held that the plaintiff has not proved that he is the son of the deceased Mookan @ Karthigan and so he has no right over the properties of Mookan @ Karthigan. Even if the Will goes and the said Mookan @ Karthigan had died intestate, his only daughter Muniammal alone would inherit the properties. However, the recital in the Will would clearly reveal that Mookan @ Karthigan had no male issues and since he is getting older and his brothers were not willing to take care of him, he and his wife were in the care and custody of his daughter Muniammal for the past 10 years. Hence, he wanted to bequeath the properties in favour of his daughter and executed the Will.

20. In such circumstances, I am of the view that the Trial Court has rightly held that the Ex.B.6/Will has been proved. However, the first appellate Court had erroneously disbelieved the Ex.B.6/Will. Taking into consideration the evidence of D.W.2/Sivakumar and D.W.3/Duraisamy, I am of the view that the Ex.B.6/Will is true and genuine and it was executed while the testator was in sound and disposing state of mind. As per the Will, the testator Mookan @ Karthigan had bequeathed his properties in favour of his only daughter viz., the appellant herein and hence, she is entitled to the properties. The deceased Buddan has not proved that he is the son of Mookan @ Karthigan and hence, he is not entitled to any share in the properties of Mookan @ Karthigan. So, the judgment of the first appellate Court is perverse and unsustainable and hence, the same is hereby set aside. Consequently, the appeal is allowed without costs.

21. In fine,

- (a) The Second Appeal is Allowed. No costs.
- (b) The judgment and decree passed by the first appellate Court is hereby set aside.
- (c) The judgment and decree passed by the Trial Court is hereby restored.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The II Additional District Sessions Judge -cum-
Chief Judicial Magistrate, Krishnagiri.

2.The Subordinate Court, Hosur.

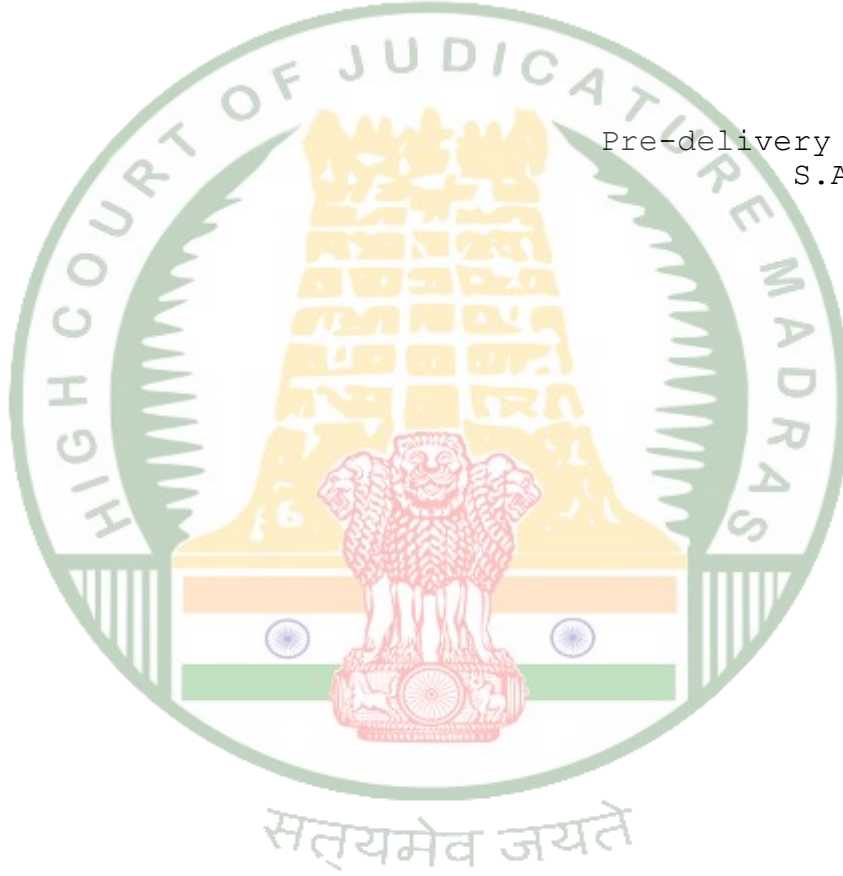
3.The Record Keeper, V.R.Section, High Court, Chennai.

+1 cc to Mr.S.Doraisamy, Advocate,SR.28793.

+1 cc to Mr.P.Mani, Advocate,SR.28645.

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krd 17/6

Pre-delivery Judgment made in
S.A.No.1585 of 2002



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