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AIR 1959 SC 443 THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY APPEAL SUIT Nos.162 of 1997 and 1040 of 2000 29.04.2015 A.S.No.162 of 1997: Between: Sri Ravada Appala Reddy and another ...Appellants And Kadambari Sarojini Devi and others ...Respondents Counsel for the appellants: Sri M.Ram Mohan for Sri M.S.R.Subrahmanyam Counsel for respondent Nos.1 and 2: Sri V.L.N.G.K.Murthy Counsel for respondent Nos.4 to 6: Sri G.Sudha Counsel for respondent Nos.3, 9 and 10: none appeared A.S.No.1040 of 2000: Between: Sri Gudla Sree Venkateswarlu & Khambam and others ...Appellants And Kadambari Sarojini Devi and others ...Respondents Counsel for the appellants: Ms.G.Sudha Counsel for respondent Nos.1 and 2: Sri V.L.N.G.K.Murthy Counsel for respondent Nos.6 and 7: Sri M.Ram Mohan for Sri M.S.R.Subrahmanyam Counsel for respondent No.5: None appeared The Court made the following: COMMON JUDGMENT: The subject matter and the parties to both these appeals are common. Hence, they are heard and are disposed of together. A.S.No.162 of 1997 is filed by defendant Nos.8 and 9 in O.S.No.35 of 1992 on the file of learned Subordinate Judge, Pithapuram. A.S.No.1040 of 2000 is filed by defendant Nos.2 to 4 in the said suit. Though A.S.No.1040 of 2000 was filed in the year 1996, the same was numbered in the year 2000 after A.S.No.162 of 1997 was numbered. A.S.No.1040 of 2000 is substantive as it was filed by defendant Nos.2 to 4, who claimed to have succeeded to the testamentary succession through Smt.K.Vasantha Devi. As the appellants in A.S.No.162 of 1997 are the purchasers from the appellants in A.S.No.1040 of 2000, it is appropriate to treat A.S.No.1040 of 2000 as the lead case. Respondent No.1 is the mother of respondent No.2. Both of them filed O.S.No.222 of 1987 on the file of the learned I Additional Subordinate Judge, Kakinada, which was later re-numbered as O.S.No.35 of 1992 on the file of the Subordinate Judge, Pithapuram, for possession of plaint A schedule properties to respondent No.1, after dividing and allotting their shares in items 1, 2 and 4 thereof and for possession of whole of item 3 of A schedule properties after ejecting the defendants therefrom, for determination of future profits from the date of suit till possession is delivered, for past profits of Rs.57,750/- with interest @ 12% per annum from the date of suit till the date of realization and for costs. It is the pleaded case of respondent Nos.1 and 2/plaintiffs that the predecessor in title - Smt.Vasantha Devi married one Khambam Sri Ramulu Reddy on 08.12.1965; that it was an inter-caste marriage between a Brahmin and a Reddy; that in 1967, the marriage of respondent No.1/plaintiff No.1 took place with Kadambari Krishnamurthy; that in the year 1974, Khambam Sri Ramulu Reddy died and that the appellant No.1/defendant No.1 was born on 16.09.1958 to his natural father – Gudla Appala Reddy, and in the year 1962 he was adopted by Khambam Sri Ramulu Reddy prior to his marriage with Smt.Vasantha Devi. Respondent Nos.1 and 2/plaintiffs further pleaded that after the death of her husband, Smt.Vasantha Devi filed O.P.No.14 of 1974 (suit in forma pauperis), which was later numbered as O.S.No.129 of 1976 on the file of learned II Additional Subordinate Judge, Visakhapatnam, for partition against appellant No.1 and Smt.Mahalakshamma, his sister and Smt. Vara Lakshmi – his daughter. That as Smt.Vasantha Devi could not raise finances for fighting the litigation, she has compromised the dispute leading to passing of a compromise decree dated 23.01.1980 in I.A.No.20 of 1980 in O.S.No.129 of 1976. That later, Smt.Vasantha Devi was admitted to hospital for high blood pressure and after getting discharged from the hospital, appellant No.1 brought her to his house, got Will dated 11.03.1980 executed by her and got the same registered. That respondent No.1 is the only sister of late Smt. Vasantha Devi and she had no other near relatives. That Smt. Vasantha Devi was very affectionate towards respondent Nos.1 and 2 and that Smt. Vasantha Devi nominated respondent No.1 as her nominee and assigned family benefit fund in her account on 01.08.1975. Respondent Nos.1 and 2 further averred that the relationship between late Smt.Vasantha Devi and defendant Nos.1 to 6 was not cordial and therefore, she could not have executed Will, dated 11.03.1980 in a sound disposing state of mind and the appellants and other defendants in collusion with each other have brought the said Will into existence. That Smt. Vasantha Devi executed another Will, dated 20.02.1982, by cancelling Will, dated 11.03.1980, and delivered the same to respondent No.1 on the same day at Dowleswaram and promised to register the same at Rajahmundry when she proposed to visit about fortnight later. That thereafter, Smt. Vasantha Devi was attacked with high blood pressure and became unconscious on 01.03.1982 and her friends in her office brought her to Rajahmundry Government Headquarters Hospital and joined her as an in patient and sent a word to respondent No.1 and her husband, who were at Dowleswaram and that this was the reason for Smt. Vasantha Devi not registering the Will. That Smt. Vasantha Devi, who became unconscious after her admission in Government Hospital, Rajahmundry, died on 05.03.1982 at 10.00 p.m. and her obsequies were performed by respondent No.1 and her husband and that Will, dated 20.02.1982, was the last Will of Smt. Vasantha Devi. Appellant No.1 in AS.No.1040 of 2000 (defendant No.1) filed a written statement, wherein he has inter alia averred that he was adopted by late Kambham Sree Ramulu Reddy in the year 1964, that on 08.12.1965, his adoptive father married Vasantha Devi at Visakhapatnam, that they all lived together at Visakhapatnam for some time and that Smt.Vasantha Devi has maliciously filed a suit challenging his adoption. Appellant No.1 has further averred that Smt.Vasantha Devi has filed suit in forma pauperis bearing O.P.No.14 of 1974, which was re-numbered as O.S.No.129 of 1976, and a compromise decree was passed in that suit. That the averment that Smt.Vasantha Devi executed Will, dated 20.02.1982, is absolutely false as she was not in a position to execute any such Will and that if such Will were to be true, there was no reason as to why she has not registered the same at Kovvuru itself before she died 13 days after the alleged execution of the Will. That Smt.Vasantha Devi has executed Will, dated 11.03.1980, and got the same registered in sound a disposition of mind and the Will, dated 20.02.1982, was fraudulently brought into existence by respondent No.1 and her husband, who never visited Smt.Vasantha Devi when she was in K.G.Hospital for more than 40 days, during which period, appellant No.1 and his natural mother served her and paid all her medical bills. That the suit filed based on a false Will is highly speculative. The appellants in AS.No.162 of 1997 (defendant Nos.8 and 9), have also filed a written statement, wherein they have denied execution of Will, dated 20.02.1982. They have pleaded that they are the purchasers of Item No.2 of 'A' Schedule property from appellant No.1 in AS.No.1040 of 2000 and that they are the bona fide purchasers after due enquiries. They have accordingly prayed for dismissal of the suit. Based on the respective pleadings, the lower Court has framed the following issues. "1. Whether the plaintiffs are entitled for partition schedule property as prayed for? 2. Whether the plaintiffs are entitled for recovery of possession of whole (of) item No.3 of the plaint A Schedule property after ejecting the defendants therefrom? 3. Whether the plaintiffs are entitled for future profits as prayed for? 4. Whether the plaintiffs are entitled for past profits of Rs.57,750/- together with interest as per prayed for? 5. Whether the Will dt.20.02.1982 is true, valid and binding on the defendants? 6. To what relief?" An additional issue was framed on 26.01.1996 as under: "Whether the suit is bad for non-joinder of necessary parties?" On behalf of respondent Nos.1 and 2/plaintiffs, PWs.1 to 5 were examined and Exs.A-1 to A-22 were marked. On behalf of the appellants and other defendants, DWs.1 and 2 were examined and Exs.B-1 to B-8 were marked. Ex.X-1 was marked through Court. Based on the oral and documentary evidence, the lower Court has held all the issues in favour of respondent Nos.1 and 2/plaintiffs. Feeling aggrieved by the judgment and decree of the lower Court, defendant Nos.1 to 4 have filed AS.No.1040 of 2000 and defendant Nos.8 and 9 have filed AS.No.162 of 1997, as noted earlier. I have heard Ms.G.Sudha, learned counsel for the appellants in AS.No.1040 of 2000, Sri M.Ram Mohan, learned counsel for the appellants in AS.No.162 of 1997, and Sri V.L.N.G.K.Murthy, learned counsel for the respondents in both the appeals. At the outset, it needs to be mentioned that the learned Counsel for respondent Nos.1 and 2 has not seriously questioned the validity of Will, dated 11.03.1980, marked as Ex.B-7. Indeed, no issue on this aspect was even framed by the lower Court. On the contrary even in the Will, dated 20.02.1982 (Ex.A-5) propounded by respondent Nos.1 and 2, there is a reference to Ex.B-7, Will. Therefore, it is appropriate to proceed on the premise that Ex.B-7, Will, was executed by Smt.K.Vasantha Devi. The learned counsel for the appellants in AS.No.1040 of 2000 has mainly concentrated on issue No.5, namely, whether the Will, dated 20.02.1982, is true, valid and binding on the appellants. She has taken me through the oral evidence and submitted that respondent Nos.1 and 2 have failed to establish that there were cordial relations between them and the testatrix and that on the other hand, having executed Ex.B-7, Will, on 11.03.1980, there was no reason for the testatrix to execute Ex.A5, Will, within less than two years. She has further submitted that the disputes which existed between the testatrix and appellant No.1 were settled, with her execution of Ex.B-7, Will, and the compromise

decree, dated 25.04.1981 and that in the absence of any evidence to show that the testatrix had close acquaintance with respondent Nos.1 and 2, Ex.A-5 propounded by them cannot be accepted as valid. She has also submitted that while respondent No.1 as PW.1 stated that she was not aware of the Will as her husband was looking after all the affairs, her husband as PW.2 has stated that he is not aware of anything as PW.1 has personal knowledge and that this material contradiction in the evidence between PWs.1 and 2 causes serious suspicion about the genuineness of the Will. The learned counsel has also pointed out certain discrepancies in the evidence of PWs.3 to 5 and submitted that Ex.A-5 being unregistered Will and pitted against Ex.B-7, registered Will, the latter must prevail over the former. The learned counsel for the appellants in AS.No.162 of 1997 submitted that appellant No.1 has purchased Ac.1.00 under Ex.A-19 and appellant No.2 has purchased Acs.2.00 each under Exs.A-20 and 21, sale deeds, from defendant No.1 bona fide and for valuable consideration and that therefore even if Ex.A-5 Will is upheld, his clients are entitled to equities to be worked out. Countering these submissions, the learned counsel appearing for the respondents in both the appeals submitted that the marriage between the testatrix and Sri Kambham Sree Ramulu Reddy was an inter caste marriage, that Smt.Vasantha Devi was never accepted by the family members of her husband and that after the death of Sree Ramulu Reddy, Smt.Vasantha Devi was forced to file a civil suit for partition and that the very fact that she has filed the suit in forma pauperis shows that she was under serious financial stress which has led to her entering into a compromise with appellant No.1. He has further pointed out that even while the suit filed by Smt.Vasantha Devi was pending, she was made to execute Ex.B-7 Will on 11.03.1980, and having made sure that her share of properties will be reverted back to him through Ex.B-7 Will, appellant No.1 allowed a compromise decree passed on 25.04.1981. The learned counsel has further submitted that the relationship between the testatrix and appellant No.1 were never cordial. He has invited this Court's attention to Ex.B-1, letter, dated 30.10.1981, addressed by the testatrix to appellant No.1, wherein she has informed that she may have to think of executing a fresh Will. In order to show that the testatrix was in cordial terms with the family of respondent Nos.1 and 2 and that she was relying upon them for financial help, the learned counsel has placed reliance on Exs.A-17 and A-18, letters. The learned counsel has also submitted that Ex.A-5 Will was duly proved by examining PWs.3 and 4, attestors, and PW.5, scribe. He has further submitted that while the testatrix was never happy with appellant No.1, who was adopted by her husband prior to her marriage, respondent No.1 being her natural sister and respondent No.2 being her niece, it is natural for the testatrix to execute Will in their favour after the disputes with appellant No.1 got settled and she became free from his influence. He has finally submitted that there are no suspicious circumstances surrounding Ex.A-5 Will and the lower Court has rightly decreed the suit. As regards the submission of the learned counsel for the appellants in AS.No.162 of 1997, the learned counsel for the respondents submitted that the plaint in the present suit was presented on 04.03.1985 and defendant Nos.8 and 9 have purchased Item No.2 of 'A' Schedule properties under Exs.A-19 to 21 from 28.03.1985 to 10.06.1987 and that therefore these sale deeds are hit by the doctrine of lis pendens and these defendants are not entitled to plead equities. I shall now consider the respective submissions of the learned Counsel for the parties. Section 30 of the Hindu Succession Act, 1956 deals with testamentary succession. This provision enables any Hindu to dispose of any property at his will or through other testamentary disposition in accordance with the provisions of the Indian Succession Act, 1925 or any other law for the time being in force and applicable to Hindus. Chapter-II of Part VI of the Indian Succession Act, 1925 (for short 'the 1925 Act') deals with Wills and Codicils. Section 61 thereof renders a Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator void. Under Section 62, a Will is liable to be revoked or altered by the maker of it at any time at his will when he is competent to dispose of his property by Will. Under Section 63 of the 1925 Act, for executing unprivileged Wills, every testator shall follow the following Rules: The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction. The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. Section 67 of the Indian Evidence Act, 1872 reads as under : "Proof of signature and handwriting of person alleged to have signed or written document produced: If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. Section 68 thereof envisages 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, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. This provision exempts documents, other than a Will, from the necessity of calling of attesting witness in proving of execution of any document which has been registered in accordance with the provisions of the Indian Registration Act, 1908 unless its execution by the person by whom it purports to have been executed is specifically denied. In Shashi Kumar Banerjee and others v. Subodhkumar Banerjee, the Supreme Court held that mode of proving a Will does not ordinarily differ from that of proving other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the 1925 Act, that the onus of proving the Will is on the person pleading the execution of the Will and that proving the testamentary capacity and the signature of the testator as required by law is sufficient to discharge this onus. In H.Venkatachala lyengar v. B.N.Thimmajamma and others, the Supreme Court held that the question as to whether the Will set up by the propounder to be the last Will of the testator has to be decided in the light of the provisions of Sections 67 and 68 of the Indian Evidence Act, 1872 and Sections 58 and 63 of the 1925 Act and that the reasonable test to be applied would be the usual test of satisfaction of the prudent mind to such matters. The Court further held that the propounder would be 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 his signature to the document is of his own free will. It was also held that ordinarily when the evidence is disinterested and that the testator has signed the document as required by law, the Courts shall be justified in making a finding in favour of the propounder. The Court further held that there may however be suspicious circumstances surrounding the Will rendering the same invalid. Keeping in view the above legal parameters, this Court needs to carefully analyse the evidence adduced by the parties. Respondent No.1 examined herself as PW-1. She has virtually reiterated the contents of the plaint. In her chief-examination, she has stated that on 20-2-1982, the testatrix came to her house at Dowleswaram and handed over a Will to her bequeathing her properties; that on that day the testatrix was hale and healthy and she informed PW-1 that she would register the Will ten days thereafter and left for Kannapuram where she was working as a Home Superintendent. PW-1 further deposed that on 1-3-1982, the office staff of Kannapuram brought the testatrix in unconscious state stating that she has become unconscious in her office; and that PW-1 admitted the testatrix in Government Hospital, Rajahmundry where she died on 5-3-1982 after being in coma for five days. She further deposed that appellant No.1 and his mother and sister did not treat her sister with love and affection and the testatrix had love and affection towards her. In her cross-examination by defendant Nos.1 to 4, PW-1 denied the suggestion that the testatrix did not deliver the Will to her on 20-2-1982. She admitted that the testatrix did not inform her of the name of the person or the address of the scribe of the Will. She has stated that there are four attestors to the Will; that one Maddi Venkata Rao of Dowleswaram was one of the attesting witnesses and she does not know the names and addresses of the other attestors; that she never visited Visakhapatnam when Vasantha Devi stayed in the house of the defendants and she never visited her sister when she was admitted in K.G. Hospital during January to 1-3-1980. She further deposed that her sister did not invite her to her marriage with Sriram Reddy. She deposed that she does not know anything about the suit affairs and that her husband knows everything. She has further stated that her sister specifically informed her after coming to her house that she got the Will drafted at the Court at Kovvur and being delivered to her and that she would come within ten days and register the same. She has denied the suggestion that on some blank papers given by the testatrix containing her signatures in connection with her prior litigation, the plaintiffs have fabricated Ex.A-5 and that she did not execute the Will. PW-1 admitted that Ex.B-1 and B-2 letters were written by Smt. Vasantha Devi. PW-2, the husband of respondent No.1 deposed that on 17-2-1980, Vasantha Devi was at his house at Dowleswaram and that in the month of March when he returned home, he found Vasantha Devi at their house and that Vasantha Devi stayed with them at that time and took treatment. He has further deposed that Vasantha Devi was in need of money and he used to finance her, as evident from Ex.X-1-Money Order receipt; that the mother of appellant No.1 attended the ceremony of Vasantha Devi at Dowleswaram and she came to their house on the eleventh day; that she enquired as to whether Vasantha Devi executed a Will; that when he replied in the affirmative,

she has instructed them to come to Visakhapatnam with the document; that they have accordingly visited Visakhapatnam on one Sunday with the Will, upon which they were taken by appellant No.1 to an Advocate where a photocopy of the Will was taken and that they were also supplied with a photocopy of the Will executed by Vasantha Devi in the year 1980. PW-2 further deposed that he has no prior acquaintance with the attestors of Ex.A-5; that at the instance of his Pleader at Kovvur, he has met the attestors and come to know that Vasantha Devi executed the Will. That one of the attestors by name Jonnagadda Muralikrishna has died about five months ago. In his cross-examination, PW-2 stated that on 21-2-1982 while he was on the way to bus stand, Vasantha Devi informed him that she executed a Will and delivered the same to his wife on the previous day; that he has approached Ramana Rao, Advocate in the year 1983 or 1984 to know about the witnesses to the Will; that the court complex and the Sub-Registrar's office were situated in one and the same compound very close to each other; that he has taken Ex.A-5 document to the Sub-Registrar's office and enquired about the persons who scribed the document and attested the same; that he was shown one G. Subramanyeswara Rao (PW-5); and that at that time Muralkrishna and Hanumantha Rao were also present at the Sub-Registrar's office. He stated that within 12 days after the death of Vasantha Devi, he made enquiries about the scribe and the attestors of Ex.A-5 Will. PW-3 has deposed that he was working as a Pleader's Clerk for the last 15 years; that he knows Vasantha Devi as she was the client of his Pleader Ramana Rao; that Vasantha Devi executed a Will in February 1982 at the Sub-Registrar's office at Kovvur at about 1 p.m; that Vasantha Devi came to the court and met Veerabhadra Rao who was the senior clerk under Ramana Rao and requested him to arrange a document writer; that the said Veerabhadra Rao called him and instructed him to take Vasantha Devi to one Subramanyeswar Rao, a document writer at the Sub-Registrar's office and get the Will scribed; that Subramanyeswar Rao prepared a rough draft of the Will as per the instructions of Vasantha Devi at about 2 p.m. and after satisfying herself, she instructed Subramanyeswar Rao to prepare a fair copy; that at that time Venkata Rao (PW-4) who is a client of Ramana Rao and another document writer by name Murali were present; that the scribe prepared a fair copy of the Will and read over the same to the testatrix and after satisfying herself, Vasantha Devi signed the Will which was attested by himself and Murali; and that he is the third attestor to Ex.A-5 and all the attestors have witnessed Vasantha Devi signing the Will and she has seen the other attestors attesting the Will. PW-3 further deposed that at the time of execution of the Will, the testatrix was hale and healthy. In his cross-examination, PW-3 admitted that he does not know the contents of the Will, but that it was read out. He has further deposed that he was present right from the commencement of draft Will till the completion of execution of the Will. He denied the suggestion that he did not witness the execution of the Will and that himself and the other witnesses did not attest the Will in the presence of Vasantha Devi on the alleged date of execution of the Will and that that was the reason why they did not place the date underneath their signatures. He has denied the suggestion that for some purpose Vasantha Devi might have sent some blank papers and delivered them to Veerabhadra Rao, the senior clerk, and those signatures were used for fabricating Ex.A-5. PW-4, another attestor to the Will, deposed that he has attested the Will and that Vasantha Devi signed in his presence; and that one Murali Krishna and PW-3 also attested the Will, which was witnessed by Vasantha Devi. He has further stated that at the time of execution of the Will, the testatrix was hale and healthy. He has denied the suggestion that Vasantha Devi did not execute the Will in their presence and that they did not attest the Will in her presence. PW-5 in his evidence has deposed that he is a document writer and that he cannot say whether he has scribed Ex.A-5 in the year 1982. He further deposed that he does not know Vasantha Devi previously, but PW-3 brought her to him on the date of the Will between 12 Noon and 1 p.m; that PW-3 informed him that a Will has to be scribed for Vasantha Devi and that thereupon he has prepared a rough draft. He has further deposed that Vasantha Devi has furnished information by verifying a chit which she was having with her; that after preparing the draft he has read over the contents to her and that thereafter she has asked him to scribe the fair Will. He has further deposed that he has asked the testatrix to come after one hour and he has accordingly prepared a fair copy of the Will at about 2.30 or 3 p.m. which was again read over to her and that she has accepted the contents thereof and signed the same. He has further deposed that the document was attested by one Guruvu Mohan Murali Krishna, PW-3 and one Venkata Rao, brought by PW-3 and he has seen Vasantha Devi executing the Will in the presence of the attestors; that himself and Vasantha Devi witnessed the attestors signing the Will and that Vasantha Devi was hale and healthy by the date of execution of Ex.A-5. He has denied the suggestion that Ex.A-5 was fabricated by using the white papers containing the signatures of Vasantha Devi brought by Veerabhadra Rao which were available with him. He has also denied the suggestion that the attestors attested the Will subsequently and that they did not see Vasantha Devi executing the Will. A perusal of the cross-examination of the plaintiffs' witnesses, and in particular that of PW-3 and PW-4, who are the attestors to Ex.A-5-Will and PW-5, the scribe of the Will, shows that nothing is elicited to discredit their testimony regarding the execution of the Will by Vasantha Devi. Except the suggestion consistently put to both the attestors and the scribe that the Will was fabricated using the signatures of Vasantha Devi, nothing of significance which would cast a shadow on the genuineness of the Will has been extracted from these witnesses. The evidence of these witnesses, in my opinion, completely satisfies the requirements of Section 63 of the 1925 Act. Though respondent Nos.1 and 2 have expressed ignorance of the manner in which the Will was executed by each of them pleading that the other person has personal knowledge, that is hardly of any significance. Except respondent No.1, Vasantha Devi did not have any blood relation. Appellant No.1 was adopted by the husband of Vasantha Devi much prior to her marriage with him. The fact that she went to the extent of filing a suit inform a pauperis itself shows that she did not have cordial terms with the appellant No.1 and that she was almost in penury. In this connection, one needs to examine the sequence in which the two Wills were executed. When O.S.No.129 of 1976 filed by Vasantha Devi was pending, she has executed Will dated 11-3-1980. Under this Will, except a meager extent of Ac.2-00 given in favour of respondent No.2, nothing of significance was given by the testatrix to her sister and her family. The compromise decree was passed on 25-4-1981. The bitter feelings Vasantha Devi had towards appellant No.1 even after passing of the compromise decree are reflected in Ex.B-1 letter dated 30-10-1981, which was about six months after passing of the compromise decree. She has complained in that letter addressed to appellant No.1 that he has been appropriating rents of both the houses; that even when she was in hospital and has written letter, she has not received any reply and that though he was an adopted son, she has treated him with affection but he has let her down. She has finally cautioned him in that letter that if his mother does not come and see her, she may think of executing a fresh Will. Within less than four months of writing this letter, Vasantha Devi executed Ex.A-5 Will in favour of respondent Nos.1 and 2, who are none other than her own sister and niece. In these incontrovertible factual matrix, I am of the opinion that the Will is not shrouded by any suspicious circumstances and in the natural course of events that have taken place, the testatrix has obviously developed thorough dissatisfaction and disillusionment at the treatment meted out to her by appellant No.1 and his mother, resulting in her change of mind and making the threat hurled by her through Ex.B-1, a reality by executing Ex.A-5-Will. Indeed, a perusal of Ex.A-5-Will would show that the testatrix referred to Will dated 11-3-1990 and rescinded the same. From the evidence of appellant No.1, who was examined as DW-1, it is clear that he had admitted the signature of the testatrix while denying the execution of Ex.A-5 Will. In the face of the evidence of PW-3 to PW-5, which remained unshaken, it needs to be held that respondent Nos.1 and 2 are able to prove Ex.A-5-Will as true and valid. Even if PW-1 and PW-2 did not have personal knowledge of the manner in which Vasantha Devi executed the Will, the same would not in any manner affect its genuineness. On the contrary, their non-involvement in the execution of the Will strengthens its genuineness as it was the testatrix who obviously wanted to bequeath the property to her only surviving blood relations, namely, her natural sister and her daughter. As regards the submission of the learned Counsel for the appellants in A.S.No.162 of 1997, they have purchased in all Ac.5-00 of land out of item No.2 of A-Schedule property. From the evidence on record, it is not in dispute that in the compromise decree in O.S.No.129 of 1976, the testatrix and appellant No.1 have got Ac.8-00 each. The extent of Ac.8-00 which fell to the share of the testatrix is shown as item No.2 of A-Schedule. Out of this property, the testatrix has bequeathed Ac.2-00 to the daughter of the sister of appellant No.1 and Ac.1-00 was bequeathed to defendant No.7, which is a religious institution. Respondent Nos.1 and 2 were accordingly left with Ac.5-00 of the said property. In his cross-examination, DW-1 deposed : ".....I am having Ac.8-00 as per Ex.A-4. I do not remember whether I sold more than Ac.8-00 of land or not. I sold 10 years back. I did not mention in my written statement the particulars of land I sold and whom they were sold. On 28-3-85 I sold Ac.3-00 of land to one Dasari Anandabayamma. On 11-4-86 I sold another Ac.2-00 to Dasari Ananthabayamma. On 10-6-87, I sold Ac.8-00 land to one Midathada Raju. I do not remember whether I sold Ac.4-00 of land to one Karavada Appalareddy on 28-3-85. I did not mention in the document that I got the land by way of compromise. I cannot give any reason why I sold Ac.13-00 as I am having only Ac.8-00 of land...." The above evidence of DW-1 categorically shows that he has not only sold the extent of Ac.8-00 of land which fell to his share under Ex.A-4 compromise decree, but he has also sold Ac.5-00 of land which was bequeathed to respondent Nos.1 and 2 under Ex.A-5-Will to defendant Nos.8 and 9. It is also not in dispute that these properties were sold after the suit was instituted. In these

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