

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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APPEAL SUIT No.681 OF 2014

JUDGMENT:(per Hon'ble Sri Justice K.C. Bhanu)

This appeal is filed challenging the judgment and decree, dated 16.06.2014, in Original Suit No.14 of 2008 passed by the II Additional District Judge, Amalapuram, East Godavari District whereunder and whereby, the suit was decreed with costs.

2. Appellant herein is defendant No.4, respondent Nos.1 to 4 herein are the plaintiffs, and respondent Nos.5 to 7 herein are defendant Nos.1 to 3, in the aforesaid Original Suit filed by the General Power of Attorney holder of the plaintiffs. For better appreciation of facts, hereinafter the parties are referred to, as they are arrayed before the trial Court.

3. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

Plaintiff No.1 is wife, and plaintiff Nos.2 to 4 are the children, of Late N.Krishna Sastry, who is original owner of the plaint schedule property and who purchased the property under two registered sale deeds, dated 10.02.1970 and 15.02.1970. He acquired some other properties situated at Kakinada and other places. He got partitioned the properties with his children on 24.09.1971 under registered partition deed. The properties purchased by late N.Krishna Sastry fell to his share and they were referred to as 'A share' in the partition deed, whereas other properties fell to the share of plaintiff Nos.2 and 3. Sri N.Krishna Sastry died intestate on 08.07.2004 in USA and while going to USA for his children's education, he leased out the properties to one

A.V. Ramana Raju in the year 1993 and since then, the said A.V. Ramana Raju had been in possession and enjoyment of the properties. After the death of Krishna Sastry, plaintiffs got the properties by way of succession. As the plaintiffs are also residing in USA, they have executed a General Power of Attorney (GPA) in favour of Sri H.Viswanadh to look after the affairs with regard to the properties. Later, they came to know that one Kakarala Gopala Krishna, who is husband of the 1st defendant and father of the 2nd defendant, executed a registered sale deed, dated 07.02.2008, in collusion with defendant Nos.3 and 4 for a sale consideration of Rs.6,45,380/-. As per the recitals in the said registered sale deed, late N.Krishna Sastry executed an unregistered Will in favour of Kakarala Gopala Krishna on 13.03.1996. The contention of the plaintiffs is that N.Krishna Sastry never executed any Will and the Will, dated 13.03.1996 is a forged and fabricated document and therefore, they prayed to declare the registered sale deed, dated 07.02.2008, as null and void.

4. Defendant Nos.1 and 2 remained *ex parte* before the trial Court.

5. Defendant No.3 filed written statement denying all the averments made in the plaint except the relationship of the plaintiffs with the said N.Krishna Sastry. He further contended that GPA holder is not having any power to file the suit and the alleged GPA was created for the purpose of causing loss to him. He submitted that after the death of late N.Krishna Sastry, the schedule property and other properties were devolved upon Sri Kakarala Gopala Krishna, who is close relative of said Krishna

Sastry. Sri Kakarala Apparao, who is father of Kakarala Gopala Krishna, is the junior uncle by courtesy to N.Krishna Sastry and he developed the career of N.Krishna Sastry during his childhood. Keeping the said service and help in mind, Krishna Sastry executed a Will, dated 13.03.1996, in respect of schedule property and other properties in favour of Kakarala Gopala Krishna. The said fact is known to all his relatives and also to the plaintiffs. Kakarala Gopala Krishna had been in possession and enjoyment of the properties even prior to execution of the Will and the Revenue Authorities recognized his right and issued title deed. During the life time of Kakarala Gopala Krishna, he executed a possessory agreement of sale with GPA, dated 04.05.2006, for a valuable consideration of Rs.10,08,400/- and since the date of execution of said document, the 3rd defendant had been in possession and enjoyment of the schedule property along with other properties. As there was a mistake in respect of date of the Will executed by late N.Krishna Sastry mentioned in the document, another document was executed amending the earlier deed on 25.09.2006. When the 3rd defendant came to know that the properties are noted as ceiling lands, he and Kakarala Gopala Krishna approached the Tahsildar, I.Polavaram and requested for issuance of a certificate to the effect that lands are not covered under the Ceiling Act. The Revenue Divisional Officer, Amalapuram, made an enquiry into the matter and submitted report. Basing on the report, the District Collector, Kakinada, declared that the land to an extent of Acs.13.35 cents in R.S.No.647/2 and an extent of Acs.14.03 cents in R.S.No.648 are the zeroyathi lands, but not the assigned lands. The Tahsildar, I.Polavaram issued a certificate certifying that the Kakarala Gopalakrishna is the absolute owner. The 3rd defendant

purchased the property prudently and both the 3rd defendant and Kakarala Gopala Krishna jointly sold the schedule property to the 4th defendant for a valuable consideration on 07.02.2008. The documents relied on by the plaintiffs are all false documents and the plaintiffs did not question the possessory agreement of sale with GPA, dated 04.05.2006 as well as the subsequent rectification deed, dated 25.09.2006. The suit is bad for non-joinder of necessary parties and also misjoinder of parties. The Court has no jurisdiction to try the suit.

6. Defendant No.4 filed a separate written statement denying all the averments made in the plaint. He pleaded that A.V. Ramana Raju is proper and necessary party to the suit and the suit is not maintainable for non-joinder of proper and necessary party. He purchased the plaint schedule property from Sri Kakarala Gopala Krishna and the 3rd defendant under a registered sale deed, dated 07.02.2008, for a valuable consideration of Rs.6,45,380/- and since then, he has been in possession and enjoyment of the schedule property with absolute rights. It was represented to him that late N.Krishna Sastry executed a Will, dated 13.03.1996, in favour of Kakarala Gopala Krishna and subsequent to the death of N.Krishna Sastry, a registered possessory agreement of sale-cum-GPA, dated 04.05.2006, was executed in favour of the 3rd defendant and subsequently, a rectification deed was executed on 25.09.2006 in favour of the 3rd defendant. Believing those representations, he purchased the schedule property under registered sale deed, dated 07.02.2008. The plaintiffs are not entitled for the relief of declaration in respect of the schedule property and the Will deed, dated 13.03.1996 is forged one. The relief of declaration without seeking the relief of

cancellation of sale deed, dated 07.02.2008, is not maintainable and hence, he prayed to dismiss the suit.

7. Basing on the above pleadings, the following issues have been framed by the trial Court for trial:

- i) “Whether N.Krishna Sastry died possessed of the plaint schedule property?
- ii) Whether N.Krishna Sastry had bequeathed the suit properties and some other properties to Kakarala Gopala Krishna by executing will dt.13-3-1996?
- iii) Whether the suit property was in possession and enjoyment of Kakarala Gopalakrishna even before the execution of the will dt.13-3-1996?
- iv) Whether the suit property was leased out to A.V. Ramanaraju and whether it is in possession of said A.V. Ramanaraju?
- v) Whether the defendant Nos.3 and 4 had acquired any right of title to the property under a possessory agreement of sale with G.P.A. dt.4-5-2006 and a sale deed dt.7-2-2008?
- vi) Whether the plaintiffs have title to the plaint schedule property and whether the plaintiffs are entitled to the reliefs of declaration and possession as prayed for?
- vii) To what relief?”

Subsequently, the following additional issue was framed:

- “i) Whether the plaintiff is entitled to seek declaration in respect of the document No.79/2008 dt.7-2-2008 as illegal, void under law?”

8. During the course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A.1 to A.14 were got marked. On behalf of the defendants, DWs.1 to 3 were examined and Exs.B.1 to B.9 were got marked.

9. The trial Court after considering the evidence on record

came to the conclusion that the Will has not been proved; and that as late N.Krishna Sastry is the owner and possessor of the plaint schedule property and he died intestate, the properties devolved upon the plaintiffs, and accordingly, the plaintiffs are owners and possessors of the property, and holding so, decreed the suit declaring that the plaintiffs are entitled for the relief of declaration in respect the plaint schedule property and directed the defendants to deliver vacant possession within 60 days and in case of defendants' failure to do so, the plaintiffs were given liberty to get the same through process of Court and also held that the plaintiffs are entitled for the relief of declaration and further declared that the registered sale deed, dated 07.02.2008 as illegal and void. Challenging the same, the present appeal is filed.

10. Learned counsel for the appellant contended that the trial Court has not properly appreciated the evidence on record; that from the evidence of PW.1 it is clear that the father of PW.1 leased out the plaint schedule property to one A.V. Ramanaraju and he has been in possession and enjoyment of the property, therefore, he is necessary and proper party; that there is no necessity for attestors and scribe to create Ex.B.3 Will and the evidence of DW.2 has not been properly appreciated and therefore, she prays to allow the appeal.

11. On the other hand, learned counsel for the respondents/plaintiffs contended that the Will has not been proved in accordance with law; that when the Will was not executed by Krishna Sastry in favour of Kakarala Gopala Krishna, the latter does not get title to the property and that the document described as possessory agreement of sale with GPA executed in favour of the 3rd defendant has no existence and consequently, the sale

deed, dated 07.02.2008, executed in favour of defendant No.4 is null and void as defendant No.3 and Kakarala Gopala Krishna have no right, title and salable interest in respect of the schedule property, and that after elaborate consideration of evidence on record, the trial Court rightly decreed the suit with costs and that order needs no interference by this Court.

12. The facts are not in dispute. One N.Krishna Sastry is the original owner of the plaint schedule property and plaintiff No.1 is wife, and plaintiff Nos.2 to 4 are the children, of said Krishna Sastry. It is not in dispute that Krishna Sastry purchased the plaint schedule property under two registered sale deeds, dated 10.02.1970 and 15.02.1970. It is also not in dispute that he got partitioned the properties with his children on 24.09.1971 under Ex.A.1, which is extract of the registered partition deed. In pursuance of the said registered partition deed, "A" share fell to the share of late N.Krishna Sastry and other properties fell to the share of plaintiff Nos.2 and 3. It is also not in dispute that Krishna Sastry died intestate on 08.07.2004 in USA. Therefore, the entire case revolves around on Ex.B.3-Will, dated 13.03.1996. If Ex.B.3 is found to be true, valid and correct document, then defendant No.3 would get right including the right to alienate the property so as to validate the sale deed executed by him and Kakarala Gopala Krishna in favour of defendant No.4 under Ex.B.5. There cannot be any dispute that propounder has to plead and establish the due execution of the Will in terms of Section 68 of the Indian Evidence Act, 1872 (for short, 'the Act'). The following ingredients are necessary for proving the Will:

- i) Propounder must show that the will was signed by the testator;

- ii) 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 depositions and put his signature on the document of his own free will;
- iii) the attestors have seen the signing of the Will by the executant; and
- iv) each of the witnesses signed the document in the presence of the executant.

13. Similarly the following ingredients are necessary for proving the Will as enshrined under Section 63 of the Indian Succession Act, 1925, which reads as follows:

“63. Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged], or a mariner at sea, shall execute his Will according to the following rules:—

- (a) 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.
- (b) 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.
- (c) 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 acknowledgement of his signature or mark, or 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.”

Bearing the above legal principles in mind, it has to be seen whether the Will has been proved in accordance with law or not. Since the 3rd defendant claims that he got the property by virtue of a Will-Ex.B.3, the burden is on him to prove that the Will was duly executed as per Section 103 of the Act, which says that if any person asserts a particular fact, the burden is on him to establish the same. As per Section 68 of the Act and Section 63 of the Indian Succession Act, it is mandatory on the part of the propounder to examine any one of the attestors of the Will. In the absence of attestors, who are not alive, the scribe can also prove the Will. Though in this case, the scribe was examined as DW.2, his evidence shows that he was not in the habit of writing documents. He says that Oleti Annapurna and Datla Venkata Ramana Raju are the attestors of Ex.B.3 Will. He admitted that the attestors did not sign the Will in his presence. There is no evidence on record to show that both the attestors died. Admittedly, they were alive. Still one of the attestors has not been examined as required under the law. DW.2 categorically admitted that the executant N.Krishna Sastry was not physically present when Ex.B.3 document was executed and he did not scribe Ex.B.3 in accordance with law. Therefore, from the evidence of DW.2, it is clear that the executant was not at all present at the time of execution of Ex.B.3. As one of the attestors of the document was examined, the Will has not been proved in accordance with law. There is no evidence to show that executant understood the nature and effect of the depositions. From the evidence on record it can safely be held that the will is not proved.

14. Coming to the evidence of DW.3, through him Ex.B.7 to B.9, which are pattadar passbook issued in favour of defendant No.4,

title deed issued in favour of defendant No.4 and certificate issued by Mandal Surveyor, I.Polavaram, dated 26.06.2008 respectively were marked. Those documents are relevant for the purpose of deciding the issue, provided the Will is proved and established by the propounder. In view of the fact that the Will has not been proved in accordance with law, the 3rd defendant has no salable interest and any sale transaction entered into by defendant No.3 is null and void.

15. Learned counsel for the respondents/plaintiffs relied upon the following judgments:

1) **N.Kamalam (dead) and Another Vs. Ayyaswamy and Another**^[1] (Para Nos.26 and 27):

“26. The effect of subscribing a signature on the part of the scribe cannot in our view be identified to be of same status as that of the attesting witnesses. The signature of the attesting witness as noticed above on a document, required attestation (admittedly in the case of a will the same is required), is a requirement of the statute thus cannot be equated with that of the scribe. The Full Bench judgment of the Madras High Court in H. Venkata Sastri and Sons v. Rahilna Bi, AIR 1962 Mad 111, wherein Ramchandra Iyer, J. speaking for the full bench in his inimitable style and upon reliance on Lord Cambell's observation in *Burdett v. Spilsbory* (1842-43 (10) CI and F 340 : 59 RR 105) has the following to state pertaining to the meaning to be attributed to the word 'attestation' (paras 3 and 4 of AIR) :

". The definition of the term "attested" which is almost identical with that contained in S. 63(c) of the Indian Succession Act, has been the result of an amendment introduced by Act 27 of 1926. Prior to that amendment it was held by this Court that the word 'attested' was used only in the narrow sense of the attesting witness being present at the time of execution.

In *Shamu Pattar v. Abdul Kadir* (1912) ILR 35 Mad 607 (PC), the Privy Council accepted the view of this Court that attestation of a mortgage deed must be made by the witnesses signing his name after seeing the actual execution of the deed and that a mere acknowledgment of his signature by the executant to the attesting witness would not be sufficient. The amending Act 27 of 1926 modified the definition of the term in the Transfer of Property Act so as to make a person who merely obtains an acknowledgment of execution and affixed his signature to the document as a witness, an attester. It will be noticed that although S.3 purports to define the word "attested" it has not really done so. The effect of the definition is only to give an extended meaning of the term for the purpose of the Act; the word 'attest' is used as a part of the definition itself. It is, therefore, necessary first to ascertain the meaning of the word "attest" independent of the statute and adopt it in the light of the extended or qualified meaning given therein. The word "attest" means according to the Shorter Oxford Dictionary "to bear witness to, to affirm the truth or genuineness of, testify, certify." In *Burdet v. Spilsbury*, (1842-43) 10 Cl and F 340, Lord Cambell observed at page 417,

"What is the meaning of an attesting witness to a deed? Why, it is, a witness who has seen the deed executed, and who signs it as a witness."

The Lord Chancellor stated,

"the party who sees the will executed is in fact a witness to it, if he subscribes as a witness, he is then an attesting witness."

The ordinary meaning of the word would show that an attesting witness should be present and see the document signed by the executant, as he could then alone vouch for the execution of the document. In other words, the attesting witness must see the execution and sign. Further, attestation being an act of a witness, i.e. to testify to the genuineness of the signature of the executant, it is obvious that he should have the

necessary intention to vouch it. The ordinary meaning of the word is thus in conformity with the definition thereof under the Transfer of Property Act before it was amended by Act 27 of 1926. Before that amendment, admission of execution by the executant to a witness who thereupon puts his signature cannot make him an attester

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properly so called, as he not being present at the execution, cannot bear witness to it; a mere mental satisfaction that the deed was executed cannot mean that he bore witness to execution.

(4) After the amendment of S.3 by Act 27 of 1926, a person can be said to have validly attested an instrument, if he has actually seen the executant sign, and in a case where he had not personally witnessed execution, if he has received from the executant a personal, acknowledgment of his signature, mark, etc. Thus of the two significant requirements of the term "attest", namely (1) that the attester should witness the execution, which implies his presence, then, and (2) he should certify or vouch for the execution by subscribing his name as a witness; which implies a consciousness and an intention to attest, the Amending Act modified only the first, the result is that a person can be an attesting witness, even if he had not witnessed the actual execution, by merely receiving personal acknowledgment from the executant of having executed the document and putting his signature. But the amendment did not affect in any way the necessity for the latter requirement, namely, certifying execution which implies that the attesting witness had the animus to attest."

27. It was next contended that in the event of there being an intent to attest, that itself should be sufficient compliance of the requirement of law. While the introduction of the concept of animus to attest cannot be doubted in any way whatsoever and also do feel it relevant in the matter of proof of a document requiring attestation by relevant statutes but the same is

dependant on the fact situation. The learned Judge as noticed above has himself recorded that two significant requirements of the term 'attest' viz., that the attester should witness the execution thereby thus implying his presence on the occasion and secondly that he should certify for execution by subscribing his name as a witness which implies consciousness and intention to attest. Unfortunately, however, the factual score presently available does not but depict otherwise. The scribe's presence cannot be doubted but the issue is not what it is being said to be in support of the appeal that the scribe having subscribed his signature, question of further attestation would not arise - this issue unfortunately we are not in a position to lend concurrence with. The will as produced, records the following at page 4 thereof (Page 106 of the P.Book):

"Witnesses.

L.T. I. of Masanae Gowder

1. (Sd/- T. Subbiya)

S/o Verai Gowder

25-298, Thomas

Street Coimbatore.

2. (Sd/-) B. Govindaraju

S/o S. Balagurumurthy

Chettiar, 25/250, Rangai

Gowder Street, Coimbatore.

.. Sd/- Arunachalam"

The animus to attest, thus, is not available so far as the scribe is concerned. He is not a witness to the will but a mere writer of the will. The statutory requirement as noticed above cannot thus be transposed in favour of the writer rather goes against the propounder since both the witnesses are named therein with detailed address and no attempt has been made to bring them or to produce them before the Court so as to satisfy the judicial conscience. Presence of scribe and his signature appearing on the document does not by itself be taken to be proof of due attestation unless the situation is so expressed in the document itself. This is again however not the situation existing presently in the matter under consideration. Some grievance was made before this Court that sufficient opportunity was not being made available, we are however, unable to record our

concurrence therewith. No attempt whatsoever has been made to bring the attesting witnesses who are obviously available.”

2) **Ravi Raja Babaiah (Died) by LRs and another Vs.**

Vemullapalli Rajeswari Devi^[2], wherein the learned Single Judge of this Court referred to various judgments of the Hon'ble Supreme Court and held thus (Para Nos.25, 26, 27, 28, 29, 30 and 31):-

“25. A Will is one of the most solemn documents known to law. The executant of a Will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is therefore essential that trustworthy and unimpeachable evidence should be produced before the Court to establish the genuineness and authenticity of the Will. In order to determine its validity, it would be open to the Court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself and also to look into surrounding circumstances as well as inherent improbabilities. *Kalyan Singh v. Chhoti and others*, AIR 1990 SC 396.

26. In order to assess whether a Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signature to the testament of his own free Will; that he was at the relevant time in a sound disposing state of mind, understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing fraud is on the person who alleges it be so. *Venkatachala v. Thimmajamma*, AIR 1959 SC 443; *Daulat Ram v. Sodha*, AIR 2005 SC 233. Since a Will is a compulsorily attestable document in view of Section 68

of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution.

27. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there may be other indications in the Will to show that the testator's mind was not free. In such a case, the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances, the Court would grant probate, even if the Will might be unnatural and might cut off, wholly or in part, near relations. *Shashi Kumar Banerjee, V. Subodh Kumar Banerjee*, AIR 1964 SC 529.

28. Even if there is an uneven distribution of assets under the Will, that itself would not be a circumstance to show that the Will is unnatural since it lies within the pure discretion of the testator. *Sridevi v. Jayaraja Shetty*, 2005 (2) ALD 99 (SC) =AIR 2005 SC 780; *S.Sundaresa Pai v. Sumangala T.Pai*, 2002(1) ALD 52 (SC) = AIR 2002 SC 317. Where disinheritance is amongst heirs of equal degree and no reason for exclusion is disclosed, then the standard of scrutiny is not the same and if the Court below failed to be alive to it, then its orders are susceptible to correction in appeal, *Ram Piari v. Bhagwant*, AIR 1990 SC 1742.

29. Deprivation of the natural heirs by a testator cannot be treated as suspicious because the whole idea behind execution of a Will is to interfere with the normal line of succession, *Rabindranath Mukherjee v. Panchanan Banerjee*, AIR 1995 SC 1684. Courts does not sit in appeal over the right or wrong of a testator's decision and its role is limited to examining whether the

instrument propounded as the last Will of the deceased is or is not that by the testator and whether it is the product of his free and sound disposing state of mind. If a Will appears on the face of it to have been duly executed and attested in accordance with the requirement of the statute, a presumption of due execution and attestation applies, *Gurdev Kaur v. Kaki and others*, 2007 (2) ALD 20 (SC) = AIR 2006 SC 1975.

30. In the matter of proof of document as in the case of the proof of Wills, it is idle to expect proof with mathematical certainty. The test to be applied always is the test of satisfaction of a prudent mind in such matters, *Venkatachala's case* (supra) and *Gopal Swaroop v. Krishna Murari*, (2010) 14 SCC 266.

31. In cases where the execution of a Will is shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and defendant. What generally is an adversary proceeding becomes in such cases a matter of the Court's conscience and then the true question which arises for consideration is whether the evidence let by the propounder of the Will is such as to satisfy the conscience of the Court that the Will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the Will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the Will, *Jaswant Kaur v. Amrit Kaur*, AIR 1977 SC 74."

3) **Anantharaju Venkata Seshamma Vs. Rajupalem**

Seshavataram (died) and others^[3], wherein a Division Bench of this Court has taken a similar view with regard to Section 63 of the Indian Succession Act and Section 63 of the Indian Evidence Act and held thus (Para Nos.14 and 15):-

"14. It is too well established that the beneficiary under a Will must not only prove its execution, but also must explain the suspicious circumstances, if any, in relation to the Will. It is only on being successful on both the counts, that the legatee can reap the benefits under the

Will. Taking the second aspect first; the guiding factor in this behalf is that the Court would take into account, the conduct of a prudent person, on the part of the executant. Into this very phenomenon, get included the factors, such as the exclusion of the natural legal heirs, the conferment of undue benefit on a person, who is otherwise well off, the condition to which the legal heirs are likely to be exposed, on account of the bequest, made by the testator.

15. The mother of the plaintiff died, within few months or years after her birth. Therefore, her father – *Adiseshayya* married the 1st defendant, who was hardly 16 or 17 years at the time of her marriage. The 2nd defendant was born out of the wedlock. By the time *Adiseshayya* died, the plaintiff was a girl of tender age of 7 to 8 years, his second wife – Defendant No.1 was aged 18 years and defendant No.2, - his daughter, through her, was an infant of hardly 1 year. In addition to that, *Laxmamma*, the widowed sister of *Adiseshayya*, was living with him. His death would result in four women, becoming without any male help. Therefore, any prudent person in his place, would not think of bequeathing his property to the total exclusion of the said two widows and two unmarried daughters of tender age. Assuming that the testator was a man of philanthropic nature, the bequest can be expected towards an institution of social service, but not to a brother, who not only got the property in the original family, but also in the adoptive family. These suspicious circumstances were not at all explained at any point of time by defendant No.3. He failed to convince the Court, as to extraordinary circumstances that prompted his brother to make him super rich, even while making the natural legal descendants, that too, women, as destitutes. This is a rare case in which, the Will, even if proved, cannot be acted upon, since several suspicious circumstances remain unexplained.”

In view of the above settled legal position, defendant No.3 failed to prove the Will in accordance with law. Therefore, he does not

have a right, title or interest to sell the property to defendant No.4. Though DW.3, who is defendant No.4, said to have purchased the property from defendant No.3, claims that he is a *bona fide* purchaser having purchased the property for valuable consideration, at the same time, that plea is not available to him when defendant No.3 has no right, title and interest to sell the property. The trial Court after elaborate consideration of evidence on record rightly decreed the suit as defendant No.4 has no right, title and interest. We do not find any merit in the appeal. Hence the appeal is liable to be dismissed.

16. Accordingly, the Appeal Suit is dismissed at the stage of admission. There shall be no order as to costs. Miscellaneous Petitions, if any, pending this appeal shall stand closed.

JUSTICE K.C. BHANU

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JUSTICE M.SEETHARAMA MURTI

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Date:24.02.2015
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[\[1\]](#) AIR 2001 SC 2802

[\[2\]](#) 2014 (5) ALD 642

[\[3\]](#) 2014(4) ALD 316 (DB)