



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2016

Delivered on : 17.03.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

T.O.S.No.11 of 1996
(O.P.No.285 of 1991)

1.Muthu Reddiar (deceased)
2.S.Thilakavathy
3.Sudhakar .. Plaintiffs
(Plaintiffs 2 and 3 impleaded as L.Rs of
the deceased sole plaintiff as per order
dated 01.12.2006 in A.No.4696/2006)

Vs.

1.Venkata Subba Reddi (deceased)
2.Usha
3.Ramachandran
4.Kasturi
5.Vatsala (deceased)
6.M.Manjula
7.K.Sivaraman
8.K.Dhanjeyan .. Defendants
(defendants 7 and 8 impleaded as L.Rs of
deceased 5th defendant as per order
dated 01.12.2006 in A.No.815/2006)

Prayers: Petitions filed under Sections 222, 276 and 277 of the Indian Succession Act, XXXIX of 1925, for the grant of Probate.

For Plaintiffs : Mr.Veeraraghavan
For Defendants : Mr.T.Sivagnanasambandan for D2
Mr.K.Bijai Sundar for D6

**J U D G M E N T**

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The executor of the Will, namely Muthu Reddiyar filed O.P.No.238 of 1992 praying for probate of the Will dated 26.02.1989 executed by Srinivasan bequeathing the properties in favour of his brother's grand children and as per the averments made in the said original petition, after the demise of Srinivasan, the Will was handed over to one Mr.M.R.Reddiar, who, on the pretext of showing the Will to the relatives of the deceased, received the Will and did not return the same and inspite of repeated demands, Mr.M.R.Reddiar refused to return the original will with ulterior motive and when notice was issued in A.No.4922/1990 for production of the original Will, he replied that there was no such Will with him. This Court, vide order dated 30.06.1992, has taken note of Section 237 of the Indian Succession Act and having satisfied that all the formalities have been complied with, directed the issuance of probate, limited only until the original and properly authenticated copy of the Will is produced. Thereafter, the elder brother of the Testator, namely Venkatasubba Reddiar, filed A.No.3791/1995 praying for revoking the order of probate dated 30.06.1992 made in O.P.No.238 of 1992 and counter affidavit was filed by the Executor the Will and this Court, vide order dated 15.02.1996, has revoked the order granting probate and converted O.P.No.238 of 1992 as T.O.S.No.11 of



2. It is relevant to extract the Genealogy Chart:

GENEALOGY					
SUBBA REDDY (DIED) / KOKILAMMAL (WIFE) DIED					
=====					
=====					
/	/	/	/		
BHAVANAMMAL	PADMAVATHY	VENKATASUBBA REDDIAR	SRINIVASA REDDI		
(died on 1-6-87)	(died 21.6.2000)	(died 7-7-2000)	(TESTATOR)		
()	()	Wife-Vijayalakshmi.	Died 18-6-89		
()	()	(died 4-8-2000)			
=====	()	()			
VATASALA (D5) (died)	()	()			
Kothandaraman (husband died)	()	()			
()	()	()			
()	()	()			
=====	()	()			
/	/	()	()		
Sivaraman	Dhananjayan	()	()		
(D7)	(D8)	()	()		
=====					
=====					
/	/	/	/	/	/
Muthu Reddiar	Ramachandran	Kasthuri	Kasthuri	Meera	Usha (D2)
(died	(D3)	wife of	(died)	(died)	Kuppursami- husband
1-8-2006)		Selvaraj (D4)	wife of Muthu Reddiar		()
()			()	Ramdas(husband)	
()			()	()	
Kasthuri (wife)			Thilakavathy	()	
()			(2 nd Plaintiff)	Sudhakar (son)	
()				3 rd plaintiff	
Thilagavathy (2 nd plaintiff)					
Sivaraman- husband -PW2					

3. It is averred in T.O.S.No.11 of 1996 among other things that Srinivasan died on 18.06.1989 at Chennai and he executed a Will dated 26.02.1989 bequeathing the properties in favour of, Thilagavathy and Sudhakar, who are the grand children of his brother, namely Subba Reddy and appointed



Muthu Reddiar, son-in-law of his sister (deceased) as Executor. It is further averred that the Will was under the custody of one Perumal Reddiar of Kedseyar Village at Dindivanam Taluk and after the demise of Srinivasan, the original Will was handed over to M.R.Reddiar @ Rengarajulu, who wanted the same to be shown to his Advocate and other relatives of Srinivasan and accordingly, it was handed over to him by Perumal Reddiar by retaining a xerox copy and inspite of repeated demands made to M.R.Reddiar to return the original Will, he refused to do so with ulterior motive and hence, A.No.4922/1990 was filed for production of the Will before this Court, wherein M.R.Reddiar filed an affidavit stating that he is not in possession of the said Will and as such, original Will could not be filed and only copy of the Will was filed. It is further averred that amount of estates which are likely to come into the possession of plaintiff's hands does not exceed in an aggregate sum of Rs.75,000/- and prayed for proving the xerox copy of the Will in common form and probating the Will which will have the limited effect until the original or authenticated copy of the Will is produced.

4. The defendant, namely Venkatasubba Reddiar, the elder brother of the Testator has filed a written statement, denying the averments and would further state that his



younger brother, namely Srinivasan died intestate on 18.06.1989 and while he was alive, the schedule mentioned property was purchased by the defendant in the name of Srinivasan, out of his own earnings and the defendant earned the said money by running a hotel in Andhra Pradesh and since the deceased was bachelor at the time when the property was purchased in his name, the real owner is himself only (Venkatasubba Reddy). It is further averred that the deceased/Srinivasan did not execute any Will at all and the schedule mentioned property belong to the defendant and since it is his self-acquired property, the defendant would further state that Muthu Reddiar is said to be the Executor of the Will and his eldest son-in-law of his daughter and by virtue of the fact that he is the eldest son-in-law, the defendant permitted Muthu Reddiar to collect the rents and by using the said position, Muthu Reddiar became aware of the family details. It is also contended by the defendant that since the schedule mentioned property, though purchased in the name of his younger brother, is his own property and on humanitarian grounds, he wanted to give 1/3rd share, after his demise, to his eldest son-in-law Muthu Reddiar, it is unprobable and ridiculous to say that his younger brother Srinivasa Reddiar executed Will in favour of one of the daughters to his elder brother, leaving other daughters and the Will was probated without the production



of original Will and in any event, it has not been executed at all. It is further stated by the defendant that he had succeeded in the Rent Control Court, which held that he is in possession of the schedule mentioned property and prays for dismissal of the Suit.

5. The defendants 3, 4 and 5 and the legal representatives of K.Padmavathy/younger sister of the defendant had filed common written statement stating among other things that their mother died on 21.06.2000 leaving behind the plaintiff and the defendants 3 and 4 and they have no objection for grant of probate. The defendants 7 and 8, namely Tvl.A.Sivaraman and Dhanjeyan were brought on record on the demise of the fifth defendant, namely Vatsala, daughter of the elder sister of the defendant and they would state that they admit the truth and genuineness of the Will and they have no objection for grant of probate.

6. Pendency of the Testamentary Original Suit, the Executor of the Will filed A.No.2454 of 2002 stating among other things that at the time of filing O.P.No.238 of 1992, the original Will was not available and subsequent to the demise of the defendant, namely Venkatasubba Reddiar, one Selvaraj, husband of Kasthuri and the son-in-law of the elder sister of the first defendant/Venkatasubba Reddy



delivered the original Will to his son-in-law Sivaraman in the presence of Balachandran of Tindivanam in or about December 2001 and subsequently, the said Sivaraman delivered the original Will to him and hence, came forward to file the said application for reception of original Will dated 26.02.1989 and fresh affidavits of the two attesting witnesses, namely Tvl.Perumal Reddiar and Seeyalan for the purpose of grant of probate. Pendency of the Testamentary Original Suit, the Executor of the Will filed an application in A.No.719 of 2003 stating among other things that since the first defendant made arrangements to alienate the Suit Schedule Property, he filed O.A.No.554/1997, praying for an order of interim injunction restraining the first defendant from alienating the property and it was also granted and in the interregnum, the 6th defendant, namely Manjula purchased the property claiming title through Venkatasubba Reddiar and therefore, prayed for cancellation of the registered Sale Deed dated 30.03.1998 executed in her favour and directing the 6th defendant and her family to handover possession of the portion in her occupation and the portion in the occupation of her tenants and even prior to that, the sixth defendant herself had been impleaded in pursuant to the order passed in A.No.5336/2001.

7. O.A.Nos.719, 720 and 3784 of 2003 were taken up



together for final disposal and this Court has granted interim orders as prayed for, vide order dated 06.03.2004.

The sixth defendant, challenging the legality of the order dated 06.03.2004, filed OSA.No.86 of 2005 and pendency of the Suit, memo of compromise was filed and this Court, having taken note of the fact that the parties will not deal with the Suit schedule property by sale or mortgage, pending disposal of the Suit, without the permission of this Court, has disposed of the appeal on 09.08.2015 in terms of the compromise memo.

8. This Court, on perusal of the pleadings, oral and documentary evidence, has framed the following issues:

1. Whether the Will reportedly executed by Srinivasa Reddiyar on 26.02.1989 is true, valid and binding?

2. Whether the suit is bad for non-joinder of necessary parties?

3. Whether the suit has been properly valued for the purpose of arriving at the net value of the estate?

4. Whether the defendants 5, 7 and 8 are unnecessary parties to the proceedings?

5. To what relief are the plaintiffs entitled to?



and during the course of arguments, the issues have been re-casted as follows:

1. Whether the Will dated 26.02.1989, is genuine and executed by the testator in a sound and disposing state of mind?

2. Whether the defendants have any caveatable interest, for the purpose of challenging the Will?

3. To what relief, the parties are entitled?

9. One of the attestors to the Will namely, Mr. Seeyala Naicker has filed a proof affidavit dated 20.03.2002 in lieu of chief examination wherein he has stated that on 25.02.1999 he was present with Perumal Reddiar, Executor of the Will, at the house of the deceased Srinivasan and he saw the deceased subscribing the signature at the foot of the testamentary paper in Tamil language and thereafter, he subscribed his signature. PW1 was cross examined on 11.04.2007 i.e., after five years and was aged about 102 years and would state that he knows Srinivasa Reddiar/Testator and he was his neighbour and he knows that Srinivasa Reddiar has executed the Will and on 26.02.1989, he executed the Will/Ex.P1 in his presence as well as in the presence of another witness, namely Perumal Reddiar and at



the request of Srinivasa Reddiar, he and Perumal Reddiar have attested the Will as attesting witnesses. PW1 would further depose that Muthu Reddiar is the son-in-law of the Testator and at the time of executing Ex.P1/Will, Srinivasa Reddiar was in a sound disposing state of mind, memory and understanding and in good health and he and Perumal Reddiar saw the Testator signing the Will. PW1 would further depose that he did not know the recitals of Ex.P1/Will and after he subscribed his signature in Ex.P1, Perumal Reddiar signed it afterwards. PW1 would further depose in the cross examination that Srinivasan Reddiar was conducting Hotel business in Kalahasthi and when he signed as an attester to Ex.P1, he do not know whether he signed as first witness or second witness, but signed as an attester. PW1 would further depose that he has studied upto IV standard and was doing carpentry work and for the past 20 years, he could not work. PW1 would also state that it is true that Ex.P1/Will was executed by Srinivasa Reddiar as he was permanently residing at Kalahasthi and in Ex.P2/affidavit he stated the age as 85 years and Srinivasa Reddiar is also known as Srinivasan and denied the suggestion that Srinivasa Reddiar did not execute Ex.P1 and further that he did not sign as attester to Ex.P1/Will. It is also deposed by PW1 that Srinivasa Reddiar (Testator), Muthu Reddiar (Executor) and Perumal Reddiar (one of the attestors) came to his house for



getting attestation in Ex.P1/Will and denied the suggestion that Srinivasa Reddiar did not execute the Will and that the property also do not belong to Srinivasa Reddiar.

10. The 7th defendant/son of the fifth defendant, who was examined as PW2, has filed proof affidavit in lieu of chief examination and he would depose that his father-in-law and Executor of the Will, namely Muthu Reddiar (since deceased) came to know about the custody of the original Will dated 26.02.1989 with one Selvaraj, husband of Kasthuri/fourth defendant and he delivered it to him in the presence of Balachandran during December 2001 and he went to Tindivanam and got the original Will and handed over the same to his father-in-law to file it in Court. PW2, in the cross examination, would depose that he has married Thilagavathy, daughter of the Executor and even prior to marriage, Muthu Reddiar was related to him and his attention was drawn to Ex.P1/Will and he would depose that his sister name is Bavana Ammal and in Ex.P1/Will it has been mentioned that Srinivasa Reddy had one sister by name Padmavathy and one brother Venkatasubba Reddy and Bavana Ammal was not alive at the time of execution of Ex.P1/Will. PW2 further deposed about the bequeath in favour of his wife and to the son of younger sister of his mother-in-law under Ex.P1/Will.

PW2 has also spoken about the address of Selvaraj and he is



also related to him and Srinivasa Reddy was running a hotel independently at Sri Sailam and he do not know whether Srinivasa Reddy would sign only as Srinivasan.

11. PW3, namely Selvaraj has filed a proof affidavit and he would state that the Executor of the Will is his wife's brother and he knows Venkatasubba Reddiar (Executor) and Srinivasa Reddiar (Testator) and they were related to him and the original Will was handed over to him by Perumal Reddiar and he was in custody of the same, promising to give it to Muthu Reddiar and he sent word to his brother-in-law, who sent his son-in-law/PW2 to collect the Will. PW3 in the cross examination would state that Ex.P1 Will was not handed over to him either by Muthu Reddiar or Srinivasa Reddiar and denied the suggestion that the Will is a forged document and he has not seen Srinivasa Reddy signing the Will and further denied the suggestion that he has given evidence in support of his brother-in-law Muthu Reddiar. The counsel for the second defendant also adopts the cross examination of the counsel for the six defendant in other aspects. PW3 was cross examined by the learned counsel appearing for the sixth defendant and he would depose that he is attending Court proceedings on the request made by Sivaraman and at Srisailam, Muthu Reddiar gave the will of the deceased Srinivasa Reddy to Padmavathy Ammal and the original Will



was with Muthu Reddiar and he handed over the same to Padmavathy Ammal and only Padmavathy Ammal handed over the Will to him and it was not handed over to him by Perumal Reddy and at the time of handing over the Will to Padmavathy Ammal by Muthu Reddiar, Perumal Reddiar was also present with Muthu Reddiar and Perumal Reddiar did not hand over the Will to him and since Padmavathy Ammal was old aged, she handed over the Will to him and after long delay, he came to know about the pendency of T.O.S.No.11 of 1996. PW3 also pleaded ignorance as to the exact date of death of Srinivasa Reddy and he do not know whether Perumal Reddy has signed as attesting witness.

12. DW1 has filed the proof affidavit and in the cross examination, she would state that she has studied upto 3rd standard and though she was arrayed as the second defendant, she did not file the written statement and would admit that no caveat has been filed and it is correct to state that the properties mentioned in Ex.P1/Will belong to Srinivasa Reddiar and it is also relevant to extract some portions of the evidence of DW1:

"It is correct to state that all the properties mentioned in the Will were self-earned properties of Sreenivasa Reddiyar and that he was the absolute owner. The statement made by father/first defendant stating that Sreenivasa



Reddiyar is not absolute owner of the above said properties is false...

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It is correct to state that my father sold the property belonging to Sreenivasa Reddiyar measuring an extent of 1 acre and 23 cents in R.S.No.97/1 to one Pushpa....

I know the 6th defendant Manjula... The person who has accompanied me to Court today is the brother-in-law of Manjula. I am aware that there are other disputes between Manjula and the plaintiffs. It is correct to state that the 6th defendant, Manjula is in occupation of a portion of the property of Sreenivasa Reddiyar. My father had sold the said portion in occupation to Manjula."

13. The learned counsel appearing for the legal heirs of the Executor of the Will/plaintiffs would submit that though the probate earlier granted was revoked at the instance of the first defendant, thereafter the Will was produced and for belated production, satisfactory explanation has also been offered through the testimonies of PWs.2 and 3 and to prove the Will, one of the attesting witness, namely PW1 was examined and though he was a rustic witness, he withstood the rigour of cross examination and categorically stated that he saw the signing of the Will by the Testator, namely Srinivasa Reddy and it was witnessed by him and Perumal Reddiar, another attesting witness and



thereby, the mandate caste under Section 63 of the Indian Evidence Act has been fully complied with. It is the further submission of the learned counsel appearing for the plaintiffs that though the first defendant, in his written statement, took a stand that he purchased the property in the name of his younger brother namely, Srinivasan/Srinivasa Reddiar and the said fact has not at all been substantiated by letting any evidence and though he has stated that he wanted to divide the property equally to his three daughters and on humanitarian grounds, he wants to give 1/3rd share after his demise to his eldest son-in-law Muthu Reddiar (Executor), he has not done so and on the contrary, he has sold the entire suit property in favour of the sixth defendant and she cannot claim that she is the bonafide purchaser without any notice for the reason that there are no document evidencing that the first defendant had any title to the suit property. The first defendant did so inspite of subsistence of interim orders passed by this Court and as a consequence, the sale in favour of the sixth defendant is not valid. It is also contended by the learned counsel appearing for the plaintiffs/legal heirs of the Executor that before commencing of the trial, first defendant is no more and his daughter, who was examined as DW1, has fully supported the case of the plaintiffs and the sixth defendant has no caveatable interest at all and rather



disputing the title of the Testator and as such, she cannot oppose the grant of probate and prays for decreeing of the Suit and for issuance of Letters of Administration as the Executor is no more.

14. The learned counsel appearing for the sixth defendant would submit that the Original Petition was presented on 16.07.1991 and numbered during 1992 and admittedly, the original Will was not produced and the Will sought to be proved in solemn form by the next kith and kin, have not been impleaded and the deceased was known only as Srinivasan and not Srinivasa Reddiar. The learned counsel appearing for the sixth defendant has drawn the attention of this Court to Ex.P1/Will and would submit that even as per the recital in the said Will, apart from the schedule mentioned property, there are other items of properties and those properties were not included in the said schedule and all the kith and kin and the younger sister of the Testator namely, Bavana Ammal has not been stated in the said Will and though the Executor managed to get the probate on 30.06.1992, at the instance of the first defendant, the elder brother of the Testator, the said order was revoked and converted as Testamentary Original Suit.

15. Insofar as non-production of the Will is concerned,



A.No.2454/2002 was taken out to receive the original Will and contradictory reasons have been given in the application as well as in the evidence of PWs.2 and 3 as to the non-production of original Will and Section 281 of the Indian Succession Act has not at all been complied with. It is the further submission of the learned counsel appearing for the sixth respondent that even assuming for the sake of arguments that Ex.P1/Will is a genuine Will, the proof of execution has not been established in the manner known to law for the reason that PW1, in his affidavit, stated that he is aged about 85 years whereas at the time of giving evidence on 11.04.2007 would state that he is aged about 102 years and the answers elicited in his cross examination would amply sustain the case of the sixth defendant that he would not have been present at the time of alleged execution of the Will. It is further contended by the learned counsel appearing for the sixth defendant that the defendant has deliberately dragged on the proceedings to avoid the evidence of the first defendant to come on record for the reason that though the first defendant was examined in chief on 27.01.2000, he was not cross examined and died on 07.07.2000 and thereafter, his daughter DW1 has been won over and relied on the judgment of the Hon'ble Supreme Court of India in **Satnam Singh (dead) by LRs. & Ors. v. Sadhu**

Singh & Ors. [2001 (8) Supreme 574] to the effect that if



any witness could not be cross examined on account of death, the examination in chief can also be taken into consideration. The learned counsel appearing for the sixth defendant has drawn the attention of this Court to the affidavit of assets and would submit that it deals with Chennai properties alone and other properties have been left out and therefore, the Tamil Nadu Court Fee Act Sections 55 to 57 r/w. Schedule III Part II Annexure A have not been complied with. It is also submitted by the learned counsel appearing for the sixth defendant that in Exs.P1 and P2, the Testator has subscribed his signature only as Srinivasan and not as Srinivasa Reddy and no tenable and proper explanation has been offered as to why in Ex.P1/Will the said person has signed as Srinivasa Reddiar and contradictory statements as to the belated production of the Will has probablised that the Will came into existence under suspicious circumstances and it is also supported by the fact that the Death Certificate of the Testator was not at all produced and three different versions have been spoken as to his place of residence, whether at Chennai or at Kalahasthi and that apart, the beneficiary of the Executor did not gone into the witness box and the mandatory provisions, namely Sections 263, 271 and 296 of the Indian Evidence Act have not been complied with at all and prays for dismissal of the Suit.

The learned counsel appearing for the sixth defendant, in



support of his submissions, has also placed reliance upon the following judgments:

(i) M.Kandiah Pillai (died) and six others v. S.Mehalingam and seven others [2000 (IV) CTC 490]

(ii) Smt.Indu Bala Bose and Others v. Manindra Chandra Bose and another [AIR 1982 SC 133]

(iii) Rani Purnima Debi and another v. Kumar Khagendra Narayan Deb and another [AIR 1962 SC 567]

(iv) Krishnan Kunjulakshmi v. Narzan alias Radhakrishnan Nair and another [AIR 2003 Kerala 98]

16. The learned counsel appearing for the second defendant, apart from adopting the arguments advanced by the learned counsel appearing for the sixth defendant, would submit that the original Will was produced after 10 years from the filing of Original Petition without any proper explanation and the Testator would sign only as Srinivasan and not Srinivasa Reddiar and prays for dismissal of the Suit.

17. The sixth defendant, after her impleadment, filed

written statement, supporting the stand of the first



defendant and took a stand that even the Will put forward is improbable and the depositions under the alleged Will is unnatural and at the time of filing of the Testamentary proceedings, the original Will was not produced and even according to the first defendant, the Will put forward was not executed by the deceased Testator and the Will cannot be true. The sixth defendant would further state that she also adopt the written statement of the first defendant and the sixth defendant is a bonafide purchaser for valuable consideration and the Suit is bad for non-joinder of all necessary parties and the defendants 5, 7 and 8 are not proper and necessary parties to the Suit and no proper evaluation has been done.

Issue No.2

18. This Court, before proceeding to analyze the oral and documentary evidence, has to point out at this juncture that the first defendant is no more and the second defendant who is her daughter was examined as DW1 and she did not support the case of her father, namely the first defendant and she would further depose that she was accompanied by the brother-in-law of the sixth defendant to the Court and was aware of other disputes between the sixth defendant and the plaintiffs and her father had sold the portion in occupation to the sixth defendant and denied the suggestion that she is



falsely deposing at the instance of the sixth defendant.

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19. It is a well settled position of law that a person who claims a property by title or claim adversely to the Testator or disputes the legatees rights to deal with the property sought to be disposed of by Will, has no *locus standi* to enter a caveat.

20. In ***Mrs.Elizabeth Egbert v. A.J.Fanthome and another*** [A.I.R. 1952 Allahabad 543], the issue arises for consideration is whether the caveators have any *locus standi* to oppose the grant of probate and in para 4 it is held that "In my opinion they are not, for it is, I think, well settled that a caveator cannot be said to have such an interest if he does not admit that the property in which he claims an interest forms part of the deceased's estate. A caveator who lays claim to a particular property and at the time says that property does not form part of the deceased's estate is not, and cannot be said to be, claiming an interest in that estate". [See ***Abhiram Dass v. Gopal Dass***, 17 Cal. 48, ***Pirojshah Bikhaji v. Pestonji Merwanji***, 84 Bom. 459, ***Komalangi Ammal v. M.K.Sowbhaggiammal***, 54 Mad 24, ***R.S.Sinha v. Miss Salena Hector***, 20 Pat. 75].



21. In **Banwarilal Shrinivas v. Kumari Kusum Bai and Others** [AIR 1973 Madhya Pradesh 69], the issue arose for consideration was whether the transferee from heirs at law, is entitled to a special citation in the proceedings for grant of letters of administration and it has been held in para 7 that *"It is well settled that any interest, however, slight, and even the bare possibility of an interest, is sufficient to entitle a party to oppose a testamentary document; So, a transferee from heirs-at-law, acquiring an interest in the testator's estate, by reason of a mortgage or sale, can, when a will is set up in opposition to his interest, apply for revocation of the probate of the Will"*. It has been further held in para 11 of the judgment that *"When a just cause under Section 263 of the Act is made out, the onus is not on the applicant for revocation to prove that the will is a forgery but is on the grantee to prove that the will is a valid one"*.

22. In **D.S.Sriramiah Setty v. Smt.D.Kanthamma** [AIR 1971 Mysore 148], pending application under Section 276 of the Indian Succession Act, 1925 for grant of letters of administration with the Will annexed, application has been filed calling upon the caveatrix to disclose specifically the nature of the interest she claims in the estate of the



testatrix, so that objections can be filed and objection was filed and caveatrix was made as a respondent in the said suit and hence, challenge was made before the High Court. The High Court of Mysore, in the above cited judgment, by placing reliance upon the judgment rendered by this Court in **M.K.Sowbhagiammal v. Komalangi [AIR 1928 Mad 803]** wherein it has been observed that "a person disputing the right of a testator to deal with the property as his own cannot be properly regarded as having interest in the estate of the deceased.

23. This Court in the judgment in **D.L.Rajasekaran (died) and others v. Ayyavu [1995 (2) MLJ 334]** held that a person, not claiming any right under testator, nor a beneficiary of Will, nor who is likely to inherit estate of deceased, whose claim is adverse to interest of testator, cannot file petition under Section 263 of the Indian Succession Act, 1925 for revocation of Probate or Letters of Administration. Following the said judgment and other judgments, a Division Bench of this Court in **Ramani U. Krishnan v. Dr.Ammi Praveen Joshua @ Veena [2005 (4) CTC 165]** held that agreement holder of property covered in probated Will have no right to file revocation of probate as a caveator and the only remedy is to file a Suit.



24. In **Krishna Kumar Birla v. Rajendra Singh Lodha and Others [2008 (3) CTC 43 (SC)]** it has been held among other things that an interest may be a wide one but such an interest must not be one which would not have the effect of destroying the estate of the testator itself and lay down the following propositions:

(i) To sustain a caveat, a caveatable interest must be shown.

(ii) The test required to be applied is: Does the claim of grant of Probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right?

(iii) It is a fundamental nature of a Probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein."

It has been further held in the said decision in para 103 that,

"What would be the caveatable interest would, thus, depend upon the fact situation obtaining in each case. No hard-and-fast rule, as such, can be laid down...."



25. The Hon'ble Supreme Court of India in the subsequent decision in ***Jagjit Singh and Others v. Pamela Manmohan Singh [2010 (3) MWN (Civil) 200]***, having noted that conflicting views have been expressed by coordinate Benches of the Hon'ble Supreme Court of India on the interpretation of the expression "caveatable interest", has referred the matter to be decided by a Larger Bench.

26. This Court, keeping in mind the above said propositions, has carefully scanned the entire materials placed before it.

27. The first defendant, namely Venkatasubba Reddy, while he was alive, has filed a written statement disputing the title of the Testator namely Srinivasa/Srinivasa Reddy by stating that he only purchased property in the name of the deceased, his younger brother namely, late Srinivasan and further averred that he did not execute any Will at all. Thus, the first defendant has disputed the very ownership and title of the Testator. The first defendant also took a stand that since the deceased Srinivasan, his younger brother, did not execute any Will, he is the absolute owner of the schedule mentioned property and stated that he wanted to equally divide and give it to his three daughters and it was not acceded to by the son-in-law of Muthu Reddiar and on



humanitarian grounds, opted to give 1/3rd share after his demise to his eldest son-in-law, namely the Testator.

28. The sixth defendant, who got impleaded herself, purchased the entire suit property by means of registered Sale Deed dated 30.03.1998 from the first defendant namely, Venkatasubba Reddy and she has also filed a written statement on 17.04.2007 adopting the written statement of the first defendant namely, Venkatasubba Reddy and would contend among other things that she is the bonafide purchaser for valuable consideration, but curiously she did not enter into the witness box though she filed the written statement. But cross examination of PWs.1 to 3 was done on her behalf. As already pointed out in the earlier paragraphs, on demise of the first defendant, the second defendant namely, Usha also came on record as his legal heir and she has examined herself as DW1 and admitted that she has not filed any written statement in the said Suit and so also other legal heirs and categorically admitted that the properties mentioned belong to Srinivasa Reddiar and further that his father or other defendants are not entitled and the properties were self acquired properties of Srinivasa Reddiar and he was the absolute owner. DW1 would state that her father sold the property to Srinivasa Reddiar admeasuring to an extent of 1 Acre and 23 cents in



R.S.No.97/1 to one Pushpa and at the time of giving evidence, she was accompanied by the brother-in-law of the sixth defendant and her father sold the portion in occupation to the sixth defendant and denied the suggestion that she is falsely deposing at the instance of the sixth defendant. No doubt, after the chief examination of the first defendant, cross examination was not done. It is the submission of the learned counsel appearing for the sixth defendant that though cross examination of Venkatasubba Reddi was not done while he was alive, his chief examination can be taken into consideration and placed reliance upon the decision in **Satnam Singh (dead) by LRs. & Others v. Sadhu Singh & Ors. [2001 (8) Supreme 574]**.

29. It is once again to be pointed out that the first defendant, elder brother of the Testator, has denied the title of the Testator, though the sale deed in respect of the property was in the name of the Testator and it is the claim of the first defendant that the suit property was purchased in the name of the Testator by him and it is his self-acquired property. The sixth defendant, in her written statement, adopted the written statement of the first defendant and thereby, she denied the title of the Testator and she did not enter the witness box conveniently.



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30. In the light of the ratio laid down in the above cited judgments, the sixth defendant has disputed the right of the Testator to deal with the property on the pretext that he was not the owner, but only the first defendant was the owner and therefore, cannot claim to have interest in the estate of the deceased, namely Srinivasa Reddiar and as such, she cannot oppose the claim of the plaintiffs.

31. Therefore, Issue No.2 is answered in negative against the sixth defendant.

Issue No.1

32. The learned counsel appearing for the sixth defendant has strongly opposed the grant of relief in the Suit and the learned counsel appearing for the second defendant has also adopted his arguments. According to the learned counsel appearing for the defendants 2 and 6, though it is averred in Ex.P1/Will dated 26.02.1989 that apart from the schedule mentioned properties, the Testator owns other items of properties which have not been included and further the fact with regard to belated production of the original Will, there are contradictory versions, the Will cannot be termed as genuine and valid and surrounded by suspicious circumstances. It is the further submission of the learned



counsel appearing for the respondents 2 and 6 that Section 281 of the Indian Succession Act has not been complied with in letter and spirit and the Affidavit of Assets deals with Chennai property alone and further the beneficiaries did not enter into the witness box and all the above circumstances had amply probablized the case of the defendants 2 and 5 that the Will is not a genuine one and surrounded by suspicious circumstances.

33. This Court, while answering Issue No.2, has held that since the sixth defendant disputes the title and entitlement of the Testator, she cannot claim to have caveatable interest and *dehors* the findings, since the order granting probate is a judgment in *rem* and this Court, also a Court of conscience, has considered the said submission.

34. It is the primordial submission of the learned counsel appearing for the defendants 2 and 6 that though Venkatasubba Reddy was examined on 27.01.2000, he was not cross examined and died on 07.07.2000 and in the light of the judgment in **Satnam Singh (dead) by LRs. & Others v. Sadhu Singh & Ors. [2001 (8) Supreme 574]**, his chief examination can be taken into consideration.

35. No doubt, after completion of chief examination of



VENKATASUBBA REDDY, he was not cross examined and he died on 07.07.2000 and attention of this Court was not invited to any proceeding as to the deliberate inaction on the part of the plaintiffs to cross examine and even otherwise, it was open to DW1 to approach the Court for early completion of its evidence, but he did not do so. DW1, as the first defendant, in his written statement, has disputed the very title and interest of the Testator and his younger brother by stating that he purchased the property out of his own funds in the name of his younger brother Srinivasa Reddiar and infact, pendency of this Testamentary Original Suit, has sold the property in favour of the sixth defendant by way of registered Sale Deed dated 30.03.1998.

36. The judgment relied on by the learned counsel appearing for the six defendant came to be rendered on different facts and circumstances of the case and has no application to the case on hand for the above cited reasons. It is also the submission of the learned counsel appearing for the defendants 2 and 6 as to the belated production of the Will that totally contradictory versions are available and therefore, it cannot be termed as genuine. No doubt, though the testimonies of PWs.2 and 3 coupled with the stand of the Executor appears to be contradictory, the fact remains that the original Will was produced and marked as



Ex.P1 and to prove it's execution, PW1 has filed his affidavit on 20.03.2002 and was examined in chief on 11.04.2007, wherein he has stated that he is aged about 102 years and Ex.P1/Will was executed in his presence and also another attesting witness, namely Perumal Reddiar and at the time of execution, the Testator was in a sound state of mind, memory and good health and he has attested the Will. However, his cross examination was done on 28.01.2008, he would state that the Executor has married the daughter of the Testator and denied the suggestion that the Testator was a bachelor. The core issue as to whether he saw the Testator signing the Will and his answer was in tune with his chief examination. There is also discrepancy as to his real age and it is to be remembered at this juncture that he is not highly educated and hailing from a rural area and considering the fact that the Will was executed on 26.02.1989 and he filed his affidavit on 20.03.2002 and examined in chief on 11.04.2007 and cross examined on 28.01.2008, certain discrepancies bound to occur and with such a background, PW1 cannot be expected to give parrot like version. PW1 is very categorical that he saw the Testator signing Ex.P1/Will and it was attested by him as well as by Perumal Reddiar.



37. The judgment in **Nand Kishore Rai and another v. Mst. Bhagi Kuer and Others [AIR 1958 Allahabad 329]**, lay down the proposition that verification of a petition required under Section 281 is similar to verification required of pleadings, including a plaint, under Order 6 Rule 15 CPC and has no greater effect of value. Omission to verify, or defective verification of a pleading is a mere irregularity within Section 99 C.P.C. and is never fatal. The provision of Section 281 of the Succession Act is less drastic than that of Order 6 Rule 15 and an omission to verify, or a defective verification of, a petition for probate cannot have a more serious effect than that of a plaint. The provision in S.281 is merely directory and not mandatory i.e., non-compliance with it is not intended to lead to the rejection of the petition.

38. The learned counsel appearing for the defendants 2 and 6 pointed out certain infirmities such as belated production of the original Will, the beneficiary did not enter into witness box as legal heirs of the propounder and discrepancies in the evidence of PW1-one of the attestors and would submit that in the light of the above suspicious circumstances, onus lies on the propounder to explain and since no reasonable or plausible explanation has been offered, the prayer sought for by the plaintiffs cannot be



granted and placed reliance upon the decision in **Smt. Indu Bala Bose and others v. Manindra Chandra Bose and another [AIR 1982 SC 133]**, which lay down the proposition 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; however where there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine and even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. It has been further held that "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. The Hon'ble Supreme Court of India, taking into consideration the factual aspects, held that execution and attestation of the Will has been proved and suspicious circumstances did not exist.

39. No doubt, the original Will was belatedly produced, but however PWs.2 and 3 had spoken about the reasons for belated production of Will. The beneficiary of the Will includes one of the daughters of the first defendant. As already pointed out, one of the legal heirs of the first



defendant, namely DW1 did not support the case of his father during the course of her evidence. In the considered opinion of the Court, the above circumstances pointed out cannot lead to the inference of suspicious circumstances and the time gap can also be taken into consideration.

40. In the case on hand, the Executor of the Will played prominent role and his wife was one of the beneficiaries, but that itself cannot be treated as suspicious circumstances in the light of the reasons assigned above. The decisions relied on by the sixth defendant in **Rani Purnima Devi and another v. Kumar Khagendra Narayan Deb and another [AIR 1962 SC 567]** which in-turn placed reliance upon the **H.Venkatachala Iyengar v. B.N.Thimmajamma [AIR 1959 SC 443]**, wherein it has been held that mode of proving a Will did not ordinarily 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.

41. This Court, after going through the testimony of PW1, is of the view that the said mandate has been fully complied with.

42. No doubt, the original order granting Letters of



Administration was revoked by this Court and later on the first defendant, elder brother of the Testator, filed a written statement stating that the schedule mentioned property was purchased by him by providing funds in the name of his younger brother, namely Srinivasa Reddy/Srinivasan and even for the sake of arguments, his chief examination can be taken into consideration, the fact of purchasing of the property by first defendant out of his own funds in the name of his younger brother has not been proved. The sixth defendant, *prima facie*, appears to have not verified the title and purchased the property under registered Sale Deed dated 30.03.1998 and not stopping with that, has filed written statement adopting the stand of the first defendant and not even deposed as a witness in support of her pleadings. The second defendant, merely adopted the arguments of the sixth defendant and did not file any written statement. Heavy reliance was placed upon Exs.D1 to D4, wherein signature has been put as Srinivasan and not as Srinivasa Reddy and therefore, attempt was made to convince the Court that Ex.P1/Will has been forged/fabricated. However, in the light of testimony of PW1, it cannot be said so. The infirmities pointed out are trivial in nature and hence, it cannot be said that on account of the same, the Will came into being under suspicious circumstances.

Therefore, this Court is of the view that Ex.P1/Will dated



26.02.1989 is genuine and valid and was executed by the Testator in a sound state of mind and not surrounded by suspicious circumstances and has been proved in accordance with law.

43. Hence, Issue No.1 is answered in affirmative in favour of the plaintiffs.

44. In the light of findings given in respect of issues Nos.1 and 2, the plaintiffs are entitled to succeed and therefore, Issue No.3 is answered accordingly.

45. In the result:

(i) This Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate in respect of the Will dated 26.02.1989.

(iii) This Court, taking into consideration the nature of relationship between the parties, is not inclined to award costs.

List of Witnesses:

PW1 : Thiru.Seeyal Naicker
PW2 : Thiru.Sivaraman
PW3 : Thiru.Selvaraj

DW1 : K.Usha

**List of Exhibits:**

Ex.P1 : Copy of the Original Will dated 26.02.1989
Ex.P2 : Affidavit of Seeyala Naicker (PW1)

Ex.D1 : Gas Agencies Cash Memo dated 14.10.1987
Ex.D2 : Letter (Venkadasubba Reddy) dated
08.03.1969
Ex.D3 : Exchange Deed dated 04.10.1976
Ex.Dr : Sale deed dated 07.02.1967

sd/.M.S.N.J

17.03.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/20.04.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.