

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2016

(Judgment Reserved on 15.10.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

T.O.S.No.38 of 2008 and Tr.C.S.Nos.888 and 889 of 2009

Sarasamma		.. Plaintiff in T.O.S.No.38 of 2008
	Vs.	
G.Pandurangan		.. Defendant in T.O.S.No.38 of 2008

1. R.Ambika (deceased)		
2. G.Pandurangan		
3. Dheerajmal, minor rep. by		
his father and natural guardian G.Pandurangan,		
the second plaintiff herein		
(plaintiffs 2 and 3 are impleaded as per		
the order of this Court in		
A.No.2880 of 2011, dated 11.07.2011.)		.. Plaintiffs in Tr.C.S.No.888 of 2009

	Vs.	
Sarasamma @ Saraswathy		.. Defendant in Tr.C.S.No.888 of 2009

G.Pandurangan		.. Plaintiff in Tr.C.S.No.889 of 2009
	Vs.	
1. T.G.Srinivasalu Naidu (died)		
2. Sarasamma		
3. Amudananda Thavayogi		
4. J.Rajendran		
5. R.Kuppabai,		
6. J.Mohan		
7. Mrs.Kanchana		
(7th defendant impleaded as per the order		
of this Court in A.No.5154 of 2009, dated 16.02.2010)		.. Defendants in Tr.C.S.No.889 of 2009

T.O.S.No.38 of 2008 numbered on conversion of O.P.No.387 of 2008, filed under Sections 232, 255 and 276 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the Madras High Court Original Side Rules, praying that Letters of Administration with a Will annexed, may be granted to the plaintiff as the legatee under the Will of the deceased R.Gopal, having effect and limited to the State of Tamil Nadu and limited to the properties mentioned in the affidavit of assets.

Tr.C.S.No.888 of 2009 numbered on transfer of O.S.No.4197 of 2008 from the file of the City Civil Court, Chennai and the amended plaint filed under Order 7 Rule 1 of the Civil Procedure Code, praying:

(a) for a permanent injunction restraining the defendant herein, her men, agents, servants or any other person or persons claiming through them from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property, especially smooth running of the School, right to use the pathway (marked yellow in the sketch) and

(b) to pay the costs of the suit.

Tr.C.S.No.889 of 2009 numbered on transfer of O.S.No.1435 of 2003 from the file of the City Civil Court, Chennai and the amended plaint filed under Order 7 Rule 1 of the Civil Procedure Code, praying:

(a) for declaration declaring that the alleged Will dated 29.07.1999 is null and void;

(b) for permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through them from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the suit properties, more-fully described in the schedule to the plaint;

(c) for permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through them from selling or encumbering with the suit properties, more-fully described in the schedule to the plaint and

(d) for costs of the suit.

In T.O.S.No.38 of 2008:-

For Plaintiff : Mr.N.R.Elango, Senior Counsel for Mr.K.Ramani
For Defendant: Mr.S.Sadhashram for Mr.S.Nagarajan

In Tr.C.S.No.888 of 2009:-

For Plaintiffs : Mr.S.Sadhashram for Mr.S.Nagarajan
For Defendant : Mr.N.R.Elango, Senior Counsel for Mr.K.Ramani

In Tr.C.S.No.889 of 2009:-

For Plaintiff : Mr.S.Sadhashram for Mr.S.Nagarajan
For D.1 and D.2 : Mr.N.R.Elango, Senior Counsel for
Mr.P.Dhananjayan
For D.3 : Mr.K.Ramanath Reddy
For D.4 and D.5 : Mr.C.Jagadish
For D.6 : Mr.R.Mahalingam
For D.7 : Mr.K.Bhaktavatchalu

COMMON JUDGMENT

T.O.S.No.38 of 2008 is numbered on conversion of O.P.No.387 of 2008, praying that Letters of Administration with a Will annexed, may be granted to the plaintiff as the legatee under the Will of the deceased R.Gopal, having effect limited to the State of Tamil Nadu and limited to the properties mentioned in the affidavit of assets.

2. Tr.C.S.No.888 of 2009 numbered on transfer of O.S.No.4197 of 2008 from the file of the City Civil Court, Chennai, praying for permanent injunction restraining the defendant herein, her men, agents, servants or any other person or persons claiming through them from interfering

with the plaintiffs' peaceful possession and enjoyment of the suit property, especially smooth running of the School, right to use the pathway (marked yellow in the sketch) and to pay the costs of the suit.

3. Tr.C.S.No.889 of 2009 numbered on transfer of O.S.No.1435 of 2003 from the file of the City Civil Court, Chennai, praying for declaration declaring that the alleged Will dated 29.07.1999 is null and void; for permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through them from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the suit properties, more-fully described in the schedule to the plaint; for permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through them from selling or encumbering with the suit properties, more-fully described in the schedule to the plaint and for costs of the suit.

4. The case of the plaintiff in T.O.S.No.38 of 2008 is as follows:

(i) She is the wife of one Mr.T.G.Srinivasalu, who is the sister's son of Late R.Gopal. The said Mr.R.Gopal, during his life time, had purchased immovable properties at Kolathur, Chennai, Guduvancherry and Arakonam out of his hard earned money and was in possession and enjoyment of the same. The said Mr.R.Gopal was married to one Kausalya, and out of the said wedlock, he had two girl children namely, Rukmani and Saroja and a male child namely Pondurangan, the respondent herein. The son of Mr.R.Gopal viz., Pondurangan was legally married to one Vijayalakshmi. Thereafter, he married one Nagaratnam and then to one Padma and is now living with one Ambika. The daughter of Mr.R.Gopal namely Rukmani is a spinster and had not married due to her health conditions and another daughter of Mr.R.Gopal namely, Saroja was deserted by her husband. Both the daughters of Mr.R.Gopal were living with him. His wife Kausalya became ill due to the mental torture and ill-treatment meted out by the respondent herein/defendant and eventually predeceased the testator. The defendant started to treat his father and sisters in a inhuman way and subjected them to cruelty. With the intention to grab the land of his father, the defendant joined hands with one Ulagarakshagan and filed a suit against his father, mother and sisters for specific performance. Mr.R.Gopal and his daughters were thrown out of the property purchased by Mr.R.Gopal at No.19A, III Cross Street, East Poompuhar, Kolathur, Chennai-600 099 and therefore, unable to bear the torture and the ill-treatment meted out to them, the said Mr.R.Gopal and his daughters were living under the care and protection of the plaintiff and her husband Mr.T.G.Srinivasalu at Arakonam.

(ii) The defendant/Mr.G.Pandurangan has already taken sufficient money from the

deceased Mr.R.Gopal and bought several properties in various places. The plaintiff states that since she and her husband had looked after the basic requirements and well being of said Mr.R.Gopal, his wife and his two daughters, Mr.R.Gopal executed a Will on 23.06.1999 in favour of the plaintiff and her husband Mr.T.G.Srinivasalu and registered the same as Document No.19 of 1999 at Sub-Registrar office, Arakonam, Vellore District, in the presence of the witnesses, whose names appear at the foot thereof. The said Mr.R.Gopal ordinarily resided at No.9, Mettu Street, Arakonam, Vellore District and died on 06.12.2001 in the said address. The plaintiff's husband Mr.T.G.Srinivasalu was named as the executor of the Will. The said Mr.T.G.Srinivasalu filed a petition in O.P.S.R.No.25236 of 2005 for grant of probate in respect of the Will executed by late R.Gopal and the same was returned for due compliance by this Court. The said petition for grant of probate in favour of the plaintiff's husband was not re-presented and the plaintiff's husband viz., Mr.T.G.Srinivasalu died on 14.03.2007 at No.9/20, Mettu Street, Suvalpet, Arakonam. The plaintiff being an aged and an illiterate lady, without any male support, was unable to follow the matter and she could not approach this Court at the earliest point of time to get Letters of Administration of the Will as the legatee under the Will.

(iii) The first daughter of the deceased Mr.R.Gopal, namely, Rukmani was under the care of the plaintiff and she is missing since 2005 and therefore, the plaintiff has given a police complaint to trace her and the same has been registered in F.I.R.No.401 of 2007. The other daughter of the Testator namely Saroja died on 21.04.2002. The parents of the deceased testator pre-deceased him. As per the Will executed by the deceased Mr.R.Gopal, his entire estate devolves only on the plaintiff and her husband Mr.T.G.Srinivasalu and they are the only beneficiaries under the Will. The plaintiff's husband died on 14.03.2007 at No.9/20, Mettu Street, Suvalpet, Arakonam. Therefore, the plaintiff has now come before this Court to grant Letters of Administration for the Will executed by late Mr.R.Gopal. There were no issues born out of the wedlock of the plaintiff with Mr.T.G.Srinivasalu. The properties bearing Item Nos.1 to 3 and 8 of the Will dated 23.06.1999 are situated outside the jurisdiction of this Court and the other properties Item Nos.4 to 7 as mentioned in the Will are situated within the city limits of Chennai and within the jurisdiction of this Court. The present petition for Letters of Administration is restricted to Item Nos.4 to 7 of the Will dated 23.06.1999. The writing hereunto annexed and now shown to the plaintiff and marked with letter 'A' is the last Will and Testament of the said deceased Srinivasalu and was duly executed on 23.06.1999 at Arakonam in the presence of witnesses, whose names appear at the foot thereof and as the last Will is available with the plaintiff, the plaintiff is filing the said Will marked in letter 'A' as stated above. The plaintiff has set forth in Annexure 'A' to the affidavit of assets filed herewith and all the properties and credits which the deceased possessed or was otherwise entitled to at the time of his death. From the said affidavit of assets, it appears that the value of the assets, which are likely to come into the plaintiff's hands, does not exceed in the aggregate a sum of Rs.47,22,750/- and the net amount of

then said assets, after deducting all the items, which the plaintiff is by law allowed to deduct is only of the value of Rs.47,12,750/-. The plaintiff undertakes to duly administer the property and credits of the said deceased and in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of Letters of Administration with the Will annexed, to the plaintiff and also render to this Court a true account of the said property and credits within one year from the said date. The plaintiff impleaded all the next of kin or other persons interested as a party respondent and there is no next of kin or other person interested to be impleaded. The plaintiff has not made any application to any District Court or to any High Court for probate of any Will of the said deceased or for Letters of Administration with or without the Will annexed to his properties and credits. Though the Will was executed on 23.06.1999, the testator had chosen to register the Will in July 1999. Hence, the plaintiff prays for the above said relief in T.O.S.No.38 of 2008.

5. The defendant in T.O.S.No.38 of 2008 has filed written statement, stating as follows:-

(i) Originally, the plaintiff filed original petition for Letters of Administration of the alleged Will dated 23.06.1999. Subsequently, on the appearance of the defendant and after following the procedure, the said original petition was converted into T.O.S. The defendant is the only son of the deceased Testator Mr.R.Gopal. The above suit has to be dismissed on the ground of laches, since the Testator died on 06.12.2001 and the above suit has been filed after the long period of 8 years. Therefore, the alleged Will is not genuine. Further, there are seven items of the properties in the alleged Will dated 23.06.1999, but the plaintiff filed the above suit only for Item Nos.4 to 7 and therefore, on this ground also, the suit has to be dismissed. The Schedule item properties 1 to 3 in the alleged Will though situate at Guduvancherry, since the Will is being questioned for the entire properties, the above suit ought to have been filed for the entire properties by paying proper Court fee. The beneficiaries under the alleged Will dated 23.06.1999 are not relatives as stated by the plaintiff and they are third parties not connected to the family of the Testator. Therefore, the defendant denies the allegation that the plaintiff is the wife of one Mr.T.G.Srinivasalu, who is the sister's son of late Mr.R.Gopal, the deceased testator and the plaintiff has to prove the same with documentary evidence. The defendant denies the allegation that the said Mr.R.Gopal, during his life time, purchased immovable properties at Kolathur, Guduvancherry and Arakkonam and states that all the properties were purchased by the defendant's father out of the sale proceeds of ancestral properties, namely, the properties situated at Serkkadu of an extent of 2.50 acres was sold by the defendant's father namely Mr.R.Gopal in the year 1964 for a valuable consideration of Rs.6,000/- and Mango Thope, Naval Thope, Iluppai thope lying in the ancestral property situated at Nedungal, was sold for a sum of Rs.9,000/- in the year 1962 and the jewels which belongs to

the grand-parents of the defendant, worth about Rs.6,500/-, were also sold and out of the said sale proceeds, the properties mentioned in the alleged Will was purchased by the deceased testator, namely, the father of the defendant and those properties were sold when the defendant was a minor. At the time of selling the properties, as the defendant was a minor, all the properties were purchased in the name of the defendant's father late Mr.R.Gopal. As such, the allegation that those properties were purchased out of his hard earned money, is denied.

(ii) It is true that Mr.R.Gopal was married to one Kousalya and out of the said wedlock, he had two female children, namely Rukmani and Saroja and a male child namely, the defendant herein. The allegation that the defendant was married to one Vijayalakshmi is true and since the said Vijayalakshmi divorced the defendant, the defendant got married to one Nagarathinam and she also died. The allegation that the defendant married one Padma is false. The defendant subsequently legally married one Ambika and at present, the defendant is living with the said Ambika at the Kolathur residence. Out of the wedlock between the defendant and the said Ambika, a male child by name Dheerajmal was born and is now aged about 4 1/2 years. It is true that the daughter of Mr.R.Gopal, namely, Rukmani is a spinster and another daughter, by name, Saroja was deserted by her husband. The defendant denies the allegation that the defendant's mother Kousalya became ill due to the mental torture and ill-treatment meted out by the defendant.

(iii) The defendant further states that the beneficiaries under the alleged Will, namely Srinivasan and Sarasamma are not related to the defendant's family and the above said two persons have no issues and have no permanent income of their own and often reside in their relative house. Since the said two persons belong to the same community as that of the defendant and through our relatives, they came to the defendant's house as a attender and cook respectively in the year 1998. Till 1998, the defendant, along with his parents and sisters, were living peacefully in the house situated at Poompuhar Nagar, Kolathur and after 1998, when both the said persons came in contact with our family, the problem arose and taking advantage of the situation prevailed at that time, the defendant had no issues and also taking advantage of the precarious conditions of the sisters of the defendant, the above said two persons, with a view to grab all the properties, conspired with one Dhananjayan, who married the grand daughter of Srinivasan's sister and gained confidence and out of the said conspiracy, all the said persons separated the parents and sisters of the defendant and took away to Arakkonam along with the proceeds of UTI-Certificates sold at Rs.11.50 lakhs and also a cash of Rs.10.50 lakhs belonging to defendant's father namely, the deceased testator Mr.R.Gopal and the deceased testator was having three bank accounts. Out of the said amount, all the above said three persons forced the deceased testator to purchase the property. When the property situated at Arakkonam was purchased, originally the defendant's father was intended to purchase in his name and in the name of his wife Kousalya and daughter Saroja and agreement was also entered into to that

effect and at that time, as the defendant's father fell ill due to the old age, the above said three persons conspired and registered the sale deed in the name of the testator, his wife Kousalya and in the name of the plaintiff, instead of the daughter of the testator Saroja pertaining to the property situated at Arakkonam. The said Srinivasan and Sarasamma have no source of income and they are unemployed and they are always depending upon the relatives for their survival.

(iv) At the time of entering into the defendant's house by the above said two persons, they obtained a sum of Rs.1.50 lakhs as loan from the defendant's father and till date, that amount was not repaid by the above said persons. Instead, they separated the defendant's father with the connivance of one Dhananjayan and lavishly spent the amount which the father of the defendant was having at that time. The said two persons, namely Srinivasan and Sarasamma lived as saprophytes with them. Immediately after separation from the custody of the defendant to Arakkonam, the defendant's mother died on 08.01.1999 under suspicious circumstances and the defendant also gave several complaints in that regard and the same is pending investigation. Thereafter, immediately after five months and 15 days from the date of death of the defendant's mother, the alleged Will dated 23.06.1999 was forcibly registered by the above said persons by employing threat, force and coercion on the father of the defendant, namely the testator. At the time of execution of the alleged Will dated 23.06.1999, the father of the defendant was aged about 83 years and he was in unsound state of mind and the above said Will was not executed by him on his own will and conscience and in a sound disposing state of mind. It is not a true document and it is vitiated by fraud and undue influence.

(v) The alleged Will dated 23.06.1999 was executed in suspicious circumstances due to the unsoundness of the mental condition of the testator namely Mr.R.Gopal. The alleged Will dated 23.06.1999 is not genuine and valid for the following reasons:-

- (a) The alleged Will was executed at the age of 83 by the testator.
- (b) At the time of execution of the alleged Will, the age of the alleged two beneficiaries, namely Srinivasan is aged about 71 years and Sarasamma is aged about 62 years.
- (c) The testator would not have executed the alleged Will in favour of the above said two beneficiaries when the defendant himself and his sisters are alive.
- (d) Both the alleged beneficiaries have no issues.
- (e) No piece of land left for his son, namely, the defendant.
- (f) Immediately after the death of the defendant's mother, the alleged Will was executed.

(vi) After the death of the deceased testator R.Gopal, the defendant's sister, namely Saroja, who is a cancer patient, was sent out by force to the house of the defendant by the plaintiff and the defendant was looking after her medical expenses and health and later on, she died in the year 2002 at the house of the defendant at Kolathur, Chennai. Though the parents and sisters of the defendant were residing at Arakkonam for a brief period, they often visit the defendant, and

the defendant and his wife also went to visit the parents and sisters often. The defendant worked as Section Superintendent, Chennai Port Trust and was earning good salary and he was only looking after the entire family consisting of his parents and sisters. On one occasion, when the defendant visited the parents and sisters at Arakkonam, the above said two persons prevented him from having access with the parents and sisters of the defendant, by giving false complaint. Their intention was only to grab the properties of the deceased testator and therefore, they gained confidence with the defendant's family and completed the conspiracy.

(vii) Immediately after the death of the testator, namely the defendant's father, the above said two persons issued Lawyer's notice by disclosing the Will and calling upon the defendant to vacate and hand over possession of the properties of the testator, namely the properties situated at Guduvancherry and Kolathur, without filing original petition for grant of Letters of Administration and thereafter, they threatened the defendant with rowdy elements to vacate the properties as stated above. Thereafter, the defendant filed suit in O.S.No.1435 of 2003 on the file of XII Asst. City Civil Court, Chennai, for declaration to declare that the alleged Will, dated 23.06.2009 executed by the father of the defendant, is null and void and also prayed for permanent injunction not to interfere with the possession of the properties and also from selling or encumbering the properties mentioned in the said suit and the said suit is still pending. The plaintiff has also filed written statement in the said suit. Without filing O.P. for probating the Will, the beneficiaries under the Will filed the suit in O.S.No.56 of 2006 on the file of the District Munsif Court, Chengalpattu, for permanent injunction not to interfere with the property situated at Guduvancherry as if they are in possession of the property suppressing the fact of pendency of the suit filed by the defendant in O.S.No.1435 of 2003 on the file of the City Civil Court, Chennai and in the above suit in O.S.No.56 of 2006, ex-parte interim order was also obtained against the defendant without filing any documents with regard to the possession of the property mentioned in the said suit and on the strength of the said interim order, with the connivance of the Inspector of Police, Guduvancherry, demolished the building that was constructed by the defendant by spending Rs.5 lakhs. At the time of demolishing the building, the said Dhananjayan, at the instance of said two beneficiaries and one Kesavan, along with Mohan, were present and they forcibly took away the defendant, leaving his wife and tender child to an undisclosed place and forcibly obtained signatures in the memorandum of understanding that was prepared and written by the said Dhananjayan, by which, it was mentioned in the said memorandum of understanding that the property situated at Guduvancherry will go to the beneficiaries under the Will and the property situated at Poompuhar Nagar, Kolathur, Chennai will go to the defendant and left the defendant on the next day. Thereafter, the defendant gave a complaint to the Inspector of Police, Guduvancherry Police Station and since no action was taken, the defendant filed a case before this Court for direction and as per the direction of this Court, F.I.R was registered in Crime No.285 of 2005 for the offences under Sections 147, 447, 506 (i), 342, 379 IPC and Sections 2 and 3 of the TNPPD Act.

As the Inspector of Police was also party to the conspiracy, the defendant made allegations against the Inspector of Police, Guduvancherry in the case filed before this Court and this Court directed the Superintendent of Police, Kancheepuram to appoint some other investigating officer and accordingly, the Inspector of Police, Chengalpattu Town Police Station, was appointed to investigate into the matter.

(viii) As far as the property situated at Guduvancherry, the said alleged beneficiaries could not take possession from the defendant, engaged Amirthananda Thava Yogi of Cholavaram by giving power and tried to take possession with rowdy elements and immediately the defendant filed CrI.O.P. before this Court against them and fearing action could be taken against them, they stopped from interfering with the peaceful possession of the defendant of the property situate at Guduvancherry. After the said incident of demolishing the house constructed by the defendant at Guduvancherry, the accused named in the F.I.R., by name Mohan, had purchased the said property at Guduvancherry from one Sekar, a native of Orathanad, Thanjavur District, who is the alleged Power Agent of the alleged beneficiaries and when the earlier power was subsisting and on the strength of the sale deed, the said Mohan who is having men and muscle power, having political clout in Guduvancherry area, tried to interfere with the possession of the defendant and immediately, the defendant filed application in O.S.No.1435 of 2003 to implead the subsequent purchaser as party to the proceedings and as the said subsequent purchaser tried to get electricity service connection, the defendant also filed another application impleading the Electricity Board, Guduvancherry and the same is now pending and his illegal activities were thwarted by the defendant. One of the beneficiaries, namely Srinivasan died due to oral cancer and thereafter, another beneficiary, namely, the plaintiff, made attempt to take possession of the property situate at Poompuhar Nagar, Kolathur, Chennai, where the defendant is now residing. The plaintiff engaged some anti-social elements having nexus with political parties who are the land grabbers and tried to take possession of the property on 05.06.2008 and in pursuance of the said arrangement, more than 30 persons having criminal background tried to take possession of the property of the defendant by beating the defendant and the same was thwarted by filing a suit and also by filing criminal complaint against them and the criminal complaint was also registered against them for the offences of criminal trespass, intimidation, attempt to murder and the said complaint was registered in Crime No.224 of 2008 and the same is still pending for investigation. Since the plaintiff could not succeed in her attempts to take possession of the properties in the occupation of the defendant, the present O.P. is filed after a lapse of eight years. If really the alleged Will, dated 23.06.1999 is genuine and really executed as alleged, the beneficiaries would have approached this Court by filing necessary application for probate/Letters of Administration of the alleged Will, dated 23.06.1999.

(ix) Since one of the sister, by name, Rukmani, was missing from 2005, the defendant filed a case in H.C.P.No.532 of 2007 before this Court for production of her body before this Court

and set her at liberty and this Court ordered CB-CID investigation to find out the whereabouts of Rukmani and till date, investigation is going on. Since the said Rukmani knows all the happenings from the date of separation of the defendant's parents by the beneficiaries, fearing that she could depose the truth before this Court where the suit is pending, could have detailed her illegally. Knowing fully well that the Will is a bogus one without following the procedure to legalise the said Will, tried to take possession out of the way by illegal methods by the said beneficiaries with the help of politicians, rowdy elements, land grabbers and though the defendant is a heart patient and his wife is a handicapped lady, who could not stand and walk on her own, thwarted all the attempts. The defendant's father, mother and sisters already gave consent prior to the execution of the Will in the year 1996 to change the Revenue Records of all the properties in the name of the defendant and accordingly, the defendant effected mutation of Revenue Records in his name and till date, the defendant is in absolute possession, occupation and enjoyment of the said properties.

(x) Like the beneficiaries under the alleged Will, one Ulagarakshagan tried to change the title of the properties situated at Guduvancherry and Kolathur and consequent to the conspiracy hatched by the said Ulagarakshagan to change the title of the properties, he filed a suit in O.S.No.10488 of 2006 for specific performance, alleging that the defendant's father, namely, the testator had executed an agreement to sell the property in his favour by obtaining signature in the written paper, by which a sum of Rs.1,00,000/- was paid by the said Ulagarakshagan to the father of the defendant, saying that he is going to lay-out the properties and sell it for good consideration and subsequently, the said Ulagarakshagan added some words as if it is an agreement to sell the property and ultimately, the said suit was dismissed, against which, Ulagarakshagan filed First Appeal in A.S.No.598 of 2005 and the same is still pending. Therefore, the allegation that with the intention to grab the land of his father, the defendant joined hands with the said Ulagarakshagan and filed a suit against his father, mother and sisters for specific performance, is false. The defendant never thrown out the defendant's father and his sisters out of the property at No.19-A, Third Cross Street, Poompuhar Nagar, Kolathur, Chennai-99 as alleged. The further allegation therefore that unable to bear the torture and ill-treatment meted out to them, the said R.Gopal and his daughters, were living under the care and protection of the plaintiff and her husband Srinivasan at Arakkonam, is false, imaginary and founded for the purpose of creating the said bogus will.

(xi) The defendant never received money from the deceased father, as the defendant was earning good salary and out of the said income, the defendant purchased certain properties and on the contrary, the defendant is spending more money for them. The defendant denies the allegation that since she and her husband looked after the basic requirements and well-being of R.Gopal, his wife and daughters, R.Gopal executed the Will on 23.06.1999 in favour of the petitioner and her husband T.G.Srinivasalu and registered the same as Document No.19 of 1999 in the office of the Sub-Registrar, Arakkonam, Vellore District in the presence of the witnesses,

whose names appear at the foot thereof. The defendant's father was not only ordinarily residing at Arakkonam, but also residing at Poompuhar Nagar, Kolathur, Chennai. Since it is a bogus Will, the said T.G.Srinivasalu as the executor of the Will, is questionable. The defendant denies the allegation that with the intention to probate the Will, they have filed O.P.S.R.No.25236 of 2005 for grant of probate, but on the contrary, with a view to blackmail and to take possession of the properties from the defendant to show something to the authorities for interference of the properties, they have filed it. If really the Will is genuine and executed in the normal circumstances, they would have immediately followed the procedures and got it probated before doing those illegal activities as mentioned earlier.

(xii) The beneficiaries sold the property situated at Guduvancherry when the suit is pending, for a valuable consideration of Rs.30 lakhs in the year 2005 itself and they have spent lavishly with the said amount and not satisfied with that, the plaintiff now also wants to take possession of the property situated at Poompuhar Nagar, Kolathur, Chennai to sell the same for valuable consideration and to misappropriate the sale proceeds for herself. As far as the allegations contained in paragraph 9 of the plaint, since the Will was obtained by force by exercising fraud, the same could not be given validity and therefore, the question devolving the entire estate of late R.Gopal on the beneficiaries does not arise. At the time of execution of the Will, the age of beneficiary, namely Sarasamma, the plaintiff, was mentioned as 55 years. Actually, at that time, the age of the plaintiff is 64 years and the age of first beneficiary conveniently not mentioned in the Will, since his age is 72 years at that time. In the Will, it is alleged that the testator did not have any ancestral properties, but actually, the testator was having ancestral properties both at Sekkadu and Nedungal. In the year 1999, the ancestral properties situated at Sekkadu of an extent of 1-3/4 acres was sold and still in Nedungal, 3.00 acres of ancestral properties and a vacant house-site is there. No sufficient reason was mentioned in the alleged Will to disinherit the only son of all the properties. Moreover, the first beneficiary, namely T.G.Srinivasalu, is also the executor. Therefore, the said Will is not prepared and signed by the defendant's father and it is fabricated and created for the purpose of grabbing the properties. The defendant purchased the property of an extent of 2400 Sq.Feet situate at Poompuhar Nagar Plot No.1815-A (which is mentioned in the alleged Will) by his own money and out of love and affection and on the request of the defendant's mother, he settled the same to and in favour of his mother and subsequently, the defendant's mother settled the said property in favour of the defendant.

(xiii) After the death of the defendant's father, the beneficiaries and their relative Dhananjayan, on so many occasions, threatened to part away with the properties and in the year 1998, when Dhananjayan was residing at Veppampattu, he called the defendant and his wife and threatened that if the defendant did not vacate the house, they would throw him out of the house by using force and on so many occasions, he sent rowdy elements and also threatened over

phone. Knowing fully well that the defendant has no issues at that time and knowing the precarious and pathetic condition of the defendant's father and sisters, they hatched conspiracy and tried to take possession on the strength of the bogus Will and in pursuance of the said conspiracy, the Will is being created.

(xiv) The house at Arakkonam was sold by manipulating the records for a sale consideration of Rs.25 lakhs and they swallowed that amount, though the stay is in force in the suit filed before the District Munsif Court, Arakkonam. In the year 1976, the defendant's father himself changed the records of Poompuhar Nagar, Kolathur property in the name of the defendant and the "A" Register stands in the name of the defendant. The defendant's father left Madras because of the problem created by one Ulagarakshagan and his groups, demanding sale deed in their favour for all the properties and also because of the second alliance concluded by him for the defendant's sister G.Saroja without the knowledge of the defendant and thereafter, there was a threat for person and property of the defendant and thereafter, the problem was solved by the defendant and his wife. Due to over age partial blindness, the defendant's father, namely, the testator could not attend the Court proceedings and hence, he handed over the possession of all the properties, Revenue Records and the power to change everything in the name of the defendant and he executed necessary documents to that effect and directed the defendant to implead in the Ulagarakshagan case claiming all the properties, as the defendant has signed the agreement and objected for the sale from the beginning itself. In the end of 1999, six months after the death of the defendant's mother, he also sold the ancestral property situated at Serkadu for Rs.1.75 lakhs on the request of the defendant's father and the said amount was handed over to him. The said persons had done maximum damage to the person and property of the defendant for their illegal gains. As a legal heir, the defendant is in possession, occupation and enjoyment of the said properties. The defendant therefore prayed for dismissal of the suit with exemplary costs.

6. The defendant in T.O.S.No.38 of 2008 has filed additional written statement, stating as follows:

(i) The Will, dated 23.06.1999 said to have been executed by the deceased father of the defendant late R.Gopal, is a document got up by playing fraud on the deceased father of the defendant by the plaintiff and her husband late Srinivasan in collusion with one Dhananjayan, who is said be a close relative of the plaintiff, with a motive to misappropriate the suit properties and the properties at Guduvancherry, namely the properties covered under settlement deed, dated 08.12.1994. The properties covered under the Will, dated 23.06.1999, more particularly, the properties situated at Guduvancherry Village, Chengalpattu Taluk and covered under settlement deed, dated 8.12.1994 bearing Document No.317 of 1994, have already been settled to and in favour of the defendant and the fraud and coercion committed by the plaintiff is very much exposed from the fact that the Will has been drafted and prepared by the plaintiff in collusion with

the deceased husband of the plaintiff late Srinivasan and the above said Dhananjayan. Without knowing the settlement of the year 1994 and without knowing the said fact, the above said Will, dated 23.06.1999 has been fabricated and got up. If the deceased had willingly executed the Will, dated 23.06.1999, he would not have included the properties at Guduvancherry in the Will.

(ii) The Will, dated 23.06.1999 has already been revoked by a deed of revocation, dated 30.06.1999 bearing Document No.19 of 1999, registered on 28.07.1999 on the file of the Sub-Registrar, Arakkonam and therefore, the above T.O.S.No.38 of 2008 cannot be maintained. In fact, there is no Will in existence to maintain T.O.S.No.38 of 2008 and T.O.S.No.38 of 2008 is liable to be dismissed. The Will, dated 23.06.1999 has been revoked by the defendant's father after he came to know of the fact that the Will, dated 23.06.1999 has been fraudulently obtained by the plaintiff and her husband in collusion with Dhananjayan to misappropriate the suit property and also the properties at Guduvancherry. The recitals in the settlement deed and the revocation deed would make it very clear that the plaintiff has played a fraud and coercion on the deceased father of the defendant to misappropriate the suit properties and also the properties at Guduvancherry and Arakkonam, besides the cash available in the account of the deceased father of the defendant. The defendant therefore prayed for dismissal of the suit with exemplary costs.

7. The case of the plaintiffs in Tr.C.S.No.888 of 2009, as stated in the amended plaint, is as follows:

(a) The deceased first plaintiff was the owner of the property in Plot No.1794-B, 1796-B, 1796-C, comprised in Old Survey Nos.106/6 and 106/7 in Poompuhar Nagar, Kolathur Village, Saidapet Taluk and the property was purchased by her father-in-law out of the sale proceeds of ancestral properties for valuable consideration in the year 1966 from one Appasamy. Besides, he also purchased properties at Guduvancherry and Arakkonam. The wife of Gopal Naidu and the deceased first plaintiff's mother-in-law Kousalya died on 08.01.1999 under mysterious circumstances and the deceased first plaintiff's father-in-law R.Gopal died on 06.12.2001, leaving behind the deceased first plaintiff's husband, Selvi Rukmani and Tmt.Saroja as the only legal heir entitled to succeed to the estates of late R.Gopal. Smt.Saroja died on 21.04.2002 and now, the surviving legal heirs of late Gopal are the deceased first plaintiff's husband Pandurangan and her sister-in-law, namely Selvi Rukmani and the deceased first plaintiff's husband being only male legal heir, is looking after the entire family members and taking care of them and further managing the entire suit properties. He also constructed several houses in the schedule mentioned properties with his own fund and paying house tax, land tax, water tax, electricity charges and other necessary charges to the Corporation and other entities. The deceased first plaintiff's father-in-law employed one Sarasamma, the defendant herein as a cook and one Srinivasan as attender and both of them conspired together to grab the property and thereby, as part of their illegal design, both the said two persons colluded and separated the deceased first

plaintiff's father-in-law and mother-in-law by taking advantage of the petty quarrel with the deceased first plaintiff's husband, namely Pandurangan. Since the deceased first plaintiff was a handicapped lady and lived at Arakkonam house and within few days after separation, the deceased first plaintiff's mother-in-law died at Arakkonam under mysterious circumstances and suspecting it to be a case of murder, the deceased first plaintiff and her husband gave a Police complaint to take necessary action against the defendant and Srinivasulu.

(b) The deceased first plaintiff's father-in-law also died on 06.12.2001 and her husband performed all the rituals and to the shock and surprise, the deceased first plaintiff's husband received a Lawyer's notice on 28.05.2002, issued by the defendant and her husband, stating that the deceased first plaintiff's father-in-law executed a Will on 29.07.1999, bequeathing all the schedule mentioned properties in favour of them and further called the deceased first plaintiff's husband to vacate from the suit properties. The alleged Will is not a genuine Will and could not have been executed in sound state of mind and it is only part of conspiracy to grab the property. No one can even imagine execution of the Will in favour of third parties. Therefore, the deceased first plaintiff's husband filed a suit in O.S.No.1435 of 2003 against the said persons, namely Srinivasan and Sarasamma, for declaration declaring that the alleged Will, dated 29.07.1999 is null and void, for permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through him from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the suit properties, more-fully described in the schedule therein, for permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through him from selling or encumbering the suit properties, more-fully described in the schedule therein. The said suit is pending before XI Assistant City Civil Court, Chennai.

(c) As per the wish of the deceased first plaintiff's father-in-law and mother-in-law, the deceased first plaintiff and her husband constructed a School in the name of the deceased first plaintiff's father-in-law, namely Ravilla R.Gopal Naidu School, for mentally retarded and physically handicapped, in one of the suit property at Kolathur, by spending more than Rs.10 lakhs and further, the deceased first plaintiff being handicapped lady, unable to stand and walk, for the beneficial avocation, thought of starting Matriculation School and when she approached the educational authorities, they insisted that the land and building should be in her name and when the same was communicated to her husband, he certainly agreed for that and gave the suit property, more-fully described in the sketch annexed with the plaint (except 900 Sq.Ft. house, all other buildings and vacant land for play ground) and as found in the schedule of the lease deed, by way of registered lease deed, dated 12.05.2005, registered in the Office of the Sub-Registrar, Sembium as Document No.3911 of 2005 to the deceased first plaintiff, for running a School, namely Ambika Pandurangan Matriculation School and accordingly, she was running the said School in the suit property and the lease is for 15 years or up to the extended period at the will of

both the parties and the School is being run for the past 10 years without any hindrance from any quarters.

(d) The defendant, along with her sister's son Dhananjayan, Jayam Kannan, Ramesh, Arumugam, totally numbering about 30 persons, who are having criminal background, on the strength of the bogus unprobated Will, came to the suit property on 06.06.2008 and threatened to vacate the premises where the deceased first plaintiff's husband was residing and further asked the inmates of the School, including the teachers, staff and students, to vacate the School building immediately and by saying so, they used filthy language against the inmates of the School, particularly against female teachers and further said that if they do not vacate, they will have to face the dire consequences. They also blocked the free ingress and egress to the school building and further, they also blocked the toilet facilities and immediately, on the complaint given to the Inspector, Kolathur Police Station, all of them restored and still the said anti-social elements are roaming around the suit property with a view to occupy the same illegally. FIR has also been registered in Crime No.224 of 2008 against the said persons. The deceased first plaintiff was handicapped lady and her husband is facing heart problems and taking advantage of the said position, the defendant and her henchmen are making hectic attempt to grab the suit property illegally by engaging persons having both criminal and political background. The alleged Will was fraudulently obtained from the plaintiff's father-in-law and at the time of alleged execution of the Will, the defendant's age was 65 and her late husband's age was 75, that too they were having no issues, and now, the defendant's husband died and the defendant being aged lady, wanted to enjoy the suit property fraudulently by engaging the Goondas without bothering about the outcome of the suit in O.S.No.1435 of 2003 filed, challenging the alleged Will. In fact, she is hitherto residing at Arakkonam. The defendant is a pucca criminal and wanted to grab all the properties illegally and that can be proved by following incidents:

(i) The defendant and her husband did not bother to probate the alleged Will, which is mandatory for the properties situated within the jurisdiction of Chennai.

(ii) The defendant and her husband, namely late Srinivasalu Naidu did not bother about the result of the suit in O.S.No.1435 of 2003 filed by the deceased first plaintiff's husband challenging the alleged Will.

(iii) The defendant and her husband on earlier occasion, filed a suit in O.S.No.56 of 2005 before the District Munsif Court at Chengalpet, suppressing the pendency of the suit in O.S.No.1435 of 2003, pending on the file of XI Asst. City Civil Court, Chennai and got ex-parte interim order and on the strength of the said interim order, the defendant demolished the building situated at Guduvancherry property and subsequently, after filing counter by the plaintiff, the said suit was withdrawn by the defendant and on the Police complaint, an FIR was also registered.

(iv) Since the sister of the deceased first plaintiff's husband, namely Rukmani was missing, the deceased first plaintiff's husband filed a case in H.C.P.No.532 of 2007 against the

said defendant herein and their henchmen, suspecting they could have concealed her and prevent her from giving evidence in the case challenging the alleged Will and in the said H.C.P., an investigation by CB-CID is being ordered and the team of the CB-CID is investigating the whereabouts of Rukmani.

(v) The defendant and her husband, on earlier occasion, gave power to one Amudhananda Thavayogi of Cholavaram and on the strength of the said power, the said Thavayogi illegally demolished the Krishnan Temple constructed by the deceased first plaintiff in the Guduvancherry property and on the direction given by this Court, the same was stopped.

(vi) The defendant did not bother about the pendency of First Appeal against the judgment and decree passed in O.S.No.10488 of 1996 filed by one Ulagarakshagan against the deceased first plaintiff's father-in-law for the very same suit property and obtained interim stay not to alienate the suit property.

(e) On the strength of the bogus Will, the defendant and her henchmen are making attempts to interfere with the peaceful possession of the suit properties and that since the said Srinivasan and Sarasamma are aged persons, they are making attempt to grab the suit property and trying to sell the same to lower price to the persons having criminal background. On earlier occasion also, the defendant and her husband sold the properties situated at Guduvancherry, covered under the Will, while the case is pending before the City Civil Court at Chennai. On 05.06.2008, the defendant and their henchmen, attempted to take possession of the said suit land with a view to grab the same illegally and at the timely intervention of the plaintiff, public and Police, the same was thwarted and some 30 persons having criminal background, are roaming around the suit property daily and the deceased first plaintiff, bona-fidely apprehended that the defendant may at any time, encroach upon the suit property and dispossess the deceased first plaintiff, since the defendant is having both men and muscle power to do any act adverse to the deceased first plaintiff. If the defendant succeeded in dispossessing in respect of the said property, the deceased first plaintiff would be put to great hardship and untold miseries. The deceased first plaintiff, with great difficulty, was running the School for her avocation, as she was handicapped lady, unable to stand and walk and her husband is heart patient. The defendant has no manner of right, title or interest in the suit property, where the School is being run and the defendant and her henchmen are taking law into their hands and doing all these illegal activities. There is a big conspiracy to dispossess the deceased first plaintiff. Hence, the deceased first plaintiff earlier filed the suit and her legal heirs have been impleaded as plaintiffs 2 and 3.

8. The defendant in Tr.C.S.No.888 of 2009 has filed written statement, stating as follows:

(a) The suit is not maintainable either in law or on facts and the same is liable to be dismissed in-limine. The defendant is the beneficiary under the Will, dated 29.07.1999 executed

by R.Gopal in respect of the suit property, which is one of the self-earned properties of the testator. The defendant filed a petition before this Court in O.P.No.387 of 2008 and the same was posted for hearing. Mr.Pandurangan entered appearance in the proceedings and the deceased first plaintiff was a stooge of Mr.Pandurangan. This Court is ousted of its jurisdiction to hear the instant suit, as it cannot render any decision as to the nucleus of the subject matter of the suit.

(b) Tmt.Saroja, who was suffering from cancer, died on 21.04.2002. The averment that the deceased first plaintiff was the wife of the son of Mr.R.Gopal, is incorrect and denied. The deceased first plaintiff has no locus-standi in law. It is false to state that Mr.Pandurangan and his sister, namely Selvi.Rukmani being only male legal heir, was looking after the entire family members and taking care of them and further managing the entire suit properties. Mr.R.Gopal constructed a house and a godown in the suit property after obtaining necessary plan sanctioned by the Corporation of Chennai. It is false to state that Mr.Pandurangan constructed several houses in the schedule mentioned properties with his own fund and paying house tax, land tax, water tax, electricity charges, etc. The defendant denies that the deceased first plaintiff's father-in-law employed the defendant as a cook and her husband Mr.Srinivasan as an attender and both of them conspired together to grab the property, taking advantage of the petty quarrel with Mr.Pandurangan. The averment made as to the cause of death of Mrs.Kausalya, wife of Mr.R.Gopal, is mischievous and scandalous and the same is denied. It is false to state that Mr.Pandurangan was not aware of the Will as stated. The Will is a genuine Will and the same was executed in sound state of mind, voluntarily, rewarding the defendant and her husband out of love and affection.

(c) Mr.Pandurangan attempted to construct the building without the consent of R.Gopal and therefore, Mr.R.Gopal was forced to lodge several complaints against the deceased first plaintiff and Mr.Pandurangan and issued legal notice and ultimately, when Mr.Pandurangan ignored to comply a suit in O.S.No.3153 of 2000, seeking perpetual and mandatory injunction. It is incorrect to state the deceased first plaintiff and Mr.Pandurangan constructed and started a School over the suit property to satisfy the desire of the parents, as stated in the plaint. The averments are unwarranted and tailored to suit the illegal objects of the deceased first plaintiff. There is no School functioning in the premises and the deceased first plaintiff was a trespasser and unauthorised occupant and was liable to be ejected out and she was liable to pay damages for the use of the premises and the defendant reserves her right to institute appropriate proceedings. It is false to state that the defendant, along with her sister's son Mr.Dhananjayan, Jayam Kannan, Ramesh, Arumugam, totally numbering about 30 persons, who are having criminal background, on the strength of bonus unprobated Will, came to the suit property on 06.06.2008 and threatened to dispossess the deceased first plaintiff and others from the premises. In fact, there is no such School functioning as per the information given by the School authorities. It is false to state that they also blocked the free ingress and egress to the School

building and blocked the toilet facilities. The deceased first plaintiff, through Mr.Pandurangan, preferred a complaint to the Inspector, Kolathur Police and the complaint was verified to be false after detailed enquiry and the FIR was closed as mistake of facts.

(d) The plaintiff and Mr.Pandurangan, with criminal intention and design, are keen to grab the properties and enrich themselves unjustly at the cost of the defendant and the said scheme can be manifested by the defendant with evidence. The contentions alleging as attempts made by the defendant and her henchmen, are false. The suit is not sustainable and is hit by the principle of res-judicata, as the present suit is filed on the same cause of action. During the time of inspection by the learned Advocate Commissioner appointed by this Court, upon consent of both parties, it was found that the entire suit property is in the exclusive possession and occupation of the defendant except 900 Sq.Ft. of RCC building, which was claimed both by the deceased first plaintiff and the defendant. The deceased first plaintiff filed the above suit for permanent injunction restraining the defendant herein from interfering with smooth running of the School in the suit property. The building which was constructed over road is kept in lock and key and the School is not functioning in the said building, as confirmed by the Office of the Joint Director of Matriculation Schools and other officials.

(e) The defendant's husband T.G.Srinivasulu Naidu expired on 14.03.2007 leaving behind the defendant as his only heir. Taking advantage of this situation, the deceased first plaintiff and Mr.Pandurangan were trying to grab the suit properties with the support of one S.Nagarajan. The suit for bare injunction is not maintainable without seeking possession. The deceased first plaintiff suppressed the previous proceedings in the suit in O.S.No.3153 of 2000 and A.S.No.598 of 2005, and they have fabricated the documents and filed the instant suit. The deceased first plaintiff and Mr.Pandurangan, along with Mr.S.Nagarajan, from the beginning, repeatedly indulged in intimidating the defendant and her counsel, by making frivolous allegations to cover up their design and thwart the defendant from effectively prosecuting legal proceedings. The ultimate intention of the deceased first plaintiff, Mr.Pandurangaj and S.Nagarajan was to suppress their illegal activities in order to grab the defendant's valuable properties based on the fabricated documents. The defendant prayed for dismissal of the suit with costs.

9. The defendant in Tr.C.S.No.888 of 2009 has filed additional written statement, stating that the second plaintiff is not the legally wedded husband of the deceased first plaintiff and the third plaintiff impleaded as the legal heir of the deceased first plaintiff, is not the son of the deceased first plaintiff and the second plaintiff as claimed. The third plaintiff had been introduced with the avowed object of protracting the proceedings and the defendant prayed for dismissal of the suit with costs.

10. The case of the plaintiff in Tr.C.S.No.889 of 2009 as stated in the amended plaint, is

as follows:

(i) The suit property of seven items more-fully described in the schedule to the plaint, was originally purchased by the father of the plaintiff, namely Late Gopal Naidu out of the sale proceeds of ancestral property. The wife of Gopal Naidu and mother of the plaintiff, namely Kousalya died on 08.01.1999 under mysterious circumstances and the father of the plaintiff, namely R.Gopal died on 06.12.2001, leaving behind the plaintiff, Selvi.Rukmani and Tmt.Saroja as the only legal heirs entitled to succeed to the estate of Late R.Gopal Naidu. Tmt.Saroja died on 21.04.2000 and now, the surviving legal heirs of Late R.Gopal is his son, the plaintiff and daughter Selvi.Rukmani to succeed to the estate of Thiru.R.Gopal. The plaintiff, as only male heir, is looking after his entire family members and taking care of them. The plaintiff is working in Chennai Port. He constructed several houses in the schedule mentioned properties with his own fund and paying house tax, land tax, water tax, electricity charges and other necessary charges to the Corporation and in this respect, the plaintiff filed a suit in O.S.No.5330 of 2000 against one Lalitha Jagatheesan for permanent injunction not to interfere with one of the schedule mentioned property and the same is still pending on the file of III Assistant City Civil Court, Chennai.

(ii) The plaintiff's father, believing the words of brokers to sell the property for exorbitant rates, received Rs.1 lakh from brokers and the land broker, by taking advantage of the old age of the plaintiff's father, manipulated the records and forged the signature of the plaintiff's father as if he executed the agreement for sale to sell the suit properties and on the strength of the forged documents, one Ulagarakshagan filed a suit in O.S.No.10488 of 1996 for specific performance, which is pending on the file of III Additional City Civil Court, Chennai and in the said suit, the plaintiff also filed impleading petition to implead him as a party to claim that all the said items of the properties were purchased by his father out of the sale proceeds of ancestral property and subsequently, the plaintiff was added as party as legal representative of his late father. The plaintiff's father employed Sarasamma as a cook and Srinivasan as attender, namely first and second defendants herein and both of them hatched a conspiracy to grab the property, thereby, as part of their illegal design, both of them colluded together and separated the plaintiff's father and mother by taking advantage of the petty quarrel with the plaintiff's wife Ambika, since she had no issues and lived in Arakkonam house and within few days after separation, the plaintiff's mother died at Arakkonam under mysterious circumstances and the plaintiff, suspecting to be a case of murder, gave complaint to the Police and is also taking necessary steps to probe the same.

(iii) Since the plaintiff's wife, namely Ambika is handicapped and issueless and as per the plaintiff's mother and father's wishes to construct a School for mentally retarded and handicapped, the plaintiff and his wife, out of their own money, constructed a School in the name of the plaintiff's father, namely Ravilla R.Gopal Naidu School for mentally retarded and physically handicapped, in one of the suit property at Kolathur, by spending more than Rs.10 lakhs and the same was

inaugurated on 07.10.2000. At that time, when the plaintiff's father was 85 years old, the said Sarasamma and Srinivasan persuaded their illegal design to file a suit in O.S.No.3153 of 2000 on the file of XI Assistant City Civil Court, Chennai, for mandatory injunction to demolish the construction and gave lot of troubles. The plaintiff being a Government servant, except giving complaint to the Police, tolerated all the activities of the said Sarasamma and Srinivasan with a view to not to aggravate the situation, further considering the age of the plaintiff's father. The plaintiff's father R.Gopal Naidu died on 06.12.2001 and the plaintiff performed all the rituals and after his father's death, the plaintiff came to know that several Lakhs of Rupees are standing in the name of the plaintiff's father's Bank Account, which had been swindled by the said Sarasamma and Srinivasan, and on the effort taken by the plaintiff, the same was stopped.

(iv) To the shock and surprise of the plaintiff, he received a Lawyer's notice on 28.05.2002 issued by the said Sarasamma and Srinivasan, the first and second defendants, stating that the plaintiff's father executed a registered Will on 29.07.1999, bequeathing all the schedule mentioned properties in favour of the first and second defendants herein and further called upon the plaintiff to vacate the suit schedule mentioned properties and if not, necessary legal steps would be taken. The alleged Will is not a genuine Will and if at all there is any Will, the same could not have been executed in sound state of mind and it is only a part of conspiracy to grab the property by the defendants 1 and 2. The plaintiff is denying the execution of the Will. The plaintiff is having voluminous records to disprove the said Will. No one can even imagine execution of the said Will bequeathing all the properties in favour of third parties, when the legal heirs are available. The plaintiff's father has no right to execute the Will, since all the properties were purchased out of sale proceeds of ancestral properties and the said alleged Will is not binding on the plaintiff.

(v) After the death of the plaintiff's father, the plaintiff as a legal heir entitled to succeed all the schedule mentioned properties and during the lifetime of the plaintiff's father and after the death of his father, the plaintiff as only son, is managing the entire properties. Three weeks before, the first and second defendants approached the plaintiff and said that if some amount is paid, they assured not to pursue the matter further. As the demand of amount was not complied with, the first and second defendants herein, by virtue of the alleged bogus Will, are making attempts to interfere with the peaceful possession and enjoyment of the properties.

(vi) As far as the property situated at Guduvancheri, the plaintiff constructed pucca houses and inducted tenants and in one house, the plaintiff is occupying. The plaintiff, on 05.01.2003, visited the property to see the ongoing construction work and to his shock, he found some of the materials missing and immediately the plaintiff lodged a Police complaint. On enquiry, it was found that it is the part of game plan of the defendants 1, 2 and 3 herein to interfere with the peaceful possession of the plaintiff in Guduvancheri property and in the Police Station, the first and second defendants alleged that they have donated the said property in favour of third

defendant herein. The Inspector, after hearing both the plaintiff and the defendants, advised the defendants not to indulge in illegal activities and further asked to approach the Civil Court for appropriate remedies. The defendants 1 and 2 have no manner of right over the suit properties and further could not alienate the suit properties in favour of the third defendant, until and unless the alleged Will had been duly probated before the competent Court having jurisdiction, since some of the schedule mentioned properties are situated within the jurisdiction of this Court. The defendants are taking the law into their hands without having respect to law.

(vii) The defendants 1 and 2, without recourse to law, are illegally interfering with the peaceful possession and enjoyment of the suit properties, which are in absolute possession and enjoyment and their nefarious activities had been thwarted and the defendants are acting adverse to the interest of the plaintiff. The defendants are men of means and having money power. The plaintiff is apprehending dispossession any time at the hands of the defendants by resorting to illegal methods and the defendants 1 and 2 are threatening the plaintiff daily to dispossess him from the suit schedule properties. Hence, the plaintiff has filed the suit for the relief stated above.

11. The defendants 1 and 2 in Tr.C.S.No.889 of 2009, filed written statement, which was adopted by the third defendant, stating as follows:

(a) It is true that the suit schedule mentioned properties were originally purchased by the father of the plaintiff, viz., Late Gopal Naidu. The defendants 1 and 2 deny the averment that the suit schedule mentioned properties were purchased by Late Gopal Naidu, from and out of the sale proceeds of ancestral property. In fact, he was working in Madras Port Trust and with his hard earned money, he bought the suit schedule mentioned properties. Late Gopal Naidu married Kousalya and out of the wedlock, he had only one son, the plaintiff and two daughters, by name Selvi.Rukmani and Tmt.Saroja. It is false to state that the plaintiff's mother died under mysterious circumstances. The mother of the plaintiff pre-deceased the father of the plaintiff and she expired on 08.01.1999 and the plaintiff's father died on 06.12.2001. Late Gopal Naidu's daughter Selvi.Rukmani is a spinster and aged about 50 years. Tmt.Saroja was deserted by her husband and she also expired on 21.04.2002. Therefore, except the plaintiff and her spinster sister Selvi.Rukmani, others died.

(b) Late Gopal Naidu executed a Will on 29.07.1999 in favour of the defendants 1 and 2 and registered the same as Document No.19 of 1999 at Sub-Registrar Office, Arakkonam in respect of the suit schedule properties. After the death of Gopal Naidu on 06.12.2001, the defendants 1 and 2 became the absolute owners of the suit properties by virtue of the Will executed by Late Gopal Naidu. The first defendant being an executor of the Will is also filing a petition for probate of the Will on the file of this Court in respect of the suit schedule properties. It is true that Tmt.Saroja was suffering from breast cancer and inspite of rendering necessary treatment, she died on 21.04.2002 and after her death, Selvi.Rukmani and the plaintiff are the

only surviving legal heirs of Late Gopal Naidu and the defendants 1 and 2 are the legacies and beneficiaries as per the Will, dated 29.07.1999 and became the absolute owners in respect of the suit properties. Though the plaintiff is the only male member of Late Gopal Naidu, he has never taken care of the family at any point of time. Various letters and the complaints lodged with the Police officials and also the affidavits and various applications filed in various Courts by Late Gopal Naidu and her daughters Rukmani and Saroja, would clearly prove the same.

(c) The plaintiff already married one lady and afterwards kept one Ambika as a concubine and indulged in several unlawful activities and from the beginning, he has not obeyed nor given respect to his parents and therefore, the parents lost their faith on the plaintiff and when the character and behaviour of the plaintiff became worst, the parents questioned about the activities of the plaintiff, for which, he has given the answer that he will kill all the family members. Therefore, in order to save their life and properties and to be relieved from the clutches of the plaintiff, they decided to shift their residence from Poompuhar, Kolathur Post to Arakkonam and sought shelter with the defendants 1 and 2, who are none other than the sister of Late Gopal Naidu and brother-in-law. After series of discussions as advised by elders, relatives and friends of their families, the defendants agreed to take care of the aged parents and daughters of the plaintiff. The defendants 1 and 2 took care of the welfare of the plaintiff's sister. Unfortunately, Tmt.Saroja had breast cancer and the defendants 1 and 2 tried their best to give best treatment, but could not succeed, ultimately, she died on 21.04.2002. While this is so, the plaintiff cannot claim that he took care of his parents and sisters.

(d) When Gopal Naidu was alive, the plaintiff forcibly, without the consent of his father and without the permission of the Corporation, built a building unauthorisedly in item Nos.4 to 7 of the suit properties, and hence, the plaintiff's father was constrained to file a suit in O.S.No.3153 of 2000 against the plaintiff to remove that unauthorised construction put-up by the plaintiff and the said suit is still pending on the file of the City Civil Court, which was posted on 15.09.2003 for steps. The defendants 1 and 2 had no knowledge about the proceedings in O.S.No.5330 of 2000 filed by the plaintiff against one Lalitha Jagatheesan and the defendants 1 and 2 are not parties to those proceedings.

(e) The plaintiff's father and his family members wanted to take shelter under defendants 1 and 2 and it is wrong to state that the plaintiff's father employed one Sarasamma as a cook and Srinivasan as attender. The help of defendants 1 and 2 done at the request of the plaintiff's aged parents, has to be carved in golden letters, which cannot be hidden, and this fact is admitted by the relatives of the plaintiff, who are residing in and around Arakkonam area. Since the plaintiff declared that the defendants 1 and 2 are cook and attender, defendants 1 and 2 reserve their right to file appropriate defamatory suit for recovery of damages against the plaintiff for having uttered such uncivilised words. The fact is that the plaintiff is under the clutches and control of his concubine Ambika and hence, he is blabbering all these statements, which is highly unwarranted

and unethical on the part of the plaintiff and these statements given by the plaintiff are all under the misguidance of the said Ambika. Similarly, the unauthorised construction put up by the plaintiff over the suit property without sanction plan, was also under the misguidance given by the said Ambika.

(f) It is absolutely wrong to state that the plaintiff and his wife, out of their own money, constructed the School in the name of the plaintiff's father, as per the wishes of the plaintiff's parents. In fact, this building itself was constructed without the consent of the plaintiff's father and without the Corporation and therefore, the plaintiff's father has filed a suit in O.S.No.3153 of 2000 for demolition of the building. It is wrong to state that when the plaintiff's father was 85 years old, the defendants 1 and 2 persuaded their illegal design to file O.S.No.3153 of 2000. The complaints lodged by Late Gopal Naidu with various Corporation offices and Police officials, would clearly show that the construction put up by the plaintiff is highly unauthorised and illegal one and is liable to be demolished. It is true that R.Gopal Naidu died on 06.12.2001 and the plaintiff being the only male heir of Gopal Naidu, performed all the rituals on the eve of Late Gopal Naidu. It is false to state that the plaintiff came to know that several Lakhs of Rupees were standing in the name of the plaintiff's father's Bank Account, which have been swindled by the defendants 1 and 2 and on the efforts taken by the plaintiff, the same has been stopped. This is highly defamatory statement, for which, the plaintiff is responsible to answer before this Court.

(g) It is true that the defendants 1 and 2 sent Lawyer's notice on 28.05.2002 and informed that they became the absolute and lawful owners of the suit properties as per the registered Will, dated 29.07.1999. It is also true that since the defendants 1 and 2 became the absolute owners, they asked the plaintiff to vacate the suit properties and if not, necessary legal steps would be taken. The defendants 1 and 2 deny the statement that the Will is not a genuine Will, as it was executed by Late Gopal Naidu in a sound state of mind, with full consent and without any compulsion. The defendants 1 and 2 are filing the Will for grant of probate order. It is false to state that the Will was executed only to grab the properties of Late Gopal Naidu as alleged by the plaintiff. Since the defendants 1 and 2 provided shelter and took care of the aged parents of the plaintiff and since the plaintiff was in no way connected with the family members of Late Gopal Naidu, the said Gopal Naidu, out of aversion, executed the Will in favour of the defendants 1 and 2, as the properties are his self-acquired properties.

(h) It is wrong to state that the plaintiff is the legal heir and is entitled to succeed to the suit properties in the existence of genuine and registered Will. It is false to state that the defendants 1 and 2 approached the plaintiff at any point of time and said that if some amount is paid, they assured not to pursue the matter further. The defendants 1 and 2 are claiming the suit properties only as per the Will and trying to take possession by way of Court proceedings and not in any other way. It is wrong to state that the plaintiff has constructed pucca building and inducted tenant at Guduvancheri plots. The plaintiff's intention is to occupy the properties of the defendants

1 and 2 by giving false complaint to Police and accordingly, the plaintiff tried to put up construction over Guduvancherry plots on 05.01.2003 and the same was prevented by the defendants 1 and 2 with the help of the Police. The Police have verified all the records and warned the plaintiff not to interfere with Guduvancheri property and thereafter, he kept quiet. The plots at Guduvancheri were already given to the third defendant herein as per the last wish of Late Gopal Naidu. The Power of Attorney Deed, dated 20.06.2002 was also registered in favour of the third defendant herein. It is wrong to state that the defendants 1 and 2 have no right in any manner whatsoever or right over the suit properties and further could not alienate the suit properties in favour of the third party, until and unless the alleged Will is probated in the competent Court. It is also false to state that the defendants 1 and 2 are taking law into their hands without having respect to law. It is also wrong to state that the defendants 1 and 2 are illegally interfering with the peaceful possession and enjoyment of the suit properties, which are in absolute possession of their nefarious activities, thwarted and the defendants 1 and 2 are acting adverse to the interest of the plaintiff. It is also false to state that the defendants 1 and 2 are having men of means and are also having money power and the plaintiff is apprehending dispossession at the hands of the defendants 1 and 2 by resorting to illegal methods. It is also false to state that the defendants 1 and 2 are threatening the plaintiff daily to dispossess him from the suit schedule properties. The other allegations in the plaint are also denied. Therefore, the defendants 1 and 2 prayed for dismissal of the suit with exemplary costs.

12. The defendants 1 and 2 in Tr.C.S.No.889 of 2009 filed additional written statement, reiterating the averments made in the written statement filed by them and further stating as follows:

(a) The amended plaint copy is not maintainable either in law or on facts and the same is liable to be dismissed in-limine. The plaintiff has not carried out amendment as per the orders passed by this Court in impleading petition filed to implead the defendants 4 to 6 as parties to the suit and therefore, the amended plaint is not a legally valid one.

(b) The Will properties, viz., item Nos.1 to 7 are the self-acquired properties of Late R.Gopal Naidu. Item No.8 of the property was purchased by the defendants 1 and 2 along with the said Late R.Gopal Naidu. The plaintiff is claiming that he and his sister Rukmani are the legal heirs of Late R.Gopal Naidu and he ought to have included both the legal heirs of Late R.Gopal Naidu. The plaintiff has deliberately not included the other legal heir in the suit. At the time of filing the suit, the other legal heir, viz., Rukmani is under the care and custody of the defendants 1 and 2. Tmt.Saroja died on 23.04.2002 and now, the surviving legal heirs of Late R.Gopal Naidu, are the plaintiff and Selvi.Rukmani, and Selvi.Rukmani is still being looked after by the defendants 1 and 2. The plaintiff has come to this Court claiming as if he is the only person eligible to get the properties of Late R.Gopal Naidu and hence, the suit is liable to be dismissed on the ground of

non-joinder of parties.

(c) In the last Will of R.Gopal Naidu, he has not included the plaintiff as his legal heir or as an executor. It is false to state that the plaintiff constructed several houses in the suit schedule properties with his own funds. In fact, Late R.Gopal Naidu constructed the buildings over item Nos.4 to 7 of the suit schedule properties and the said Late R.Gopal Naidu was in enjoyment and possession of the said building by paying house tax and land tax and also electricity charges. As far as the construction of a house at Guduvancheri property is concerned, Late R.Gopal Naidu raised a shed in order to protect the properties--item Nos.1 to 3. The plaintiff has not constructed any house or building anywhere in the suit schedule properties as alleged by him and he has not constructed any School in memory of his father, for mentally retarded and handicapped.

(d) The atrocity the family members of the plaintiff faced while they were staying with him, is appearing in various letters and complaints and those documents are vital to dismiss the false suit of the plaintiff. The suit properties in item Nos.1 to 3 have already been sold to defendants 4 to 6 and one Geetha, by way of pucca registered sale deeds and also got patta in their favour and they are in peaceful possession and enjoyment of the same. The defendants 4 to 6 and Geetha also developed the property by levelling the plots and laid stones. The part of the sale proceeds were also deposited as per the judgment and decree in O.S.No.10488 of 1996 and the remaining amount was paid to Annai Sri Saradha Anathai Illam through the third defendant, as per the wishes of Late R.Gopal Naidu. The plaintiff suppressed these facts.

(e) The defendants 1 and 2, because of their old age, have appointed one Mr.Sekar as their Power Agent and it is a fact that the Power Agent has filed O.S.No.56 of 2005 on the file of the District Munsif Court, Chengalpet, when the plaintiff and one Ambika attempted to interfere with item Nos.1 to 3 of the suit schedule properties and got an order of injunction in the said suit and prevented their unlawful interference. As far as the plaintiff is concerned, he has suppressed the fact with regard to the memorandum of understanding entered into between the plaintiff and the first defendant on 02.04.2005, wherein, he has clearly agreed that the properties at Poompuhar and Guduvancheri belong to the defendants 1 and 2 herein and the plaintiff will not interfere with item Nos.1 to 3 of the suit schedule properties. Suppressing the above fact, the plaintiff gave Police complaint against the defendants 1 and 2, Power Agent Sekar and also against their counsel, to the Inspector of Police, Guduvancheri. After spot inspection and investigation by the Police authorities, they have found out that there was no conspiracy to grab the property by the defendants 1 and 2 as alleged by the plaintiff. The defendants 1 and 2 condemn the allegations made against their counsel, who explained the case and shown the documents and other records to the Police. The allegation that the defendants 1 and 2, on the strength of the Will, are attempting to interfere with the peaceful possession of the suit properties situate at Guduvancheri, is false.

(f) On a perusal of the schedule properties furnished in the plaint, it could be seen that

there is no superstructure or building or Temple as alleged by the plaintiff. In fact, there was a shed put up by Late R.Gopal Naidu before execution of the Will and that shed also became old and dilapidated. After sale of item Nos.1 to 3 of the suit schedule properties, the said shed was removed by the purchasers Mr.Mohan and others and the entire item Nos.1 to 3 of the suit schedule properties are in lawful and physical possession of the purchasers Mr.Mohan and others. The plaintiff and the said Ambika are in unlawful possession and occupation of the building at Poompohar. The plaintiff fabricated some documents, for which, the first defendant sent a complaint against him and Ambika and their counsel, which is pending before the Superintendent of Police, Vellore District. The atrocities and illegalities committed by the plaintiff and Ambika, could be seen from the records.

(g) The defendants 1 and 2 acted lawfully based on the Will executed by Late R.Gopal Naidu, as the Will supersedes succession and they have got right, title and interest over the suit schedule properties. The plaintiff has not come to this Court with clean hands. His only intention is to grab the suit schedule properties by hook or crook and if he opines that the Will is not genuine, the question of proving the bona-fides lies only with him. Hence, the plaintiff is duty bound to prove that the Will executed by Late R.Gopa Naidu in favour of the defendants 1 and 2, is null and void. Since the property at Guduvancheri has already been sold out, the defendants 1 and 2 have right, title and interest over item Nos.4 to 7 of the suit schedule properties. Though the names of all the purchasers were furnished in the counter filed in impleading petition, the plaintiff deliberately omitted all the names of the purchasers and therefore, the plaint is liable to be dismissed on this ground also.

(h) The defendants 1 and 2 have filed O.P.D.No.25236 of 2005 before this Court for probating the Will in respect of item Nos.4 to 7 of the suit schedule properties. It is wrong to state that the defendants 4 to 7 are not the bona-fide purchasers. If the plaintiff is really interested that he is a bona-fide person to have right, title and interest, he could have produced before this Court any single document to prove his worthiness and without doing so, he is unnecessarily dragging on the matter for more than two years. The plaintiff is not having any title, right or interest in respect of the suit schedule properties and hence, seeking relief of injunction, does not arise. The defendants 1 and 2 stated that the suit is devoid of merits and lacks bona-fide and prayed that it is liable to be dismissed with exemplary costs.

13. The sixth defendant in Tr.C.S.No.889 of 2009 has filed written statement, which was adopted by the defendants 4 and 5, stating as follows:

(a) The sixth defendant is one of the purchaser of the property being vacant land comprised in S.No.121/A1B measuring an extent of 4800 Sq.Ft. situate at Jesupatham Nagar, 5, Guduvancheri Village, more-fully described in the schedule in item No.3 of the plaint. The fourth and fifth defendants, along with him, have purchased the property by way of registered sale deed

in Document No.1453 of 2005 and 1454 of 2005, dated 03.03.2005 which stands in the name of J.Mohan. Document No.1490 is in the name of J.Rajendran and Document No.1479 stands in the name of Kuppa Bai, wife of J.Rajendran. Since the date of purchase of the above property, the sixth defendant is in possession and enjoyment of the same without any interference.

(b) The deceased Gopal Naidu, during his lifetime, executed a Will, dated 29.07.1999 in favour of the defendants 1 and 2 and it is valid. The plaintiff's contention that the properties were purchased by his father Late Gopal Naidu from and out of sale proceeds of ancestral property, is wrong. Various allegations raised in the plaint, relate to the family affairs and the sixth defendant is not aware of the same. The defendants 4 and 5 are the bona-fide purchasers of the suit properties, through a valid sale consideration of a sum of Rs.26 lakhs. The sixth defendant denies the allegation of fraud involved in the sale of item Nos.1 to 3 of suit properties. The sixth defendant and defendants 4 and 5 are the lawful owners of the properties mentioned in item Nos.1 to 3 of suit properties and the plaintiff has no right, title, interest whatsoever over the said properties and the relief claimed by the plaintiff in the suit does not arise. The plaintiff is playing fraud upon this Court by way of filing such vexatious suit and abusing the process of law. The suit is devoid of merits, lacks bona-fide and there is no cause for the above suit and the plaintiff has filed the suit with evil intention to grab the suit properties. The suit is liable to be dismissed with exemplary costs.

14. The seventh defendant in Tr.C.S.No.889 of 2009 has filed written statement, stating as follows:

(a) The suit as framed is not maintainable as against the seventh defendant. The plaint does not contain a single averment or allegation against the seventh defendant or her property, namely item No.8 of the plaint schedule. In the absence of any pleading against the seventh defendant, the suit is not maintainable in law and is liable to be dismissed. Item No.8 of the plaint schedule mentioned property originally was purchased jointly by Late Gopal Naidu, his wife Kausalya, his daughter Rukmani and Sarasamma, the seventh defendant's vendor, under a sale deed bearing Doc.No.612 of 1998, dated 06.07.1998. The said Kousalya executed a Will, dated 15.11.1998 bequeathing her 1/4 share in the property on her husband Gopal Naidu for life and after his life time, her 1/4 share devolved on Sarasamma, the vendor of the seventh defendant. Kousalya died on 08.01.1999 and Gopal Naidu died on 06.12.2001. Gopal Naidu, during his life time, executed a Will, dated 29.07.1999, bequeathing his properties in favour of Sarasamma. Srinivasalu Naidu, the husband of Sarasamma obtained a decree for specific performance against Rukmani in respect of her 1/4 share and a sale deed, bearing Doc.No.491/2006 had been executed by the learned Subordinate Judge, Ranipet in favour of Srinivasalu Naidu, the husband of the seventh defendant's vendor.

(b) Upon the death of Gopal Naidu and Srinivasalu Naidu, her vendor Sarasamma

became the absolute owner of the plaint item No.8 property with full power of alienation. The seventh defendant purchased the plaint item No.8 property for valuable consideration from the absolute owner Sarasamma, under a registered sale deed, bearing Doc.No.4447 of 2007, dated 22.06.2007. From the date of her purchase, the seventh defendant alone is in possession and enjoyment of the entire plaint schedule item No.8 property, without any hindrance or hitch. The seventh defendant is an innocent purchaser for valuable consideration and as such, the sale in her favour cannot be impeached by this Court at the behest of the plaintiff, who has neglected his rights, if any, all these years.

(c) The sale deed, dated 22.06.2007 is valid in the eye of law and binding on the plaintiff. Had the plaintiff included the plaint schedule item No.8 property when the suit was laid in the year 2003, the seventh defendant would not have purchased the property in the year 2007. This Court, exercising equitable jurisdiction, would certainly exercise equity in favour of the seventh defendant, rather than in favour of the plaintiff, who is guilty of laches and negligence.

(d) Admittedly, Rukmani, the daughter of Late Gopal Naidu and his wife Kousalya, have not been made parties to the suit. Hence, the suit is bad and liable to be dismissed for non-joinder of proper and necessary parties. From the plaint averments, it is abundantly clear that the plaintiff, who never cared for his parents or looked after them during their old age, only wants their properties after their death. The conduct of the plaintiff is to be deprecated by this Court. Sarasamma had lawful title in respect of the plaint item No.8 property with absolute power of alienation. Hence, the sale in favour of the seventh defendant is perfectly valid. The seventh defendant being an innocent purchaser for valuable consideration, is legally entitled to suit item No.8 property and this Court ought to exercise its equitable jurisdiction in favour of the seventh defendant. In the absence of any pleadings, the seventh defendant is put to disadvantage and prays that the suit may be dismissed with costs as against the seventh defendant.

15. This Court, by order dated 06.07.2009, framed the following issues for trial in T.O.S.No.38 of 2008:

"(i) Whether the suit properties are the self-acquired properties of the testator R.Gopal or not ?

(ii) Whether the Will dated 23.06.1999 executed by the father of the defendant in favour of the plaintiff and her deceased husband Srinivasan is true, valid and binding ?

(iii) Whether the testator was unduly influenced by the plaintiff and her husband to execute the Will by their importunity ?

(iv) Is not the exclusion of the defendant proper in the last Will of R.Gopal, dated 23.06.1999 ?

(v) Whether the plaintiff in T.O.S.No.38 of 2008 is entitled to get Letters

of Administration ?

(vi) Whether the grant of probate claimed by the plaintiff shall have effect over all the properties and estate, movable and immovable ?

(vii) Whether the testamentary suit is maintainable, in view of the long delay in filing the suit ?

(viii) Whether the plaintiff is legally justified in effecting sale of the properties or estates of the testator without probating the Will vis-a-vis Section 273 of the Indian Succession Act ? and

(ix) To what other relief/s the plaintiff is entitled to ?"

16. The City Civil Court, Chennai, by order dated 19.11.2008 in O.S.No.4197 of 2008 (since transferred and numbered as Tr.C.S.No.888 of 2009 before this Court), framed the following issues for consideration:

"(i) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? and

(ii) To what other relief the plaintiff is entitled ?"

17. The City Civil Court, Chennai, by order dated 16.12.2005, in O.S.No.1435 of 2003 (since transferred and numbered as Tr.C.S.No.889 of 2009 before this Court), framed the following issues for consideration:

"(i) Whether the Court fee paid by the plaintiff is correct ?

(ii) Whether the plaintiff is entitled for declaration as prayed for ?

(iii) Whether the plaintiff is entitled for permanent injunction (with the plaintiff's peaceful possession, occupation and enjoyment of the suit properties) as prayed for ? and

(iv) Whether the plaintiff is entitled for permanent injunction against the defendants should not from selling or encumbering with the suit properties as prayed for ?

(v) To what relief the plaintiff is entitled ?"

18. This Court, by order dated 26.04.2010, in T.O.S.No.38 of 2008 and Tr.C.S.Nos.888 and 889 of 2009 framed the following additional issues on the pleadings submitted in the additional written statement :

"(i) Whether the revocation deed, dated 30.06.1999 in Document No.19 of 1999 registered at Joint Sub-Registrar of Arakkonam is a genuine, true and

valid document, executed by the deceased father of the defendant in the presence of the witnesses ?

(ii) Whether the settlement deed, dated 08.12.1994 bearing Document No.317 of 1994 registered with Sub-Registrar of Guduvancherry, is a genuine, true and valid document and had come into effect ? and

(iii) Whether the suit is not maintainable ?"

19. This Court, by order dated 09.11.2010, framed the following additional issue in Tr.C.S.No.889 of 2009:

"Whether the seventh defendant is the bona-fide purchaser for value of item No.8 of the property mentioned in the plaint or not ?"

20. This Court, by order dated 16.09.2011 in Tr.C.S.No.888 of 2009, framed the following additional issues based on the additional written statement:

"(i) Whether the second plaintiff is not the legally wedded husband of the deceased first plaintiff ? and

(ii) Whether the third plaintiff is not the son of the deceased first plaintiff and the second plaintiff ? "

21. During the course of joint trial in all the three suits, on the side of the plaintiffs, Sarasamma (plaintiff in T.O.S.No.38 of 2008, defendant in Tr.C.S.No.888 of 2009 and second defendant in Tr.C.S.No.889 of 2009) was examined as P.W.1, besides, P.W.2 G.Kuppusamy, P.W.3 B.Anandharaman, P.W.4 R.Ramesh Kannan and P.W.5 S.Nagappan, were examined and Exs.P-1 to P-57 were marked. On the side of the defendants, G.Pandurangan (defendant in T.O.S.No.38 of 2008, second plaintiff in Tr.C.S.No.888 of 2009 and plaintiff in Tr.C.S.No.889 of 2009) was examined as D.W.1 and Exs.D-1 to D-44 were marked.

22. Learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008, who is also appearing for the defendant in Tr.C.S.No.888 of 2009 and the first and second defendants in Tr.C.S.No.889 of 2009, contended that the entire suit property belongs to late R.Gopal, who executed a Will (Ex.P-18 = Ex.P-57) on 23.06.1999 in the presence of P.Ws.2 and 3 and the said Will was registered before the Sub-Registrar Office. Ex.P-47 is the affidavit of the attesting

witness to the Will, namely P.W.2 G.Kuppusamy. Learned Senior Counsel further submitted that as per the said Will, T.G.Srinivasalu Naidu, who is the husband of the plaintiff-Sarasamma, was appointed as the executor of the Will. Subsequently, the said T.G.Srinivasalu Naidu died on 14.03.2007 and his Death Certificate is marked as Ex.P-45. The said T.G.Srinivasalu Naidu died leaving behind his wife Sarasamma and Ex.P-46 is the Legal Heirship Certificate in respect of the deceased T.G.Srinivasalu Naidu. The said R.Gopal died on 06.12.2001 and his Death Certificate is Ex.P-42. The said R.Gopal's wife G.Kousalya died on 08.01.1999 and her Death Certificate is Ex.P-43. Learned Senior Counsel further submitted that the said R.Gopal's daughter G.Saroja died on 21.04.2002 and her Death Certificate is marked as Ex.P-44. The said R.Gopal's another daughter is Rukmani and her whereabouts are not known for many years. The deceased R.Gopal's son is G.Pandurangan, who is the defendant in T.O.S.No.38 of 2008, the second plaintiff in Tr.C.S.No.888 of 2009 and the plaintiff in Tr.C.S.No.889 of 2009. Learned Senior Counsel further submitted that the defendant-G.Pandurangan was giving all sorts of troubles to the deceased R.Gopal during his lifetime and a suit in O.S.No.10488 of 1996 was filed before the City Civil Court, Chennai, against the deceased R.Gopal and others, in which, the said G.Pandurangan was a proposed defendant. The deceased R.Gopal contested the suit and filed counter affidavit (Ex.P-4 and Ex.P-48) in I.A.No.16132 of 1997 in O.S.No.10488 of 1996. The deceased R.Gopal also filed affidavits in various applications in the said O.S.No.10488 of 1996, which are marked as Exs.P-6 to P-8 and Ex.P-38. The deceased R.Gopal sent a complaint (Ex.P-3), dated 21.02.1996 to the Chief Justice of India regarding the suit in C.S.No.1115 of 1993 which was pending before this Court. He also sent a complaint (Ex.P-5) dated 30.04.1999 to the Inspector of Police, Arakkonam against G.Pandurangan and others and also sent a complaint (Ex.P-20), dated 17.10.2000 to the Inspector of Police, Arakkonam. He also sent a complaint (Ex.P-9), dated 05.05.2000 to the Commissioner of Corporation of Chennai, against G.Pandurangan and others. He also sent letters - Ex.P-10, dated 06.05.2000, Ex.P-14, dated 09.06.2000, Ex.P-15, dated 10.06.2000 and Ex.P-16 dated 17.6.2000 to G.Pandurangan. He also sent a letter (Ex.P-12) dated 22.05.2000 to the Chief Minister's Grievance Cell. He also sent a letter (Ex.P-13), dated 23.05.2000 through an Advocate to the Zonal Officer of the Corporation of

Chennai. G.Saroja (daughter of R.Gopal) sent a letter (Ex.P-17), dated 13.07.2000 to G.Pandurangan.

23. Learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008 further submitted that the said Will was acted upon and Sarasamma and Srinivasalu Naidu acquired the properties by virtue of the said Will and enjoyed the properties during their lifetime. The defendant-G.Pandurangan gave all sorts of troubles to the plaintiff-Sarasamma and her husband Srinivasalu Naidu, for which, the said Srinivasalu Naidu gave complaint (Ex.P-21), dated 12.02.2002 and also complaint (Ex.P-39), dated 18.11.2005 to the Inspector of Police, Arakkonam. The Special Officer of the Chief Minister's Cell has addressed letters dated 27.06.2008 to the District Collector, Chennai (in Ex.P-31), to the Commissioner of Police, Chennai (in Ex.P-32) and to the Commissioner of Corporation of Chennai (in Ex.P-33), with a copy marked to the plaintiff-Sarasamma. Ex.P-30 series are the receipts issued by the Inspector of Police, Kolathur Police Station, Chennai, for the complaints given by the plaintiff-Sarasamma. Exs.P-35 and P-37 series, all dated 01.01.2009, are the copies of the Telegrams sent by the plaintiff-Sarasamma to the Commissioner of Police, Chennai and other officials. Ex.P-36 dated 02.01.2009 is the copy of the Telegram sent by the plaintiff-Sarasamma to the Tahsildar, Perambur, Chennai. Learned Senior Counsel appearing for the plaintiff further submitted that cases were registered against the defendant-Pandurangan and Exs.P-24 and P-50 are the copies of the FIR pertaining to those cases.

24. Learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008 further contended that after the death of T.G.Srinivasalu Naidu, the plaintiff-Sarasamma enjoyed the properties continuously. The deceased R.Gopal's son, namely G.Pandurangan has no right, title or interest over the suit properties. Even as per the said Will Ex.P-18 = Ex.P-57, the deceased T.G.Srinivasala Naidu was the executor of the said Will. Hence, the plaintiff-Sarasamma earlier filed O.P.No.387 of 2008 before this Court for grant of Letters of Administration in respect of the said Will, and since the defendant-G.Pandurangan contested the said O.P., the same was converted as T.O.S.No.38 of 2008. Learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008 further submitted that the Will is clearly proved by the attesting witnesses

and the copy of the Will was summoned from the Sub-Registrar Office. Ex.P-51 dated 28.03.2013 is the authorisation letter issued by the Sub-Registrar, Guduvancherry, authorising R.Ramesh Kannan (P.W.4), Assistant, Sub-Registrar's Office, Guduvancherry, to adduce evidence in connection with T.O.S.No.38 of 2008. Ex.P-52 is the photo identity card of P.W.4. Ex.P-54 dated 16.04.2013 is the letter addressed by the Sub-Registrar Joint-1, Arakkonam to the Master of this Court, deputing their staff Mr.S.Nagappan (P.W.5) in giving the copy of the Will. Ex.P-55 is the photo identity card of P.W.5. Ex.P-56 dated 16.04.2013 is the letter addressed by the Sub-Registrar Joint-1, Arakkonam to the Master of this Court, stating that the Will has not been cancelled as on that date. Ex.P-57 is the certified copy of the Will executed by the deceased R.Gopal.

25. Learned Senior Counsel appearing for the plaintiff further contended that the whereabouts of another daughter of the deceased R.Gopal, i.e. Rukmani, are not known and at that time, the defendant-G.Pandurangan filed H.C.P.No.532 of 2007 before this Court and the plaintiff-Sarasamma filed counter statement in H.C.P.No.532 of 2007, which is marked as Ex.P-28. The copy of the order dated 03.09.2007 passed in H.C.P.No.532 of 2007 is marked as Ex.P-29. Learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008 further submitted that one Ulagarakshagan filed a suit for specific performance in O.S.No.10488 of 1996 before the City Civil Court, Chennai, against the deceased R.Gopal and others, and the copy of the judgment in O.S.No.10488 of 1996 is marked as Ex.P-26. He further submitted that the defendant-G.Pandurangan filed O.S.No.1435 of 2003 before the City Civil Court, Chennai, which was transferred to this Court and numbered as Tr.C.S.No.889 of 2009 and the written statement filed by the defendants 1 and 2 in O.S.No.1435 of 2003 is marked as Ex.P-25. Since the defendant-Pandurangan has no right, title or interest over the suit properties, he has no right to execute the settlement deed Ex.P-23, dated 11.04.2003 in favour of R.Ambika and she cannot acquire any title through the said settlement deed. Learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008 further submitted that since the defendant in T.O.S.No.38 of 2008 (second plaintiff in Tr.C.S.No.888 of 2009 and plaintiff in Tr.C.S.No.889 of 2009) has no right, title or interest over the suit properties, he has no right to execute the lease agreement (Ex.P-49) in

favour of the deceased first plaintiff-Ambika (in Tr.C.S.No.888 of 2009). The plaintiffs 2 and 3 in Tr.C.S.No.888 of 2009 were added as parties and they also have no right or interest over the properties. Hence, the suit filed by Ambika (since deceased) in Tr.C.S.No.888 of 2009 for permanent injunction and the suit filed by Pandurangan in Tr.C.S.No.889 of 2009 for declaration and permanent injunction, are liable to be dismissed. The plaintiff-Sarasamma alone is entitled to the suit properties as per the Will executed by the deceased R.Gopal and she has been enjoying the suit properties as per the Will and the Will (Ex.P-18 = Ex.P-57) has been clearly proved through the oral and documentary evidence produced on the side of the plaintiff and hence, the learned Senior Counsel appearing for the plaintiff prayed that the Letters of Administration may be granted in favour of the plaintiff-Sarasamma. In support of his submissions, learned Senior Counsel appearing for the plaintiff in T.O.S.No.38 of 2008, relied on the following decisions:

(a) 1994 (1) SCC 1 (S.P.Chengalvarayana Naidu Vs. Jagannath):

"1. Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment / decree -- by the first court or by the highest court -- has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

.....

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in

dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamount to paying fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

(b) 2004 (6) SCC 325 (Vice-Chairman, Kendriya Vidyalaya Sangathan Vs. Girdharilal Yadhav):

"11. The admitted facts remain that the respondent is a permanent resident of Haryana. It further stands admitted that at the relevant time, Ahirs/Yadavs of Haryana were not treated as OBC. It further stands admitted that the respondent obtained a certificate showing that he was a resident of Rajasthan, which he was not. It is not disputed that a detailed enquiry was conducted by the District Magistrate, Kota, wherein the respondent had been given an opportunity of hearing. It is also not in dispute that he had given an opportunity to show cause as to why his appointment should not be cancelled not only by the appointing authority but also by the Appellate Authority. In terms of Section 58 of the Evidence Act, 1872 facts admitted need not be proved. It is also a well-settled principle of law that the principles of natural justice should not be stretched too far and the same cannot be put in a straitjacket formula. In *Bar Council of India Vs. High Court of Kerala* (2004 (6) SCC 311) this Court has noticed that: (SCC p. 324, paras 49-50)

" '24. The principles of natural justice, it is well settled, cannot be put into a straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The question had been considered by a Bench of this Court in *Sohan Lal Gupta Vs. Asha Devi Gupta* (2003 (7) SCC 492) of which two of us (V.N. Khare, C.J. and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held: (SCC p. 506, para 29)

"29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby."

25. The principles of natural justice, it is well settled, must not be stretched too far.'

(See also *Mardia Chemicals Ltd. Vs. Union of India* (2004 (4) SCC 311: 2004 (4) SCALE 338) and *Canara Bank Vs. Debasis Das* (2003 (4) SCC 557 : 2003 SCC (L & S) 507)).

In *Union of India Vs. Tulsiram Patel* (1985 (3) SCC 398 : 1985 SCC (L & S) 672) whereupon reliance has been placed by Mr.Reddy, this Court held: (SCC p.477, para 97)

'97. Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed.' "

(c) 2011 (12) SCC 588 (Inderjit Singh Grewal Vs. State of Punjab):

"15. Respondent 2 herself had been a party to the fraud committed by the appellant upon the civil court for getting the decree of divorce as alleged by her in the impugned complaint. Thus, according to her own admission she herself is an abettor to the crime. A person alleging his own infamy cannot be heard at any forum as explained by the legal maxim "*allegans suam turpetudinem non est audiendus*". No one should have an advantage from his own wrong (*commundum ex injuria sua memo habere debet*). No action arises from an immoral cause (*ex turpi cause non oritur action*). Damage suffered by consent is not a cause of action (*volenti non fit injuria*). The statements/allegations made by the Respondent 2 patently and latently involve her in the alleged fraud committed upon the court. Thus, she made herself disentitled for any equitable relief."

(d) 2004 (3) MLJ 370 (Division Bench of Madras High Court) (Senthilkumar Vs. Dhandapani):

"16. ... In cross-examination, P.W.2 has stated that on 18-8-84 the adoption ceremony was performed between 8 A.M. and 9.30 A.M. At one stage he said that the adoption ceremony came to an end by 9-45 A.M. It was explained that since on the date of his chief examination, negatives were not brought to the Court, on application by the plaintiffs, P.W.2 was recalled and through him photographs with negatives taken on 18-8-84 were marked. Exs.A-10 to A-22 are photos with respective negatives. An argument was advanced that 18-8-84 being a Saturday and after 9 A.M it was not an auspicious time, the function could not have taken place as claimed by the plaintiffs' witnesses, particularly as spoken to by P.W.2. On going through his entire evidence, we are unable to accept the said contention. It is the evidence of P.W.2 that the function started at 8 A.M. and ended by 9.30 A.M. It is not in dispute that 8 to 9 A.M. was an auspicious time and merely because the function went beyond 9 A.M. and ended only at 9.30 A.M., it cannot be said that there was no function at all. We also verified photographs and negatives-Exs.A-10 to A-22 which would clearly depict the ceremonies performed for adoption of first plaintiff. The photographs also clearly show the presence of parents of adopted son namely first plaintiff and P.W.1, Arumugha Mudaliar, Prohit and other relatives and well-wishers."

26. Learned counsel for the defendant in T.O.S.No.38 of 2008, who is also appearing for

the plaintiffs in Tr.C.S.No.888 of 2009 and plaintiff in Tr.C.S.No.889 of 2009, contended that the suit properties do not absolutely belong to the deceased R.Gopal and the suit properties were purchased by R.Gopal from out of the sale proceeds of the joint family property and the deceased R.Gopal has no absolute right to execute the Will Ex.P-18 and the Will was not executed by him out of free consent and he was not in a sound and disposing state of mind at that time. The deceased R.Gopal excluded his own legal heir, i.e. son, namely Pandurangan and also the daughters of the deceased R.Gopal, namely Saroja and Rukmani, in the said Will and there is no reason stated for the same in the Will. He further submitted that the plaintiff-Sarasamma and her husband T.G.Srinivasalu Naidu are not the near legal heirs or close relatives of the deceased R.Gopal. He further submitted that the Will is not true and genuine and hence, no right devolves on the plaintiff and she has no right to seek for Letters of Administration in respect of the Will. The plaintiff has not proved the Will before Court and regarding the execution of the Will, there are different dates mentioned in the Will. The evidence of attesting witnesses to the Will, is contrary to the documents and hence, their evidence is not believable. Hence, the plaintiff is not entitled for Letters of Administration.

27. Learned counsel for the defendant in T.O.S.No.38 of 2008 further contended that the plaintiff has not proved that she alone is the sole legal heir of the deceased R.Gopal and Kausalya. The defendant's sister Saroja died and the whereabouts of his another sister Rukmani, were not known for so many years and earlier, the defendant filed H.C.P.No.532 of 2007 and the said H.C.P. was closed with a direction to CB-CID to continue the investigation and proceed in accordance with law. The defendant alone inherited the properties of the deceased R.Gopal and the plaintiff has no right or interest over the same. He further contended that the defendant alone is the sole legal heir of the deceased R.Gopal and the defendant executed a settlement deed (Ex.P-1), dated 12.09.1983 in favour of his mother G.Kausalya and subsequently, the defendant also executed a settlement deed (Ex.P-23), dated 11.04.2003 in favour of his wife Ambika. The defendant also executed Ex.P-49 lease agreement in favour of his wife Ambika.

28. Learned counsel for the defendant in T.O.S.No.38 of 2008 further contended that the deceased R.Gopal, during his lifetime itself, revoked the Will, which was registered before the

Registrar Office and the copies of the revocation of the Will are marked as Exs.D-11 to D-14, dated 30.06.1999. Subsequently, there is no Will after revocation. Since the Will has already been revoked, the question of granting Letters of Administration in favour of the plaintiff will not at all arise and hence, he prayed that the suit may be dismissed.

29. Learned counsel for the defendant in T.O.S.No.38 of 2008 further submitted that the plaintiff-Sarasamma executed sale deed (Ex.D-1) dated 22.06.2007 in favour of the seventh defendant (Kanchana) in Tr.C.S.No.889 of 2009 and Ex.D-2 sale deed, dated 23.03.2006 was executed by the learned Sub-Judge, Ranipet, for G.Rukmani Ammal in favour of T.G.Srinivasalu Naidu. He further submitted that Ex.D-3 dated 20.06.2002 is the General Power of Attorney executed by T.G.Srinivasalu Naidu and Sarasammal in favour of Amudhananda Thavayogi and Ex.D-4 dated 01.02.2005 is the General Power of Attorney executed by T.G.Srinivasalu Naidu and Sarasammal in favour of V.Sekar. The legal notices sent by the plaintiff's counsel to the defendant are marked as Ex.D-5, dated 11.03.2011 and Ex.D-6, dated 28.05.2002. Ex.D-7 is the copy of the plaint filed by R.Gopal and two others in O.S.No.3153 of 2000 on the file of the City Civil Court, Chennai. Ex.D-8, dated 19.01.1998 is the copy of the handwritten post-card sent by R.Gopal to G.Pandurangan (defendant). Ex.D-16, dated 25.01.1998 is the copy of the handwritten post-card sent by Kausalya to Ambika. Exs.D-9 and D-10 are the receipts for the Money Orders sent by Pandurangan to Rukmani. Ex.D-28 is the copy of the sale deed dated March, 2005, executed by the Power Agent V.Sekar for T.G.Srinivasalu Naidu and Sarasammal, in favour of J.Rajendran. Ex.D-29 is the copy of the sale deed dated 07.03.2005, executed by the Power Agent V.Sekar for T.G.Srinivasalu Naidu and Sarasammal, in favour of R.Kuppabai. Ex.D-30 is the copy of the sale deed dated 03.03.2005, executed by the Power Agent V.Sekar for T.G.Srinivasalu Naidu and Sarasammal, in favour of J.Mohan. Ex.D-15 is the copy of the sale deed dated 29.03.2000 executed by T.G.Srinivasalu Naidu and Sarasammal in favour of Ramachandran. Ex.D-18 dated 30.01.2004 is the release deed executed by G.Rukmani in favour of G.Pandurangan (defendant). Ex.D-31 series are the letter dated 17.04.2007 (with acknowledgement card) sent by the defendant's counsel to the plaintiff and others. Ex.D-35, dated 30.07.2005 is the letter written by Swamy Amudananda Thavayogi to the defendant's counsel.

Ex.D-17 dated 12.03.2004 and Ex.D-19 dated 18.03.2004, are the copies of the complaints given by G.Rukmani to the Inspector of Police, Arakkonam. Ex.D-23 is the copy of the complaint given by G.Rukmani to the Inspector of Police, Guduvancherry. Ex.D-20 dated 05.06.2008 is the certified copy of the FIR registered in Crime No.224 of 2008 against 30 persons (absconding) in respect of the complaint given by the defendant-G.Pandurangan to the Inspector of Police, Kolathur Police, Station, Chennai. Ex.D-21, dated 10.11.2003 is the copy of the complaint given by Ambika to the Inspector of Police (Law and Order). Ex.D-22 is the settlement deed, dated 08.12.1994 executed by R.Gopal in favour of G.Pandurangan (defendant). Exs.D-24 and D-25 are the letters written by G.Saroja. Ex.D-26 is the copy of the plaint filed by T.G.Srinivasalu Naidu and Sarasamma represented by their Power Agent V.Sekar, in O.S.No.56 of 2005 on the file of the District Munsif Court, Chenglepet. Ex.D-27 dated 20.09.2006 is the copy of the complaint given by the defendant-G.Pandurangan to the D.G.P. of Police, Chennai. Exs.D-32 and D-33, dated 28.01.2002 are the cancellation deeds executed by G.Rukmani. Ex.D-34 dated 21.05.2002 is the letter written by George to Pandurangan (defendant). Ex.D-36 dated 22.03.2002 is the letter written by Rukmani to the defendant-Pandurangan. Ex.D-37 dated 06.06.2008 is the letter written by the defendant-Pandurangan to the Inspector of Police, Kolathur, Chennai. Exs.D-38 and D-39, dated 04.08.2006, are the judgment and decree respectively, in O.S.No.3677 of 2006 on the file of the City Civil Court, Chennai. Ex.D-40 is the statement of G.Saroja. Ex.D-41, dated 17.09.1997 is the letter written by G.Kausalya to Pandurangan (defendant). Ex.D-42 is the death ceremony intimation card by G.Pandurangan Naidu (defendant) in respect of the death of his father R.Gopal Naidu. Ex.D-43 dated 04.01.1999 is the letter sent by G.Saroja to Ambika. Ex.D-44 dated 18.06.2005 is the copy of the FIR in respect of the complaint given by G.Pandurangan (defendant) against the plaintiff-Sarasamma and others.

30. Learned counsel for the defendant in T.O.S.No.38 of 2008 further submitted that from the above documents, it is clear that there is no valid reason for the deceased R.Gopal to execute the Will in favour of Sarasamma (plaintiff) and her husband T.G.Srinivasalu Naidu and the Will projected on the side of the plaintiff is false as the same had not been proved. He therefore submitted that the plaintiff-Sarasamma is not entitled for the Letters of Administration prayed for in

T.O.S.No.38 of 2008 and hence, T.O.S.No.38 of 2008 may be dismissed and consequently, Tr.C.S.Nos.888 and 889 of 2009 may be decreed as prayed for. In support of his submissions, learned counsel appearing for the defendant in T.O.S.No.38 of 2008, relied on the following decisions:

(a) AIR 1955 SC 346 (Girja Datt Singh Vs. Gangotri Datt Singh):

"14. It still remains to consider whether the attestation of the signature of the deceased on the will, Ex.A-36 was in accordance with the requirements of Section 63 of the Indian Succession Act. Section 63 prescribes that:

"(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 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...."

In order to prove the due attestation of the will Ex. A.36 Gangotri would have to prove that Uma Dutt Singh and Badri Singh saw the deceased sign the will and they themselves signed the same in the presence of the deceased. The evidence of Uma Dutt Singh and Badri Singh is not such as to carry conviction in the mind of the court that they saw the deceased sign the will and each of them appended his signature to the will in the presence of the deceased. They have been demonstrated to be witnesses who had no regard for truth and were ready and willing to oblige Gur Charan Lal in transferring the venue of the execution and attestation of the documents Ex.A-23 and Ex.A-36 from Gonda to Tarabganj for reasons best known to themselves.

If no reliance could thus be placed upon their oral testimony, where would be the assurance that they actually saw the deceased execute the will in their presence and each of them signed the will in the presence of the deceased. It may as well be that the signature of the deceased on the will was appended at one time, the deceased being there all alone by himself and the attestations were made by Uma Dutt Singh and Badri Singh at another time without having seen the deceased sign the will or when the deceased was not present when they appended their signatures thereto in token of attestation. We have no satisfactory evidence before us to enable us to come to the conclusion that the will was duly attested by Uma Dutt Singh and Badri Singh and we are therefore unable to hold that the will Ex.A-36 is proved to have been duly executed and attested."

(b) AIR 1962 SC 567 (Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb and another):

"5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This was considered by this Court in H.Venkatachala Iyengar Vs. B.N.Thimmajamma (1959 Supp (1) SCR 426 : (AIR 1959 SC 443). It was observed in that case that the 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 S.63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was

sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate though the will might be unnatural and might cut off wholly or in part near relations.

... ..

16. The High Court was also conscious of the fact that the evidence as to the execution and attestation of the will was not very adequate, for the learned chief Justice observed that the evidence on the point of actual execution might not be very adequate; but the view taken by the High Court was that more evidence was not necessary in view of the pleadings of the parties. In this connection the High Court relied on Dwijendra Narayan Deb's acceptance of the will in favour of the respondent. This in our opinion was not justified so far as the appellants were concerned, for an admission of Dwijendra Narayan Deb who must now be held to have put forward a forged will could not be an added circumstance to support the inadequate evidence led by the respondent. We are further of the opinion that the High Court was not justified in executing the inadequacy of the evidence to prove the due execution and attestation of the will on the basis of the pleadings of the parties. It is true that the appellants did not say in so many words that the will propounded by the respondent was a forgery as they did about the will propounded by Dwijendra Narayan Deb; even so the appellants had put the respondent to strict proof of due and legal execution and attestation of the will and there was an issue to that effect. This was not a case where the due and legal execution and attestation of the will was admitted and the only disputes were that the testator had not a sound disposing state of mind or had acted under undue influence or coercion. Though the appellants did not go to the length of characterising the will as a forgery as they did in the case of the will propounded by Dwijendra Narayan, they certainly put the respondent to strict proof of legal and due execution and attestation of the will. In such circumstances it was the duty of the respondent, particularly in the presence of auspicious circumstances which have been noted by the High Court, to prove the due execution and attestation of the will by satisfactory evidence which would lead Court to the conclusion that the suspicious circumstances had been dispelled. We do not see how the evidence which has been characterised by the High Court as inadequate would suffice to dispel the suspicious circumstances

which undoubtedly are present in this case. We have no hesitation in coming to the conclusion, apart from the question of registration with which we shall deal presently, that if the evidence which has been produced in this case were all the evidence available to prove the due execution and attestation of the will, there could be no doubt that the respondent had failed to satisfy the Court and dispel the suspicious circumstances which were undoubtedly present in this case.

... ..

23. There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have not been acted upon: (see, for example, *Vellasaway Sarvai Vs. L. Sivaraman Servai*, ILR 8 Rang. 179 : (AIR 1930 PC 24), *Surendra Nath Vs. Jnanendra Nath*, AIR 1932 Cal. 574 and *Girja Datt Singh Vs. Gangotri Datt Singh*, (S) AIR 1955 SC 346. Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.

24. The question therefore is whether in the circumstances of the present case the evidence as to registration discloses that the testator knew that he was admitting the execution of a will when he is said to have put down his signature at the bottom of the will in the presence of Arabali. We have scrutinized that evidence carefully and we must say that the evidence falls short of satisfying us in the circumstances of this case that the testator knew that the document the execution of which he was admitting before Arabali and at the bottom of which he signed was his will. Therefore we are left with the bald fact of registration which in our opinion is insufficient in the circumstances of this case to dispel the suspicious circumstances which we have enumerated above. We are therefore not satisfied about the due execution and attestation of this will by the testator and hold that the propounder has been unable to dispel the suspicious circumstances which surround the execution and attestation of this Will. In the circumstances, no letters of administration in favour of the respondent can be granted on the basis of it."

(c) AIR 1965 SC 354 (Ramachandra Rambux Vs. Champabai and others):

"8. The questions which we have to consider are whether there was, in fact, a will, that is to say, whether Ramdban did execute a will during his lifetime,

and if so, whether the document upon which the appellant relies is a will executed by Ramdhan and duly attested by witnesses. The appellant can prove these facts only by adducing evidence of the due execution of the will by Ramdhan and of its attestation. The challenge before us is as to the credibility of the witnesses who have come forward to say that the document upon which the appellant relies not merely bears the signature of Ramdhan but represents the disposition made by Ramdhan, that is it was executed by Ramdhan, and that the attesting witnesses attested the execution of the will by Ramdhan. In order to judge the credibility of the witnesses, the Court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses, but it is open to it to look into the surrounding circumstances as well as the probabilities, so that it may be able to form a correct idea of the trustworthiness of the witnesses. This issue cannot be determined by considering the evidence adduced in the Court separately from the surrounding circumstances which have also been brought out in the evidence, or which appear from the nature and contents of the document itself. We do not understand the observations of Lord Waston to mean that the testimony as to the execution of the document has to be considered independently of the attendant circumstances. All that he says is that where there is a large and consistent body of testimony tending to show the execution of a will by the testator, that evidence should not be lightly set aside on the theory of improbability.

9. Dealing with the mode of proof of a will, this Court has observed in *H.Venkatachala Iyengar Vs. B.N.Thimmajamma*, 1959 Supp (1) SCR 426 at p.443 : (AIR 1959 SC 443 at p.451-452)

"As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator, who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of the wills the court will start on the same enquiry as in the case of the proof of documents. 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 put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; . . . the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would

naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator."

This Court also pointed out that apart from suspicious circumstances of this kind, where it appears that the propounder has taken a prominent part in the execution of the will which confers substantial benefits on him, that itself is generally treated as a suspicious circumstance attending the execution of the will, and the propounder is required to remove the suspicion by clear and satisfactory evidence. In other words, the propounder must satisfy the conscience of the Court that the document upon which he relies is the last will and testament of the testator.

10. This decision has been recently referred to in a Judgment of this Court in *Shashi Kumar Banerjee Vs. Subodh Kumar Banerjee, Civil Appeal No.295 of 1960 D/13-9-1963* : Civil Appeal No.295 of 1960, D/13-9-1963 : (AIR 1964 SC 529). There, Wanchoo J. who spoke for the Court, has observed as follows :

"The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S.63 of the Indian Succession Act. 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. Where however 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. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubt it is for the propounder to satisfy the conscience of the Court. 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 might 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 succeed 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. It is in the light of these settled principles that we have to consider whether the appellants have succeeded in establishing that the will was duly executed and attested."

... ..

18. In the circumstances, we hold that the High Court was right in rejecting the evidence of the attesting witnesses and the scribe as well as of the appellant with regard to the execution of the will by Ramdhan."

(d) AIR 1968 SC 1332 : 1968 (3) SCR 473 (Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and others):

"6. It is well-established that in a case in which a will is prepared under circumstances which raise the suspicion of the court that it does not express the mind of the testator it is for those who propound the will to remove that suspicion. What are suspicious circumstances must be judged in the facts and circumstances of each particular case. If, however, the propounder takes a prominent part in the execution of the will which confers substantial benefits on him that itself is a suspicious circumstance attending the execution of the will and in appreciating the evidence in such a case, the court should proceed in a vigilant and cautious manner. It is observed in Willians on *Executors and Administrators*, Vol.I, 13th Edn., p.92:

"Although the rule of Roman Law that '*Qui se scripsit haeredem*' could take no benefit under a will does not prevail in the law of England, yet, where the person who prepares the instrument, or conducts its execution, is himself benefited by its dispositions, that is a circumstance which ought generally to excite the suspicion of the court, and calls on it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce, unless the suspicion is removed, and it is judicially satisfied that the paper does express the true will of the deceased."

According to the decision in *Fulton Vs. Andrew* (1875 LR 7 HL 448), "those who take a benefit under a will, and have been instrumental in preparing or obtaining it, have thrown upon them the onus of showing the righteousness of the transaction". "There is however no unyielding rule of law (especially where the ingredient of fraud enters into the case) that, when it has been proved that a testator, competent in mind, has had a will read over to him, and has thereupon executed it, all further enquiry is shut out". In this case, the Lord Chancellor, Lord Cairns, has cited with approval the well known observations of Baron Parke in the case of *Barry Vs. Butlin* (1838 2 Moo PC 480, 482). The two rules of law set out by Baron Parke are: "first, that the *onus probandi* lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator"; "the second is, that, if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased". In *Sarat Kumari Bibi Vs. Sakhi Chand* (56 IA 62) the Judicial Committee made it clear that "the principle which requires the propounder to remove suspicions from the mind of the Court is not confined only to cases where the propounder takes part in the execution of the will and receives benefit under it. There may be other suspicious circumstances attending on the execution of the will and even in such cases it is the duty of the propounder to remove all clouds and satisfy the conscience of the court that the instrument propounded is the last will of the testator." This view is supported by the following observations made by Lindley and Davey, L. JJ., in *Tyrrell Vs. Painton* (1894 P 151, 157, 159):

"The rule in *Barry Vs. Butline* (2 Moo PC 480), *Fulton v. Andrew* (1875 LR 7 HL 448) and *Brown Vs. Fisher* (1890 63 LT 465) is not, in my opinion, confined to the single case in which a will is prepared by or on the instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite the

suspicion of the Court; and wherever such circumstances exist, and whatever their nature may be, it is for those who propound the will to remove such suspicion and to prove affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the will." (Lindley, L.J.).

"It must not be supposed the principle in *Barry Vs. Butlin* (2 Moo PC 480) is confined to cases where the person who prepares the will is the person who takes the benefit under it—that is one state of things which raises a suspicion; but the principle is that wherever a will is prepared under circumstances which raise a well-grounded suspicion that it does not express the mind of the testator the Court ought not to pronounce in favour of it unless that suspicion is removed." (Davey, L.,J.)."

7. It is in the light of these principles that the evidence adduced in this case will have to be considered. As we have already pointed out, there is abundant testimony in this case which proves beyond doubt that the testator was physically in a weak condition and that he was in a delirious state of mind at the time of the execution of the will. It is admitted that the first defendant took a prominent part in summoning the attesting witnesses and the scribe and in procuring the writing materials for the execution of the will. There is also evidence that Veeriah lost his father, Gangiah when he was hardly 10 years of age and after Gangiah's death the first defendant brought Rattamma and Veeriah to his house and was looking after them. The first defendant had therefore considerable influence over Veeriah and his mother Rattamma. There is also the circumstance that Veeriah was only 24 years of age at the time of the execution of the will and he was slow witted and below the average level of intelligence and understanding. Having regard to the cumulative effect of all the circumstances we are of opinion that the will, Ex. B-4 was not executed by Veeriah in a sound and disposing state of mind and was not legally valid and binding upon the plaintiff. We accordingly set aside the finding of the High Court on this issue."

(e) AIR 1977 SC 74 (Smt.Jaswant Kaur Vs. Smt.Amrit Kaur and others):

"5. The suit was tried eventually by the learned Senior Sub-Judge, Sangrur, who by his judgment dated June 29, 1964 decreed it. The learned Judge held that the defendant who set up the will had failed to prove that it was the last will and testament of his grandfather Gobinder Singh and alternatively, that even on the assumption that the will was proved, it must be deemed to have been revoked on account of certain dispositions made by the testator after the making of the will. This alternative conclusion that the will stood revoked by implication is clearly unsupportable and the appellant, who disputes the will, did not urge that consideration before us. The revocation of an unprivileged will is an act only a little less solemn than the making of the will itself and has to comply with statutory requirements contained in Section 70 of the Succession Act.

... ..

9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and the 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 led 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.

10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in *R.Venkatachala Iyengar Vs. B.N.Thimmajamma* (1959 Supp (1) SCR 426 = AIR 1959 SC 443). The Court, speaking through Gajendragadkar, J., laid down in that case the following propositions :

"1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question  whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him,

but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

... ..

14. Circumstances are too numerous to mention which throw a cloud of suspicion on the making of the will by Gobinder Singh. The will is alleged to have been made on November 26, 1945 but it did not see the light of the day till August 20, 1957. Being an ambulatory document, it may be granted that there may be no occasion for anyone to know of its existence until the death of the testator on December 15, 1954. But it is understandable that a document by which property worth lakhs of rupees was disposed of should have remained a closely guarded secret from the whole world of intimate friends and relatives, nay, from the sole legatee himself, for over 2½ years after the testator's death. The testator had left behind him a large property and along with it a large amount of litigation which makes it impossible to believe that upon his death in December 1954, no one bothered to go through his papers which would reflect the state and extent of his property. The explanation of the defendant that he hit upon the will by chance while going through some papers of his grandfather is therefore patently lame and unacceptable.

... ..

23. Quite a few other circumstances can be mentioned which raise a grave suspicion as regards the making of the will but the circumstances enumerated above are, in our opinion, sufficient to discard the will. The defendant in his evidence has offered no explanation of any of these circumstances. He has totally failed to discharge the heavy onus which lay on him of explaining the suspicious circumstances surrounding the execution of the will and of establishing that the document which he propounded was the last will and testament of his grandfather Gobinder Singh."

(f) AIR 1989 Allahabad 133 (Balkrishna Das Agarwal Vs. Smt.Radha Devi and others):

"38. Coming now to the Will set up by the defendant No.1, we must bear in mind that the mode of proving a Will does not ordinarily differ from that of proof of any other document except as to the special requirement of attestation prescribed by [Section 63](#) of the Indian Succession Act. The onus of proof rests squarely on the person propounding a Will and in the absence of any suspicious circumstances surrounding its execution, the proof of testamentary capacity and testator's signatures as required by law would normally suffice in discharging the onus. Where, however, suspicious circumstances are found to exist, the propounder of the Will must explain them and dispel all the suspicions to the satisfaction of the Court before it is accepted as genuine. This would be so even in those cases where such a plea has not been raised and on proved circumstances had given rise to doubt. In such cases also, it is for the propounder to satisfy the conscience of the Court. These suspicious circumstances may be as to the genuineness of the testator's signatures, his mental condition, the nature of disposition being unnatural and improbable or unfair in the light of the relevant circumstances or may consist of such other indications inherent in the Will as would show that the testator's mind was not free. In any of such cases, the propounder must remove all legitimate suspicions to the entire satisfaction of the Court. These rules are based on sound judicial principles and on ground of public policy as the Will often, if not always, comes under challenge only when the testator has already departed from this world and cannot, therefore, assist the Court enquiring into its genuineness in any manner.

... ..

53. It is well established that in a case in which a Will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator, it is for those who propound the Will to remove that suspicion. What are suspicious circumstances must invariably be judged in the facts and circumstances of each particular case. If, however, propounder takes a prominent part in the execution of the Will which confers substantial benefits on him that itself is a suspicious circumstance attending the execution of the Will and in appreciating the evidence in such a case, the Court should proceed in a vigilant and cautious manner."

(g) 1990 (1) SCC 266 (Kalyan Singh Vs. Chhoti):

"20. It has been said almost too frequently to require repetition that a will is one of the most solemn documents known to law. The executant of the 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 genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour. 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. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party.

... ..

22. The Privy Council in *Mt. Biro Vs. Atma Ram* (AIR 1937 PC 101 : 64 IA 92 : (1937) 1 MLJ 646) had an occasion to consider an analogous case where the wife was practically disinherited and there was unexplained delay in producing the will in public. There the alleged will by a testator gave only a life estate to his daughter who was the only child and who was to get some property at her marriage. The bulk of the estate was vested in the widow of the testator and three other women, namely, his mother, his step-mother and his paternal aunt. These women though entitled under the Hindu law only to maintenance, were made joint owners equally with the widow of the testator. None of the devisees could get the estate partitioned or alienate it for necessity. It was however, provided that the lady, who survived the other three devisees, would become the absolute owner of the estate. The widow of the testator would not get her husband's estate, if she predeceased any of her co-devisees. The will was not produced until after 22 years its execution though there were occasions to produce it, had it been in existence. Considering these circumstances, the Privy Council observed (at 104):

"It is most unlikely that a person having a wife and a minor unmarried daughter, who should be the objects of his affection, would make a will which would practically disinherit them.

That the testament is unnatural and runs counter to the ordinary sentiments of persons, having a status in society similar to that of Harbans Lal, cannot be seriously disputed. But this is not the only circumstance which tells against its genuineness. The will purports to have been executed on August 24, 1900, and the testator died within a month of that date. But it is strange that it was not produced until 1922, after the commencement of the present litigation. During this long period of 22

years, which intervened, there were occasions when the widow or her advisers could have produced the document, if it had been in existence; but they did not do so."

The will in the present case, constituting the plaintiff as a sole legatee with no right whatever to the testator's wife seems to be unnatural. It casts a serious doubt on genuineness of the will. The will has not been produced for very many years before the court or public authorities even though there were occasions to produce it for asserting plaintiff's title to the property. The plaintiff was required to remove these suspicious circumstances by placing satisfactory material on record. He has failed to discharge his duty. We therefore, concur with the conclusion of the High Court and reject the will as not genuine.

... ..

25. The High Court said, and in our opinion very rightly, that Ex.3 could not be regarded as secondary evidence. Section 63 of the Evidence Act mentions five kinds of secondary evidences. Clauses (1), (2) and (3) refer to copies of documents; clause (4) refers to counterparts of documents and clause (5) refers to oral accounts of the contents of documents. Correctness of certified copies referred to in clause (1) is presumed under Section 79; but that of other copies must be proved by proper evidence. A certified copy of a registered sale deed may be produced as secondary evidence in the absence of the original. But in the present case Ex. 3 is not a certified copy. It is just an ordinary copy. There is also no evidence regarding contents of the original sale deed. Ex. 3 cannot, therefore, be considered as secondary evidence. The appellate court has a right and duty to exclude such evidence."

(h) 1996 (2) CTC 466 (Madras High Court) (T.Kanniah Rao Vs. Inder Rao):

"6. In this case two witnesses have been examined on the side of the plaintiff to prove the valid execution and attestation of the will. It is in this context to be pointed out that while according to the defendant the testatrix was aged 90 at the time of the alleged execution of the will, according to the plaintiff she was only aged about 60 years. But no evidence has been adduced by the plaintiff to prove the age of the testatrix on the date of alleged execution of the will. It is also in this context worthwhile to note that it is admitted that Krishna Bai suffered a fracture of the hip and was bed-ridden for some time. According to the plaintiff Krishna Bai suffered a fracture but subsequently she got cured and she was later in a position to move about and was not confined to bed. P.W.1 is one of the attester to the will. In the course of cross' examination he has admitted that Krishna Bai suffered fracture in the hip bone in the year 1980 and was bed-ridden. He further admits that for about 5 or 6 months she took treatment and was thus bed-ridden and thereafter she was cured and was able to walk properly. P.W.2 is the other attester to the will. In the course of cross examination he admits that Krishna Bai met with an accident after December 1981 and she suffered an injury in the hip. She went to Puthoor for treatment as the bone was dislocated. He also states that after about 7 and 8 months after the accident Krishna Bai died. Therefore we have evidence to show that Krishna Bai was laid up and was bed-ridden at about the time the alleged will is said to have been executed. As that she was under medical treatment is also admitted by these two witnesses. No doubt these witnesses denied the suggestion that Krishna Bai was unconscious and was not in a sound and disposing state of mind and body at that time. But anyhow the fact remains that a suspicion has been created about the capacity both physical and mental of the testatrix to execute the will. The plaintiff has shunned the witness stand. The plaintiff has failed to examine the relations to speak to the fact that Krishna Bai though suffered a fracture was cured of the same and was able to move about and to further prove that she was physically

and mentally in a fit condition to execute the will. There is absolutely no explanation forthcoming from the plaintiffs side as to why he could not examine relations with regard to the health condition of Krishna Bai. The will is said to have been executed on 19.1.1982. P.W.2 admits that towards the end of 1981 Krishna Bai suffered fracture and was bed-ridden for about 6 months. Only after 6 months she was cured. As I stated already regarding age of the testatrix on the date of the alleged execution of the will no definite proof is adduced. In other words it is not established that she was not so far advanced in age at that time. This aspect assumes importance especially when we have the admitted fact that she met with an accident and suffered hip injury. If she was advanced in age as contended by the defendant then the suffering of a hip injury at about the time will be definitely a matter of significance. For, it will have enormous bearing on the mental and physical condition of the individual which in turn will govern the issue of valid execution and attestation of the will. Rulings are to the effect that suspicious circumstances should be properly explained by the propounder. Therefore it is essential that the propounder must adduce unimpeachable evidence to establish the genuineness and authenticity of the will when there are suspicious circumstances placed before the court, The onus is on the propounder to explain away the suspicious circumstances and lift the veil of suspicion that enshrouds the will. Here in this case a suspicion has been created which hangs over like a pall of gloom over the factum of execution of the will. No attempt has been made by the propounder to dispel and cast away the ominous clouds of suspicion. There is yet another fact which adds a touch of invincibility to the clouds of suspicion that enshroud the will. The reason given in the will is that the beneficiary under the will has been maintaining the testatrix from the date of death of the husband of the testatrix. It is in this connection admitted that the properties that the testatrix got are situate in Peters Road Mirsahibpet and Venkatachala Mudali Street, Mylapore. It is also admitted that these properties were occupied by number of tenants and they were paying rent. Therefore when there were rental collections the recital in the will that she was being maintained and looked after by the beneficiary is odd. It is also to be pointed out that the plaintiff has not taken the witness stand to say that he was maintaining her or to prove that he was performing the annual rituals of the husband of the testatrix. Even the witnesses who have been examined as P.W.-1 and 2 do not say in the course of chief examination that she was being maintain and looked after by the plaintiff and that the plaintiff was performing the annual 'thithi' of the testatrix's husband. Therefore these circumstances thus belie the recital in the will. Therefore to begin with the plaintiff has failed to place before court's materials that would persuade the court to hold that there are no suspicious circumstances attached to the execution of the will. In other words the clouds of suspicion that hang over the execution of the will are very much still there. Perhaps they are more dark and dense. In such circumstances it has to be held that the propounder has failed to discharge the onus east upon him.

... ..

8. In his evidence in the course of chief examination P.W.1 docs not say anywhere that Krishna Bai signed the will in his presence and that he attested the will in the presence of Krishna Bai. What all he has stated in the course of chief examination is that the will contains the thumb impression of Krishna Bai and that he signed the document as an attesting witness and that he has identified the thumb impression of Krishna Bai before the Sub- Registrar. He also says that he saw Krishna Bai putting her left thumb impression in all pages of the will and Krishna Bai came to the Sub Registrar's Office. He further states that having understood the contents of the will read over by the Registrar Krishna Bai made her thumb impression in the will. Thus he does not satisfy to the requirements. The proof adduced falls too short of standard of proof. He has not stated clearly in his evidence whether he signed it as an attestor at the residence or at the sub-

Registrar's Office. In the course of cross examination he states that himself and witness Murugesan saw Krislina Bai putting her thumb impression in the Sub-Registrar's Office. In the course of cross examination he admits that in the affidavit filed by him in respect of the application he has stated that Krishna Bai affixed her thumb impression in the house along with other witnesses. He would say that both the statement and the evidence are true. In this connection it is Pertinent to note that this witness is interested. Under the will one of the properties bequeathed is item No. 2 bearing Door No. 28, Chanda Sahib Street, Madras-14. This property has been gifted to this witness by the plaintiff in the year 1950. Therefore it is clear that this witness is beholden to the plaintiff. This witness has specifically stated that the will was read out by the Sub- Registrar and its contents was accepted and acknowledged by the testatrix and she affixed her thumb impression. It has been held in the decision reported in *Ammu D/o of; P.Konnu Vs. Krishnan S/o T.Kushunni*, AIR 1965 Ker. 32 that "in a case where a document becomes complete and valid only on registration, the sub-registrar and the identifying witnesses at registration may not become attesting witnesses But in a case where the document is a will which does not require registration, the Sub-Registrar and the identifying witnesses, if they conform to the law regarding attestation, may become attesting witnesses". Therefore the Sub-Registrar has to be treated as an attesting witness. But he has not been examined. It is also worthwhile once again referred to the decision reported in *Sadachi Ammal Vs. Rajathi Ammal*, AIR 1940 Mad. 315 in this context. Thus we find that the evidence of P.W.I cannot be termed as proving the valid execution and attestation of the will. The other witness examined is P.W.2 Murugesan. In his evidence in the course of Chief Examination he states that he himself and Krishna Bai went by Taxi to the Sub-Registrar's Office and that P.W.I was there and that he identified Krishna Bai before the Sub-Registrar and Krishna Bai affixed her thumb impression in the Registrar's Office. Thus the evidence of P.W.2 also does not conform to the requirement of law. He has not stated that he saw Krishna Bai executing the will in his presence. Nor he has stated that Krishna Bai saw him attesting. At best he only speaks to the identification of Krishna Bai before the Sub-Registrar. In the course of cross examination he makes it further clear. He admits that he does not know who prepared the will and that Krishna Bai handed over the will to him and asked him to attest the same. According to him the thumb impression was affixed by her in her house whereas P.W.I says differently. He says clearly that Krishna Bai affixed her thumb impression in the house in the will and thereafter affixed her thumb impression before the Sub- Registrar. He also says that all the thumb impressions at pages 1 to 4 were affixed by the testatrix in her house and that she did not affix any thumb impression in the Sub-Registrar's Office. He has further stated that contents of the will were read over to the testatrix only in the Sub-Registrar's Office. But the evidence of P.W, 1 is different. Neither P.W. 1 nor P.W.2 states that the contents of the will were read over to her at the house and she acknowledged it to be correct and executed the same. On the other hand both say that the contents of the will was read out only by the Sub-Registrar at the Sub-Registrar's Office. But the Sub-Registrar has not been examined. The evidence of these two witnesses do not speak to a case of valid execution and attestation of the will. A look at the will also shows that the thumb impressions of Krishna Bai is obtained not only at the bottom of each page but also on the sides of the first, second, third and fourth pages. It is not known why so many thumb impressions should be obtained and in such a haphazard fashion. This is one of the circumstances that adds to the flow of suspicion. There is yet another suspicious circumstance attached to the will. There is a declaration by the attester that Krishna Bai signed before them and the attestors signed before Krishna Bai. It is not known why there is a separate column containing such a declaration. All these things only add to the river of suspicion which cascades down to submerge the genuineness of the will.

9. There is yet another important circumstance that once for all sets the seal of rejection. The will is said to have been executed in the year 1982. Though an explanation given in the plaint that because the plaintiff was ill he could not immediately take steps to put the will and initiate proceedings for probate the plaintiff has not chosen to take the witness stand to support this allegation. From the evidence on record it is clear that a suit was filed by Inder Rao as plaintiff in O.S. No. 8379 of 1985 for partition of the properties. Admittedly the suit included the properties which are the subject matter of the will. The plaintiff herein was the 7th defendant in the suit. Plaintiff Inder Rao has clearly alleged that the will is not true and that. It was obtained by coercion and under influence and that it was not executed by Krishna Bai out of free volition and mind and that she was not in a sound state of mind at the time of execution of the will. The 7th defendant viz., the plaintiff herein did not choose to file the original will there. Only a xerox copy of the will was produced and marked there. The suit was dismissed by the trial court. But on appeal in A.S.No. 536 of 1988 the appeal was allowed. A specific finding was given that the will has not been produced nor has been proved and probate obtained. The judgment by the trial court was on 28.10.1987. This application for grant of probate was filed into court on 4.2.1986 and it was returned and represented on 20.8.1986 and numbered on 4.9.1986. The plaintiff has not chosen to take steps on the will immediately and did not choose to file the original will in the suit but where there was necessity to do so. He has chosen to file this application only subsequently. There is no explanation for not having taken immediate steps on the basis of the will. All this would show that the will cannot be a genuine document. Apparently taking advantage of the fact that Krishna Bai was sick and in bed due to hip injury her thumb impression have been apparently obtained to prepare this will. The numerous circumstances pointed out would also show that the will is not a document executed by Krishna Bai of her free will and accord. Before wind up it is also necessary to refer to one another fact which is not controverted at all. The plaintiff has not chosen to disclose all the near relations or reversioners. A genealogical table is furnished by both sides. It is admitted that some of the near relations have been omitted to be mentioned or referred to by the plaintiff. The plaintiff has thus suppressed the fact that there are other persons interested. Saraswathi Bai, Kamala Bai, Narayana Rao, Rukmani Bai Inderlal four daughters of Raja Rao, Choti Bai, Kasthuri Bai, Jawar Rao, Bansi Rao and K. Shamlal Rao are near relations of Krishna Bai. They have not been disclosed in the petition. It is in this context to be stated the plaintiff has stated that apart from the persons mentioned in the petition there are no others entitled to the property. But whereas we find that there are other near relations who may also have a claim to the properties. But they have not been shown as parties. This is yet another ground against the grant of probate. This position is well settled by the decision in the case of *G.Nagappan Vs. Kalaiselvam*, 1995 (2) L.W. 65. Therefore on an analysis, I hold that the will dated 19.1.1982 was not executed by Krishna Bai in a sound and disposing state of mind or voluntarily and therefore the plaintiff is not entitled to get letters of administration."

(i) AIR 1998 SC 2861 (Gurdial Kaur and others Vs. Kartar Kaur and others):

"4. The law is well settled that the conscience of the court must be satisfied that the Will in question was not only executed and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will. Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propounder of the Will to dispel the suspicious

circumstance. As in the facts and circumstances of the case, the court of appeal below did not accept the valid execution of the Will by indicating reasons and coming to a specific finding that suspicion had not been dispelled to the satisfaction of the Court and such finding of the court of appeal below has also been upheld by the High Court by the impugned judgment, we do not find any reason to interfere with such decision. This appeal, therefore, fails and is dismissed without any order as to costs."

(j) AIR 2003 SC 761 (Janki Narayan Bhoir Vs. Narayan Namdeo Kadam):

"9. It is thus clear that one of the requirements of due execution of a will is its attestation by two or more witnesses, which is mandatory.

10. Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said section, a document required by law to be attested 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. It flows from this section that if there be an attesting witness alive capable of giving evidence and subject to the process of the court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the will as envisaged in Section 63. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a court of law by examining at least one attesting witness even though the will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63 viz. attestation by two attesting witnesses in the manner contemplated therein, the examination of the other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the *execution of the will* does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency

in meeting the mandatory requirements of Section 68 of the Evidence Act.

11. Section 71 of the Evidence Act is in the nature of a safeguard to the mandatory provisions of Section 68 of the Evidence Act, to meet a situation where it is not possible to prove the execution of the will by calling the attesting witnesses, though alive. This section provides that if an attesting witness denies or does not recollect the execution of the will, its execution may be proved by other evidence. Aid of Section 71 can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the document to prove it by other evidence. Section 71 has no application to a case where one attesting witness, who alone had been summoned, has failed to prove the execution of the will and other attesting witnesses though are available to prove the execution of the same, for reasons best known, have not been summoned before the court. It is clear from the language of Section 71 that if an attesting witness denies or does not recollect execution of the document, its execution may be proved by other evidence. However, in a case where an attesting witness examined fails to prove the due execution of will as required under clause (c) of Section 63 of the Succession Act, it cannot be said that the will is proved as per Section 68 of the Evidence Act. It cannot be said that if one attesting witness denies or does not recollect the execution of the document, the execution of will can be proved by other evidence dispensing with the evidence of other attesting witnesses though available to be examined to prove the execution of the will. Yet another reason as to why other available attesting witnesses should be called when the one attesting witness examined fails to prove due execution of the will is to avert the claim of drawing adverse inference under Section 114 Illustration (g) of the Evidence Act. Placing the best possible evidence, in the given circumstances, before the Court for consideration, is one of the cardinal principles of the Indian Evidence Act. Section 71 is permissive and an enabling section permitting a party to lead other evidence in certain circumstances. But Section 68 is not merely an enabling section. It lays down the necessary requirements, which the court has to observe before holding that a document is proved. Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but driven to a state of helplessness and impossibility, cannot be let down without any other means of proving due execution by "other evidence" as well. At the same time Section 71 cannot be read so as to absolve a party of his obligation under Section 68 read with Section 63 of the Act and liberally allow him, at his will or choice to make available or not a necessary witness otherwise available and amenable to the jurisdiction of the court concerned and confer a premium upon his omission or lapse, to enable him to give a go-by to the mandate of law relating to the proof of execution of a will.

12. Turning to the facts of the case on hand, it is evident that only one attesting witness Prabhakar Sinkar, examined in the case, did not prove the execution of the will inasmuch as he did not prove the attestation of the will by the other attesting witness Wagle who though available was not examined. The scribe examined in the case was not an attesting witness, which is clear from the evidence on record and as rightly conceded so by the learned counsel for the respondent before us. Hence, it is unnecessary to go into the question whether the scribe in this case could or could not be an attesting witness. The evidence of Sinkar, the only attesting witness, does not satisfy the mandatory requirements of Section 68 of the Evidence Act. We are not in a position to accept the contention urged on behalf of the respondent that the evidence of other witnesses, namely, that of the respondent and the scribe could be considered under Section 71 of the Evidence Act. Section 71 has no application when the one attesting witness, who alone has been summoned, has failed to prove the execution of the will and the other attesting witness though available has not been examined. When the document is not proved as mandatorily required under Section 68 of the Evidence

Act, the provision of Section 71 of the Evidence Act, which is permissive, and enabling in certain circumstances as discussed above does not help the respondent. In *Vishnu Ramkrishna and others Vs. Nathu Vithal and others* (AIR 1949 Bom. 266), Chagla, C.J., speaking for the Division Bench in similar circumstances has stated that although Section 63 of the Succession Act requires that a will has to be attested by two witnesses, Section 68 of the Evidence Act permits the execution of the will to be proved by only one attesting witness being called. Where the attesting witness, who is called to prove the execution, is not in a position to prove the attestation of the will by the second witness, the evidence of the witness called falls short of the mandatory requirements of Section 68. Section 71 of the Evidence Act can only be requisitioned when the attesting witnesses who have been called failed to prove the execution of the will by reason of either denying their own signatures or denying the signature of the testator or having no recollection as to the execution of the document. This section has no application when one attesting witness has failed to prove the execution of the will and the other attesting witnesses were available who could prove the execution if they were called."

(k) AIR 2004 SC 436 (Bhagat Ram Vs. Suresh):

"19. We have carefully perused the submissions so made. In the case of Dharam Singh (supra) (Dharam Singh Vs. ASO -- AIR 1990 SC 1888 : 1990 Supp.S.C.C. 684), the two witnesses did not support the execution of the Will. The trial Court had relied upon the statement of the registering authority. The decision of the trial Court was reversed by the first appellate Court and the decision by latter was upheld by the High Court. In a short judgment this Court held that the appellate Court and High Court were right in their conclusion that the Registrar could not be a statutory attesting witness. There is no further discussion. Presumably what was sought to be contended before this Court was that the Registrar having discharged his statutory duty ought to be treated as a statutory attesting witness; for the Registrar would not register the document unless execution of the document was admitted by the executant and acknowledged to the Registrar. In Dharam Singh's case (AIR 1990 SC 1888) the Court has relied on two earlier decisions of this Court in [M.L.Abdul Jabbar Sahib Vs. H.V.Venkata Sastri & Sons](#), (AIR 1969 SC 1147 : 1969 (3) SCR 513) and Beni Chand Vs. Smt.Kamla Kunwar, (1977 (I) SCR 578 : AIR 1977 SC 63). In Abdul Jabbar's case this Court has held by reference to the definition of 'attested' as given in [Section 3](#) of the Transfer of property Act, 1882 that to be an attesting witness it is essential that the witness should have put his signature *animo attestandi*, i.e. for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose e.g. to certify that he is a scribe or an identifier or a registering officer he is not an attesting witness. Prima facie the registering officer puts his signature on the document in discharging of his statutory duty under [Section 59](#) of the Registration Act and not for the purpose of attesting it or certifying that he has received from the executant a personal acknowledgement of his signature. The evidence adduced in the case did not show the registering officer having signed the document with the intention of attesting it nor was it shown that the registering officer signed it in the presence of the executant. In these circumstances, the Court concluded that the registering officer was not an attesting witness. Beni Chand's case (supra) deals with general principles relating to execution of the Will and does not deal with the question whether a registering officer can be an attesting witness or not. The ratio of the several decisions by the High Court of Punjab and Haryana cited at the Bar is

that, in the facts and circumstances of a given case, the Registrar may also fulfill the character of an attesting witness as required by law and if, on entering into witness box as required by [Section 68](#) of the Evidence Act, he proves by his testimony the execution of document by deposing to having witnessed himself the proceedings as contemplated by [Section 63](#) of the Succession Act, he can be an attesting witness. The certificate of registration under [Section 60](#) of the Registration Act, 1908 raises a presumption under [Section 114](#). Illustration (e) of the [Evidence Act](#) that he had regularly performed his duty and therefore the facts spelled out by the endorsements made under [Sections 58](#) and [59](#) of the Registration Act may be presumed to be correct without formal proof thereof. The duties discharged by the registering officer do not include attestation or verification of attestation of will as required by the rules enacted by [Section 63](#) of the Succession Act. An endorsement by registering officer is not by itself a proof of the will having been duly executed and attested."

.. ..

21. The Registrar of Deeds who has registered a document in discharge of his statutory duty, does not become an attesting witness to the deed solely on account of his having discharged the statutory duties relating to the registration of a document. Registration of any will, and the endorsements made by the Registrar of Deeds in discharge of his statutory duties, do not elevate him to the status of a 'statutory/ attesting witness'. However, a registrar can be treated as having attested to a will if his signature or mark appears on the document akin to the one placed by an attesting witness and he has seen the testator sign or affix his mark to the will or codicil or has received from the testator a personal acknowledgement of his signature or mark and he has also signed in the presence of the testator. In other words, to be an attesting witness, the registrar should have attested the signature of the testator in the manner contemplated by clause (c) of [Section 63](#) of the Succession Act. No particular form of attestation is provided. It will all depend on the facts and circumstances of a case by reference to which it will have to be answered if the registrar of deeds fulfils the character of an attesting witness also by looking at the manner in which the events have actually taken place at the time of registration and the part played therein by the Registrar.

22. A Registrar of Deeds before he be termed an attesting witness, shall have to be called in the witness box. The Court must feel satisfied by his testimony that what he did satisfies the requirement of being an attesting witness. This is the view taken by the High Court of Punjab in the several decisions cited by the learned counsel for the appellants and also in the Division Bench Decisions of the High Court of Calcutta in [Earnest Bento Souza Vs. Johan Francis Souza & Ors.](#), AIR 1958 Calcutta 440, and of the Orissa High Court in [Kotni R.N.Subudhi Vs. V.R.L.Murthy Raju](#), AIR 1961 Orissa 180.

Question 3:

23.Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by law to be proved in the manner as provided in [Section 68](#) of the Evidence Act. Under [Section 58](#) of the Registration Act the Registrar shall endorse the following particulars on every document admitted to registration :

(1) the date, hour and place of presentation of the document for registration;

(2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(3) the signature and addition of every person examined in reference to

such document under any or the provisions of this Act, and

(4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

24. Such particulars as are referred to in [Sections 52 and 58](#) of the Registration Act are required to be endorsed by Registrar alongwith his signature and date on document under [Section 59](#) and then certified under [Section 60](#). A presumption by reference to [Section 114 \[Illustration \(e\)\]](#) of the [Evidence Act](#) shall arise to the effect that the events contained in the endorsement of registration, were regularly and duly performed and are correctly recorded. None of the endorsements, require to be made by the Registrar of Deeds under the [Registration Act](#), contemplates the factum of attestation within the meaning of [Section 63\(c\)](#) of the Succession Act or [Section 68](#) of the Evidence Act being endorsed or certified by the Registrar of Deeds. The endorsements made at the time of registration are relevant to the matters of the registration only (See: Kunwar Surendra Bahadur Singh Vs. Thakur Behari Singh (AIR 1939 Privy Council 117). On account of registration of a document, including a will or codicil, a presumption as to correctness or regularity of attestation cannot be drawn. Where in the facts and circumstances of a given case the Registrar of Deeds satisfies the requirement of an attesting witness, he must be called in the witness box to depose to the attestation. His evidence would be liable to be appreciated and evaluated like the testimony of any other attesting witness."

(I) [AIR 2007 SC 614](#) ([Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao](#)):

"21. Both the schedules of the will were meticulously drafted. Tarabai in her deposition did not say that she or the appellant had furnished all those details to Mahimkar in advance. Except they, in the given situation, no other could do so. An inference can, therefore, be safely drawn that the appellant had a role to play in execution of the will. Story of the will being drafted in the cubicle of ICU of the hospital, thus, cannot be believed. In all probabilities, the will was drafted by Mahimkar in his chamber. It may also be borne in mind that as the deceased could only sign in English, question of his dictating the will and at least the terms thereof was wholly unlikely. Will has been drafted by a professional. The theory set up by the propounder that he believed that the appellant would carry out his charitable activities is not reflected from the will. No reason has been assigned as to why he had chosen the appellant alone for taking the entire benefit of the legacy.

... ..

31. Section 63 of the Succession Act lays down the mode and manner of execution of an unprivileged will. Section 68 of the Evidence Act postulates the mode and manner of proof of execution of document which is required by law to be attested. It in unequivocal terms states that execution of will must be proved at least by one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and

extrinsic evidence on this point is receivable.

32. The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See *Madhukar D.Shende Vs. Tarabai Aba Shedage* (2002 (2) SCC 85 : AIR 2002 SC 637 : 2002 AIR SCW 242) and *Sridevi Vs. Jayaraja Shetty* (2005 (8) SCC 784 : AIR 2005 SC 780 : 2005 AIR SCW 605). Subject to above, proof of a will does not ordinarily differ from that of proving any other document.

33. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:-

- (i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will;
- (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
- (iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.

(See *H.Venkatachala Iyengar Vs. B.N.Thimmajamma and others* - AIR 1959 SC 443 and *Management Committee T.K.Ghosh's Academy Vs. T.C.Palit and others* - AIR 1974 SC 1495)."

(m) AIR 2007 SC 1058 (*Hardev Singh Vs. Gurmail Singh*):

"28. There is another aspect of the matter which cannot be lost sight of. The appellant claimed absolute interest in the property on the premise that his mother has executed a will in his favour on 3-10-1995. The said will has not been proved. If the title claimed is on the basis of the will, the same was required to be proved in the light of the provisions contained in Section 63 of the Succession Act and Section 68 of the Evidence Act. If the will has not been proved, in the absence of such proof the general law of succession and inheritance shall apply."

(n) AIR 2007 SC 2025 (*Adivekka Vs. Hanamavva Kom Venkatesh*):

"17. ... In *Rabindra Nath Mukherjee Vs. Panchanan Banerjee* (AIR 1995 SC 1685 : 1995 AIR SCW 2631 : 1995 (4) SCC 459) wherein reliance has been placed by Mr.Mahale, the circumstances preceding the execution of the will were taken into consideration. This Court in the factual matrix obtaining therein opined: (SCC p.462, para 8)

"8. If a total view is taken of the aforesaid circumstances, which has to be the approach, we are of the opinion that the courts below overplayed some circumstances which they regarded as suspicious and somehow missed some circumstances which bolstered the case of the propounders." "

(o) 2008 (2) CTC 850 (SC) = 2008 (8) SCC 463 (Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur):

"14. Article 137 of the Limitation Act reads as follows:

"137. Description of Application: Any other application for which no period of limitation is provided elsewhere in the Division.

Period of Limitation: Three years

Time from which period begins to run: When the right to apply accrues."

The crucial expression in the petition (*sic* Article) is "right to apply". In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of letters of administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty and because of the nature of the proceedings it is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was *S.Krishnaswami and etc. Vs. E. Ramiah, AIR 1991 Madras 214*. In para 17 of the said judgment it was noted as follows:

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the court to perform a duty. Probate or letters of administration issued by a competent court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the court to perform that duty. There is only a seeking of recognition from the court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under Article 137 of the Limitation Act, 1963."

15. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of administration is not covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in *The Kerala State Electricity Board case (supra) (The Kerala State Electricity Board, Trivandrum Vs. T.P.Kunhaliumma, 1976 (4) SCC 634)*.

16. Similarly reference was made to a decision of the Bombay High Court in *Vasudev Daulatram Sadarangani Vs. Sajni Prem Lalwani (AIR 1983 Bom. 268)*. Para 16 reads as follows:

"16. Rejecting Mr.Dalpatrai's contention, I summarise my

conclusions thus:—

(a) under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

(c) such an application is for the court's permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death;

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

(g) once execution and attestation are proved, suspicion of delay no longer operates."

17. Conclusion (b) is not correct while Conclusion (c) is the correct position of law."

(p) 2009 (3) SCC 687 = AIR 2009 SC 1766 (Bharpur Singh Vs. Shamsheer Singh):

"14. The legal principles in regard to proof of a will are no longer res integra. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

15. This Court in *H.Venkatachala Iyengar Vs. B.N.Thimmajamma* (AIR 1959 SC 443) opined that the fact that the propounder took interest in execution of the will is one of the factors which should be taken into consideration for determination of due execution of the will. It was also held that: (AIR p. 451, para 19)

one of the important features which distinguishes a will from other documents is that the will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator.

16. In *H.Venkatachala case (H.Venkatachala Iyengar Vs. B.N.Thimmajamma (AIR 1959 SC 443))*, it was also held that the propounder of a will must prove:

(i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

It was moreover held: (*H.Venkatachala case--H.Venkatachala Iyengar Vs. B.N.Thimmajamma (AIR 1959 SC 443)*, AIR p. 452, para 20)

"20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."

....

19. The provisions of Section 90 of the Evidence Act, 1872 keeping in view the nature of proof required for proving a will have no application. A will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872. In the event the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Evidence Act providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witnesses, if an attesting witness is alive and subject to the process of the court and capable of giving evidence. (See *B.Venkatamuni Vs. C.J.Ayodhya Ram Singh (2006 (13) SCC 449, SCC p.458, para 19)*).

20. This Court in *Anil Kak Vs. Sharada Raje* (2008 (7) SCC 695) opined that court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role, holding: (SCCp.714, paras 52-55):

"52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/ or letters of administration with a copy of the Will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a Will.

55. Unlike other documents, even *animus attestandi* is a necessary ingredient for proving the attestation."

.. ..

22. We may notice that in *Jaswant Kaur Vs. Amrit Kaur* (1977 (1) SCC 369) this Court pointed out that when the will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. An adversarial proceeding in such cases becomes a matter of court's conscience and propounder of the will has to remove all suspicious circumstances to satisfy that the will was duly executed by the testator wherefor cogent and convincing explanation of suspicious circumstances shrouding the making of will must be offered.

23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts.

24. The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with."

(q) 2010 (5) SCC 274 (S.R.Srinivasa Vs. S.Padmavathamma):

"38. In *H.Venkatachala Iyengar Vs. B.N.Thimmajamma* (AIR 1959 SC 443 : 1959 Supp (1) SCR 426), Gajendragadkar, J. stated the true legal position in the matter of proof of wills. The aforesaid statement of law was further clarified by Chandrachud, J. in *Jaswant Kaur Vs. Amrit Kaur* (1977 (1) SCC 369) as follows: (SCC pp.373-74, para 10):

"1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial

onus of the propounder to remove all reasonable doubts in the matter.”

Applying the aforesaid principles to this case, it would become evident that the will has not been duly proved.

39. As noticed earlier in this case, none of the attesting witnesses have been examined. The scribe, who was examined as DW 2, has not stated that he had signed the will with the intention to attest. In his evidence, he has merely stated that he was the scribe of the will. He even admitted that he could not remember the names of the witnesses to the will. In such circumstances, the observations made by this Court in *M.L.Abdul Jabbar Sahib Vs. M.V.Venkata Sastri & Sons (1969 (1) SCC 573)* become relevant. Considering the question as to whether a scribe could also be an attesting witness, it is observed as follows:(SCC p. 577, para 7):

"7. ... It is essential that the witness should have put his signature *animo attestandi*, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signature. If a person puts his signature on the document for some other purpose, e.g., to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness."

40. In our opinion, the aforesaid test has not been satisfied by DW 2, the scribe. The situation herein is rather similar to the circumstances considered by this Court in *N.Kamalam Vs. Ayyasamy (2001 (7) SCC 503)*. Considering the effect of the signature of scribe on a will, this Court observed as follows: (SCC pp.518-19, paras 26-27):

"26. The effect of subscribing a signature on the part of the scribe cannot in our view be identified to be of the same status as that of the attesting witnesses. ...

27. ... 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 the 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."

... ..

44. It is undoubtedly correct that a true and clear admission would provide the best proof of the facts admitted. It may prove to be decisive unless successfully withdrawn or proved to be erroneous. The legal position with regard to admissions and their evidentiary value has been dilated upon by this Court in many cases.

... ..

63. This Court in *Iyengar case (H.Venkatachala Iyengar Vs. B.N.Thimmajamma - AIR 1959 SC 443 : 1959 Supp (1) SCR 426)* had clearly held that cases in which the execution of the will is surrounded by suspicious circumstances, it may raise a doubt as to whether the testator was acting of his own free will. In such circumstances it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter. The presence of suspicious circumstances makes initial onus heavier. Such suspicion cannot be removed by the mere assertion of the propounder that the will bears signature of the testator or that the testator was in a sound and disposing state of mind at the

time when the will was made."

(r) 2012 (1) LW 636 (Madurai Bench of Madras High Court) (Perumal Vs. Alagammal @ Pappathi):

"24. A bare poring over of the aforesaid precedents would demonstrate and evince that the only the surviving witness in order to satisfy the requirements of Sections 68 and 69 of the Indian Evidence Act, should unambiguously and unequivocally, clearly and plainly depose that he witnessed the testator signing in his presence and that he attested the testator's signature. Over and above that, when that witness ventures to speak about one other attester's role, then he must be able to say similarly that the deceased attesting witness, either saw the testator signing the Will or got acknowledgment from the testator; the testator signed the Will and whereupon the deceased attesting witness attested the testator's signature in the presence of the testator, but such evidence is precisely lacking in the deposition of P.W.2. However, here and there, so to say, here a little and there a little, some evidence cropped up in the deposition of P.W.2 as though Annamalai was also present at the time of drafting the Will; P.W.2 signed the Will as attesting witness after the testator having signed it, and thereafter, the other witnesses signed the Will.

25. In my considered opinion, the deposition of P.W.2, regarding the signature of Annamalai the deceased attesting witness, was not free from doubt and it does not also satisfy the strict requirements of Sections 68 and 69 of the Indian Evidence Act.

26. It is also a fact that Perumal - the plaintiff was very much present at the time of scribing of the Will Ex.A.3 as well as at the time of execution of the Will by the testator. In such a case, the presence of Perumal, the beneficiary at the time of execution of the Will should necessarily be taken as the one of the suspicious circumstances and that would lead to the suspicion that he might have in all probabilities dominated the Will of the sexagenarian testator aged about 65 years, who had no issues and that her husband also predeceased her.

... ..

35. The learned Counsel for the plaintiff would submit that Krishnasamy is Class II heir as per Hindu Succession Act and his disinheritance by virtue of the Will cannot be taken seriously, but in the decision of the Honourable Apex Court in Ram Piari Vs. Bhagwant reported in AIR 1990 SUPREME COURT 1742, it is found stated that even Class II heirs as per Hindu Succession Act should be treated as heirs and their disinheritance would be of much significance. Whereas the learned Counsel for the plaintiff would try to explain and expound unsatisfactorily and unacceptably that it was a case in which among the Class II heirs, some were preferred and some were left and that was why the Honourable Apex Court held so.

36. He would also cite the definitions of "Heir general" and "Heirs, lineal and collateral" as found set out in "The Law Lexicon" thus:

"Heir general. An heir who generally represents the deceased and succeeds to everything not specially provided to other heirs.

Heirs, lineal and collateral. Heirs may be lineal or collateral. In certain contingencies brothers, sisters, parents, and even kindred in the remotest degree, are heirs at law.

The word "heirs" is one of the strongest and most expressive terms in the law, and when employed it will be given its settled legal meaning, unless the context shows in the clearest and most decisive manner that the parties who used it intended that it should have some other meaning.

Heirs and lineal and collateral, but the generic term includes both classes."

and submit that if there is disinheritance of Class I heirs as per Hindu Succession Act, it could be commented upon. I am of the considered view that such a sweeping statement cannot be made if any of the natural heirs is disinherited by Will. No doubt, in the presence of Class I heirs, Class II heirs cannot obviously have any claim, but if there are no Class I heirs, then Class II heirs can very well press into service the plea that their unexplained disinheritance is fatal to the Will."

31. Learned counsels appearing for the defendants 3 to 6 in Tr.C.S.No.889 of 2009 submitted that the sixth defendant is one of the purchaser of the property being vacant land in S.No.121/A1B, measuring an extent of 4800 Sq.Ft. situate at Jespuatham Nagar, 5, Guduvancheri Village, more-fully described in the schedule in item No.3 of the plaint. It is further contended that the defendants 4 and 5, along with sixth defendant, purchased the properties by way of registered sale deeds, which are marked as Ex.D-30, dated 03.03.2005, Ex.D-28 dated March 2005 and Ex.D-29 dated 07.03.2005. It is further contended that they are the bona-fide purchasers as per the respective sale deeds and they are in possession of the respective properties. The plaintiff-Pandurangan (in Tr.C.S.No.889 of 2009) has filed vexatious suit only with an intention to grab the suit properties and he is not entitled for the reliefs prayed for in Tr.C.S.No.889 of 2009 and there is no cause of action for filing the same and they prayed that Tr.C.S.No.889 of 2009 may be dismissed. In support of his submissions, learned counsel appearing for the defendants 4 and 5 in Tr.C.S.No.889 of 2009, relied on the following decisions:

(a) AIR 2001 SC 1151 = 2001 (4) SCC 325 (Clarence Pais and others Vs. Union of India):

"6. A combined reading of Sections 213 and 57 of the Act (Indian Succession Act) would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories."

(b) 2010 (5) SCC 770 (Balathandayutham Vs. Ezhilarasan):

"5. In the suit, the stand of the first appellant was that the will dated 25-9-1972 was not genuine and the said will had been revoked by Ramachandran by another will dated 25-4-1980 and also thereafter by another

will dated 2-5-1980. Both the appellants claimed their rights under the so-called subsequent wills.

... ..

8. On these facts the learned first appellate court held that when the execution of a will asserted by one party is denied by the other party, then the burden is on the party who relies on the will to prove its execution. But when the execution of the will is not denied then no burden is cast on the party who relies on a will to prove its execution. Relying on the aforesaid principle, the first appellate court held, and in our view rightly, that the existence of the first will dated 25-9-1972 has been admitted. But the appellants' case is that the same has been revoked. However, there is no attesting witness to prove Ext.B-19 dated 2-5-1980 and Ext. B-20 dated 25-4-1980, which are the two subsequent wills."

(c) 2001 (3) CTC 283 (Division Bench of Madras High Court) (Corra Vedachalam Chetty Vs. G.Janakiraman):

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

26. This need for caution, cannot be exploited by unscrupulous caveators who choose to cull out imaginary suspicions with a view to prevent the legatees under the Will from claiming the benefit thereunder and to render the last Will of the deceased wholly ineffective. In this context, the conduct of the persons who raise the alleged ground for suspicion is also to be looked at, to know as to how credible are the grounds for suspicions sought to be raised by such persons. In this case, the suspicion is sought to be raised by a person who is keenly interested in making the Will ineffective and whose conduct is far from one which would inspire confidence in truthfulness of his statements."

32. Learned counsel appearing for the seventh defendant in Tr.C.S.No.889 of 2009 contended that item No.8 of the plaint schedule property belongs to the seventh defendant and it was purchased from late Gopal Naidu, his wife Kausalya, his daughter Rukmani and Sarasamma, under sale deed dated 06.07.1998 in Document No.612 of 1998. He further submitted that the said Kausalya executed a Will, dated 15.11.1998, bequeathing her 1/4 share in the property on her husband Gopal Naidu for life and after his life time, her 1/4 share devolved on Sarasamma, the vendor of the seventh defendant. Kausalya died on 08.01.1999 and Gopal Naidu died on

06.12.2001. He further submitted that Gopal Naidu, during his lifetime, executed a Will, dated 29.07.1999, bequeathing his properties in favour of Sarasamma, and upon the death of Gopal Naidu and Srinivasala Naidu, Sarasamma became the absolute owner of the plaint item No.8 property with full power of alienation. He further contended that the seventh defendant purchased the plaint item No.8 property from the absolute owner Sarasamma, under a registered sale deed, bearing Doc.No.4447 of 2007, dated 22.06.2007, which is marked as Ex.D-1 and she is in possession and enjoyment of the said property in item No.8 of the plaint schedule. Therefore, the learned counsel for the seventh defendant prayed that the suit in Tr.C.S.No.889 of 2009 may be dismissed.

33. Heard the learned counsel appearing for the parties and perused the materials available on record.

34. The following facts are admitted by both sides:

The suit properties in T.O.S.No.38 of 2008 belonged to Late R.Gopal and his wife Late Kausalya. The plaintiff-Pandurangan in Tr.C.S.No.889 of 2009 is the son of the above said R.Goapl and Kausalya. The said R.Goapl and Kausalya had two daughters, namely Rukmani and Saroja. The plaintiff-Sarasamma in T.O.S.No.38 of 2008 is not the legal heir of the deceased R.Gopal and deceased Kausalya and she is neither Class-1 heir, nor Class-2 heir of the deceased R.Gopal and deceased Kausalya, as per the Hindu Succession Act. The defendant-Pandurangan's wife Ambika, was the first plaintiff (since deceased) in Tr.C.S.No.888 of 2009 and subsequent to her death, Pandurangan was impleaded as second plaintiff and their son Dheerajmal, was impleaded as the third plaintiff in Tr.C.S.No.888 of 2009. The plaintiff in T.O.S.No.38 of 2008, namely Sarasamma and her husband T.G.Srinivasalu Naidu, were residing with Late R.Gopal during his last years. The defendants 4 to 7 in Tr.C.S.No.889 of 2009 are the purchasers of some of the properties. In proof of the death of R.Gopal, his Death Certificate is marked as Ex.P-42 and his wife's Death Certificate is marked as Ex.P-43. One of the daughters of the said R.Gopal, i.e. Saroja, also died and her Death Certificate is marked as Ex.P-44. T.G.Srinivasalu Naidu, who is the first defendant in Tr.C.S.No.889 of 2009, also died and in proof of the same, his Death Certificate is marked as Ex.P-45 and the Legal Heirship Certificate of the

deceased T.G.Srinivasalu Naidu is marked as Ex.P-46.

35. On verification of records, it is seen that no impleading application has been filed to bring on record the legal heirs of the deceased T.G.Srinivasalu Naidu, who is the first defendant in Tr.C.S.No.889 of 2009, but his wife, namely Sarasamma is already a party and shown as second defendant in Tr.C.S.No.889 of 2009. Hence, the Registry of this Court is directed to record the death of T.G.Srinivasalu Naidu (first defendant) in the cause title pertaining to Tr.C.S.No.889 of 2009 as "died".

36. The following further facts are also admitted by both sides:

R.Ambika, namely the first plaintiff in Tr.C.S.No.888 of 2009 is the wife of Pandurangan, who is the second plaintiff in Tr.C.S.No.888 of 2009 and who is also the defendant in T.O.S.No.38 of 2008. T.O.S.No.38 of 2008 is filed only in respect of the properties situated within the jurisdiction of this Court, i.e. items 4 to 7 mentioned in the Will and there are some other properties of the deceased R.Gopal as stated in the Will, and those properties are situated outside the jurisdiction of this Court, i.e. in Guduvancherry and Arakkonam and they are items 1 to 3 and 8 in the Will. T.O.S.No.38 of 2008 (O.P.No.387 of 2008) is filed by the plaintiff-Sarasamma on 20.06.2008 before this Court.

37. The following further facts are also admitted by both sides:

The whereabouts of the said Rukmani, one of the daughters of the deceased R.Gopal and Kausalya, are known for many years. The defendant-Pandurangan filed Habeas Corpus Petition before this Court in H.C.P.No.532 of 2007 against the plaintiff-Sarasamma and others, in which, the plaintiff-Sarasamma filed counter statement and the same is marked as Ex.P-28. This Court, after hearing both sides, disposed of H.C.P.No.532 of 2007 on 03.09.2007 and the order in the said H.C.P. is marked as Ex.P-29. In the said order dated 03.09.2007 in H.C.P.No.532 of 2007, with regard to tracing the detenue-Rukmani, this Court directed the CB-CID to continue the investigation and to proceed in accordance with law. Till date, she could not be traced out and there is no material placed before this Court with regard to her whereabouts. The said Rukmani is a spinster and the husband of the deceased Saraoja deserted her. Therefore, the defendant-Pandurangan (who is the brother of late Saroja and Rukmani), alone is the Class-2 legal heir of

his sisters.

38. After hearing both sides, the main dispute to be decided in these suits is as to whether the alleged Will, dated 23.06.1999 (i.e. original marked as Ex.P-18 and certified copy of the Will is marked as Ex.P-57) was executed by the deceased R.Gopal or not and whether the said Will is proved through the witnesses examined before this Court.

39. In order to prove the Will, on the side of the plaintiff, P.W.2 G.Kuppusamy and P.W.3 B.Anandharaman were examined and they are the attesting witnesses to the Will. In his affidavit dated 20.04.2008 (Ex.P-47) at the time of filing O.P.No.387 of 2008, P.W.2 Kuppusamy and in his proof affidavit, dated 14.02.2012 at the time of adducing evidence in T.O.S.No.38 of 2008 (O.P.No.387 of 2008), P.W.2 Kuppusamy has stated with regard to the execution and attestation of the alleged Will. It is pertinent to notice the following averments made by the petitioner-Sarasamma in O.P.No.387 of 2008 (plaintiff in T.O.S.No.38 of 2008) in paragraphs 6, 10 and 17:

"6. The petitioner submit that since she and her husband had looked after the basic requirements and well being of said R.Gopal, his wife and his two daughters, R.Gopal executed the Will on 23.06.1999 in favour of the petitioner and her husband T.G.Srinivasulu and registered the same as Document No.19 of 1999 at Sub-Registrar Office, Arakonam, Vellore District in the presence of the witnesses whose names appear at the foot thereof. The said R.Gopal ordinarily resided at No.9, Mettu Street, Arakonam, Vellore District and died on 06.12.2001 at No.9, Mettu Street, Arakonam, Vellore District."

"10. The petitioner submits that properties bearing Item No.1 to 3 and 8 of the will dated 23.06.1999 are situated outside the jurisdiction of this Hon'ble Court and the other properties Item No.4 to 7 as mentioned in the Will are situated within the city limits of Chennai and within the jurisdiction of this Hon'ble Court. The present petition for Letters of Administration are restricted to Items 4 to 7 of the Will, dated 23.06.1999."

"17. The petitioner submits that though the Will was executed on 23.06.1999 the testator had chosen to register the Will in July 1999."

40. From the above averments of the petitioner (plaintiff) in O.P.No.387 of 2008 (T.O.S.No.38 of 2008), it is seen that she has categorically and specifically stated that the Will was executed on 23.06.1999 and it was registered on a later date, i.e. in July 1999. In the affidavit, dated 20.04.2008 (Ex.P-47), P.W.2 Kuppusamy has stated as follows in paragraphs 2 and 3:

"2. That on 23.06.1999 I was present together with Mr.B.Anantharaman

at the house of late T.G.Srinivasulu and we did then see the deceased R.Gopal set and subscribe his name at the foot of the Testamentary paper of in the English language and character hereto annexed and marked with letter "A" and publish the same as and for his last Will and Testament.

3. That thereupon, I this deponent and the said Mr.B.Anantharaman did at the request of the said deceased and in his presence and in the presence of each other all being present at the same time set and subscribed our respective names and signatures at the foot of the Testamentary paper as witnesses thereto."

41. From the above averments of P.W.2 Kuppusamy in his affidavit, it is clear that he was one of the attesting witnesses to the Will, along with P.W.3 Anantharaman and the deceased R.Gopal signed in the Will at the same time. Thus, P.W.2 Kuppusamy has specifically stated in the above affidavit that the Will was executed only on 23.06.1999 and signed by the attesting witnesses on the same day.

42. It is seen that P.W.1 Sarasamma (plaintiff) has filed proof affidavit at the time of adducing evidence in T.O.S.No.38 of 2008 and in her proof affidavit, in paragraphs 5 and 7, she has stated as follows:

"5. Since I and my husband have been taking care of Mr.R.Gopal, his wife and two daughters, Mr.R.Gopal, at his own free will and pleasure, when he was in sound mental health, without any coercion and undue influence, has executed the Will, dated 23.06.1999, bequeathing his self earned properties to me and my husband."

"7. The petitioner and her husband are the beneficiaries of the Will executed by Mr.R.Gopal, duly attested by two witnesses and Registered on 29.07.1999 as document No.19 of 1999, in the office of the Sub-Registrar, Arakkonam. The Will dated 23.06.1999 executed by R.Gopal in favour of me and my husband T.G.Srinivasulu Naidu is Exhibit P.18."

43. From the above averments in the proof affidavit of P.W.1, it is clear that she has specifically stated that the Will was executed only on 23.06.1999 before the attesting witnesses and it was subsequently registered on 29.07.1999 and the original Will is marked as Ex.P-18.

44. On the side of the plaintiff, P.W.2 Kuppusamy was examined and in his proof affidavit, dated 14.02.2012 filed at the time of adducing evidence, he has stated as follows in paragraphs 2 and 6:

"2. I submit I am well aware of R.Gopal Naidu for more than 10 years. I submit that on 23.06.1999 I was present together with one Mr.B.Anantharaman at the house of late R.Gopal at No.9, Mettu Street, Stuavalpet, Arakkonam, Vellore

District and we saw the deceased set and subscribe his name at the foot of the Testamentary paper of in the English language and character and publish the same as and for his last will and testament."

"6. I submit that again on 29.07.1999 Mr.R.Gopal has called me and Mr.B.Anantharaman to the Sub-Registrar Office, Arakonam, and thereafter the said Mr.R.Gopal has subscribed his name at the rear side of his last will dated 23.06.1999 in my presence and in the presence of the another attesting witness Mr.B.Anantharaman. Similarly myself and B.Anantharaman have also subscribed out signatures in the presence of R.Gopal at the rear side of the first page of the will dated 23.06.1999. I have already filed my affidavit on 20.04.2008 in this regard and the same may be marked as Exhibit P-47 in T.O.S.No.38 of 2008."

45. Another attesting witness to the Will, was examined as P.W.3 Anandharaman and in his proof affidavit filed at the time of adducing evidence, he has stated as follows in paragraphs 2 and 6:

"2. I submit I am well aware of R.Gopal Naidu for more than 10 years. I submit that on 23.06.1999 I was present together with one Mr.G.Kuppusamy at the house of late R.Gopal at No.9, Mettu Street, Stuavalpet, Arakkonam, Vellore District and we saw the deceased set and subscribe his name at the foot of the Testamentary paper of in the English language and character and publish the same as and for his last will and testament."

"6. I submit that again on 29.07.1999 Mr.R.Gopal has called me and Mr.G.Kuppusamy to the Sub-Registrar Office, Arakonam, and thereafter the said Mr.R.Gopal has subscribed his name at the rear side of his last will dated 23.06.1999 in my presence and in the presence of the another attesting witness Mr.G.Kuppusamy. Similarly myself and Mr.G.Kuppusamy have also subscribed out signatures in the presence of R.Gopal at the rear side of the first page of the will dated 23.06.1999. I have signed as second witness in the Will dated 23.06.1999 and the said Will was marked as Exhibit P-18 in T.O.S.No.38 of 2008."

46. Further, on the side of the plaintiff, P.W.5 S.Nagappan (Junior Assistant) was summoned from the Office of the Joint Sub-Registrar-I, Arakkonam and at the time of adducing evidence, P.W.5 has filed his proof affidavit, stating as follows in paragraphs 2 to 4:

"2. I submit that I have been instructed and authorized by the Joint Sub-Registrar-I, Arakkonam, Vellore District to produce the certified copy of Will bearing Document No.19/1999 and to adduce evidence thereon in TOS.No.38/2008 pending on the file of this Hon'ble Court. The authorisation letter given by the Joint Sub-Registrar-I, Arakkonam, Vellore District is produced herewith and the same may be marked as Exhibit P-54. My Identity Card may be marked as Exhibit P-55.

3. I submit that I have carefully verified the records and found that there is no such Revocation of Wills (4 numbers) bearing documents No.19/1999 in the Office of the Joint Sub-Registrar-I, Arakkonam, Vellore District, and the same were not registered as Document No.19/1999 Bk-III on 28.07.1999. The letter

dated 16.04.2013 given by the Joint Sub-Registrar-I, Arakkonam, in this regard may be marked as Exhibit P-56.

4. I submit that the Will Document No.19/1999 Bk-III dated 23.06.1999 registered on 29.07.1999 was not revoked as Revocation of Wills Documents No.19/1999 (4 Nos.). The certified copy of the Will Document No.19/1999 Bk-III, dated 23.06.1999 registered on 29.07.1999 (within sealed cover) may be marked as Exhibit P.57."

47. On a reading of the above proof affidavits of P.Ws.1 to 3 and 5, it is clear that the Will was executed by the deceased R.Gopal in the presence of the attesting witnesses (P.Ws.2 and 3) only on 23.06.1999 and the Will was subsequently registered on a later date, i.e. on 29.07.1999. Therefore, it is clear that Ex.P-18 is the original Will and the certified copy of the Will, submitted by the competent authority, i.e. Joint Sub-Registrar-I, Arakkonam, is marked as Ex.P-57. The relevant portion of Ex.P-18 Will and the relevant endorsement made on the reverse of page 1 of the Will, is extracted hereunder:

"WILL: THIS LAST WILL AND TESTAMENT OF R.GOPAL, son of Late Chinna Boji Naidu, aged about 82 years, residing at No.9, Mettu Street, Stuwalpettai, Arakonam, Vellore District, made on this the 23rd day of June, 1999, hereinafter called testator

... ..

IN WITNESS WHEREOF, I have signed this Will on this the day of July, 1999 in the presence of the following witnesses who have attested the same in my presence.

Sd/- R.Gopal

Witnesses:

- 1) Sd/- G.Kuppuswamy S/o Govinda Mandiri, Periyar Nagar Vedal, Arakkonam.
- 2) Sd/- B.Anantharaman S/o Boopathi, Perapperi (Villg), AKM Tk.

Endorsement on the reverse of page 1 of the Will:

Presented in the Office of the District Registrar, Arakkonam and fee of Rs.500/- paid between the hours of 10 and 11 on 28th July 1999.

Sd/- Gopal

EXECUTION ADMITTED BY

LEFT THUMB.

Sd/- Gopal

Gopal, S/o Chinna Boji Naidu former No.9, Mettur Street, Stuwalpettai, Arakkonam.

IDENTIFIED by:

1. ... Sd/- G.Kuppuswamy, S/o Govinda Mandiri Periyar Nagar Vedal, Arakkonam, Vellore District.

2. ... Sd/- B.Anadharaman, S/o Boopathy Perapery Village, Kilveedhi Post, Arakkonam Tk.

28th July 1999.

Sd/-... Joint Sub-Registrar-I.

Registered as No.19 of 1999 of Book III Volume 16 pages 5 to 8.

29th July 1999

Sd/- Joint Sub-Registrar-I.

.... seal....."

48. On a reading of the entire Will, it is clear that the Will is dated in the first paragraph only as "23.06.1999". But, in the last paragraph of the Will, the date is left blank and shown as "...on this the day of July 1999..." Hence, if the Will is prepared on 23.06.1999, the last paragraph also should contain the same date as 23.06.1999. There is no reason to indicate the blank date by specifically stating as "... on this theday of July 1999". Therefore, this Court is of the considered view that the Will was not prepared on 23.06.1999, but it was only prepared during the month of July 1999 without mentioning the date of the month of July 1999. Therefore, the argument of the learned Senior Counsel appearing for the plaintiff that the evidence of P.Ws.1 to 3 and their proof affidavits show that the Will was executed and signed on 23.06.1999 by the deceased R.Gopal in the presence of the attesting witnesses, is not sustainable, as it is unbelievable that the Will was executed on 23.06.1999.

49. Further, it is seen that P.W.1 plaintiff-Sarasamma stated in her proof affidavit that the Will was executed on 23.06.1999 and registered on 29.07.1999. But, on the contrary, in her cross-examination, she has stated as follows:

"The signature found in my proof affidavit is that of mine. In para 7 of my proof affidavit, I have stated that the Will dated 29.07.1999 of R.Gopal was registered in the office of the Sub-Registrar, Arakkonam. I gave instructions to my advocate to say so in my proof affidavit. On 29.07.1999 when the Will was

registered, I had also gone to the office of the Sub-Registrar, Arakkonam. Apart from myself and Gopal Naidu, my husband T.G.Srinivasalu Naidu and two witnesses Mr. Anantharaman and Mr. Kuppasamy were also present at the office of the Sub-Registrar, Arakkonam on 29.07.1999. On 29.07.1999, Gopal Naidu telephoned me at about 3 p.m. and thereafter, myself and the two witnesses went to the office of the Sub-Registrar. He told me over phone that the Will was made ready and the witnesses can be asked to come to the office of the Sub-Registrar, Arakkonam. My husband did not telephone me on that day from the office of the Sub-Registrar, Arakkonam. The Will was typed and prepared in the office premises of the Sub-Registrar, Arakkonam. I did not care to ascertain as to who had prepared the Will. After letting the witnesses to go inside the office of the Sub-Registrar, I waited outside. Inside the office, Gopal Naidu, my husband and the two witnesses were present. I did not ask my husband as to whether Gopal Naidu signed the Will outside the office of the Sub-Registrar, Arakkonam or before the Sub-Registrar, Arakkonam. We returned from the office of the Sub-Registrar, Arakkonam at 4 p.m. on 29.07.1999. On 29.07.1999, after receiving a phone call from Gopal Naidu to send the witnesses, I telephoned the witnesses, they came to my house and we all went to the office of the Sub-Registrar, Arakkonam."

50. P.W.2 G.Kuppasamy in his proof affidavit, stated that he signed the Will only on 23.06.1999, but contrary to that, in his cross-examination, he has stated as follows:

"... .. According to me, the Will was read out and explained to me on 29.07.1999 by the advocate and the same was submitted for registration on the same day. The date of execution of the Will by Gopal Naidu is left blank. I have not noticed the blank and so I had not asked the advocate as to why it was kept blank. The Will was written a month before but it was registered after one month. I attested the Will on 29.07.1999 before the Sub-Registrar, Arakkonam. I deny the suggestion that I have not attended the office of the Sub-Registrar, Arakkonam on 29.07.1999. I deny the suggestion that the advocate did not bring the Will to the office of the Sub-Registrar, Arakkonam on 29.07.1999. I deny the suggestion that Gopal Naidu did not attend the Sub-Registrar's Office on 29.07.1999 for the purpose of registration.

The witness adds: After Gopal Naidu signed the Will, we attested the same.

I deny the suggestion that the other attesting witness Anantharaman also did not present in the office of the Sub-Registrar on 29.07.1999. I deny the suggestion that I do not know whether Gopal Naidu had signed the Will, but on the request of T.G.Srinivasalu Naidu, I had attested the Will.

The witness adds: Only after Gopal Naidu signed the Will, we attested the same.

Gopal Naidu asked me and Anantharaman to come to the Sub-Registrar's office on 29.07.1999 and we both reached there. Myself and Anantharaman attested the Will in the presence of the Sub-Registrar, Arakkonam. Gopal Naidu signed the Will first before the Sub-Registrar."

51. P.W.3 B.Anandharaman also stated in his proof affidavit that the Will was executed

only on 23.06.1999, but contrary to that, in his cross-examination, he has stated as follows:

" I attended Sub-Registrar's office at Arakkonam on the afternoon 29.07.1999, but I do not know the exact time. Gopal Naidu himself called me to come to the Sub-Registrar's office on the afternoon of 29.07.1999. He informed me at 12 O'clock on that date. I attended Sub-Registrar's office twice that is, on 23.06.1999 and 29.07.1999. I attended the Sub-Registrar's office on the afternoon of 23.06.1999. I went to the Sub-Registrar's office on 23.06.1999 to sign in the Will of Gopal Naidu. I signed the Will on 23.06.1999 in the presence of the Sub-Registrar. At that time, Mr.Kuppusamy, P.W.2 was also present in the office of the Sub-Registrar. Sarasamma was not present there on 23.06.1999, but T.G.Srinivasalu Naidu was present. On 23.06.1999, myself, Mr.Kuppusamy (P.W.2) Gopal Naidu and T.G.Srinivasalu Naidu were present in the office of the Sub-Registrar and we all signed in the presence of the Sub-Registrar and left the office late in the evening."

52. This Court has already held that on 23.06.1999, the alleged Will Ex.P-18 was not at all executed. But contrary to that, P.W.3 Anandharaman stated that he signed the Will only on 23.06.1999 and Gopal Naidu signed the Will on 23.06.1999 in the presence of Sub-Registrar. This is contrary to the entire case of the plaintiff and therefore, the evidence of P.W.3 Anandharaman has to be discarded as false evidence.

53. Further, P.Ws.1 and 2 stated in proof affidavits that the Will was executed on 23.06.1999, but contrary to the same, in their cross-examination, they have stated that only on 29.07.1999, they have signed in the Will before the Sub-Registrar, Arakkonam. The interesting case is that, on a reading of the entire Will, it is seen that the Will was dated in the first paragraph as 23.06.1999, but in the last paragraph of the Will, it is shown as only "July 1999" without mentioning the date. The alleged Will was presented before the Joint Sub-Registrar-I, Arakkonam on 28.07.1999 between 11 and 12 hours and the executant Gopal and all the attesting witnesses executed and signed by the Joint Sub-Registrar. The execution of the Will was completed only on 28.07.1999 as signed by the Joint Sub-Registrar-I, by registering the document and assigning the document number as 19 of 1999 on 29.07.1999, as seen from the original document Ex.P-18-Will. Thus, it is clear that the Will was registered only on 29.07.1999 as Document No.19 of 1999 in Book (22) III Volume 16 pages 5 to 8. Therefore, on a reading of the entire original Will (Ex.P-18), it is clear that the Will was executed before the Sub-Registrar on 28.07.1999 itself, for which,

the Sub-Registrar also signed on 28.07.1999, but the Will was registered only on 29.07.1999 by assigning the document number and there was no execution of the Will on 29.07.1999 and it was only official administrative act of assigning the document number as 19 of 1999 on 29.07.1999 and no witness appeared before the Sub-Registrar on 29.07.1999 for execution of the Will and there is no necessity for any witness or the executant Gopal to be present before the Sub-Registrar on 29.07.1999. Hence, the evidence of P.Ws.1 to 3 that they have appeared before the Sub-Registrar on 29.07.1999 and they have signed in the Will before the Sub-Registrar on that day, is totally unbelievable and their evidence has to be thrown out as false evidence.

54. In this case, since the plaintiff has filed the Original Petition in O.P.No.387 of 2008, which was subsequently converted as T.O.S.No.38 of 2008 and she has relied upon Ex.P-18 Will, it is for the plaintiff to prove the Will before this Court by examining the attesting witnesses and adduce cogent and convincing evidence before this Court. But, in this case, the evidence of the attesting witnesses (P.Ws.2 and 3) and the plaintiff (P.W.1), is contrary to each other regarding the date of execution and registration of the Will and their evidence is contrary to their proof affidavits and hence, the evidence of P.Ws.1 to 3 has to be rejected, as the same is not trustworthy.

55. The burden of proving the Will executed by Gopal Naidu either on 23.06.1999 or on 29.07.1999, as claimed by the plaintiff in her pleadings and evidence, is on the plaintiff and she has to discharge the burden of proving the Will. From the above facts and circumstances, it has to be held that the plaintiff in T.O.S.No.38 of 2008 has failed to prove Ex.P-18 Will as per law. Therefore, this Court is of the considered view that the alleged Will as executed by R.Gopal Naidu is not proved before this Court.

56. During the course of arguments, learned counsel appearing for the defendant-Pandurangan, stated that the Will executed by Gopal had been revoked, as seen from the subsequent documents, which are marked as Exs.D-11 to D-14, dated 30.06.1999. This Court has already come to the conclusion that the Will is not proved by the plaintiff herself by adducing clinching and cogent evidence. Further, in respect of the revocation of the Will as per Exs.D-11 to D-14, P.W.5 Nagappan, Junior Assistant of the Office of the Joint Sub-Registrar-I, Arakkonam

was examined and he has stated in his proof affidavit that he has been authorised by the Joint Sub-Registrar-I, Arakkonam, Vellore District to produce the certified copy of the Will bearing Document No.19 of 1999 and the authorisation letter given by the Joint Sub-Registrar-I, Arakkonam is marked as Ex.P-54. P.W.5's Photo Identity Card is marked as Ex.P-55. He has also stated in his proof affidavit that he had carefully verified the records and found that there is no such revocation of Wills (4 numbers) bearing documents No.19/1999 in the Office of the Joint Sub-Registrar-I, Arakkonam, Vellore District and the same were not registered as Document No.19/1999 Bk-III on 28.07.1999. The letter dated 16.04.2013 given by the Joint Sub-Registrar-I, Arakkonam in that regard is marked as Ex.P-56, in which, the Joint Sub-Registrar-I, Arakkonam has stated that as on date, the Will - Document has not been cancelled.

57. Hence, from the above official witness P.W.5 and Ex.P-56, it is clear that the alleged revocation of the Will in Exs.D-11 to D-14, are not genuine documents and they were not at all executed or registered before the Sub-Registrar and that the Will (Ex.P-18), was not at all cancelled. Moreover, in Exs.D-11 to D-14, in the first two paragraphs, it is stated by R.Gopal as follows:

"THIS REVOCATION DEED OF WILL AND TESTAMENT of R.Gopal, son of Late Chinna Boji, aged about 82 years, residing at No.9, Mettu Street, Stuwalpettai, Arakonam, Vellore District, make on this the 30th day of June, 1999. WHEREAS I executed my Last Will and Testament on 23rd day of June, 1999, registered as Doc.No.19 of 1999, at Arakonam Joint S.R.O. covering certain subject matters of my assets/properties situating at various places, favouring one T.G.Srinivasulu and his wife Sarasamma, abruptly not minding well the family necessity and without deep comprehension over family and amity and peace."

58. In the above four documents Exs.D-11 to D-14 (revocation of Will) stated to have been executed on 30.06.1999, it is specifically stated that the testator-R.Gopal has executed the last Will and Testament on 23.06.1999, registered as Document No.19 of 1999 at Arakonam Joint Sub-Registrar Office, covering certain subject matters of his assets/properties situated at various places and the testator R.Gopal is willing to revoke the Will which was executed on 23.06.1999. On a reading of the above documents Exs.D-11 to D-14 (revocation of Will), it is clear that on the date of revocation, i.e. on 30.06.1999, the Will was already registered in the Office of

the Sub-Registrar, Arakkonam as Document No.19 of 1999. But, it is seen that Ex.P-18 Will was presented on 28.07.1999 and it was registered only on 29.07.1999. There is no witness examined on the side of the defendant-Pandurangan to prove the revocation deeds (Exs.D-11 to D-14) of the Will as alleged by the defendant. Further, the certified copy of the original Will Ex.P-18 is marked as Ex.P-57, which was produced by the competent Sub-Registrar and the certified copy of the Will in Ex.P-57 also clearly shows that the Will in Document No.19 of 1999 was registered only on 29.07.1999 before the Office of the Joint Sub-Registrar-I, Arakkonam. It is nobody's case that the original document - Will was registered before 29.07.1999. Hence, in the revocation deeds in Exs.D-11 to D-14 executed prior to 29.07.1999, i.e on 30.06.1999, it is not possible to mention the document number of the Will as 19 of 1999 in those revocation deeds, which creates a doubt in respect of the validity of the documents in Exs.D-11 to D-14 revocation deeds of the Will, as the original Will Ex.P-18 was registered only on 29.07.1999. It is therefore clear that the revocation deeds in Exs.D-11 to D-14 have been only created as documents, showing the date as 30.06.1999. The concerned parties have failed to note that the original Will Ex.P-18 was registered only on 29.07.1999 as Document No.19 of 1999. Further, even the entry with regard to the registration of the Will Ex.P-18 on 28.07.1999 is totally false, as the Will was actually registered only on 29.07.1999 as Document No.19 of 1999, though there is an endorsement in the Will Ex.P-18 that it was presented and executed on 28.07.1999 and more particularly, the Joint Sub-Registrar-I, Arakkonam has stated in Ex.P-56 letter dated 16.04.2013 that the Will document has not been cancelled as on date.

59. Moreover, if we compare the seal of the Sub-Registrar Office in the original Will Ex.P-18 with that of the seal of the Sub-Registrar Office in Exs.D-11 to D-14 revocation deeds of the Will, the seal in Ex.P-18 Will is bigger than the seal in Exs.D-11 to D-14. Hence, it is clear that Exs.D-11 to D-14 revocation deeds of the Will are created and cooked up with ulterior motive to show as if the documents in Exs.D-11 to D-14 were registered on 30.06.1999 itself, whereas, the fact remains that the original Will Ex.P-18 was registered only on 29.07.1999. Therefore, Exs.D-11 to D-14 revocation deeds of the Will are not valid documents and the parties have created only false evidence for the purpose of the case and Exs.D-11 to D-14 are to be thrown out.

60. Further, on verifying the documents marked on the side of the plaintiff, it is seen that the deceased Gopal Naidu has given Police complaints (Exs.P-5, P-19 and P-20) to the Inspector of Police, Arakkonam Police Station. The said R.Gopal also sent a complaint to the Commissioner of Corporation of Madras, which is marked as Ex.P-9. He also sent letters, dated 06.05.2000 and 09.06.2000 to the defendant-Pandurangan, which are marked as Ex.P-10 and Ex.P-14 respectively. The said R.Gopal, along with others, have given a letter to post the case, as stated in his complaint to the Honourable Chief Justice of India, which is marked as Ex.P-3, dated 21.02.1996. Therefore, even before 1999 itself, Gopal Naidu has given complaint to the Honourable Chief Justice of India. The said Gopal, along with two others, sent a letter, dated 22.05.2000 to the Chief Minister's Grievance Cell, which is marked as Ex.P-12. He also sent a legal notice, dated 23.05.2000 to the Zonal Officer, Corporation of Chennai, which is marked as Ex.P-13. It is further seen that one Ulagarakshagan, claiming that he is the agreement holder, filed a suit for specific performance in O.S.No.10488 of 1996 before the City Civil Court, Chennai, against the deceased R.Gopal and others, in which, R.Gopal filed various affidavits in applications, which are marked as Exs.P-4, P-6 to P-8 and P-38. The copy of the judgment, dated 09.02.2004 in O.S.No.10488 of 1996 is marked as Ex.P-26. The said Ulagarakshagan also filed C.S.No.1115 of 1993 before this Court, in which, R.Gopal filed counter affidavit in A.No.681 of 1993 in C.S.No.1115 of 1993, which is marked as Ex.P-2.

61. From the above documents, it is clear that there was dispute between the father-Gopal and son-Pandurangan (defendant) and the father-Gopal has given various complaints to authorities. Even though, admittedly there was some dispute between the father and son and suits were pending between the parties, the present O.P.No.387 of 2008 (T.O.S.No.38 of 2008) is filed by the plaintiff-Sarasamma, for grant of Letters of Administration in respect of the alleged Will executed by the deceased R.Gopal. The only question that has to be decided in this case is as to whether the plaintiff-Sarasamma has proved the Will executed by the deceased R.Gopal or not, in favour of the plaintiff-Sarasamma and her husband T.G.Srinivasalu Naidu (since deceased). In view of the above discussion, this Court is of the considered view that the Will has not been proved by plaintiff-Sarasamma and the documents produced on the side of the plaintiff are not

relevant to the case, and moreover, the plaintiff-Sarasamma and T.G.Srinivasalu Naidu (since deceased) are not the legal heirs of the deceased R.Gopal, as per the Hindu Succession Act, either as Class-I heirs or Class-2 heirs. In the absence of proving the Will, the plaintiff-Sarasamma is not entitled to succeed to the properties of the deceased R.Gopal.

62. Since the wife of the deceased R.Gopal Naidu, namely Kausalya, pre-deceased the testator-Gopal Naidu, only their son-Pandurangan (defendant) is available and their daughter Saroja died and their another daughter Rukmani's whereabouts are not known and inspite of filing of H.C.P.No.532 of 2007 by the defendant-G.Pandurangan, she could not be searched and investigation was handed over to CB-CID as per the order of this Court, dated 03.09.2007 passed in the said H.C.P., which is marked as Ex.P-29. Thus, the defendant-Pandurangan alone is the sole legal heir to succeed to the properties and estate of the deceased R.Gopal and the plaintiff-Sarasamma in T.O.S.No.38 of 2008 has no right, interest or title over the properties of the deceased R.Gopal and she is not entitled to succeed to the properties of the deceased R.Gopal, in the absence of proving the alleged Will and hence, as the plaintiff-Sarasamma and her husband-T.G.Srinivasalu Naidu have no right, interest or title over the suit properties, they have no right to execute any sale deed in favour of parties or execute any document in respect of the same and therefore, any party who purchased the properties from the plaintiff-Sarasamma and her husband T.G.Srinivasalu Naidu, cannot acquire any valid title over the properties.

63. Learned counsel for the defendant-Pandurangan in T.O.S.No.38 of 2008, submitted that, as second plaintiff in Tr.C.S.No.888 of 2009, the said Pandurangan seeks permanent injunction restraining the defendant-Sarasamma therein from interfering with the possession and enjoyment of the suit properties, especially smooth running of the School and right to use the pathway, and as plaintiff in Tr.C.S.No.889 of 2009, the said Pandurangan seeks declaration that the alleged Will is null and void, for permanent injunction restraining the defendant-Sarasamma therein and others from interfering with his possession, occupation and enjoyment of the suit properties and also for permanent injunction restraining the defendants therein from selling or encumbering the suit properties. This Court has already held that since the Will executed by the deceased R.Gopal Naidu has not been proved by the plaintiff-Sarasamma, she has no right, title

or interest over the suit properties and therefore, she has no right to interfere with the possession of the defendant-Pandurangan or sell or encumber the suit properties, as prayed for in Tr.C.S.Nos.888 and 889 of 2009.

64. Learned counsel for the defendant-Pandurangan submitted that in Tr.C.S.No.888 of 2009, as the first plaintiff-R.Ambika died, her legal heirs, namely the second plaintiff-Pandurangan (husband) and the third plaintiff-Dheerajmal (son) were impleaded as parties and the said suit in Tr.C.S.No.888 of 2009 is filed for permanent injunction restraining the defendant-Sarasamma therein from interfering with his possession and enjoyment of the suit properties, especially smooth running of the School and right to use the pathway. It has been already held by this Court that the plaintiff-Sarasamma is not entitled to any right over the suit properties, since the Will has not been proved. Since the plaintiff-Sarasamma only claims her right through the Will executed by the deceased Gopal and the Will having not been proved by her, she has no right, interest or title either over the suit properties or the properties of the deceased R.Gopal or even the properties of the defendant-Pandurangan. The properties are inherited by the defendant-Pandurangan from his father-Gopal. Hence, the plaintiff-Sarasamma has no right to interfere with the possession of the defendant-Pandurangan in respect of the properties, as claimed in Tr.C.S.Nos.888 and 889 of 2009.

65. It is pertinent to note that on the side of defendant-Pandurangan, they have produced copies of sale deeds executed by the plaintiff-Sarasamma and her husband T.G.Srinivasalu Naidu in favour of the defendants 4 to 7 in Tr.C.S.No.889 of 2009 and they are:- Ex.D-1 is the copy of the sale deed, executed by Sarasammal in favour of Kanchana (seventh defendant in Tr.C.S.No.889 of 2009); Ex.D-28 is the copy of the sale deed, dated March, 2005, executed by the Power Agent V.Sekar for T.G.Srinivasalu Naidu and Sarasammal, in favour of J.Rajendran (fourth defendant in Tr.C.S.No.889 of 2009); Ex.D-29 is the copy of the sale deed, dated 07.03.2005, executed by the Power Agent V.Sekar for T.G.Srinivasalu Naidu and Sarasammal, in favour of R.Kuppabai (fifth defendant in Tr.C.S.No.889 of 2009) and Ex.D-30 is the copy of the sale deed, dated 03.03.2005, executed by the Power Agent V.Sekar for T.G.Srinivasalu Naidu and Sarasammal, in favour of J.Mohan (sixth defendant in Tr.C.S.No.889 of 2009). Further, Ex.D-

15 is the copy of the sale deed, dated 29.03.2000 executed by T.G.Srinivasalu Naidu and Sarasammal in favour of one Ramachandran. It is also to be noted that Ex.D-2, dated 23.03.2006 is the certified copy of the sale deed executed by Mrs.V.Thangabala (then Sub-Judge, Ranipet) for G.Rukmani Ammal, in favour of T.G.Srinivasalu Naidu. Ex.D-3, dated 20.06.2002 is the copy of the General Power of Attorney executed by T.G.Srinivasalu Naidu and Sarasamma in favour of the third defendant-Amudhananda Thavayogi (in Tr.C.S.No.889 of 2009). Ex.D-4, dated 01.02.2005 is the copy of the General Power of Attorney executed by T.G.Srinivasalu Naidu and Sarasamma in favour of one V.Sekar. Exs.D-5 and D-6 are the legal notices issued by the plaintiff's counsel to the defendant. Ex.D-7 is the copy of the plaint in O.S.No.3153 of 2000 on the file of the City Civil Court, Chennai, filed by R.Gopal and two others against Ulagarakshagan and two others. Ex.D-8 dated 19.01.1998 is the copy of the handwritten Post Card sent by R.Gopal to the defendant-Pandurangan. Exs.D-9 and D-10 are the Money Order receipts in respect of the Money Orders sent by the defendant-Pandurangaj to G.Rukmani. Ex.D-15 is the copy of the sale deed dated 29.03.2000 executed by T.G.Srinivasalu Naidu and Sarasammal in favour of Ramachandran. Ex.D-16, dated 25.01.1998 is the copy of the handwritten Post Card sent by Kausalya to Ambika. Exs.D-24 and D-25 are the copies of the letters written by Saroja. Ex.D-17, dated 12.03.2004 and Ex.D-19, dated 18.03.2004 are the copies of the complaint given by G.Rukmani to the Inspector of Police Arakkonam. Ex.D-23 is the copy of the complaint given by G.Rukmani to the Inspector of Police, Guduvancherry. Ex.D-27, dated 20.09.2006 is the copy of the complaint given by the defendant-Pandurangan to the Director General of Police, Chennai. Ex.D-20 is the certified copy of the FIR in Crime No.224 of 208, dated 05.06.2008 on the file of Kolathur Police Station, Chennai, registered in respect of the complaint given by Pandurangan against group of 30 persons (absconding). Ex.D-44 is the certified copy of the FIR in Crime No.285 of 2005, dated 18.06.2005 on the file of Guduvancherry Police Station, Kancheepuram District, registered in respect of the complaint given by the defendant-Pandurangan against the plaintiff-Sarasamma and T.G.Srinivasalu Naidu and others. Ex.D-21, dated 10.11.2003 is the copy of the complaint given by Ambika to the Inspector of Police (Law and Order).

66. It is alleged on behalf of the defendant-Pandurangan that the deceased R.Gopal, on

08.12.1994, has executed a settlement deed in favour of Pandurangan, which is marked as Ex.D-22. But, no witness had been examined on the side of the defendant to prove the said settlement deed--Ex.D-22. It is further to be noted that the the plaintiff-Sarasamma and her husband T.G.Srinivasalu Naidu filed O.S.No.56 of 2005 on the file of the District Munsif Court, Chenglepet, for permanent injunction, against the defendant-Pandurangan and three others and the copy of the plaint in the said O.S.No.56 of 2005 is marked as Ex.D-26. Ex.D-34 is the copy of the letter written by one George to the defendant-Pandurangan. Ex.D-35 is the letter written by the third defendant in Tr.C.S.No.889 of 2009, i.e. Amudananda Thavayogi, to the defendant-Pandurangan's Advocate. Ex.D-36 is the copy of the letter, dated 22.03.2002 written by Rukmani to the defendant-Pandurangan. Ex.D-37 is the copy of the complaint/letter, dated 06.06.2008 written by the defendant-Pandurangan to the Inspector of Police, Kolathur, Chennai. Exs.D-38 and D-39 are the judgment and decree, dated 04.08.2006 in O.S.No.3677 of 2006 on the file of the City Civil Court, Chennai, filed by the plaintiff-Sarasamma and T.G.Srinivasalu Naidu against the defendant-Pandurangan and others, for permanent injunction and the said suit in O.S.No.3677 of 2006 was dismissed as withdrawn. Ex.D-40 is the statement of Saroja. Ex.D-41 is the copy of the letter, dated 17.09.1997 sent by Kausalya to the defendant-Pandurangan. Ex.D-42 is the death ceremony intimation card by G.Pandurangan Naidu (defendant) in respect of the death of his father R.Gopal Naidu. Ex.D-43 is the copy of the letter, dated 04.01.1999 sent by Saroja to Ambika.

67. Further, on the side of the defendant, Exs.D-32 and D-33, both dated 28.01.2002, are the cancellation deeds executed by G.Rukmani, cancelling the Wills (Document Nos.28 and 23 of 2001) already executed by G.Rukmani in favour of Sarasamma (plaintiff). But, even earlier, the plaintiff-Sarasamma has not claimed any right through the said Wills executed by Rukmani, as stated in Exs.D-32 and D-33 cancellation deeds.

68. It is further alleged that the sister of the defendant-G.Pandurangan, namely G.Rukmani executed partition release deed (Ex.D-18), dated 30.01.2004 in his favour, releasing her right in the family property. Even though Ex.D-18 is produced, the defendant-Pandurangan has not claimed any right in respect of the same and no witness had been examined in this

regard. Hence, it has to be held that Ex.D-18 is not proved on the side of the defendant-Pandurangan. Even though Ex.D-18 partition release deed is not proved, it is to be noted that Gopal's wife Kausalya and their daughter Saroja died and their another daughter Rukman's whereabouts are not known for many years, which is evident from the order, dated 03.09.2007 passed in H.C.P.No.532 of 2007, and ultimately, the defendant-Pandurangan is the sole surviving legal heir of the deceased R.Gopal Naidu (father), deceased Kausalya (mother), deceased Saroja (sister) and his another sister Rukmani. Hence, the defendant-Pandurangan alone is entitled to succeed to the family properties of his deceased father R.Gopal Naidu, either acquired or self-acquired through the income from self-acquired property by way of sale of the joint family properties. Whatever may be the acquisition of properties, the defendant-Pandurangan alone is the legal heir of the properties of the deceased R.Gopal Naidu.

69. Admittedly, the plaintiff-Sarasamma has filed O.P.No.387 of 2008, which on contest by the defendant-Pandurangan, has been converted as T.O.S.No.38 of 2008. The plaintiff-Sarasamma has filed the said O.P. (T.O.S) in respect of properties in item Nos.4 to 7 mentioned in the Will and left out the other items of properties in item Nos.1 to 3 and 8 mentioned in the Will as they are situated outside the jurisdiction of this Court. It is to be noted that the said O.P.No.387 of 2008 has been filed under Sections 232, 255 and 276 of the Indian Succession Act, which reads as follows:

"Section 232: Grant of administration to universal or residuary legatees:--When--
 (a) the deceased has made a Will, but has not appointed an executor, or
 (b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or
 (c) the executor dies after having proved the Will, but before he has administered all the estate of the deceased,
 an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Section 255: Probate or administration, with Will annexed, subject to exception:--
 Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception.

Section 276: Petition for probate:--(1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in Sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed,

and stating--

- (a) the time of the testator's death,
- (b) that the writing annexed in his last Will and testament,
- (c) that it was duly executed,
- (d) the amount of assets which are likely to come to the petitioner's hands, and
- (e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state,--

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate."

70. It is also pertinent to extract Section 273 of the Indian Succession Act, as follows:

"Section 273: Conclusiveness of probate or letters of administration:--Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted--

- (a) by a High Court, or
 - (b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees,
- shall, unless otherwise directed by the grant, have like effect throughout the other States.

The proviso to this section shall apply in India after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after the date in proceedings which were pending at that date.

The proviso shall also apply in India after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after the date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan."

71. T.O.S.No.38 of 2008 is maintainable, since the properties in item Nos.4 to 7

mentioned in the Will, are situated within the jurisdiction of this Court and the properties in item Nos.1 to 3 and 8 mentioned in the Will, are situated outside the jurisdiction of this Court, which have rightly not been included and as those item Nos.1 to 3 and 8 mentioned in the Will, are not the subject matter of T.O.S., this Court cannot decide the issue as to whether the plaintiff is legally justified in effecting sale of the properties or estates of the testator without probating the Will vis-a-vis Section 273 of the Indian Succession Act. This Court is of the considered view that the Will as alleged to have been executed by the deceased R.Gopal is not at all validly proved and therefore, the plaintiff-Sarasamma has not acquired any right, title or interest over the properties mentioned in Ex.P-18 Will = Ex.P-57 certified copy of the Will. Issue No.(viii) in T.O.S.No.38 of 2008 is answered accordingly.

72. Learned counsel for the defendant-Pandurangan contended that the Will was executed on 23.06.1999, but the O.P. (T.O.S) for grant of Letters of Administration has been filed only on 20.06.2008, with a delay of nine years and hence, the T.O.S is liable to be dismissed on the ground of delay.

73. Learned Senior Counsel appearing for the plaintiff-Sarasamma in T.O.S.No.38 of 2008 contended that the T.O.S has to be treated as if ordinary suit is filed and hence, the plaintiff has every right to file the T.O.S. and therefore, it has to be construed that the T.O.S is filed within time.

74. In this regard, though learned counsel appearing for both parties relied on various decisions, as extracted above, it is worthwhile to notice that as per Article 137 of the Limitation Act, dealing with "Other Applications" in Part-2 in Third Division therein, i.e. the description is stated as "any other application for which no period of limitation is provided elsewhere in this division, the period of limitation mentioned therein is "three years" and the time from which the period begins to run is stated as "when the right to apply accrues". Therefore, in this case, as per the Limitation Act, the O.P. (T.O.S) has to be filed within three years from the date of the death of the executant, i.e. R.Gopal. Admittedly, the testator R.Gopal died on 06.12.2001, which is evident from his Death Certificate marked in Ex.P-42. Hence, it has to be held that the O.P. (T.O.S) has not been filed within three years from the date of the death of the testator R.Gopal and hence, the

T.O.S. is liable to be dismissed on the ground of delay. In this case, admittedly, the testator R.Gopal died on 06.12.2001, which is evident from his Death Certificate--Ex.P-42 and the executor-T.G.Srinivasalu Naidu also died on 14.03.2007, which is evident from his Death Certificate--Ex.P-45. Learned Senior Counsel appearing for the plaintiff-Sarasamma contended that the said T.G.Srinivasalu Naidu already filed a petition for grant of probate in 2005 in respect of the Will and the same was returned by this Court for due compliance and it was subsequently not re-presented and in the meantime, he died in 2007 and thereafter, his wife, namely the plaintiff-Sarasamma has filed the present O.P.No.387 of 2008 (T.O.S.No.38 of 2008) for grant of Letters of Administration on 20.06.2008. As per the above mentioned Article 137 of the Limitation Act, the O.P. (T.O.S) has not been filed within three years from the date of the death of the testator-R.Gopal. Moreover, even as per Article 113 of the Limitation Act, the O.P. (T.O.S) has not been filed within three years. Article 113 of the Limitation Act deals with the "suit for which there is no prescribed period" as mentioned in Part-X-First Division therein, and with regard to the "description of application", it is stated therein as "any suit for which no period of limitation is provided elsewhere in this Schedule, the period of limitation is mentioned therein as "three years" and with regard to the "time from which the period beings to run", it is stated therein as "when the right to sue accrues". Therefore, it has to be held that the O.P. (T.O.S) has not been filed within three years from the date of the death of the testator-R.Gopal.

75. It is admitted that there is no specific Article mentioned in the Limitation Act fixing the period of limitation for filing an application specifically for grant of Letters of Administration or Probate. In this case, it is admitted that, earlier, the defendant-Pandurangan filed a suit before the City Civil Court, Chennai in O.S.No.1435 of 2003, which has since been transferred to this Court and numbered as Tr.C.S.No.889 of 2009. The said suit in O.S.No.1435 of 2003 was initially filed before the City Civil Court, Chennai, on 20.01.2003, which was subsequently re-presented and thereafter transferred to this Court and numbered as Tr.C.S.No.889 of 2009. The following is the prayer made in O.S.No.1435 of 2003 - Tr.C.S.No.889 of 2009:

- (a) for declaration declaring that the alleged Will dated 29.07.1999 is null and void;
- (b) for permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through them from interfering with the plaintiff's peaceful

possession, occupation and enjoyment of the suit properties, more-fully described in the schedule to the plaint;

(c) for permanent injunction restraining the defendants their men, agents, servants or any other person or persons claiming through them from selling or encumbering with the suit properties, more-fully described in the schedule to the plaint and

(d) for costs of the suit.

76. As noted above, O.P.No.387 of 2008 (T.O.S.No.38 of 2008) was filed before this Court on 20.06.2008 and it was filed after a lapse of five years from the date of filing of O.S.No.1435 of 2003 (Tr.C.S.No.889 of 2009). In this regard, it is useful to refer paragraph 9 of the affidavit filed in support of O.P.No.387 of 2008 (T.O.S.No.38 of 2008), which reads as follows:

"9. The Petitioners submit that as per the Will executed by the deceased Mr.R.Gopal, his entire estate devolves only on the petitioner and her husband T.G.Srinivasulu and they are the only beneficiaries under the Will. The petitioner's husband died on 14.03.2007 on No.9/20, Mettu Street, Suvalpet, Arakonam. Therefore the petitioner has now come before this Hon'ble Court to grant Letters of Administration for the Will executed by Late R.Gopal. There were no issues born out of the wedlock of the petitioner with T.G.Srinivasulu."

77. Except the above averments made in the affidavit, there is no other satisfactory reason adduced by the plaintiff-Sarasamma for the delay in filing O.P.No.387 of 2008 (T.O.S.No.38 of 2008) and it is clear that the O.P. (T.O.S) was filed before this Court only on 20.06.2008 and the same was not filed within three years from the date of the death of the testator (deceased) R.Gopal on 06.12.2001 or even within three years from the date of filing of O.S.No.1435 of 2003 (Tr.C.S.No.889 of 2009) by the defendant-Pandurangan against the plaintiff-Sarasamma and others, before the City Civil Court on 20.01.2003. Since the delay in filing the O.P. (T.O.S) for grant of Letters of Administration, has not been satisfactorily explained, the testamentary proceedings in O.P. (T.O.S) is not maintainable and the same liable to be dismissed on that ground. Issue No.(vii) in T.O.S.No.38 of 2008 is answered accordingly.

78. Since the seventh defendant in Tr.C.S.No.889 of 2009 purchased the property from T.G.Srinivasalu Naidu and the plaintiff-Sarasamma on the basis of the Power of Attorney

executed by them and as the plaintiff-Sarasamma and T.G.Srinivasalu Naidu have no right, title or interest over the properties of the deceased-testator R.Gopal, as held above, the plaintiff in T.O.S.No.38 of 2008 is not legally justified in effecting sale of the properties or estates of the testator without probating the Will under Section 273 of the Indian Succession Act. Issue No.(viii) in T.O.S.No.38 of 2008 is answered accordingly. The seventh defendant is not entitled to claim as a bona-fide purchaser for value of item No.8 of the property mentioned in the plaint in Tr.C.S.No.889 of 2009. Additional issue framed in Tr.C.S.No.889 of 2009 is answered accordingly.

79. On the side of the defendant-Sarasamma in Tr.C.S.No.888 of 2009, i.e. the plaintiff in T.O.S.No.38 of 2008, it is contended that the second plaintiff-G.Pandurangan, i.e. the defendant in T.O.S.No.38 of 2008 is not the legally wedded husband of the deceased first plaintiff-R.Ambika in Tr.C.S.No.888 of 2009 and the third plaintiff-Dheerajmal in Tr.C.S.No.888 of 2009 is not their son. Even though such an argument is put-forth on the side of the defendant-Sarasamma in Tr.C.S.No.888 of 2009 and there is no serious contest on the said aspect, there is no evidence adduced on their side to that effect. Further, the second and third plaintiffs in Tr.C.S.No.888 of 2009 are added as legal heirs of the deceased first plaintiff in Tr.C.S.No.888 of 2009. Further, the copy of lease agreement executed by the defendant-Pandurangan in favour of his wife Ambika Pandurangan, is marked as Ex.P-49 on the side of the plaintiff-Sarasamma in T.O.S.No.38 of 2008. Moreover, even in Ex.P-5 copy of complaint given by R.Gopal Naidu to the Inspector of Police, Arakkonam, it is stated as follows:

@ ///// T& ghz;Lu';fDf;F 3 kidtpfSk;. 1 fPg;g[k; cs;shh;fs;/ ehfuj;dk; vd;w fPg;g[f;F Rkhh; 9 taJs;s uk;ah vd;w bgz; ,Uf;fpwJ/ Rkhh; 5 khj fh;gj;ij fUr;rpjij[bra;Jtpl;llh;/ vd; kidtp bfsry;ak;khis gpy;yp Ndpak; bra;J Rkhh; 7 Mz;L fhykhf ghjpf;fg;gl;L 8/1/99 fhykhfptpl;lhh;/ Xa;btLj;j gpwF fpHf;F g{k;g[fhh;. 25k; bjU. 19V vz;zpy; FoapUe;j brhe;j tPl;il tpl;L ork;gh; 1997?y; T& ghz;Lu';fDk;. jw;fhy kidtp mk;gpft[k;. gy bjhy;iyfs; bfhLj;J rkhsfp;f Koahky; muf;nfhzk; te;Jtpl;nlhk;/ /////@

80. Thus, even the father (R.Gopal) of the defendant-Pandurangan specifically admitted that Ambika is the wife of Pandurangan. Hence, it is clearly proved that the deceased-Ambika

(first plaintiff in Tr.C.S.No.888 of 2009) was the wife of Pandurangan (second plaintiff in Tr.C.S.No.888 of 2009) and their son-Dheerajmal is the third plaintiff in Tr.C.S.No.888 of 2009. Therefore, the argument of the learned Senior Counsel appearing for the plaintiff-Sarasamma in T.O.S.No.38 of 2008 that the second plaintiff-Pandurangan in Tr.C.S.No.888 of 2009 is not the legally wedded husband of the deceased first plaintiff-Ambika in Tr.C.S.No.888 of 2009 and that the third plaintiff in Tr.C.S.No.888 of 2009 is not their son, is not acceptable. Additional issue Nos.(i) and (ii) in Tr.C.S.No.888 of 2009 are answered accordingly.

81. In view of the above facts and circumstance of the case and the discussion made above and also on perusing the decisions relied on by the learned counsel appearing for the parties, since the alleged Will has not been proved by the plaintiff-Sarasamma, she is not entitled to any right, interest or title over the suit properties of the deceased R.Gopal Naidu in T.O.S.No.38 of 2008 and the defendant-G.Pandurangan alone is entitled to the suit properties in T.O.S.No.38 of 2008. On both sides, i.e. the plaintiff-Sarasamma and the defendant-G.Pandurangan, no document is produced or no witness is examined to show that the suit properties are purchased by the deceased R.Gopal from and out of the sale proceeds of the joint family property and there is no material or reliable evidence in that regard. Hence, it has to be held that the suit properties are the self-acquired properties of the deceased R.Gopal. Issue No.(i) in T.O.S.No.38 of 2008 is answered accordingly.

82. From the above discussion, it has to be held that Ex.P-18 Will (dated 23.06.1999, registered on 29.07.1999) executed by testator--R.Gopal, the father of the defendant-Pandurangan, in favour of the plaintiff-Sarasamma and her husband T.G.Srinivasalu Naidu (since deceased), is not legally proved and hence, the said Will is not true and it is invalid and not binding on the parties. Though the deceased testator R.Gopal might not have been unduly influenced by the plaintiff and her husband to execute the Will by their importunity, in view of the fact that the Will has not been proved, this Court need not go into the question regarding the exclusion of the defendant-G.Pandurangan in the last Will of the deceased R.Gopal. Actually, there is no Will at all executed on 23.06.1999 by the deceased R.Gopal and therefore, the plaintiff-Sarasamma is not entitled for grant of Letters of Administration in T.O.S.No.38 of 2008

and consequently, the question of the grant of probate/Letters of Administration as claimed by the plaintiff-Sarasamma shall have the effect over all the properties and estate, movable and immovable, or not, will not arise and T.O.S.No.38 of 2008 is liable to be dismissed. Issue Nos.(ii) to (vi) in T.O.S.No.38 of 2008 are answered accordingly.

83. With regard to the revocation deeds, dated 30.06.1999, marked as Exs.D-11 to D-14, the same have not been proved by the defendant-Pandurangan and since no witness has been examined on the side of the defendant to prove the same, as discussed earlier in this judgment, they are not true and they are invalid and not genuine documents. Additional issue No.(i) framed in all the suits is answered accordingly.

84. Since Ex.D-22 settlement deed, dated 08.12.1994 has not been proved and since no witness has been examined on the side of the defendant to prove the same, as discussed earlier in this judgment, the same is not true and it is invalid and not a genuine document. Additional issue No.(ii) framed in all the suits is answered accordingly.

85. In view of the discussion made above, T.O.S.No.38 of 2008 is not maintainable and the same is liable to be dismissed and Tr.C.S.Nos.888 and 889 of 2009 are maintainable and are to be decreed as prayed for. Additional issue No.(iii) framed in all the suits is answered accordingly.

86. Therefore, for all the reasons stated above, after analysing the entire oral and documentary evidence adduced by both sides, this Court is of the considered view that the Will, alleged to have been executed by the deceased R.Gopal on 23.06.1999 and stated to have been registered on 29.07.1999, has not been proved by the plaintiff-Sarasamma as per law, and hence, she is not entitled for grant of Letters of Administration as prayed for in T.O.S.No.38 of 2008. Hence, T.O.S.No.38 of 2008 is liable to be dismissed and she is not entitled to any relief. Issue No.(ix) in T.O.S.No.38 of 2008 is answered accordingly.

87. Since, as held above, the plaintiffs 2 and 3 in Tr.C.S.No.888 of 2009 are the legal heirs of the deceased first plaintiff therein and the plaintiff-Sarasamma in T.O.S.No.38 of 2008 has based her right and claim only based on the alleged Will Ex.P-18 = Ex.P-57 and the Will having not been proved, the plaintiff-Sarasamma has no right, title or interest over the suit properties in T.O.S.No.38 of 2008. Hence, she is not entitled to get Letters of Administration as prayed for in T.O.S.No.38 of 2008. Consequently, the plaintiffs in Tr.C.S.No.888 of 2009 are entitled to the prayer of permanent injunction as prayed for therein. Issue Nos.(i) and (ii) in

Tr.C.S.No.888 of 2009 as framed by the City Civil Court, are answered accordingly.

88. Since it has already been decided above that the alleged Will produced on the side of the plaintiff-Sarasamma in T.O.S.No.38 of 2008 is not proved, it follows that the plaintiff-Pandurangan in Tr.C.S.No.889 of 2009 is entitled to the prayer of declaration and two permanent injunctions as prayed for in Tr.C.S.No.889 of 2009, and the plaintiff-Pandurangan in Tr.C.S.No.889 of 2009, i.e. the defendant in T.O.S.No.38 of 2008 alone is the surviving legal heir in respect of the suit properties in all the three suits, i.e. T.O.S.No.38 of 2008 and Tr.C.S.Nos.888 and 889 of 2009. Issue Nos.(ii) to (v) in Tr.C.S.No.889 of 2009, as framed by the City Civil Court, are answered accordingly.

89. Even though issue No.(i) is framed by the City Civil Court in Tr.C.S.No.889 of 2009 with regard to the Court fee paid by the plaintiff-G.Panduranga in Tr.C.S.No.889 of 2009, no argument is advanced by the parties and no evidence or document is produced by them to substantiate the said point. Hence, it has to be held that the plaint in Tr.C.S.No.889 of 2009 is valued properly and proper Court fee is paid therein. Issue No.(i) as framed by the City Civil Court in Tr.C.S.No.889 of 2009 is answered accordingly.

90. In the result:-

- (a) T.O.S.No.38 of 2008 is dismissed;
- (b) Tr.C.S.Nos.888 and 889 of 2009 are decreed as prayed for.
- (c) No costs, in all the three suits.

04.03.2016

(1/2)

Index : Yes / No

Internet : Yes / No

cs / jrl

Office to note: Since the first defendant (T.G.Srinivasalu Naidu) in Tr.C.S.No.889 of 2009 died and since no impleading application has been filed, the Registry is directed to record his death by indicating in the cause title in Tr.C.S.No.889 of 2009 in respect of the first defendant as "died".

Witnesses examined on the side of plaintiff:-

P.W.1 Sarasamma (plaintiff in T.O.S.No.38 of 2008, defendant in Tr.C.S.No.888 of 2009 and second defendant in Tr.C.S.No.889 of 2009)

P.W.2 G.Kuppusamy

P.W.3 B.Anandharaman

P.W.4 R.Ramesh Kannan

P.W.5 S.Nagappan,

List of documents marked on the side of plaintiff:-

Exhibit No.	Date	Description of the exhibit
P.1	12.09.1983	Certified copy of settlement deed executed by G.Pandurangan in favour of G.Kowsalya
P.2	10.02.1994	Certified true copy of counter affidavit of R.Gopal in A.No.681 of 1993, High Court, Madras
P.3	21.02.1996	Xerox copy of petition sent by R.Gopal to the CJI
P.4	25.01.1999	Certified true copy of counter affidavit of R.Gopal in I.A.No.16132 of 1997, City Civil Court, Madras
P.5	30.04.1999	Copy of complaint given by R.Gopal Naidu to Inspector of Police, Arakkonam
P.6	06.07.1999	Certified true copy of affidavit of R.Gopal in O.S.No.10488 of 1996, City Civil Court, Madras
P.7	06.07.1999	Certified true copy of affidavit of R.Gopal in O.S.No.10488 of 1996, City Civil Court, Madras
P.8	06.07.1999	Certified true copy of affidavit of R.Gopal in O.S.No.10488 of 1996, City Civil Court, Madras
P.9	05.05.2000	Copy of complaint given by R.Gopal Naidu to the Commissioner, Corporation of Madras
P.10	06.05.2000	Xerox copy of letter sent by R.Gopal to G.Pandurangan
P.11	-	Returned cover
P.12	22.05.2000	Certified true copy of letter sent by R.Gopal and others to Chief Minister's Grievance Cell
P.13	23.05.2000	Letter sent by the Advocate for R.Gopal to the Zonal Officer, Corporation of Chennai
P.14	09.06.2000	Xerox copy of letter sent by R.Gopal to G.Pandurangan
P.15	10.06.2000	Xerox copy of letter sent by R.Gopal to G.Pandurangan
P.16	17.06.2000	Xerox copy of letter sent by R.Gopal to G.Pandurangan
P.17	13.07.2000	Letter written by Saroja to G.Pandurangan
P.18	23.06.1999	Original Will executed by R.Gopal

Exhibit No.	Date	Description of the exhibit
P.19	17.08.2000	Xerox copy of complaint given by R.Gopal to the Inspector of Police, Arakkonam
P.20	17.10.2000	Complaint given by R.Gopal to the Inspector of Police, Arakkonam
P.21	12.02.2002	Complaint given by T.G.Srinivasalu to the Inspector of Police, Arakkonam
P.22	08.07.2008	Certified true copy of plaint filed in O.S.No.1435 of 2003, City Civil Court, Madras
P.23	11.04.2003	Certified true copy of settlement deed executed by G.Pandurangan in favour of R.Ambiga
P.24	26.06.2008	Certified true copy of FIR
P.25	-	Certified true copy of written statement filed in O.S.No.1435 of 2003, City Civil Court, Madras
P.26	09.02.2004	Certified true copy of judgment in O.S.No.10488 of 1996 on the file of the City Civil Court, Chennai
P.27 series	27.06.2005	Letter sent by the plaintiff's counsel to Mr.Ulagaratchagan along with postal acknowledgement and challan
P.28	-	Certified true copy of counter statement filed in H.C.P.No.532 of 2007
P.29	03.09.2007	Certified true copy of the order in H.C.P.No.532 of 2007
P.30 series	-	Certified true copy of two receipts for filing the complaints
P.31	27.06.2008	Letter sent by the Office of Secretariat to the Collector, Chennai
P.32	27.06.2008	Letter sent by the Office of Secretariat to the Commissioner of Police, Chennai
P.33	27.06.2008	Letter sent by the Office of Secretariat to the Commissioner, Corporation of Chennai
P.34	14.10.2008	Medical Certificate
P.35	01.01.2009	Certified true copy of telegram sent by the plaintiff to Commissioner of Police, Egmore
P.36	-	Certified true copy of telegram sent by the plaintiff to Tahsildar, Perambur
P.37 series	-	Certified true copy of telegrams sent by the plaintiff
P.38	-	Certified true copy of affidavit of R.Gopal in O.S.No.10488 of 1996, City Civil Court, Madras
P.39 series	18.11.2005	Xerox copy of letter sent by Srinivasalu to the Inspector of Police, Arakkonam
P.40	-	Certified true copy of postal acknowledgement card
P.41	04.01.1967	Original sale deed executed by K.B.Appasawmy in favour of R.Gopal

Exhibit No.	Date	Description of the exhibit
P.42	28.12.2001	Death Certificate of R.Gopal
P.43	11.8.2008	Death Certificate of G.Kousalya
P.44	16.06.2002	Death Certificate of G.Saroja
P.45	16.03.2007	Death Certificate of T.G.Srinivasalu
P.46	12.09.2008	Legal Heirship Certificate of Srinivasalu
P.47	20.04.2008	Affidavit of attesting witness
P.48	-	Certified true copy of counter affidavit of R.Gopal in I.A.No.16132 of 1997, City Civil Court, Madras
P.49	12.05.2005	Certified true copy of lease agreement executed by G.Pandurangan in favour of Ambika Pandurangan
P.50	02.10.2012	Certified copy of FIR
P.51	28.03.2013	Authorisation letter given by Sub-Registrar, Guduvancherry
P.52	-	Photo ID Card of P.W.4
P.53	10.02.1994	Certified copy of sale deed executed by M/s.Swamy Constructions, partnership firm, rep. by Managing Director K.Kuppuswamy as Power of Attorney Agent of vendors - Mr.Venu, Mr.M.Poongavanam and Smt.Dhanapathy, in favour of Mr.A.Chandrasekar
P.54	16.04.2013	Authorisation letter given by Joint Sub-Registrar-I, Arakkonam to the Master, High Court, Madras
P.55	-	Photo ID card of P.W.5
P.56	16.04.2013	Letter given by the Joint Sub-Registrar-I, Arakkonam to the Master, High Court, Madras
P.57	23.06.1999	Certified copy of the Will executed by R.Gopal

Witnesses examined on the side of defendants:-

D.W.1 - G.Pandurangan (defendant in T.O.S.No.38 of 2008, second plaintiff in Tr.C.S.No.888 of 2009 and plaintiff in Tr.C.S.No.889 of 2009)

Documents marked on the side of defendants:-

Exhibit No.	Date	Description of the exhibit
D.1	22.06.2007	Certified copy of sale deed executed by Sarasammal @ Saraswathi in favour of Kanchana

Exhibit No.	Date	Description of the exhibit
D.2	23.03.2006	Certified copy of sale deed executed by Mrs.V.Thangabala (Sub-Judge, Ranipet) for G.Rukmani Ammal, in favour of T.G.Srinivasalu Naidu
D.3	20.06.2002	Xerox copy of General Power of Attorney executed by T.G.Srinivasalu and Sarasammal in favour of Amudhananda Thavayogi
D.4	01.02.2005	Xerox copy of General Power of Attorney executed by T.G.Srinivasalu Naidu and Sarasammal in favour of V.Sekar
D.5	11.03.2011	Legal notice issued by the plaintiff's counsel to the defendant
D.6	28.05.2002	Legal notice issued by the plaintiff's counsel to the defendant
D.7	-	Xerox copy of plaint filed in O.S.No.3153 of 2000, City Civil Court, Madras
D.8	19.01.1998	Handwritten Post Card sent by R.Gopal to G.Pandurangaj
D.9	-	Money Order receipt
D.10	-	Money Order receipt
D.11	30.06.1999	Revocation of Will, executed by R.Gopal
D.12	30.06.1999	Revocation of Will, executed by R.Gopal
D.13	30.06.1999	Revocation of Will, executed by R.Gopal
D.14	30.06.1999	Revocation of Will, executed by R.Gopal
D.15	29.03.2000	Certified copy of sale deed executed by T.G.Srinivasalu Naidu and Sarasammal in favour of Ramachandran
D.16	25.01.1998	Handwritten Post Card sent by Kousalya to Ambika
D.17	12.03.2004	Complaint given by G.Rukmani to the Inspector of Police, Arakkonam
D.18	30.01.2004	Original release deed executed by G.Rukmani in favour of G.Pandurangan
D.19	18.03.2004	Complaint given by G.Rukmani to the Inspector of Police, Arakkonam
D.20	05.06.2008	Certified copy of FIR
D.21	10.11.2003	Copy of complaint given by Ambika to the Inspector of Police (Law and Order)
D.22	08.12.1994	Original settlement deed executed by R.Gopal in favour of G.Pandurangan
D.23	-	Complaint given by G.Rukmani to the Inspector of Police, Guduvancherry
D.24	-	Letter written by G.Saroja

Exhibit No.	Date	Description of the exhibit
D.25	-	Letter written by G.Saroja
D.26	-	Xerox copy of plaint filed in O.S.No.56 of 2005, District Munsif Court, Chinglepet
D.27	20.09.2006	Complaint given by Pandurangan to the Director General of Police, Chennai
D.28	March 2005	Certified copy of sale deed executed by T.G.Srinivasalu Naidu, Sarasammal, by their Power Agent V.Sekar, in favour of J.Rajendran
D.29	07.03.2005	Certified copy of sale deed executed by T.G.Srinivasalu Naidu, Sarasammal, by their Power Agent V.Sekar, in favour of R.Kuppabai
D.30	03.03.2005	Certified copy of sale deed executed by T.G.Srinivasalu Naidu and Sarasammal, by their Power Agent V.Sekar, in favour of J.Mohan
D.31 series	17.04.2007	Letter sent by defendant's counsel to the plaintiff and others, and acknowledgement card
D.32	28.01.2002	Registered cancellation deed executed by G.Rukmani
D.33	28.01.2002	Registered cancellation deed executed by G.Rukmani
D.34	21.05.2002	Letter written by George to Pandurangan
D.35	30.07.2005	Letter written by Swamy Amudananda Thavayogi to the defendant's counsel
D.36	22.03.2002	Letter written by Rukmani to Pandurangan
D.37	06.06.2008	Xerox copy of letter written by Pandurangan to Inspector of Police, Kolathur, Chennai
D.38	04.08.2006	Certified true copy of judgment in O.S.No.3677 of 2006, CCC, Chennai
D.39	04.08.2006	Certified true copy of decree in O.S.No.3677 of 2006, CCC, Chennai
D.40	-	Statement of G.Saroja
D.41	17.09.1997	Letter sent by Kousalya to Pandurangan
D.42	-	Death ceremony intimation card by G.Pandurangan Naidu in respect of the death of his father - R.Gopal Naidu
D.43	04.01.1999	Letter sent by G.Saroja to Ambika
D.44	18.06.2005	Certified true copy of FIR

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Index : Yes / No
Internet: Yes / No

cs / jrl

Office to note: Since the first defendant (T.G.Srinivasalu Naidu) in Tr.C.S.No.889 of 2009 died and since no impleading application has been filed, the Registry is directed to record his death by indicating in the cause title in Tr.C.S.No.889 of 2009 in respect of the first defendant as "died".

G.CHOCKALINGAM, J

cs/jrl

Judgment
in T.O.S.No.38 of 2008
and
Tr.C.S.Nos.888 and 889 of 2009

04.03.2016