

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2017

PRONOUNCED ON: 30.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.28 of 2014

V.Dayalan

Plaintiff

Vs

1. V.Thayarammal

2. V.Kasthuri

3. V.Jothi

4. V.Pragasam

5. V.Lakshmi

Defendants

Prayer:- This Testamentary Original Suit is filed under Sections 222 and 276 of the Indian Succession Act read with Order XV Rule 4 of the Original Side Rules.

For Plaintiff : Mr.T.Srinivasaraghavan

For Defendants : Mr.S.Ramesh

JUDGEMENT

This Testamentary Original Suit has been filed, with respect to last Will and Testament dated, 10.5.1996, of B.Venugopal Naidu, who had died on 1.6.2004 at No.33, Hyder Garden, 3rd Street, Perambur, Chennai-12.

2. Originally, OP.No.421 of 2013 was filed, seeking probate of the last Will and Testament dated 10.5.1996 of B.Venugopal Naidu. The petition was filed under Sections 222 and 276 of the Indian Succession Act, 1925, read with Order 25 Rule 4 of the Original Side Rules.

3. The Petitioner, V.Dayalan, was the son of the said B.Venugopal Naidu. There were five Respondents in OP.No.421 of 2013. The 1st

Respondent, V.Thayarammal was the wife of the B.Venugopal Naidu. The 2nd Respondent, V.Kasthuri, the 3rd Respondent, V.Jothi and the 5th Respondent, V.Lakshmi are the daughters of B.Venugopal Naidu and the 4th Respondent V.Pragasam was the son of B.Venugopal Naidu. This court had directed issue of notice in the said Original Petition and the 2nd Respondent, V.Kasthuri, the 3rd Respondent, V.Jothi and the 5th Respondent, V.Lakshmi registered their protest by filing a caveat and also an affidavit in support of the caveat opposing grant of probate in favour of the Petitioner. Consequently, this court by order dated, 8/8/2014, had directed that OP.No.421 of 2013 must be converted into a testamentary and original suit and accordingly, it was converted and renumbered as TOS.No.28 of 2014.

4. The Petitioner in OP.No.421 of 2013, V.Dayalan became termed as the Plaintiff and the Respondents 2, 3 and 5 were termed as the Defendants. It must also be mentioned that pending the proceedings, the 1st Respondent in the OP, V.Thayarammal also died, but, since her legal representatives were already on record, there was no necessity to carry out any amendment or to implead any new parties to the suit.

5. In the petition, seeking grant of probate, it has been stated that late B.Venugopal Naidu died on 1.6.2004 and he had executed a Will dated 10.5.1996. It has been further stated that the Will had attested by two witnesses, T.Sundararaj, son of G.Thiruvengadam and S.Jayapaul, son of Subramani. It has been further stated that under the Will, B.Venugopal Naidu bequeathed his properties to his two sons, namely, V.Dayalan and the 4th Respondent, V.Pragasam. It has been further stated that in the Will, the testator had clearly indicated that his three daughters, who had entered appearance, who had objected grant of probate and who are termed as the

Defendants, had been given in marriage in the respectable families and they are living with their husbands and families. It has also been stated that the property covered under the Will was his self-acquired property. It was further stated that he had given to the Plaintiff, V.Dayalan, the B-Schedule property for long lease for 50 years and had already put him in possession. He thereafter bequeathed the B-Schedule property to the Petitioner and bequeathed the C-Schedule property in the Will to V.Pragasam. The 1st Respondent, V.Thayarammal in the OP was given a life interest in the property without powers of alienation or encumbrance. The Petitioner was appointed as the executor. It had also been stated that the Respondents 1 and 4 had given consent affidavits. It was only after the 1st Respondent gave consent, the petition seeking probate had been filed. It has been stated that consequently, there was a delay in filing the petition, seeking probate.

6. As stated above, the Respondents 2, 3 and 5 had filed their caveat. They also filed their written statement. In the written statement, they have stated that the date of Will was 10.5.1996, the testator died on 1.6.2004 and the petition seeking probate had been filed on 21.2.2013 after nearly 9 years. It has therefore been stated that no specific explanation had been granted for the delay in filing the application seeking probate. It has been further stated that the testator was also alive for more than 8 years after the execution of the Will and during his entire life time in the said period, he did not disclose about the execution of the Will. It has been stated that all these facts create suspicions over the fair and free minded execution of the Will. It has been further stated that the testator had, on several occasions, mentioned that all his daughters would be entitled to equal shares and after his life time and after the life time of his wife. However, the Will has excluded the Defendants

from any share in the property. It has been stated that if economic reason and financial stability of the daughter are reasons, then the said reasons are equally applicable to the sons also.

7. It has also been specifically stated that the signature of the testator has been forged and fabricated. It has been further stated that the testator had executed a lease deed in favour of the Plaintiff for a portion of the property in 1995. Consequently, there was no necessity in 1996, to execute a Will appointing the Plaintiff as the executor. It has been further stated that timing of the documents creates suspicion. It has been further stated that the testator was under the undue influence of the Plaintiff and the Will was executed under such undue influence and coercion exerted by the Plaintiff. The Plaintiff as elder son was living with his parents and controlled their action. Therefore, the state of mind of the Testator had been doubted by the Defendants.

8. It has been stated that the 1st Respondent, mother of the Defendants was also under the control of the Plaintiff. It has been further stated that from 1996 to 2004, the family had met on several occasions and at no point of time, the testator revealed that he had executed a Will. It has been stated that the Plaintiff had instructed the testator not to mention about the Will. It has been that even at the time of filing the written statement, the 1st Respondent was afraid of speaking against the Plaintiff on account of her age and on account of his control over her. It has been further stated that the Will is false and therefore, the suit should be dismissed.

9. On consideration of the pleadings, this court had framed the following issues for trial:-

1. Whether the Will dated 10.5.1996 executed by the deceased, namely, B.Venugopal Naidu is true and valid?
2. Whether the suit is liable to dismissed on account of delay and for not explaining the reasons for delay?
3. To what other reliefs the Plaintiff is entitled

10. The parties were invited to adduce evidence before the Additional Master II, High Court, Madras. The Plaintiff, V.Dayalan examined himself as PW.1. Two attesting witnesses, T.Sundararaj and S.Jayapaul were examined as PW.2 and PW.3. The 3rd Defendant V.Lakshmi was examined as DW.1. The Plaintiff marked Ex.P1 to Ex.P3. Ex.P1 is the copy of death certificate of B.Venugopal, who died on 1.6.2004. Ex.P2 is the original Will executed by B.Venugopal dated 10.5.1996. Ex.P3 is the original legal heirship certificate with respect to B.Venugopal. The Defendants did not mark any document.

11. This court heard the learned counsel on either side.

12. The learned counsel for the Plaintiff took the court through the averments made in the petition and stated that the Plaintiff was under the impression that since under the Will life estate was granted to the mother, V.Thayarammal, he cannot approach the court seeking probate since his right and title opened up only on the death of the mother V.Thayarammal. However, subsequently, the mother V.Thayarammal gave her consent and after obtaining such consent, the petition for probate had been filed. According to the learned counsel, this explains the delay in filing the petition. The learned counsel also stated that the evidence as required under law, had been let in on behalf of the Plaintiff.

13. The Plaintiff had produced and marked the death certificate of

B.Venugopal and also his legal heirship certificate as Ex.P1 and Ex.P3. The Will of B.Venugopal dated 10.5.1996 had also been produced in original. There were two attesting witnesses to the Will. Both the attesting witnesses were examined as PW.2 and PW.3. All the three Plaintiff witnesses withstood cross examination. The learned counsel therefore stated that the entire requirements to prove the Will had been satisfied by the Plaintiff and consequently, stated that probate must be granted. The learned counsel also relied on several precedents, which shall be discussed in the course of the general discussion with respect to the guide lines and scope of grant of probate of the Will.

14. On the other hand, the learned counsel for the Defendants stated that the Will was dated 10.5.1996, and B.Venugopal, the testator died only 1.6.2004. For the entire 8 years subsequent to the execution of the Will, B.Venugopal had not whispered about the execution of the Will to any of the Defendants though he was in cordial terms with the Defendants. He had further stated that the Defendants each will get a share in the property, but more surprisingly even though B.Venugopal died on 1.6.2004, the application seeking probate was filed only in the year 2013 after a period of 9 years. This period of delay, according to the learned counsel for the Defendants, causes a great sense of suspicion over the bona fide nature of the Will. According to the learned counsel, the Will has been fabricated and falsely prepared. The learned counsel further stated that the affidavit of consent given by the 1st Respondent V.Thayarammal was dated 20.2.2013 whereas it was attested by Advocate Notary even on 16.2.2013. Consequently, the learned counsel stated that the affidavit of consent should be rejected by the court. The learned counsel further stated that there being suspicious circumstances surrounding the execution of the Will, the court should deny grant of probate.

15. I have carefully considered the rival arguments of the learned counsel on either side.

16. **Issues (1) and (2):-** OP.No.421 of 2013 had been filed by V.Dayalan, son of B.Venugopal. He had filed the petition under Sections 222 and 276 of the Indian Succession Act and under Order 25 Rule 4 of the Original Side Rules, seeking grant of probate of the Will dated 10.5.1996 executed by his father, B.Venugopal. The 1st Respondent was his mother, V.Thayarammal. The 2nd Respondent, V.Kasthuri, the 3rd Respondent, V.Jothi and the 5th Respondent, V.Lakshmi, were his sisters. The 4th Respondent V.Pragasam was his brother. The 1st Respondent, V.Thayarammal and the 4th Respondent V.Pragasam gave their consent for grant of probate. However, the other Respondents, who were the sisters of the Plaintiff, registered their objections by means of an affidavit and consequently, OP.No.421 of 2013 was converted into TOS.No.28 of 2014 by order of this court dated 8.8.2014.

17. The Will of B.Venugopal is dated 10.5.1996. It is a registered Will. It has been registered as Document No.57 of 1996 in the Office of the Sub Registrar, Purasawalkam. There were two witnesses to the said Will. It has also been prepared by an Advocate, R.Subramanian, who had also signed the Will. Two witnesses had also identified the testator before the Sub Registrar and had also affixed their signatures in the Will. As stated above, both the witnesses, namely, T.Sundararaj and S.Jayapaul were examined in court as PW.2 and PW.3. In the Will, the witnesses have clearly stated that the testator had signed in the presence of the witnesses and the witnesses also signed in the presence of the testator.

18. Section 63 of the Indian Succession Act is as follows:-

“63. Execution of unprivileged wills.-Every testator, not being a

soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:--

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

19. A perusal of the Will produced as Ex.P2 shows that it satisfied the conditions laid down in Section 63 of the Indian Succession Act. In the Will, it had been written as follows:-

"g;gof;F vd; KG kd rk;kjj;jpg; nghpy; fPH;f;fz;l rhl;rpfs; Kd;dpiyapy; ehd; ifbaGj;jpl;L vGjp itf;Fk; capy; rhrdk; "

s/d
B.Venugopal

@,ej capy; rhrdk; fPnH ifbaGj;jpl;l rhl;rpfs;hpa v';fs; ,Uth; Kd;dpiyapYk;. ifbaGj;J ,lg;gl;L eh';fs; rhl;rpfs;h ,ej capy; rhrdj;jpy; ifbaGj;J bra;Js;nshk; "

s/d
1. T.Sundararaj (PW.2)
2. S.Jayapaul (PW.3)

20. Section 68 of the Indian Evidence Act is as follows:-

"68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

21. Both the attesting witnesses, who are also the identifying witnesses, had been examined as PW.2 and PW.3.

22. Even though the Plaintiff had satisfied the requirements under law, the case of the Defendants will have to be examined. The Defendants have stated that the Will was said to be dated 10.5.1996, B.Venugopal Naidu, the testator died on 1.6.2004, the petition seeking grant of probate was filed on 21.2.2013 and the consent affidavit of the mother, V.Thayarammal was attested by the Advocate Notary on 16.2.2013, but is said to be dated 20.2.2013 and at the time of the said affidavit, V.Thayarammal was indisposed.

23. Pointing out the above dates, the learned senior counsel for the Defendants stated that between 1996 and 2004, the testator had not whispered about the existence of the Will. It is stated that the reason mentioned by the testator that since the Defendants were economically and financially well off, there was no necessity to grant them a share in the property, cannot be accepted since the same condition also applies to the Plaintiff and also the 4th Respondent in the OP. It has been stated that the delay in presenting the Will for nearly 9 years has not been explained and causes deep suspicion over the Will. The learned counsel further stated that the consent affidavit of V.Thayarammal has to be rejected by the court.

24. The Will is a registered will. It was registered at SRO, Purasawalkam. The date of Will is 10.5.1996. A perusal of the Will shows that the testator had stated that he is aged 78 years and is keeping good health and is of sound mental capacity. He had also stated that he is executing the Will out of his own wish and without any coercion from anybody. He had clearly stated about the details of his family, namely, his wife and two sons and three daughters. He had further stated that three daughters were living with their respective families. He had further stated that he and his wife alone were residing at No.33, Hyder Garden, 3rd Street, Chennai 600012. He further stated that he worked in B&C Mills and retired. He had no ancestral properties. With his own earnings, he had purchased plot no.7, Krishnadoss Road, Perambur Barracks, Chennai-12, for which the present address is Door No.33, Hyder Garden, 3rd Street, Chennai-12 on 8.8.1957. He had further stated that he had constructed a portion in the said plot and that the front portion of the vacant plot had been given as lease for a period of 50 years on 29.11.1995. He further stated that his three daughters were given in marriage in respectable families. Therefore, there was no necessity to grant them any share in the property. He further stated that priority should be given to live interest to his wife. However, she did not have any right to alienate or mortgage or otherwise encumber the property. He had further stated that after his wife, the property devolved to his eldest son V.Dayalan and that the back portion of the property was given to his 2nd son V.Pragasam, which was also after death of his wife. He also nominated the eldest son V.Dayalan as his executor. He also gave the schedules of the property, namely A-Schedule which was the entire extent and B-Schedule, which was the portion given to V.Dayalan and C-Schedule which was the portion given to V.Pragasam. He also gave measurements and the boundaries

of each one of the properties. Later, he finally stated that he had signed in the Will in the presence of the witnesses and the witnesses also stated that they signed in the presence of the testator. The Will had also been prepared the advocate, R.Subramanian, who also put his signature.

25. The Will had been duly presented before the Sub Registrar, Purasawalkam on 10.5.1996. The testator had fixed his left thumb impression and also put his signature. The two attesting witnesses also put their signatures as identifying witnesses. The document was duly registered as Document No.157 of 1996. Consequently, a presumption arises on the genuineness of a registered document.

26. Section 114(e) of the Indian Evidence Act is as follows:-

“114. Court may presume existence of certain facts. The court may presume the existence of any fact which it things likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.

(e) That judicial and official acts have been regularly performed;”

27. In 2002 1 CTC 244 (**Madhukar D.Shende Vs. Tarabai Aba Shedage**) in paragraph 8, the Honourable Supreme Court had held as follows:-

“8.The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of

stones of suspicion and supposition by wayfarers and waylayers.

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict — positive or negative.”

28. In 2005 1 CTC 443 SC (Sridevi and others Jayaraja Shetty and others) it was held in paragraph 14 as follows:-

“14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. DW 2, the scribe, in his testimony has categorically stated that the Will was scribed by him at the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the Will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the Will in their presence and they had signed the Will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been shown that they were in any way interested in the propounders of the Will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the scribe (DW 2) and the two attesting witnesses (DWs 3 and 4) is fully corroborated by the statement of the handwriting expert (DW 5). The Will runs into 6 pages. The testator had signed each of the 6 pages. The handwriting expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the Will are that of the testator. In our view, the Will had been duly executed.”

29. In the present case, the only suspicious circumstances given by

the Defendants are that there was non disclosure for a considerable period of

time and delay in filing the petition. They have further stated that the Defendants have been excluded from inheritance.

30. In AIR 2003 SC 3109 (**Ramabai Padmakar Patil (dead) by LRs and others Vs. Rukminibai Vishnu Vekhande and others**) in paragraph 8 it was held as under:-

“8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance, especially in a case where the bequest has been made in favour of an offspring.”

31. In 2007 11 SCC 621 (**Savithri and others Vs. Karthyayani Amma and others**) it was held as under:-

“15. The will was admittedly registered. The testator lived for seven years after execution of the will. He could change his mind; he did not. The very fact that he did not take any step for cancellation of the will is itself a factor which the Court may take into consideration for the purpose of upholding the same.”

32. In AIR 1995 SC 1684 (**Rabindra Nath Kukherjee and another Vs. Panchanan Banerjee**), in paragraph 4, it was held as below:-

“4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially.”

33. In 2008 8 MLJ 753 (**Muniammal Vs. Annadurai (deceased) and others**) this court had also in paragraph 27 had held that registration of the Will

is an additional factor to establish the genuineness of the Will.

34. In the present case, in view of the above judgements, Ex.P2, being a registered Will and since both the attesting witnesses have been examined in court and they also withstood the cross examination, the court should uphold the grant of probate.

35. The contention of the learned counsel for the Defendants that the affidavit of V.Thayarammal was dated prior to the date of attestation has also to be considered. A perusal of the affidavit shows that the Advocate, who identified and put his signature in black ink, had given the date as "20th". The date was originally blank. This affidavit was filed in court on 21.2.2013. Since in the affidavit, date was blank, the Advocate had presumably with over enthusiasm given the date. However, the notary had clearly attested it on 16.2.2013. The signature of the notary is found on both the pages of the affidavit. The seal of the notary is found and round seal is also found. The date is also given. Consequently, I hold that the affidavit can be considered and there is no reason to view it with suspicion.

36. The learned counsel for the Defendants has also relied on **2016 1 LW 577 (S.Vatsala Vs. K.S.Mohan and others)** for the proposition that the propounder must give valid reason for the delay in filing the application. In this case, the Plaintiff has stated that they were under the impression that V.Thayarammal had to give her consent and when she gave her consent, since she had a life estate, the application had been filed before the court. I find no reason to doubt such reason.

37. In **AIR 1959 SC 443 (H.Venkatachala Iyengar Vs. B.N.Thimmajamma and others)** in paragraphs 18, 19 and 20, it was held as under:-

“18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression “a person of sound mind” in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. 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.

19. 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 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.

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. “

38. It is seen from the facts and circumstances of the case that the

suspicious circumstances surrounding are only with respect to non disclosure and delay. These facts cannot by themselves be a ground to reject or deny grant of probate.

39. In the present case, the Plaintiff has proved the execution of the Will by examining PW.2 and PW.3, who are the attesting witnesses. They have clearly spoken that they saw the testator signing the Will and they signed in his presence. The requirements under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act are satisfied. The Will is also a registered Will. Consequently, a presumption can be drawn under Section 114(e) of the Indian Evidence Act.

40. It is also seen that the registered Will has also been produced before the court. The Plaintiff has satisfied the consciousness of the court that the Will was duly executed attested and that the testator had testamentary capacity. The reason for disinheriting the Defendants had also been given in the Will which reason they did not deny. It is not the case of the Defendants that they question the statement of the testator that they are financially well off. They accept that they have been given in marriage to respectable families. Consequently, I hold that the probate of the Will has to be granted.

41. In the result, this TOS is decreed as prayed for. Issue probate in favour of the Plaintiff. No costs.

30.10.2017

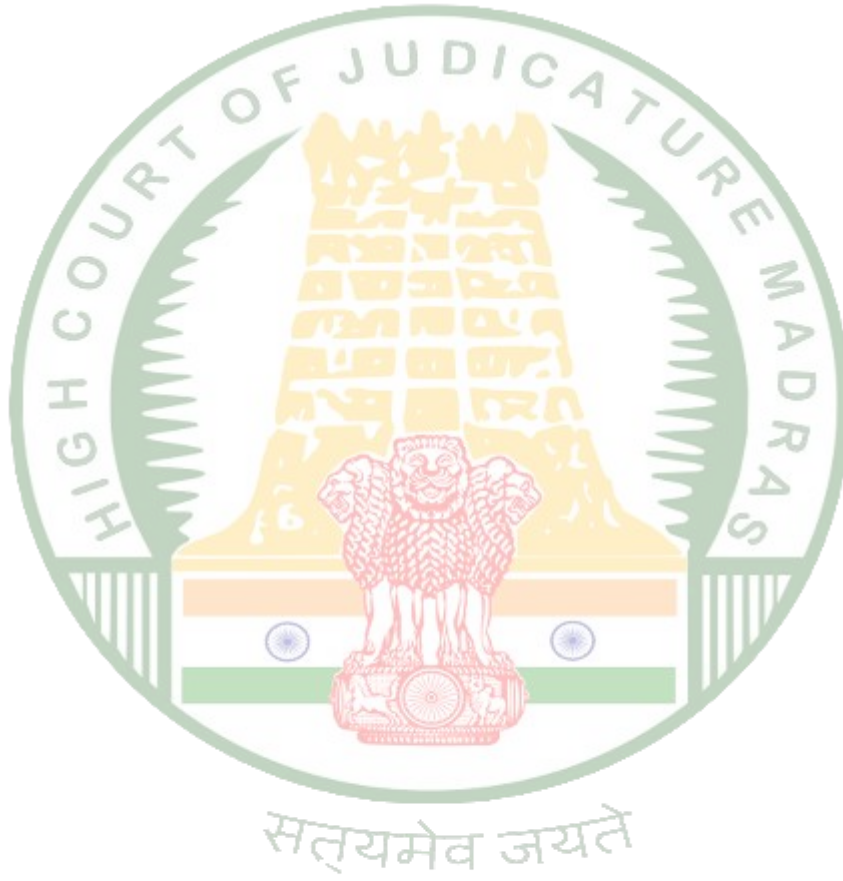
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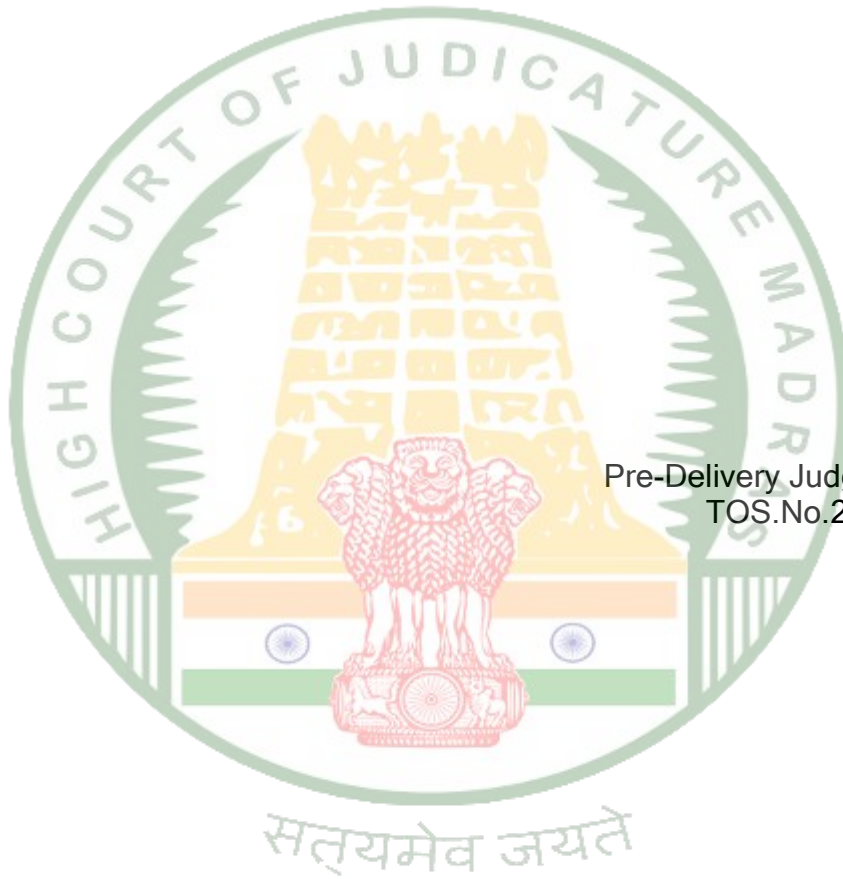
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C.V.KARTHIKEYAN, J.

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