

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.06.2017

Delivered on 27.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH

A.S.Nos.191 & 192 of 2013
and
M.P.Nos.1 & 1 of 2013

R.Kumaran ..Appellant in both the appeal/
Defendant in O.S.17/2011 and Plaintiff
in O.S.NO.111/2011

Vs.

1.L.Dhanalakshmi
2.Vasantha
3.A.Thangavel ..Respondents in A.S.191/2013/Defendants
in O.S.111/2011

1. L. Dhanalakshmi
2. Vasantha
R1 & R2 rep. by General Power
of Attorney A. Thangavel ..Respondents in AS.No.192/2013/
Plaintiff in O.S.NO.17/2011

Prayer:- Civil Miscellaneous Appeals have been filed under
Section 96 of CPC against the common judgment and decree dated
17.04.2013 passed in O.S.Nos.111 & 17 of 2011 on the file of the
learned Principal District Judge, Cuddalore.

For Appellant : Mr.D.Ravichander

For Respondents: Mr.S.Vijayakumar,
for Mr.V.Jayaprakash Narayanan

COMMON JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.)

In the present appeals, challenge is made to the common judgment and decree dated 17.04.2013 in O.S.Nos.111 & 17 of 2011 passed by the learned Principal District Judge, Cuddalore, whereby (i) partly decreeing the suit in O.S.No.111 of 2011 declaring that the plaintiff (appellant herein) is entitled for only 1/3 share in the suit properties and granting injunction against the 3rd defendant (3rd respondent herein) alone from disturbing the plaintiff's possession and enjoyment of his share in the suit property; (ii) decreeing the suit in O.S.No.17 of 2011 granting preliminary decree in favour of the plaintiff therein (respondents 1 & 2 herein) for their 2/3 share in the suit properties.

2. Since the issues involved in both the appeals are interconnected, both these appeals are disposed of by way of this common Judgment.

3. The appellant in both the appeals are one and the same person viz., R.Kumaran. Originally, he had filed a suit in O.S.No.471 of 2010 on the file of the learned Principal District Munsif Court, Cuddalore on 25.10.2010 against his sister L.Dhanlashmi (D1) and one Vasantha (D2) who is the daughter of the appellant's deceased sister Ranjitham, and also as against one A.Thangavel citing him as 3rd defendant, who is an agreement holder with the defendants 1 & 2.

4. The prayer made in the said suit viz., O.S.No.471 of 2010 reads as follows_

- (i) declaring the plaintiff's title to the suit properties
- (ii) restraining the defendants and their men and servants from alienating or in any way disturbing the plaintiff's peaceful possession and enjoyment of the suit properties by an order of permanent injunction.

When the said suit was pending before the learned Principal District Munsif, Cuddalore, the defendants 1 & 2 (respondents 1 & 2 herein - who are sister and deceased sister's daughter) filed a suit in O.S.No.17 of 2011, through their Power Agent-3rd respondent herein/3rd defendant, before the learned Principal District Judge, Cuddalore, praying for partition and separate possession of their 2/3rd share in the suit properties. Subsequent to the filing of the said suit (O.S.No.17 of 2011), the respondents 1 & 2 herein/D1 & D2 have also filed a petition to transfer the suit in O.S.No.471 of 2010 from the file of the

Principal District Munsif Court to Principal District Court at Cuddalore, to try jointly along with O.S.No.17 of 2011 and the said transfer petition was allowed; thereby, the suit in O.S.No.471 of 2010 was transferred to the Principal District Court and renumbered as O.S.No.111 of 2011. Both the said suits were tried jointly and common judgment was passed as stayed supra.

5.For the sake of convenience, hereinafter the appellant herein will be referred to as the Plaintiff and the respondents will be referred to as defendants.

6.The case of the plaintiff-R.Kumaran in the suit filed by him in O.S.No.111 of 2011 are as follows:-

6-1.The suit properties originally belonged to the plaintiff's father viz., Rajamanickam. Item No.1 of the suit schedule properties viz., Old S.No.29/3, New S.No.27/4, measuring Acre 1.95 cents, was purchased by the plaintiff's father Rajamanickam under a registered Sale Deed dated 26.07.1961. Item No.2 of the suit schedule properties viz., Old S.No.31/4, New S.No.27/4, measuring acre 1.00 cent, was purchased by the plaintiff's father Rajamanickam under the unregistered Sale Deed dated 28.07.1975. From the date of purchase, the plaintiff's father was in possession and enjoyment of the said properties and he was having patta in his name and also paying kisth. The plaintiff's father Rajamanickam executed a Will in favour of the plaintiff on 20.09.1992 while he was in a sound disposing state of mind. The said Will is true, valid, duly executed and attested and it is the last Will executed by the plaintiff's father Rajamanickam. As per the said Will, after the life time of Rajamanickam, absolute right was given to the plaintiff with regard to the suit properties. The plaintiff's father Rajamanickam died on 13.11.1992, leaving behind his wife and two daughters and a son (plaintiff). On his death, the Will dated 20.09.1992 came into effect. The plaintiff took possession of the properties on 13.11.1992. As per the contents of the Will, the plaintiff continued to be in possession of the suit properties to the knowledge of all, including the defendants. Hence, according to the plaintiff, he has got prescriptive title over the suit properties by way of adverse possession also.

6-2.While situation stood thus, the mother of the plaintiff Jagathamabal died in the year 2006, leaving behind two daughters viz., Ranjitham (deceased) and Dhanalakshmi (D1) and a son (plaintiff). The said Ranjitham and her husband died several years back, leaving behind their only daughter Vasantha (2nd defendant/2nd respondent herein). According to the plaintiff, the defendants 1 & 2, who are the sister and deceased sister's daughter, have got no share in the suit properties as

per the Will dated 20.09.1992. In fact, they were aware of the Will dated 20.09.1992 executed by the plaintiff's father Rajamanickam in favour of the plaintiff and also that the plaintiff is in possession and enjoyment of the suit properties from 13.11.1992. Hence, the defendants are estopped from disturbing the possession and enjoyment of the plaintiff in respect of the suit properties. While so, the 1st defendant, her sons and the 2nd defendant executed Power of Attorney Deeds dated 07.10.2010 & 10.11.2010, in favour of the 3rd defendant Thangavelu, who is a real-estate agent, to sell the suit properties. According to the plaintiff, neither the defendants 1 & 2 nor the 3rd defendant have no right to deal with the suit properties. Hence, the plaintiff has filed the suit to declare his right over the suit properties and for restraining the defendants from interfering with his possession and enjoyment of the suit properties.

6-3. Resisting the case of the plaintiff, a written statement was filed in O.S.No.111/2017 by the 1st defendant Dhanalakshmi, which was adopted by the 2nd defendant Vasantha. According to the defendants, the suit properties were purchased by Rajamanickam, who is the father of the plaintiff and 1st defendant and the grand-father of the 2nd defendant. The said Rajamanickam died on 13.11.1992. On the death of the said Rajamanickam, his properties devolved on his widow Jegadambal and his children in equal shares. The plaintiff's mother Jegadambal died during the year 2006 and on her death, her undivided share devolved on the plaintiff and the defendants 1 & 2. As such, the plaintiff and the defendants 1 & 2 are each entitled to 1/3rd share in the properties. So, the plaintiff cannot claim any exclusive right over the suit properties. Further, the defendants 1 & 2 specifically denied the truth and genuineness of the Will propounded by the plaintiff. The Will is fabricated by the plaintiff recently. The plaintiff was able to get obliging persons to assist him in fabricating the Will. The attestors and the scribe are parties to the forged document-Will. The plaintiff is bound to explain as to why it was decided not to register the Will. The Will appears to be unnatural. There is no reason for the testator to disinherit his daughter and grand daughter. The Will propounded by the plaintiff is not the Will of the said Rajamanickam. In fact, after the death of the said Rajamanickam, the plaintiff has been in the management of the property. The plaintiff purchased a property adjacent to Item-3 of the suit schedule properties and he sold the same to one Gunasundari and Panneerselvam. The purchasers Gunasundari & Panneerselvam found that the said property can be reached only through the property of Rajamanickam; so, the purchasers took a document from the 1st defendant and her son, styled as a Confirmation Deed on 12.12.2009 (Ex.B.5) and under the said document, the defendants

have received Rs.1,60,000/- from the purchasers towards her share in the property. Under the said document-Ex.B.5, a right of way is given to the purchasers to reach the property purchased by them through Item No.2 & 3 of the suit schedule properties. As the Item Nos.2 & 3 properties belonged to the estate of Rajamanickam, the purchasers have taken the said document-Ex.B.5 recognizing the rights of the defendants 1 & 2. Further, the 1st defendant has entered into an agreement of sale with the 3rd defendant's wife to sell her undivided interest in Items 1 to 3. On 26.06.2010, the agreement is evidenced by deed dated 26.06.2010. Similarly, the 2nd defendant has entered into an agreement of sale with the 3rd defendant's wife on 14.08.2010. That apart, the 1st defendant along with her daughters and son has executed a General Power of Attorney in favour of the 3rd defendant on 07.10.2010 in respect of her interest in the suit properties. Similarly, the 2nd defendant has also executed a power of attorney in favour of the 3rd defendant. According to the defendants, the plaintiff has fabricated the Will to defraud his sister and sister's daughter and he is not entitled to any relief of declaration and injunction. Thus, the defendants sought for dismissal of the suit.

7.As stated earlier, when the trial in O.S.No.111 of 2011 was in progress, the defendants 1 & 2 viz., Dhanalakshmi and Vasantha, through their Power Agent viz., the 3rd defendant, filed a suit in O.S.No.17 of 2011 claiming 2/3rd share in the property, praying for preliminary decree for partition and separate possession of the defendants.

8.The sum and substance of the case of the defendants in the suit filed by them viz., in O.S.No.17 of 2011, are as follows:-

The suit properties were purchased by the said Rajamanickam and he had been in possession and enjoyment of the same. He died on 13.11.1992 intestate, leaving behind the plaintiff and the defendants 1 & 2 and his wife Jegadambal, as his legal heirs. They succeeded to the estate of Rajamanickam. The 1st defendant Dhanalakshmi and elder daughter of Rajamanickam viz., Ranjitham were married even during the life time of their father Rajamanickam and they were living with their husbands. While so, the said Ranjitham and her husband died, leaving behind their only daughter Vasantha (D2) as their legal heir. The said Rajamanickam was very much attached to his daughters. After the death of Ranjitham, he was particularly affectionate towards the 2nd defendant Vasantha. After the death of Rajamanickam, the mother Jegadambal had been living either with her son or with her daughter. The properties of Rajamanickam have been in common enjoyment of the plaintiff and the defendants 1 & 2. So long as the mother Jegadambal was alive, things were very cordial. The mother Jegadambal died during the

year 2006. After the death of the mother, the defendants wanted the plaintiff to agree for an amicable division of the properties. The plaintiff, who is the male member, should have effected a division of the properties. But, the plaintiff was postponing the partition on some pretext or other. Unable to wait, the defendants 1 & 2 executed General Power of Attorney Deeds in favour of the 3rd defendant Thangavelu on 07.10.2010 and 10.11.2010 respectively. Even before the execution of Power of Attorney Deeds, the defendants 1 & 2 have entered into an agreement of sale with the 3rd defendant Thangavelu under two separate agreements dated 26.06.2010 and 14.08.2010 respectively and they had to do so, because of the non-cooperation on the part of the plaintiff in effecting the division. While so, to the shock and surprise of the defendants, they received a suit notice in respect of the suit in O.S.No.111 of 2011 filed by the plaintiff against them. In the said suit, the plaintiff is propounding the Will alleged to have been executed by the said Rajamanickam. But, the father Rajamanickam never executed any Will on 20.09.1992 or on any other date. The Will propounded by the plaintiff is a pure rank forgery. There is no reason for Rajamanickam to completely disinherit his daughter and granddaughter. There is intrinsic evidence in the document itself to show that Rajamanickam is not the author of the Will. The plaintiff with the help of obliging persons has fabricated the Will. Thus, the defendants 1 & 2 filed the suit in O.S.No.17 of 2011 for preliminary decree for partition and separate possession of their 2/3th share in the properties and for their share of future income payable by the plaintiff.

9. On the above pleadings, in O.S.No.111 of 2011 the following issues were framed by the Trial Court:-

(i) Whether the Will dated 20.09.1992 executed in favour of the plaintiff by his father is true and valid?

(ii) Whether the plaintiff is the absolute owner of the suit property?

(iii) Whether the plaintiff has prescribed title through adverse possession also over the suit property?

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

(v) To what other relief the plaintiff is entitled to?

10. In O.S.No.17 of 2011, the following issues have been framed by the Trial Court_

(1) Whether the plaintiffs (defendants herein) are in joint possession and enjoyment of the suit properties?

(2) Whether the plaintiffs (defendants herein) are entitled to 2/3 shares in the suit property?

(3) To what relief the plaintiffs (defendants herein) are entitled to?

11. The Trial Court has conducted a joint trial and common evidence was recorded. Before the Trial Court, on the side of the plaintiff, plaintiff examined himself as P.W.1, besides examining two other witnesses as P.W.2 & P.W.3 and marked 12 documents as Ex.A.1 to Ex.A.12. On the side of the defendants, 3rd defendant examined himself as D.W.1, the 1st defendant examined herself as D.W.2, besides examining one S.Rajasekar as D.W.3 and marked 14 documents as Ex.B.1 to Ex.B.14.

12. After considering both the oral and documentary evidence adduced on either side, the Trial Court has partly decreed the suit in O.S.No.111 of 2011 filed by the plaintiff by declaring that the plaintiff therein is entitled to only 1/3rd share in the suit properties and in O.S.No.17 of 2011 filed by the defendants 1 & 2, the Trial Court decreed the suit declaring that they are entitled to 2/3rd share in the suit properties, as stated supra, mainly on the ground that the Will dated 20.09.1992 said to have been executed by the father of the plaintiff is neither true nor valid and it is surrounded by suspicious circumstances. Aggrieved over the same, the present appeals have been filed by the plaintiff.

13. The learned counsel appearing for the appellant/plaintiff submitted that the suit schedule Item Nos.1 & 2 properties are self-acquired properties of his father Rajamanickam and he executed a Will in favour of the plaintiff on 20.09.1992. The said Will was marked before the Trial Court as Ex.A.4, which is duly attested by two witnesses. As per the Will (Ex.A.4), on the death of testator Rajamanickam, absolute right was given to the plaintiff. The said Rajamanickam died on 13.11.1992 and his death certificate was marked as Ex.A.3. On the death of Rajamanickam, the Will came into effect and the plaintiff became the absolute owner of the suit properties from 13.11.1992 and patta was also transferred in his name under Patta No.246 and 54, as per Ex.A.5 and Ex.A.6. Further, 'A' register in respect of the suit properties also stands in the name of the plaintiff as per Ex.A.7 & Ex.A.8. The plaintiff is paying kist in respect of the suit properties in his name from 1992 and the available kist receipts were filed and marked as Ex.A.9 to Ex.A.11. The said Rajamanickam's wife Jegadambal died in the year 2006. The defendants 1 & 2, who are none other than the plaintiff's sister and deceased sister's daughter, were also well aware of the Will (Ex.A.4) executed by Rajamanickam in favour of the plaintiff. The plaintiff's possession and enjoyment of the suit properties is also known to the defendants. While so, on the instruction

of the 3rd respondent, who is a stranger to the suit properties, by fabricating some documents, the defendants attempted to disturb the plaintiff's peaceful possession and enjoyment of the suit properties. Hence, the plaintiff has filed the suit based on the Will (Ex.A.4), for declaration of his right over the suit properties and for injunction against the defendants.

14.The learned counsel for the appellant/plaintiff would further submit that the plaintiff has proved the Will in accordance with Section 63 of the Succession Act r/w Section 68 of the Indian Evidence Act, by examining two attesting witnesses. In the cross-examination of P.Ws.1 to 3, no adverse remarks to the case of the plaintiff was brought out. But, the Trial Court, on erroneous appreciation of evidence, came to the conclusion that the Will is surrounded by suspicious circumstances and disbelieved the Will, by assigning the following reasons

a)different inks were used while preparing the Will, the Will has been prepared with particular ink for the first 22 lines, then subsequently, the next 18 lines filled with different one and thereafter, the 2nd page of the Will once again filled with the same ink.

b)the attesting witnesses are close relatives of beneficiary

c)Will came to be executed in motor-shed which is 100 meters away from home.

d)the address of the scribe has been mentioned in Will (Ex.A.4) as if No.5, Ramakrishna Nagar, Koothapakkam; whereas Ramakrishna layout was not formed in the year 1992.

Thus, on the above reasonings, the Trial Court has come to the conclusion that the Will (Ex.A.4) is surrounded by suspicious circumstances.

15.Assailing the reasonings assigned by the Trial Court, the learned counsel appearing for the appellant/plaintiff, by relying upon the judgment reported in (2005) 1 SCC 40 [Daulat Ram Vs. Sodha], submitted that as per the said dictum, the plaintiff has to prove the execution of the Will by satisfying the requirements of Section 63 of the Indian Successions Act . Once it is proved that the requirements of Section 63 of the Indian Succession Act are satisfied, the burden which rests on the propounder is discharged. Where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. But, the burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing a fraud, is on the person who alleges it to be so. So far as the present case is concerned, the plaintiff has discharged the onus of proving the

Will by examining the attesting witnesses. But, in the cross-examination, the defendants had not questioned anything with respect to the execution of the Will and had not questioned anything with respect to the genuineness of the Will. Under such circumstances, the Trial Court ought not to have proceeded with suspicious eye on the genuineness of the will. In this regard, the learned counsel for the appellant/plaintiff has also relied upon the decision reported in 2001 (3) CTC 283 [Corra Vedachalam Chetty Vs. G.Janakiraman].

16.The learned counsel appearing for the appellant/plaintiff further submitted that the alleged suspicious circumstances surrounding the Will, under which the Trial Court disbelieved the Will propounded by the plaintiff, do not appear to be suspicious circumstances surrounding the execution of the Will. One of the reasons assigned by the Trial Court to disbelieve the Will is that different inks were used while preparing the Will. In this regard, the learned counsel for the appellant/plaintiff, by relying upon the decision reported in 2005 (13) SCC 278 [Hazara Bradri Vs. Lokesh Datta Multani], submitted that mere usage of different inks will not lead to a suspicious circumstance and on that ground, the Will cannot be discarded.

17.The learned counsel for the appellant/plaintiff further submitted that another reason assigned by the Trial Court for disbelieving the Will is that the Will came to be executed in a motor-shed and not in the house. But, according to the learned counsel for the appellant/plaintiff, the said finding is erroneous as it is the specific case of the plaintiff that his father Rajamanickam was staying in the motor-shed only. In fact, the D.W.2 (1st defendant) in her cross-examination had admitted that their father Rajamaickam was staying in the motor-shed. Therefore, according to the learned counsel for the appellant/plaintiff, the said finding of the Trial Court is erroneous.

18.As regards the reason assigned by the Court below that the attesting witnesses to the Will are close relatives of the plaintiff, who is the beneficiary under the Will, it is contended by the learned counsel for the appellant/plaintiff, by relying upon the decision reported in (2007) 11 SCC 621 [Savithri Vs. Karthyayani Amma], that attestation made by the close relatives cannot be consideration as a suspicious circumstance. Further, when a circumstance is not normal or is not normally expected in a normal situation or is not expected of a normal person, then only it could be said to be of a suspicious circumstance. In the instant case, absolutely there is no specific averment in the written statement of the defendants and not even suggestion that the Will is a forged one. When that being so, the attestations made by the close

relatives cannot be taken as a suspicious circumstance at any point of time for disbelieving the Will.

19.Yet another reason assigned by the Trial Court is that the address of the scribe has been mentioned in the Will-Ex.A.4, as if scribe resided at No.5, Ramakrishna Nagar, Koothapakkam, Cuddalore, but it creates a suspicious circumstance since in the year 1992, during which year the Will was executed by the plaintiff's father, Ramakrishna Layout was not formed. In order to prove this defence, the defendants have filed Ex.B.6, which is a Sale Deed of the year 1996 executed in favour of one Valli. To co-relate Ex.B.6-Sale Deed, the defendants have also produced Ex.B.7, Encumbrance Certificate in respect of the property situated at Ramakrishna Nagar to show that one Valli has purchased a plot in the year 1996 and constructed a house, which was assigned Door No.5, after the year 1999. Thus, according to the learned counsel for the defendants, the layout was not formed in the year 1992 and it was formed only in the year 1996.

20.But, the learned counsel for the appellant/plaintiff submitted that in Ex.B.6 (Sale Deed), in the schedule of the property, no where Ramakrishna Nagar was mentioned and only survey number was mentioned. In Ex.B.7-Encumbrance Certificate, Ramakrishna Nagar was incorporated since in the application for issuance of EC submitted by the applicant, Ramakrishna Nagar was mentioned. This was admitted by D.W.3 in his evidence. Moreover, though the summon was issued to the said Valli, one Rajasekar was examined as D.W.3 to speak about Ex.B.6; therefore, the evidence of D.W.3 also liable to be rejected in toto. But, the Trial Court, without considering all these aspects, on an erroneous appreciation of evidence, has come to the conclusion that Will-Ex.A.4 is surrounded by suspicious circumstances, and decreed the suit only in part.

21.Further, the learned counsel for the appellant/plaintiff submitted that the 1st defendant as D.W.2, who is the sister of the plaintiff, has clearly admitted in her evidence that she knew nothing about the suit filed by them and she knows only D.W.3-Thangavel (3rd defendant), who is a real-estate agent; therefore, the evidence of the D.W.2 (1st defendant) would clearly show that only at the instigation of the 3rd defendant, the suit was filed by the defendants 1 & 2, since she pleaded ignorance with regard to the details of the suit. Thus, the learned counsel for the appellant/plaintiff submitted that by allowing both the appeals, the suit filed by the plaintiff should be decreed and the suit filed by the defendants 1 & 2 has to be dismissed.

22. Countering the submissions made by the learned counsel for the appellant/plaintiff, it is contended by the learned counsel for the respondents/defendants that the Trial Court by assigning cogent and convincing reasons, has come to the conclusion that Will-Ex.A.4 is surrounded by suspicious circumstances. It is an unregistered Will, marked as Ex.A.4, said to have been executed by the plaintiff's father Rajamanickam on 20.09.1992 in favour of him. The plaintiff's father Rajamaickam died on 13.11.1992. According to the plaintiff, on the death of his father Rajamaickam, Will-Ex.A.4 came into effect and he became absolute owner of the suit properties. The evidence on record would show that the plaintiff had taken an effective part in execution and attestation of the Will. When he was the beneficiary under the Will, which completely disinherited the other members of the family, he has to explain each and every suspicious circumstance and remove the cloud over the Will-Ex.A.4. First of all, the plaintiff has to explain to the satisfaction of the Court for such association in preparation of Will and getting it attested with his father-in-law and sambanthi (P.W.2 & P.W.3) and deciding not to register the Will, which is totally absent in this case.

23. Further, the learned counsel for the respondents/defendants submitted that though the plaintiff had submitted that he has proved the Will in accordance with Section 63 of Indian Succession Act r/w Section 68 of the Indian Evidence Act, by examining the attesting witnesses, the duty is cast upon him to remove the suspicious circumstances. In this case, the plaintiff has not discharged his initial burden of removing the suspicious circumstances over the Will. In this regard, the learned counsel for the respondents/defendants has also submitted that the plaintiff has taken an effective part in the execution of the Will. This suspicious circumstance gets stronger, when the other family members including the wife of the testator was completely disinherited in the Will. In support of his contention, the learned counsel for the respondents/defendants has also relied upon the decision of the Hon'ble Supreme Court reported in AIR 1959 SC 443(1) [H.Venkatachala Iyengar Vs. Thimmajama and others], wherein it has been held that if it is shown that the propounder has taken a prominent part in the execution of the Will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the Will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. In this regard, the learned counsel for the respondents/defendants has also relied upon the following decisions_

- (i) (2009) 6 MLJ 560 [Premavathi and others Vs. V.Sundararajan and others]
(ii) AIR 2007 SC 311 [B.Venkatamuni Vs. C.J.Ayodhya Ram Singh and others]
(iii) 2007(2) CTC 172 [Niranjan Umeshchandra Joshi Vs. Mridula Jyoti Rao & others]
(iv) (1982) 1 SCC 20 [Smt.Indu Bala Bose and others Vs. Manindra Chandra Bose and another].

24. The learned counsel for the respondents/defendants would further contend that the wife of the testator was not provided with any property, which is yet another suspicious circumstance. The testator completely disinherited his wife, daughter and grand-daughter and no convincing reason was stated in the Will for completely disinheriting them. Therefore, the Will is unnatural and it cannot be believed. In this regard, the learned counsel for the respondents/defendants relied upon the decision of the Hon'ble Supreme Court reported in AIR 2007 SC 311 [B.Venkatamuni Vs. C.J.Ayodhya Ram Singh and others], wherein it has been held that there may be suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property or wherein in the light of the relevant circumstance the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator's free will and mind; in all such cases where there may be legitimate suspicious circumstances, those must be reviewed and satisfactorily explained before the Will is accepted. In the instant case, no proper explanation was given by the plaintiff for disinheriting the wife and daughters by the testator; therefore, the findings rendered by the Trial Court need not be interfered with by this Court.

25. Further, the learned counsel for the respondents/defendants submitted that it has been stated that the Will was said to have been executed on 20.09.1992; however, for more than 18 years, no mutation in the revenue records has taken place. In fact, no documentary evidence was produced on the side of the plaintiff, after the death of the testator to prove that Will-Ex.A.4 was disclosed to the public, which will clearly show that the Will came into existence only after several years since the death of the testator and it is not a genuine one. The plaintiff in his deposition clearly admitted that he does not know when the Will came into effect and was made known to others. In this regard, the learned counsel for the respondents/defendants has also relied upon the decision reported in AIR 1991 Madras 214 [E.Devarajan and others Vs. E.Ramiah] and submitted that the delay aspect is relevant to test the genuineness of a Will propounded; delay in taking steps

gives rise to suspicion and the longer the delay, the stronger the suspicious.

26.The learned counsel for the respondents/defendants further relied upon the decision AIR 1990 SC 396(1) [Kalyan Singh Vs. Smt.Chhoti and others], wherein it has been held that 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, hence, the plaintiff is required to remove the suspicious circumstance by placing satisfactory material on record.

27.That apart, the learned counsel for the respondents/defendants submitted that the attestors to the Will-Ex.A.1 are only interested witnesses viz, father-in-law and in-laws (sambanthi) and they were examined as P.W.2 & P.W.3; naturally they are expected to speak in support of the plaintiff and they are only interested witnesses. Apart from P.W.2 & 3, no independent witness was examined on the side of the plaintiff to prove the execution of the Will-Ex.A.4.

28.Further, it is contended by the learned counsel for the respondents/defendants that the address of the scribe mentioned in Ex.A.4-Will is fake. The Will-Ex.A.4 is alleged to have been executed on 20.09.1992 and the scribe of the Will was not examined. The non-examination of the scribe in this case would give rise to a doubt, since the scribe has given his address as No.5, Ramakrishna Nagar, Koothappakkm, Cuddalore in the Will-Ex.A.4. During the year 1992, the layout for Ramakrishna Nagar itself had not been laid at all and initially the said place was an agriculture field and one Valli had purchased a plot in Ramakrishna Nagar on 03.10.1996 as a vacant site and the Sale Deed was marked as Ex.B.6, which would clearly speak that there is no house in the said address in the year 1992. The respondents/defendants, through the evidence of D.W.3 and Ex.B.6 to Ex.B14 (Sale Deed, house tax receipts & Electricity receipts pertaining to the said address etc), clearly proved the fact that the Ramakrishna layout was formed only in the year 1996 and a house was constructed only in the year 2000 at No.5, Ramakrishna Nagar, Koothapakkam, Cuddalore. Hence, it is clear that the attesters and the scribe are parties to the forged document-Will.

29.The learned counsel for the respondents/defendants would further contend that P.W.2 & P.W.3, attesting witnesses, had stated in their evidence that the testator was sick and could not walk properly. If he is sick and could not walk properly, how all of them proceeded from the house to motor-shed, situated 100 meters away, where the Will was prepared and attested as per the case of the plaintiff, was not properly explained. Normally

in the motor-shed the motor and its accessories would be kept. It is highly unbelievable that four persons were present in the motor-shed and that they have been involved in scrutiny of documents, writing of papers, even without any seating arrangements and table for writing, coupled with the fact that the scribe was not examined in the Court.

30.The learned counsel for the respondents/defendants would further submit that Ex.A-4-Will has been written in a particular ink for the first 22 lines. The next 18 lines have been written in a different ink in the first page of the Will. Thereafter, the reverse page of the Will has been written in the same ink as that of the first 22 lines. Thus, according to the learned counsel for the respondents/defendants, the Will has been fabricated and manipulated because while drafting the Will, if the pen did not write properly or the pen tank dried of ink resulting in the writer choosing another pen midway of the preparation of the Will, then the question shall arise as to how the writer was able to get the same ink and the pen for the 2nd page (reverse page) of the Will. Under such suspicious circumstance, non-examination of the scribe of the Will is fatal to the case of the plaintiff, when there is serious doubt about the pattern of the ink used for writing the Will and place where the alleged Will was executed and also about the health condition of the author of the Will.

31.Further, the learned counsel for the respondents/defendants submitted that the appellant/plaintiff had purchased property adjacent to Item No.3 of the suit schedule property in his name and sold his property to one Gunasundari and Panneerselvam. The purchasers found that their property can be reached only through the property of Rajamanickam (suit schedule properties). So, the purchasers negotiated with the defendants and got confirmation affidavit Ex.B-5 on 12.12.2009 for right of way to reach their property through item Nos.1 & 2 of the suit schedule property, by paying a sum of Rs.1,60,000/-, which is clinching evidence for recognizing respondents/defendants title over the suit schedule property. Considering all these aspects, the Trial Court has correctly come to the conclusion that the Will is surrounded by suspicious circumstances and accordingly, partly decreed the suit filed by the plaintiff in respect of his 1/3rd share alone and decreed the suit filed by the defendants 1 & 2 for their 2/3rd share. There is no compelling circumstances warranting this Court to reverse the said judgment and decree of the Trial Court. Thus, the learned counsel for the respondents/defendants sought for dismissal of the appeal.

32.By way of reply, the learned counsel appearing for the appellant/plaintiff submitted that the appellant had purchased the property adjacent to Item No.3 of the suit schedule property in his name and sold the same to one Gunasundari and Panneerselvam. The said property can be reached only through the suit schedule property, which was bequeathed to the plaintiff by his father by Will dated 20.09.1992. But, the purchasers of the property viz., Gunasundari & panneerselvam got a confirmation affidavit (Ex.B.5) from the defendants 1 & 2 for the right of way to reach their property through Item Nos.1 & 2 of the suit schedule property. The learned counsel for the respondents/defendants submitted that Ex.B.5 is an unregistered document and that only to project a case as if the defendants are not aware of the Will and the property was in their enjoyment, Ex.B.5 was created by them; therefore, the case of the defendants that the title of the defendants over the suit schedule properties was recognized by the third party under Ex.B.5 is not legally sustainable. Moreover, the said Gunasundari and Panneerselvam were also not examined as witnesses on the side of the defendants. In fact, the 1st defendant, who was examined as D.W.1, has admitted in his cross-examination that Ex.B.5 was prepared only after filing of the suit. Therefore, no reliance could be placed on Ex.B.5 to come to a conclusion that the plaintiff has prepared the Will.

33.With regard to the delay in carrying out the mutation, it is submitted by the learned counsel for the appellant/plaintiff that after the death of the plaintiff's father Rajamanickam, the property was only in the possession of the plaintiff, which was admitted by D.W.2 in her evidence. When the 3rd defendant started to disturb the possession of the plaintiff by obtaining Power of Attorney from the defendants 1 & 2, the plaintiff carried out mutation in the revenue records and it does not mean that the defendants are not aware of the Will.

34.Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record.

35.In view of the above submissions made on either side, the only question that falls for consideration in these appeals is as follows_

Whether the findings of the Trial Court that the Will is surrounded by suspicious circumstances is correct?"

If this question is answered, that would suffice to dispose of the issue involved in both these appeals.

36.It is admitted case that the suit schedule properties are self-acquired properties of the plaintiff's father Rajamanickam. It is the case of the plaintiff that his father Rajamanickam executed a Will (Ex.A.4) in favour of him on 20.09.1992. As per the Will-Ex.A4, on the death of his father Rajamanickam, absolute right was given to the plaintiff. The plaintiff's father Rajamanickam died on 13.11.1992 and thereafter, the Will-Ex.A.4 came into effect and the plaintiff became absolute owner of the suit schedule properties. The plaintiff's mother Jegadamabal died in the year 2006. According to the learned counsel for the appellant/plaintiff, though the defendants were aware of the Will executed by his father Rajamanickam in favour of him, the 1st defendant, who is the sister of the plaintiff, and the 2nd defendant who is the deceased sister's daughter, had executed Power of Attorney to the 3rd defendant who is a real-estate agent, authorizing him, to sell the suit properties. Since the 3rd defendant started to disturb the peaceful possession of the plaintiff, the suit was filed by the plaintiff for declaration of his title over the entire suit schedule properties, based on the Will-Ex.A.4 executed by his father Rajamaickam. But, the Will-Ex.A.4 was disputed by the defendants stating that it is fabricated by the plaintiff.

37.In order to prove the Will-Ex.A.4, the plaintiff examined himself as P.W.1, besides examining the two attestors to the Will as P.W.2 & P.W.3. According to the learned counsel for the appellant/plaintiff, the plaintiff has proved the execution of the Will in accordance with Section 63 of the Succession Act r/w Section 68 of the Indian Evidence Act. But, the Trial Court has come to the conclusion that though the execution of the Will is proved by the plaintiff, it is surrounded by suspicious circumstances. For coming to such a conclusion, the following reasons were assigned by the Trial Court—

a)address of the scribe is mentioned in the Will-Ex.A.4 as if No.5, Ramakrishna Nagar, Koothapakkam; whereas Ramakrishna layout was not formed in the year 1992.

b)different inks were used while preparing the Will. It has been prepared with particular ink for the first 22 lines, then subsequently, the next 18 lines filled with different one and thereafter, in the 2nd page, the Will once again filled with the same ink.

c)The attesting witnesses are close relatives of the beneficiary-plaintiff.

d)Will came to be executed in a motorshed which is 100 meters away from home.

"

38.One of the reasons assigned by the Trail Court for disbelieving the Will is that in the Will-Ex.A.4, address of the scribe was given as No.5, Ramakrishna Nagar, Koothapakkam, whereas Ramakrishna layout was not formed in the year 1992. In order to prove their defence, the defendants marked Ex.B.6 ie., the sale deed of the year 1996 executed in favour of one Valli, who purchased a plot in Ramakrishna Nagar, Koothapakkam, Cuddalore; and she had constructed a house in the year 1999, which was assigned Door No.5, Ramakrishna Nagar. Therefore, according to the defendants, Ramakrishna Nagar came into existence only after the year 1996.

39.But, We find from a perusal of the materials available on record, that though summon was sent to the said Valli, who had purchased the plot in Ramakrishna Nagar after the year 1996 through Ex.B.6, she was not examined as a witness; whereas one Rajasekar was examined as D.W.3 to mark and speak about Ex.B.6. But, on a perusal of Ex.B.6-Sale Deed, it could be seen that Ramakrishna Nagar was not spelt out in the said document. The description of the property mentioned in Ex.B.6-Sale Deed reads as follows_

"சொத்து விவரம் கடலூர் பதிவு மாவட்டம் கடலூர் 2 நீர் இணை சப்-ரி கடலூர் ஊராட்சி ஒன்றியம் எல்லைக்குள் பட்ட கூத்துப்பாக்கம் கிராமத்தில் பதிய சர்வே நெ.24 .2, 1.04.5 ஏர்ஸ் இதில் தென்புரம் பாதி ஏக் 1.30 செ. இதில் கீழ்புரம் ஏக்கர் 1.00, இதில் அமைந்துள்ள மனைகளில் மனை எண்.5-க்கு கீழ்க்கு மேற்கில் 60 அடி, தெற்கு வடக்கில் 30 அடி, சதுர அடி 1800 இந்த அளவுள்ள காலிமனை இதன் மூலம் கிரயம்."

In fact, the 3rd defendant, who has been examined as D.W.1, has also admitted in his cross-examination that on the basis of the contents of Ex.B.6, it cannot be said that the said document has connection with Ramakrishna Nagar. The relevant portion in the cross-examination of D.W.1 is as follows_

"நான் தாக்கல் செய்துள்ள பிவா.த.சா.ஆ.6 பத்திரத்தில் ராமகிருஷ்ணா நகர் என்று குறிப்பிடப்பட்டுள்ளதா என்றால் இல்லை. அதனால் பிவா.த.சா.ஆ.6 ஆவணத்தை வைத்து அது ராமகிருஷ்ணா நகர் தொடர்புடையது என்று கூறமுடியாது"

Since Ramakrishna Nagar could not be found in Ex.B.6-Sale Deed, the defendants chose to file Ex.B.7-Encumbrance Certificate. But, a perusal of Encumbrance Certificate (Ex.B.7) would indicate that the same is pertaining to Survey No.24/2 and the certificate doesn't bear the name of the layout. D.W.1 had enclosed the schedule of property along with Encumbrance Certificate so as to impress upon the Court as though the same pertains to Ramakrishna Nagar. But, D.W.1 in his cross-examination has admitted that in the Encumbrance Certificate, the description of the property which is mentioned by the

applicant in the application submitted to the Sub-Registrar Office, would be mentioned. The relevant portion in the evidence of D.W.1 reads as follows_

"நான் கொடுத்த விண்ணப்பத்தில் உள்ள சொத்து
விவரத்தைதான் வில்லங்கச் சான்றிதழில் இணைத்து
கொடுப்பார்கள் என்றால் சரிதான். நான் பி.வா.த.சா.ஆ.6-ஐ
பார்த்து தான் வில்லங்க மனுவை எழுதிக் கொடுத்தேன் "

Therefore, the finding rendered by the Trial Court that the fact that Ramakrishna Nagar was not in existence in the year 1992 would give rise to a suspicious circumstance, is not sustainable. If really Ramakrishna Nagar was not in existence in the year 1992, the defendants ought to have taken steps to mark the layout plan approved for Ramakrishna Nagar, which would show the exact year of formation of Ramakrishna Nagar layout. But, the defendants have not done so. In the absence of crucial document such as layout plan, by merely placing reliance on the sale deed executed between the third parties, it cannot be said that the Will is surrounded by suspicious circumstance. Further, the onus of proof of a particular fact would be on the person who pleads so. Hence, as contended by the learned counsel for the appellant/plaintiff, the defendants have not discharged their burden. Hence, the said reason assigned by the Trial Court cannot be taken as a ground to come to the conclusion that the Will is surrounded by suspicious circumstances.

40.In this regard, it would be appropriate to place a reference in the judgment relied upon by the learned counsel for the appellant/plaintiff, reported in 2001(3) CTC 283 [Corra Vedachalam Chetty Vs. G.Janakiraman], wherein the Division Bench of this Court has held as follows_

"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 in his or her last Will or as to whether he or she had

signed the same and whether the attestors had signed receiving an acknowledgement 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."

A reading of the dictum laid down in the above said judgment would show that Will should be treated like any other document and the Court should not approach the same with suspicious eye and the conduct of the person who raises the alleged ground for suspicion has to be looked into. In the instant case, the 1st defendant had adduced evidence that she was not aware of the details of the suit and she has also stated in her evidence that she does not know the reasons for filing the suit. The evidence on record would show that it is the 3rd defendant who is a real-estate agent, who entered into an agreement with the defendants 1 & 2, was conducting the case. Therefore, considering the conduct of the parties, no merit could be given to the submissions made by the learned counsel for the respondents/defendants based on Ex.B.6.

41. Further, We are of the opinion that though different inks were used while preparing the Will, the same cannot be taken as a reason to disbelieve the Will on the ground of suspicious circumstance. In this regard, a reference could be placed in the judgment reported in 2005(13) SCC 278 [Hazara Bradri Vs. Lokesh Datta Multani], wherein it has been held as follows_

"The learned Single Judge took the view that the signatures of Smt. Ram Kaur and those of Sardar Sujan Singh are in the same ink whereas the signatures of the other two attesting witnesses are in different ink. The Will cannot be disbelieved only because the testator had used a different pen than the pen used by the attesting witnesses."

42. In the decision reported in 2005 (1) SCC 40 [Daulat Ram s. Sodha], it has been held as follows—

"10. Will being a document has to be proved by primary evidence except where the Court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But, where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so.

...

13. The burden to prove that the Will dated 08.05.1983 executed by Prati in favour of his daughter was forged or was obtained by undue influence or by playing a fraud was on the appellants which they have failed to discharge.

No evidence was led by them on either of these points."

From a reading of the above said judgment, it would be seen that in order to prove the Will, the propounder has to show that the Will was signed by the testator and he put his signatures in the testament on his own free will and he was at the relevant time in a disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses, who attested it in his presence and in the presence of each other. In the instant case, by examining P.W.2 & P.W.3 (attestors to the Will), the plaintiff has discharged the onus that rests on him. In fact, the attestors, P.W.2 & 3, had cogently spoken the factum that the testator Rajamanickam had instructed to prepare the Will and on his instruction, the Will was prepared and the same was signed by the testator. But, the defendants have not chosen to question anything in the cross-examination with regard to the execution of the Will and had not questioned in respect of the genuineness of the Will. On the other hand, cross-examination of PWs was done only with regard to the address of the scribe to create a doubt/suspicion on the Will, which also miserably failed to be established by the defendants by producing any tangible evidence.

43. In this regard, it would be useful to place a reference in the judgment reported in (1982) 1 SCC 20 [Indu Bala Bose Vs. Manindra Chandra Bose], wherein it has been held by the Hon'ble Supreme Court as follows—

"7. This Court has held that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by Section 63 of the 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. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signatures 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 suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will, which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations.

8. Needless to say that any and every circumstance is not a 'suspicious' circumstance. A circumstance would be 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

44. In the decision reported in (2005) 1 SCC 280 [Meenakshiammal Vs. Chandrasekaran], the Hon'ble Supreme Court has observed as follows—

"16. We do not find any merit in this civil appeal. 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 proof of 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 it accepts the Will as genuine. Even where the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be regarding the genuineness of the signature of the testator, the condition of the testator's mind, the disposition 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 normally expect that all legitimate suspicions should be completely

removed before the document is accepted as the last Will of the testator."

The above said judgments are squarely applicable to the facts and circumstances of the present case. P.W.2 & P.W.3 had clearly and cogently spoken about the due execution of Ex.A.4-Will. There was no positive evidence on the side of the defendants to discard the genuineness of the Will. There was not even a single question or even a suggestion to P.Ws.1 to 3 in their cross-examination put forth on the side of the defendants in respect of forgery of the Will as well as with regard to the lack of testimonial capacity of the testator. In such circumstances, merely for the reasons that the plaintiff alone is the beneficiary under the Will, it cannot be said the Will is surrounded by suspicious circumstance.

45. One of the reasons assigned by the Trial Court for disbelieving the Will is that the Will came to be executed in a motor-shed and not in the house. From a careful perusal of the evidence on record, We find that it is the specific case of the plaintiff as well as the D.W.2 (1st defendant) that Rajamaickam lived in the motor-shed and the same is also just 100 metres away from home. The 1st defendant, who was examined as D.W.2, had admitted in her chief-examination that her father Rajamaickam was staying only in motor-shed. The relevant portion in the evidence of D.W.2 reads as follows

"என் தந்தை நிலத்தில் உள்ள மோட்டார் ஷெட்டிலேயே இருந்து வந்தார்."

In view of the evidence of D.W.2 (1st defendant), We are of the opinion that the execution of the Will in Motor-shed by the testator cannot be taken as one of the suspicious circumstances to disbelieve the Will.

46. Further, it was also not the case of the defendants that the signatures in the Will are not the signatures of Rajamaickam and at the time of preparing the Will, he was not in sound disposing state of mind. When that be so, the circumstances pointed out by the Trial Court cannot be taken as suspicious circumstances. As stated supra, a circumstance would be 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. But, in the instant case, the plaintiff has discharged his onus by examining the attestors to the Will as P.W.2 & P.W.3; whereas the defendants have miserably failed to establish by adducing cogent and convincing evidence that the Will is forged one.

47. Further, the Court below has disbelieved the Will on the ground that though the Will is alleged to have been executed in the year 1992, it came to public in the year 2010 only, hence,

it is found to be suspicious circumstance. But, the judgment delivered by the Hon'ble Supreme Court, which has been relied upon by the learned counsel for the appellant/plaintiff, reported in (1996) 8 SCC 624 [Sadasivam Vs. K.Dorasamy] gives a fitting answer to this issue_

"6.As regards the circumstances which have been characterized by Mr.Sibal as suspicious, the one, namely the Will seeking the light of day only in 1985 though it was executed in 1979, is really suspicious, others, like it being unregistered, there being no witness of the locality and divesting of close relations, are not so, as very often a Will is not registered and such persons are called to attest it in whom the testator has confidence, even if they be residing at some distance. Divesting of close relations being the purpose of execution of Will, this is normally not a suspicious circumstance. This apart, as submitted by Mr.Lalit, good reason existed for bequeathing the property to the respondent- the same being his having been brought up by Karuppanna. As to making the Will public in 1985, the explanation is that relationship with Marappa became strained when he filed suit O.S.No.187 of 1985, whereafter suit for probate of the Will was filed by the respondent - the same suit O.S.No.274 of 1985. the aforesaid delay cannot, in these facts, raise any suspicion. So, the Will cannot be said to be surrounded (shic shrouded) with suspicious circumstances."

Even in the instant case, keeping the dictum laid down in the said judgment, if We analyse the evidence on record, it could be seen that D.W.2 (1st defendant) had admitted in her evidence that only the plaintiff was looking after the suit properties after the demise of his father. Therefore, even the delay in bringing the Will to public cannot be taken as a ground of suspicious circumstance.

48.It is the submission of the learned counsel for the respondents/defendants that though the Will was executed in the year 1992, mutation was carried out only in the year 2010; therefore, the same could be taken as a suspicious circumstance. But, We find that, as stated supra, even according to D.W.2 (1st defendant), after the demise of their father, the plaintiff was

looking after the property for more than 18 years. Only when the 3rd defendant started to disturb the possession of the plaintiff based on the Power of Attorney executed by the defendants 1 & 2, occasion had arisen for him to carry out the mutation. Therefore, the delay in carrying out the mutation cannot be taken as a reason for disbelieving the Will.

49. Above all, as observed earlier, We find that D.W.2 (1st defendant) in her evidence had pleaded ignorance of the details of the suit and she had stated that she does not know what is the reason for filing the suit and she knows only 3rd defendant. The relevant portion in her evidence reads as follows_

"வழக்குச் கொத்துக் களின் சர்வே எண்கள் எனக்குத் தெரியாது. அதன் விஸ்தீரணம் சக்குபந்தி தெரியாது. வழக்கை யார், எதற்காக போட்டுள்ளார்கள் என்று தெரியாது. வழக்கு சம்மந்தமாக தங்கவேலு என்பவரை மட்டும்தான் தெரியும் ;

Since the 1st defendant (D.W.2) had admitted in her evidence that she was not aware of the particulars about the suit, the only conclusion that could be arrived at is that, as contended by the learned counsel for the appellant/plaintiff, the suit is filed only on the instigation of the 3rd defendant, who is a real-estate agent.

50. It is contended by the learned counsel for the respondents/defendants that in the Will, there is no provision made for wife and daughters. Since wife and daughters of the testator were not provided with any property under the Will-Ex.A.4, the same could be taken as one of the suspicious circumstances. But, We find that there is no pleadings to that effect in the written statement of the defendants. No cross-examination was made to that effect. Further, from a careful reading of the Will, We find that the testator had specifically stated that defendants 1 & 2 have no right in the property and the plaintiff has to take care of them by doing 'seervarisai' to them. So far as the wife is concerned, in the Will, no provision was made. Since no provision was made in the Will to the wife of the testator, that alone cannot be taken as a suspicious circumstance surrounding the Will, particularly when the respondents/defendants have not challenged the sound disposing state of mind of the testator at the time of execution of the will and when they have not chosen to allege that the Will was fabricated. Moreover, the properties are self-acquired properties of the testator. Therefore, non-making of any provision in the Will for the wife cannot be taken as a suspicious circumstance. Moreover, the defendants have not chosen to cross-examine P.W.1/plaintiff by showing the Will to P.W.1 with regard to the non-making of any provision for the

wife of the testator in the Will. In the cross-examination of P.W.1, no attempt was even made by the defendants with regard to the non-making of any provision for the wife of the testator, to doubt the correctness of the Will. On the other hand, it is the evidence of D.W.2 that she was not aware of the suit and what for the suit was filed.

51. Similarly, the submission made by the learned counsel for the respondents/defendants based on Ex.B.5-confirmation affidavit also cannot be accepted, because Ex.B.5 is an unregistered document. Moreover, parties to the said document namely Gunasundari & Panneerselvam were also not examined as witnesses.

52. Therefore, We are of the opinion that the plaintiff has proved the Will in accordance with Section 63 of the Succession Act r/w Section 68 of the Indian Evidence Act. The various suspicious circumstances pointed out by the Trial Court cannot be taken as suspicious circumstances, particularly when, as observed supra, the state of mind and signature of the testator were not questioned by the defendants. Further, We find that, as observed earlier, it was not even suggested to P.Ws.1 to 3 in their cross-examination that the testator lacks testimonial capacity or that the Will was not out of his free will. In the absence of such suggestion, no significance could be placed to the various circumstances pointed by the learned counsel for the respondents/defendants, to come to the conclusion that the Will is surrounded by suspicious circumstances. In this regard, it would be appropriate to place reliance in the decision of the Hon'ble supreme Court reported in (2007) 1 SCC 546 [Gurdev Kaur Vs. Kaki], wherein it has been held as follows_

"26. The appellants, aggrieved by the judgment of the Trial Court and the Appellate Court, preferred second appeal under Section 100 C.P.C. before the High Court of Punjab and Haryana.

27. The learned Single Judge of the High Court set aside the concurrent findings of facts arrived at by the Courts below predominantly on the ground that, in the normal circumstances, a prudent man would have bequeathed the property in favour of his legal heirs. However, in the present case, the testator has disinherited the plaintiffs.

28. The findings arrived at by the High Court are totally erroneous. The Court does not sit in appeal over the testator's decision. The Court's role is limited to examining whether the instrument propounded as the last Will of the deceased is or is not that by the testator and whether it is the product of the free and sound disposing mind.

29.Amar Singh D.W.1, in the examination-in-chief, did not support the case of the defendants. He was declared hostile and the counsel for the defendants sought permission to cross-examine him. In the cross-examination, he clearly stated that Bhagwan Kaur used to take care of the deceased Chanan Singh. He also stated that the deceased Chanan Singh might have executed the Will giving the entire property to his wife Bhagwan Kaur. He also stated that the deceased Chanan Singh had put his thumb mark on the Will in his presence. He also stated in his statement that the testator Chanan Singh could converse at the time of execution of the will, meaning thereby that he was in sound disposing mind at the time of execution of the will. The learned Single Judge of the High Court did not take into consideration the entire statement of Amar Singh D.W.1 in proper perspective while setting aside the concurrent findings of the Courts below. The findings of the High Court are erroneous and contrary to record.

.....

77.The High Court has clearly deviated from the settled principle of interpretation of the Will. The Court does not sit in appeal over the right or wrong of the testator's decision. The Court's role is limited to examining whether the instrument propounded as the last Will of the deceased is or is not that by the testator and whether it is the product of the free and sound disposing mind. It is only for the purpose of examining the authenticity or otherwise of the instrument propounded as the last Will, that the Court looks into the nature of the bequest. The learned Single Judge of the High Court has not even properly appreciated the context of the circumstances.

78.The contents of the Will have to be appreciated in the context of his circumstances, and not vis-à-vis the rules for intestate succession. It is only for this limited purpose that the Court examines the nature of bequest. The Court does not substitute its own opinion for what was the testator's Will or intention as manifested from a reading of the written instrument. After all, a Will is meant to be an expression of his desire and therefore, may result in disinheritance of some and grant to another. In the instant case, wife of the testator Bhagwan Kaur alone had lived with the deceased and only she had looked after him throughout his life.

The other daughters were all happily married a long time ago and in their weddings the testator had spent huge amount of money. In his own words, he had spent more than what they would have got in their respective shares out of testator's property.

79.If a Will appears on the face of it to have been duly executed and attested in accordance with the requirements of the statute, a presumption of due execution and attestation applies."

The dictum laid down in the above judgment would apply to the present facts of the case also. In the instant case, when the execution of the Will is proved, in the absence of any question in the cross-examination of P.Ws.1 to 3 challenging the sound disposing state of mind as well as the free will of the testator in signing the Will, no significance could be attached to the various circumstances pointed out by the learned counsel for the respondents/defendant to arrive at a conclusion that the Will is surrounded by suspicious circumstances. When that being so, the Trial Court cannot sit as an appellate authority over the decision of the testator. Whereas in the instant case, without considering this vital aspect, the Trial Court came to an erroneous conclusion that the Will is surrounded by suspicious circumstances. Therefore, the judgment and decree passed by the Trial Court in respect of rejecting the claim of the plaintiff on erroneous finding that the Will is surrounded by suspicious circumstances, are liable to be set aside.

Hence, for the foregoing reasons, both the appeals deserve to be allowed and accordingly, the same are allowed as prayed for. Consequently, the suit filed by the plaintiff viz., O.S.No.111 of 2011 is decreed as prayed for and the suit filed by the defendants 1 & 2 viz., O.S.17 of 2011 is dismissed. Connected Miscellaneous Petitions are closed. No costs

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

SSV

To,

The Principal District Judge, Cuddalore.

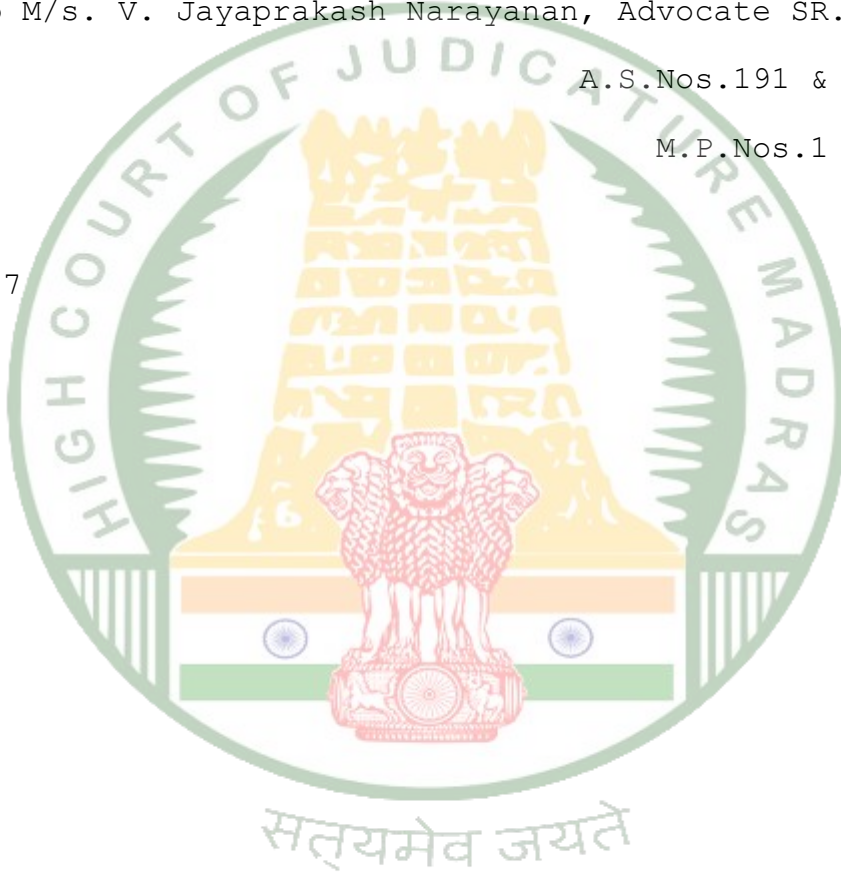
Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to M/s. D. Ravichander, Advocate SR.53201

+ 4 ccs to M/s. V. Jayaprakash Narayanan, Advocate SR.53807

A.S.Nos.191 & 192 of 2013
and
M.P.Nos.1 & 1 of 2013

MP (CO)
EU 19.09.17



WEB COPY