

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

T.O.S.No. 35 of 2008AndTr.C.S.No. 892 of 2009AndA.No. 1240 of 2010T.O.S.No. 35 of 2008

S.Viswanathan

... Petitioner

Vs.

1. S.Rajalakshmi

2. N.Ranganayaki

... Respondents

PRAYER : This Testamentary and Original Suit filed under Section 222 and 276 of the Indian Succession Act read with Order XXV of the O.S Rule 4, praying to allow the petitioner to prove the Will in common form, and that probate thereof to have limited effect to the State of Tamilnadu, may be granted to him and such other order or others that may deem fit, proper and necessary under the circumstances of the case and render justice.

Tr.C.S.No. 892 of 2009

Mrs.Ranganayaki

... Plaintiff

Vs.

1. Mrs.S.Rajalakshmi

2. Mr.S.Viswanathan

3. Mr.S.Krishnaswamy ... Defendants

PRAYER : This Transfer Civil Suit filed under Order VII Rule 1 to 6 CPC, praying for a Judgment and Decree in favour of the plaintiff as follows:-

(a) for declaration declaring that the plaintiff is a legal heir of her deceased sister Dr.Jayam in order to succeed her properties equally with her another sister viz., the first defendant.

(b) for permanent injunction restraining the defendants and their men, agents or any other persons claiming through them from any way dealing with or encumber the suit properties in Schedule A and B;

(c) to pay the cost of this suit to the plaintiff by the defendants.

A.No. 1240 of 2010:-

This application has been filed by the plaintiff in Tr.C.S.No. 892 of 2009 to amend the plaint.

For Plaintiff in T.O.S.No. 35/2008
& defendants in Tr.C.S.No. 892/2009
& respondent in A.No. 1240 of 2010 : Mr. Bijai Sundar

For plaintiff in Tr.C.S.No. 892/2009
& respondents in T.O.S.No. 35/2008
& petitioner in A.No. 1240 of 2010 : Mr.V.Anand

COMMON JUDGMENT

T.O.S.No. 395 of 2008 was originally filed as O.P.No. 290 of 2008 seeking, probate of the Will dated 05.01.2008 said to have been executed by Dr.S.Jayam, who died on 05.01.2008. The petitioner in the Original Petition, S.Visawanathan was appointed as executor under the said Will. The first respondent in the Original Petition was S.Rajalakshmi and the second respondent was N.Ranganayaki. It must be mentioned that S.Rajalakshmi, N.Ranganayaki and the deceased Dr.S.Jayam are sisters. Subsequently, N.Ranganayaki objected to grant of probate and by order of this Court, O.P.No. 290 of 2008 was converted to T.O.S.No. 35 of 2008.

2. Tr.C.S.No. 892 of 2009 was originally filed as O.S.No. 1310 of 2008 before the City Civil Court, Chennai. The plaintiff in the said suit was

N.Ranganayaki. The first defendant was Mrs. Rajalakshmi, the second defendant was S.Viswanathan and the third defendant was S.Krishnaswamy. The said suit had been filed seeking declaration that the plaintiff was the legal heir of her deceased sister Dr.S.Jayam to succeed to the properties equally with the first defendant and for permanent injunction restraining the defendants or anybody from dealing with or encumbering the suit properties and for costs of the suit. A.No. 1240 of 2010 had been filed seeking amendment of the plaint.

3. In the said suit, written statement had been filed by the second defendant which was adopted by the first and third defendants. Issues were also framed. At that stage, this Court had directed by order dated 20.08.2009 in A.No. 6774 of 2009. That O.S.No. 11310 of 2008 is to be transferred to the file of the High Court to be tried along with T.O.S.No. 35 of 2008. The said suit was transferred and renumbered as Tr.C.S.No. 892 of 2009.

Background Facts:-

4. The entire issue revolves around the family of late K.V.Sankaran, Senior Advocate of much renown. His wife was S.Rajalakshmi, who are the first respondent in O.P.No. 290 of 2008 and also the first defendant in Tr.C.S.No. 892

of 2009. They had two sons, namely S.Viswanathan and S.Krishnaswamy, who were the second and third defendants in Tr.C.S.No. 892 of 2009. For reasons which are not germane to this proceedings, S.Rajalakshmi left the companionship of K.V.Sankaran and resided separately. Thereafter, her younger sister Dr.S.Jayam started to live with K.V.Sankaran and took care of the two sons, namely S.Viswanathan and S.Krishnaswamy and brought them up as her own sons. S.Rajalakshmi did not have any contact subsequently with K.V.Sankaran.

5. K.V.Sankaran and Dr.S.Jayam had both jointly founded Sashisanatha Education and Charitable Trust which was a Public Charitable Trust. They also had purchased several properties. K.V.Sankaran subsequently died. Dr.S.Jayam continued to live with the two sons S.Viswanathan and S.Krishnaswamy. The Will which is the subject matter of T.O.S.No. 35 of 2008 was said to have been executed by Dr.S.Jayam on 05.01.2008. S.Rajalakshmi did not oppose grant of probate. The executor was one of her son S.Viswanathan. However N.Ranganayaki had opposed grant of probate and consequently, the Original Petition had to be converted as Testamentary and Original suit.

Pleadings in T.O.S.No. 35 of 2008:-

6. The plaintiff S.Viswanathan stated that the testatrix Dr.S.Jayam was a renowned Doctor and Philanthropist at Chennai. She died on 05.01.2008 at Cancer Institute (WIA), Adyar, Chennai. She was suffering from cancer. She had immovable properties which included:-

(a) undivided half share in 1/4th undivided share in 1.67 grounds in plot No. 69, Old Door No. 37, New No. 68, Rukmani Road, Kalakshethra Colony, Besant Nagar, Chennai - 600 090 along with the residential flat therein in the ground floor at Annapoorna flats;

(b) House ground and premises bearing Old Door No. 31, New No.1, First Main Road, Kamarajnagar West, Thiruvanmiyur, Chennai - 600 041;

(c) Vacant Plot No. 7, at Karadipatti Village, Palkalai Nagar (E) Madurai - 625 021, in survey No. 12A/5A of an extent measuring 2778. 3/4 sq.ft.,

(d) vacant plot at Karadipatti Village, Palkalai Nagar (E) Madurai - 625 021, in survey No. 12A/4A of an extent measuring 4447 sq.ft.,

She also included movables which included:-

(i) Hyundai Varna XI car bearing Registration No. TN07AL7151;

(ii) Fixed Deposit at ICICI Bank bearing F.D.No. 2394046 at Besant Nagar Branch, Chennai;

(iii) Mediclaim Policy No. 411200/2007/49496 from Medicare TPA Services (I) Pvt. Ltd., No. 6.Bishop Lefroy Road, Kolkatta - 700 020.

7. In the petition it was stated that the sister of Dr.S.Jayam, by name S.Rajalakshmi was married to late K.V.Sankaran, a Senior Lawyer, practicing in Madras High Court and they had two sons, namely, S.Viswanathan, who was the plaintiff and S.Krishnaswamy. In 1996, K.V.Sankaran and S.Rajalakshmi separated. From that time, the testatrix Dr.S.Jayam started to live with K.V.Sankaran. The two sons were of tender age and K.V.Sankaran and Dr.S.Jayam gave them good education and conducted their marriages. Dr.S.Jayam also lived in the same house and participated in all family functions and festivals. K.V.Sankaran also financially supported Dr.S.Jayam in her higher education. She did not marry anybody else. She lived with K.V.Sankaran.

Because of this fact, they were both ostracized by family members.

8. Dr.S.Jayam suffered from cancer and she executed a Will dated 02.01.2008 when she was in the Cancer Institute for treatment. On 05.01.2008 she made a slight modification and executed another Will at 7 a.m. It was claimed that the said Will was her last and final Will. On the same day, at 2.50 p.m., she died at Cancer Institute.

9. In the said Will, the plaintiff S.Viswanathan was appointed as Executor. He was also appointed as the Managing Trustee of Sahishnatha Educational and Charitable Trust and Perinatal Research Foundation. The defendant in T.O.S., namely N.Ranganayaki had issued a notice dated 11.01.2008 stating that the plaintiff and her brother had taken illegal possession of the properties. She was then informed that Dr.S.Jayam had left a Will. Subsequently, O.P.No. 290 of 2008 was filed seeking grant of probate and as stated above it was subsequently converted as T.O.S.No. 35 of 2008.

10. N.Ranganayaki filed her written statement. She admitted the relationships. According to her, she, S.Rajalakshmi, Dr.S.Jayam, Viswanathan and Rangarajan were children of S.Muthulakshmi and Subramanian. The parents

died and the two brothers also died as bachelors. It was stated that Dr.S.Jayam died a spinster. Accordingly, it was claimed that she and her another sister S.Rajalakshmi were the only surviving legal heirs of Dr.S.Jayam. It was stated that Dr.S.Jayam was suffering from cancer for a long period of time and she lost her normal state of mind. It was stated that it was therefore improbable that she would have executed a Will on 02.01.2008 and another Will on 05.01.2008 just 7 hours before her death. It was specifically stated that both the Wills were not true and were not genuine. It was further stated that the plaintiff and his associates had created the Wills with an intention to grab the properties. It was stated that S.Rajalakshmi had married K.V.Sankaran and had two sons, namely, Viswanathan and Krishnaswamy. But it was denied that S.Rajalakshmi and K.V.Sankaran separated. It was also denied that Dr.S.Jayam came to live with K.V.Sankaran. It was specifically denied that Dr.S.Jayam had a live-in relationship with K.V.Sankaran. It had been stated that the death certificate of Dr.S.Jayam had been produced by giving false information. It had been specifically stated that the Wills could not have been executed since Dr.S.Jayam was not in a normal state of mind. It was further stated that she had filed O.S.No. 1310 of 2008 on the file of the Second Assistant City Civil Court, Chennai. It was stated that the plaintiff had filed the Testamentary and Original Suit with an intention to grab the properties.

11. The plaintiff, S.Viswanathan filed reply statement. He stated that the defendant had claimed a share in the properties even without waiting for the 13 day ceremonies to get over. It was further stated that Dr.S.Jayam did not have any contact with the defendant for over 40 years. The defendant was shown as respondent only because she was a sister of the deceased. It was specifically stated that the Will was executed when Dr.S.Jayam had completed control of her mental senses. It was further stated that there was always a team of Doctors and physicians by her side during her last days. It was further stated that she also attended a National Neonatology Conference in Pune in December 2007. It was specifically denied that the Will was fabricated. It was specifically denied that the plaintiff had intention to grab the properties. It was further stated that K.V.Sankaran and S.Rajalakshmi separated in 1966. S.Rajalakshmi stayed with her parents. It was further stated that Dr.S.Jayam brought up the plaintiff and his brother Krishnaswamy like a mother. She stayed with K.V.Sankaran for over 30 years. It was further stated that both the Wills had been executed at a time when she was of sound mental condition. She had requested A.U.Elango, an Advocate to draft the Will. He was a close associate of K.V.Sankaran. He received instructions and prepared the first Will and subsequently, on obtaining further instructions prepared the second Will. He also had safe custody of both the Wills.

It had been stated that the plaintiff was a Chartered Accountant and his brother was a Senior Faculty at Madurai Kamaraj University. The attesting witnesses were all Doctors and were closely associated with Dr.S.Jayam. The two trusts mentioned in the Wills were public trusts. It was further stated that the defendant, her husband and her daughter and son-in-law came to the funeral after seeing the obituary of Dr.S.Jayam in the English daily Hindu and created a ruckus. They were prevented from obstructing the funeral. They tried to remove the ashes by misrepresenting themselves with the staff at cremation ground. They also created a scene in the Besant Nagar house in front of neighbours. The defendant issued a legal notice even before the 13th day ceremony. She also distributed notices during a condolence meeting held on Vijaya Hospital. It had been stated that the defendant suppressed the fact of the Will and filed O.S.No. 1310 of 2008. It had been stated that the defence should be struck of.

12. The defendant filed an additional written statement stating that the plaintiff and his brother and their families had controlled Dr.S.Jayam. They had threatened and had prevented the defendant from visiting and meeting Dr.S.Jayam. It had been stated that she and Dr.Jayam always maintained cordial relationship.

13. The defendant also denied the averments in the reply statement. She stated that A.U.Elango had not disclosed himself as a person, who drafted the Will. She reiterated that the mental condition of Dr.S.Jayam prevented her from executing the Will out of free consent. She stated that the Court should dismiss the Testamentary and Original Suit.

Pleadings in Tr.C.S.No. 892 of 2009:-

14. This suit, as stated above had been filed by Ranganayaki against her sister Rajalakshmi and S.Viswanathan and S.Krishnaswamy. It had been stated in the plaint that Dr.S.Jayam died intestate on 05.01.2008. The plaintiff claimed that she and the first defendant alone were the legal heirs of Dr.S.Jayam. It had been stated in the plaint that the second and third defendants had taken possession of the suit property. It had been further stated that they had also taken possession of the movable items. It had therefore been stated that the suit had been filed for a declaration that she is a legal heir of the deceased sister Dr.S.Jayam and for permanent injunction against the defendants from dealing with

or encumbering the suit properties.

15 . A written statement had been filed denying the allegations that the defendants were attempting to grab the suit properties of Dr.S.Jayam. It had been stated that Dr.S.Jayam looked after the second and third defendants as their mother after the first defendant had separated herself from her husband K.V.Sankaran. Dr.S.Jayam resided along with K.V.Sankaran from 1966. It had been stated that Dr.S.Jayam executed a Will on 02.01.2008 and another Will on 05.01.2008. She died on 05.01.2008 at Cancer Institute. It had been further stated that the plaintiff had issued a legal notice on 11.01.2008, and a reply was given on 30.01.2008, in which it was mentioned that Dr.S.Jayam left a Will and that fact had been suppressed in the plaint. It had been stated that the plaintiff and her family had created a ruckus during the funeral of Dr.S.Jayam. It had been stated that the plaint should be dismissed.

16. Issues framed in T.O.S.No. 35 of 2008:-

On considering the pleadings and the submissions of the learned counsels, this Court had framed the following issues for consideration:-

(i) Whether the Will dated 05.01.2008 was executed by Testatrix in a sound and disposal state of mind in the presence of attesting witnesses and is it valid, genuine and last testament of the Testatrix?

(ii) Whether the Will dated 05.01.2008 is a forged one?

(iii) Whether the plaintiff is entitled for grant of probate as sought for?

(iv) To what relief the plaintiff is entitled for?

17. Issues framed in Tr.C.S.No. 892 of 2009 (O.S.No. 11310 of 2008) by the Second Assistant City Civil Court, Chennai:-

The following issues had been framed:-

(a) Is the frame of the suit with reference to the relief asked for defective?;

(b) Is the plaintiff entitled to the declaration of her heirship and prohibiting injunction?

(c) Is the Will dated January 05, 2008 which D2 pleads true and

enforceable?;

(d) What's this Court's decree in the suit? What are its terms?

A.No. 6774 of 2009:

18. By order dated 20.08.2009 in A.No. 6774 of 2009 in T.O.S.No. 35 of 2008, this Court had transferred of O.S.No. 11310 of 2008 to the file of the High Court. Accordingly, the said suit was transferred and renumbered as Tr.C.S.No. 892 of 2009. Joint trial was ordered in both the suits.

Trial proceedings in T.O.S.No. 35 of 2008 and Tr.C.S.No. 892 of 2009:-

19. The plaintiff in T.O.S.No. 35 of 2008, S.Viswanathan was examined as PW-1. The attesting witness Dr.V.Seetha was examined as P.W.2. The Advocate, who had taken instructions to draft the Will A.U.Elango, was examined as P.W.3. An independent witness R.Senguttuvan was examined as P.W.4. Dr.V.Sridevi, who gave treatment. Dr.S.Jayam was examined as CW1. Incidentally she also attested the Will of Dr.S.Jayam.

20 . The defendant did not gray the witness box. She did not examine any witness.

21 . The plaintiff marked Exs. P-1 to P-35. The defendant, during cross examination, marked Exs. D1 and D2. During trial, Ex. X1 and C1 were also marked. Among the documents marked on behalf of the plaintiff, Ex. P1, Ex.P2 and Ex. P3 were marriage invitation cards. Ex.P4 was a certified copy of marriage extract. Ex. P5 was a copy of passport of S.Krishnaswamy. Ex.P7 was the nomination for NSC obtained from postal department. Ex.P8 was the copy of sale deed dated 13.3.2002. Ex.P12 was the passport of Dr.S.Jayam and Ex.P13 was the passbook of the account in Canara Bank. Ex.P14 was the Indian Bank CD (Income Tax) Scheme 1974 of Dr.S.Jayam and K.V.Sankaran. Ex.P15 and P-16 were the original birthday cards sent by Dr.S.Jayam. Ex.P20 was the copy of sale deed in favour of Dr.S.Jayam. Ex.P21 was the copy of pan card of Dr.S.Jayam. Ex.P24 were series of photographs from the family album. Ex.P25 was the original Will dated 02.01.2008 and Ex.P26 was the original Will dated 05.01.2008. Ex.P28 was the death certificate of Dr.S.Jayam. The notice and reply notice were marked as Ex.P27 and P29. Ex.P30 series was the original medical summary from Cancer Institute with enclosures.

22. Ex.D1 was the copy of a descriptive role and Ex.D2 was a letter addressed to Pension Officer, Chennai.

23 . Ex. X1 was a letter pad of Government of India project.

24 . Ex. C1 series was the original bed side chart at Cancer Institute of Dr.S.Jayam for the period from 26.12.2007 to 05.01.2008.

25. Since examination of the issues in T.O.S.No. 35 of 2008 will determine the issues framed in Tr.C.S.No. 892 of 2009, the issues in T.O.S.No. 35 of 2008 were addressed during the arguments advanced by the learned counsels. For sake of convenience, the parties are referred according to their nomenclature in T.O.S.No. 35 of 2008.

26. Heard the arguments advanced by Mr.S.Bijai Sundar, the learned counsel for the plaintiff and Mr.V.Anand, the learned counsel for the defendant.

27. Mr.Bijai Sundar, the learned counsel for the plaintiff took the Court through the pleadings and the Exhibits marked during trial. According to the learned counsel, K.V.Sankaran was a renowned Senior Advocate practicing in Madras High Court. His wife was S.Rajalakshmi, who was the elder sister of the deceased Dr.S.Jayam. They had two sons, namely, Krishnaswamy and S.Viswanathan. S.Viswanathan is the plaintiff in T.O.S.No. 35 of 2008.

28 . According to the learned counsel, in 1966 K.V.Sankaran and S.Rajalakshmi had differences of opinion and S.Rajalakshmi separated herself from the marital house and began to live with her parents. Her younger sister Dr.S.Jayam then started to live with K.V.Sankaran. She brought up the two children, who were very young, as a mother. K.V.Sankaran also provided for her higher medical education. Dr.S.Jayam became a very prominent medical professional in Chennai. Her client all included persons of high eminence in Chennai. She was able to purchase the properties mentioned in the schedule in the Will. Since she started to live with K.V.Sankaran, all relatives ostracized both of them. The defendant N.Ranganayaki did not have any contact with Dr.S.Jayam or with K.V.Sankaran for nearly 30 years. Dr.S.Jayam conducted the marriage of the plaintiff and his brother along with K.V.Sankaran. She was shown as their mother in the invitation cards. In all documents, she was shown as the mother of

the plaintiff and his brother. Unfortunately, after the death of K.V.Sankaran, she was afflicted with cancer. She took treatment in Cancer Institute, Chennai. PW2 Dr.V.Seetha was always with her during her treatment. Even CW1 Dr.V.Sridevi was always with her. They were her close associates. They provided her comfort. They were the attesting witnesses to the two Wills. She executed the first Will on 02.01.2008. She gave instructions to A.U.Elango, Advocate, who was an associate of K.V.Sankaran. Subsequently, A.U.Elango prepared the Will. He then brought back the Will to Dr.S.Jayam, who made certain modifications. The second Will was therefore prepared on 05.01.2008. It was signed by her at 7.00 a.m. PW-1 and CW1 attested it. This fact establishes that she was of good mental health. She then died at 2.50 p.m. She had complete control over her mental status at the time of execution of the Will.

29. With respect to the conduct of the defendant, the learned counsel stated that the defendant did not have any contact with the family for 30 years. After seeing the obituary of Dr.S.Jayam in The Hindu, she came to the house along with her family and created a ruckus. She tried to obstruct the funeral. This was prevented. She along with her daughter however grabbed the ashes and tried to immerse it. This was also prevented. Even before the 13 day ceremonies

could get over, she issued a legal notice. It was informed in the reply notice that a Will is available. She however, suppressed the fact of the Will and filed the suit in the City Civil Court. It was argued that the Will having been duly executed in the manner known to law and proved during trial by the evidence of the attesting witness and also by the evidence of the Advocate who prepared the Will, that the Will had been proved in the manner known to law. It was further stated that CW-1 Dr.V.Sridevi also produced the entire medical records and it was pointed out that at that time when the Will was executed, Dr.S.Jayam had complete control of her mental status. The learned counsel therefore stated that probate must be granted and the suit must be dismissed.

30. On the other hand, Mr.V.Anand, learned counsel for the defendant, denied that there was a live in relationship by Dr.S.Jayam with K.V.Sankaran. According to him, the defendant had continuous cordial relationship with Dr.S.Jayam. The counsel also brought to the notice of this Court, the mental condition and the physical ailment of Dr.S.Jayam. She was under the total control of the plaintiff, his brother and their families. She suffered from cancer. They controlled her every movement. They prevented the defendant from visiting her or even from contacting her.

31. The learned counsel also pointed out Ex. C1 and stated that it is only a bed side report of the condition which will be noted by the Doctor only at the time when he/she comes on rounds to visit the patients. At that particular point of time, the patient will always be freshed up to give a good impression before the Doctor. Therefore, Ex.C1 cannot be conclusive proof that Dr.S.Jayam was of sound mental status with ability to execute the Will, particularly on 05.01.2008. The learned counsel also relied on the MERCK Manual to substantiate his point that the illness which afflicted Dr.S.Jayam was very serious and she could not have the mental capacity to dictate and execute a Will on the very day she died.

32. The learned counsel stated that the Will was false, fabricated and forged. The only intention was to grab the properties. The counsel stated that the suspicious circumstances have not to be erased away by the plaintiff and therefore, the Will must not be given any stamp of approval by the Court. The learned counsel stated that the Testamentary and Original Suit must be dismissed and Tr.C.S.No. 892 of 2009 must be decreed.

33 . I have carefully considered the pleadings, oral and documentary evidence and the arguments put forward.

Issue No. 1 & 2 in T.O.S.No. 35 of 2008 and Issue No. (c) in Tr.C.S.No. 890 of 2009:

34. O.P.No.290 of 2008 had been filed by the petitioner S.Viswanathan in his capacity as Executor of the Will of Late Dr.S.Jayam, who died on 05.01.2008. The petitioner sought probate of the Will dated 05.01.2008. In the Original Petition, he had shown S.Rajalakshmi and N.Ranganayaki as respondents. They are the sisters of Dr.S.Jayam, the testatrix. N.Ranganayaki filed an affidavit opposing grant of probate and consequently, O.P.No. 290 of 2008 was converted into T.O.s.No. 35 of 2008. N.Ranganayaki also filed written statement and further pleadings were filed by both S.Viswanathan the plaintiff and N.Ranganayaki the defendant.

35. K.V.Sankaran was a Senior Advocate, practising in the Madras High Court. His wife was his S.Rajalakshmi, the first respondent in O.P.No. 290 of 2008. Sometime in the year 1966, they had differences and S.Rajalakshmi separated and began to live independently. They had two sons, S.Viswanathan the plaintiff in T.O.S.No. 35 of 2008 and S.Krishnaswamy. Subsequent to the

separation of S.Rajalakshmi, her younger sister Dr.S.Jayam started to live with K.Sankaran. She looked after the two children, who were of tender age at that particular point of time. N.Ranganayaki was another sister of S.Rajalakshmi and Dr.S.Jayam. During her life time, Dr.S.Jayam treated the sons of K.V.Sankaran and her sister S.Rajalakshmi as her own children. Documents have been filed in Court and which shall be described in more detail describing her as mother in several official and other family documents. Dr.S.Jayam became a famous medical practitioner with exclusive clientele. She and K.V.Sankaran also formed Charitable Trusts. She also purchased properties. After death of K.V.Sankaran, her relationship with his sons continued and according to the plaintiff, she was looked after by the plaintiff and his brother in her last days. She was however afflicted with cancer and died on 05.01.2008. She took treatment in Cancer Institute at Adayar and being a medical professional was aware of the nature the affliction and its seriousness. On record are two Wills, one dated 02.01.2008 and another dated 05.01.2008. She died on 05.01.2008.

36. The documents on record shall reflect her closeness to the plaintiff and his brother. The documents have not been challenged during cross examination.

37 . Ex.P-1 is the reception invitation of Viswanathan (the son of K.V.Sanakaran) with Geetha and it was issued in the names of Sarvasri Dr.S.Jayam and K.V.Sankaran, Advocate Madras. The RSVP address was given as No.4, Wheatcrofts Road, Madras - 600 034, which was the address of Dr.S.Jayam. Ex.P-2 is the invitation for the marriage between S.Krishnaswamy, the son of K.V.Sankaran. It was held on 18.06.1990. However in the invitation, it was shown that வழக்குறைஞன் K.V. சங்கரன், டாக்டர் ஜெயம் M.D., D.C.H., as the invitees on the side of bridegroom S.Krishnaswamy. The address given was 31, First Main Road, West Kamaraj Nagar, Madras - 41, which was the residential address of K.V.Sankaran. Ex.P-3 is the marriage invitation of Dr.S.Krishnaswamy and Dr.R.Usha and Dr.S.Krishnaswamy was described as "(S/o. Dr.S.Jayam and Sri K.V.Sankaran)". The address again given was 31, First Main Road, West Kamaraj Nagar, Madras - 41 which is the address of Dr.S.Jayam as found in the passport Ex.P-12. Ex.P-4 is the marriage registration extract of S.Krishnaswamy and his father's name was given as K.V.Sankaran and mother's name was given as S.Jayam. Ex.P-5 is the passport of Krishnaswamy and even in that his father's name was given as Sankaran and mother's name was given as Jayam. Ex.P-6 is the extract of Alumni meeting of Madurai Medical College. Dr.Jeyam Subramanian's spouse name was given as Nil, but the names

of her Children were given as Mr.Viswanathan, MCA MBA and Mr.Krishnaswamy. They are the sons of K.V.Sankaran. Ex.P-7 is the nomination for National Saving Certificate issued by the Department of Posts, India in the name of Dr.S.Jayam and she had nominated Dr.Krishnaswamy describing him as her son. Ex.P-8 is the sale deed dated 30.03.2002 in favour of Dr.S.Jayam and Dr.S.Krishnaswamy, who was represented by his power of attorney Dr.S.Jayam. Ex.P-10 is a certificate issued by Peerless General Finance and Instrument Company Limited in the name of M/s. Dr.S.Jayam and the nominee was given as Mr.Krishnaswamy aged 23, son. Ex.P-11 is the driving motor license of K.V.Sankaran. Ex.P-14 is the Indian Bank CD (Income) Scheme 1974 of Dr.S.Jayam and K.V.Sankaran dated 12.03.1977 and their address had been given as No.8, Lynwood Avenue, Nungambakkam, Madras - 34. Ex.P-15 is a letter dated 18.06 .2002 in the handwriting of Dr.S.Jayam to Aswin in which she had described herself as "Patty", namely, grandmother. Similarly, Ex.P-16 dated 19.06.2006 is the birth day card sent by Dr.S.Jayam to Aswin again describing herself as Patti. Ex.P-17 dated 28.12.2007 is Oriental Medi Claim Insurance Policy of Dr.S.Jayam in which the nominee was given as Dr.Krishnaswamy, son. Ex.P-18 is the extract of the passbook of State Bank of India dated 20.11.2006 in the joint names of S.Jayam and S.Krishnaswamy. Ex.P-24 are photographs from the family album in which Dr.S.Jayam is predominantly present. Ex.P-28 is the death certificate of

Dr.S.Jayam issued by the Corporation of Chennai and the name of her husband has been given as K.V.Sankaran, late.

38. I hold that these documents which have not been challenged during cross examination, show the close relationship which Dr.S.Jayam had with the sons of K.V.Sankaran and also with K.V.Sankaran.

39 . PW-1 was the plaintiff S.Viswanathan. The very first question put to him during cross examination was:

q. What is the relationship between your mother and Dr.Jayam, Testartix?

A . My mother name is S.Rajalakshmi and her sister is Ms.Jayam.

Further questions were asked as follows:-

q. When did she adopt you?

A . In the year 1966.

q . Have your filed any document to show that she adopted you?

A . No.

q . On what basis you have said that she has adopted you?

A. She has brought me up from 1966. She looked after me as a mother I was young boy at that time. She stayed in the same house along with my father and brother. She looked after my education and further settled me in marriage. After that we have been very close together as mother and son.

q. Whether Dr.Jayam has disclosed anywhere that she has adopted you?

A. All close contact and friends of Dr.Jayam and my father knew me and my brother as practically children of Dr.Jayam eventhough it was not official adoption. There are also several records were Dr.Jayam has stated either me or my brother as her son.

q. Have you filed any document to show your previous statement that Dr.Jayam stating that either you or your brother as her son?

A . Yes.

q. What are all the documents?

A. Ex.P1 to P- 6, P8, Ex.P10 and Ex.P24 are the documents.

40. Cross examination continue challenging the assertion of PW-1 that the testatrix Dr.S.Jayam can be described as adopted mother and it was on the following lines:-

q. You said that your have been adopted by Dr.Jayam have you got or she got any consent from alleged biological mother?

A. In a way yes. My mother has accepted the facts.

q. Do you have any document to show that consent?

A. My biological mother has accepted the Will and she has given her consent affidavit and she has stated orally about this several times.

q. Whether you have any document to show that your mother has given consent at the time of adoption or from the year 1966 till she filed the consent affidavit.

A. My mother has accepted the divorce of my father. I understand that the divorce has been granted by the Court in the year 1978 to 1980. I do not have the divorce papers.

q. In the absence of any document I put it to you that you cannot be called as an adopted son of Dr.Jayam?

A. I do not agree. Dr.Jayam and my father had have a live in relationship in the nature of husband and wife from 1966 till the death of my father in 1996.

We have in practice had relationship of mother and son and therefore I state that we have had a relationship of adopted mother and son.

41. The evidence effectively emphasises the fact that PW-1 had continuously asserted that the testatrix had a special relationship with him and his brother. The corollary drawn is that the bequeath by Dr.S.Jayam in the Will which is the subject matter can be considered as being a natural bequeath out of love and affection.

42. In the background of the above fact, the Wills dated 02.01.2008 and 05.01.2008 will have to be examined. As mentioned above, Dr.S.Jayam suffered from affliction with Cancer.

43. It is the case of the defendant N.Ranganayaki that Dr.S.Jayam was never in a position to execute or sign any Will and consequently, the entire Will was forged and fabricated by the plaintiff. Before examining that aspect, the plaintiff as propounder of the Will has a duty to lead evidence with respect to the attestation of the Will. That aspect being procedural in nature has to be determined first. The plaintiff examined three other witnesses.

44. PW-2 Dr.V.Seetha was examined orally in chief. She was aged 60 years at the time of examination on 12.09.2013. In her chief examination, she stated that her qualification is M.D., DCH. She was working as Co-ordinator for the Regional Corroborative Centre for facility based new born care at the Institute of Child Health, Egmore. In her chief examination, she further stated:-

"As of now I know Dr.Jayam for the past more than 30 years. I joined as a intern at the Institute of Child

Health, Egmore under Dr.S.Jayam and from that time onwards she was my mother. After my internship was completed my relationship with Dr.Jayam continued. I know Dr.Jayam and also her family. I know the family members of Dr.Jayam, her husband Mr.K.V.Sankaran, Pappu and Ramanan. Pappu's name is Krishnaswamy and Ramanan's name is Viswanathan."

45 . This evidence further strengthens the case of the plaintiff regarding the close relationship Dr.S.Jayam had with K.V.Sankaran and his sons. PW-2 further stated as follows:-

"I am aware of the fact that Dr.Jayam was diagnosed to be suffering from cancer at Adyar Cancer Institute in June 2007. I am aware of the fact that Dr.Jayam was treated for cancer at Adyar. I am aware of the nature of the treatment given to Dr.Jayam. Panhysterectomy was done followed by radiotherapy for Dr.Jayam. The said Panhysterectomy treatment part was for the period of two to three weeks and after that she was discharged from the hospital and she used to go for radiotherapy everyday according to the schedule. I used to accompany her everyday for her treatment after completing my hospital duty."

46. The above evidence clearly revealed the close intimacy which PW-2

had with Dr.S.Jayam. It is further evidenced that Dr.S.Jayam was in good health and had actually attended a National Conference in December 2007 at Pune.

PW-2 further stated that:

"Myself and Dr.Mangayarkarasi, who is another close associate of Dr.Jayam took and admitted her at the Cancer Institute, Adyar. I used to be with her practically everyday till her death. So far as my knowledge goes I never heard Dr.Jayam mentioning anyone by name Ranganayagi nor have I met the said Ranganayagi either in her residence or in the hospital where she was attending."

47 . This evidence is very crucial since as a medical professional, PW-2 knew the condition of Dr.S.Jayam and also stated that she was with her practically everyday till her death. PW-2 further spoke about the two Wills dated 02.01.2008 and 05.01.2008. She deposed as follows:-

"These two Wills were executed by Dr.S.Jayam. In Ex.P- 25 Dr.Jayam has signed in our presence and Dr.Sridevi and I signed as witnesses. In Ex.P- 26, Dr.Jayam has signed in my presence and also in the presence of Dr.J.Kumutha. Exs. P25 was executed at Cancer Institute of Adyar on 02.01.2008. On the same day

myself and Dr.Sridevi also signed in Ex.P- 25 Will, at Cancer Institute, Adyar. Immediately after Dr.Jayam signed myself and Dr.Sridevi signed in Ex.P- 25 in her presence at Cancer Institute, Adyar. Ex.P- 26 was signed by Dr.Jayam on 05.01.2008 at 7.00 a.m at Cancer Institute, Adyar. In my presence and also in the presence of Dr.J.Kumutha Ex.P26 Will was executed by Dr.Jayam. Immediately after the execution by Dr.S.Jayam myself and Dr.Kumutha signed in Ex.P- 26 as attesting witnesses. On the request of Dr.Jayam myself and other witnesses signed in the Wills as witnesses. I am aware of the contents of the both Wills, Ex.P25 and P26 at the time of signing as witness. The signature found in Exs. P25 and P26 are that of Dr.Jayam. I have seen Dr.Jayam signing in Exs. P25 and P26. At the time of execution of Exs. P25 and P26 Dr.S.Jayam was fully conscious and aware of what she was doing."

48 . PW-2 is not only a witness to the Wills but also a medical professional and much credibility has to be attached to her evidence. She was cross examined by the counsel for the defendant on the following lines:-

q. When did you first meet Dr.Jayam after she was admitted in Cancer Institute in December 2007?

A. Myself and Dr.Mangaiyarkarasi admitted Dr.Jayam at Adyar Cancer Institute in December 2007.

q. Can you tell the Court the exact date you have brought her to Adyar Cancer

Institute?

A. On 26th December 2007.

q. Who were all there at the time of admitting her in Adyar Cancer Institute?

A. Myself and Dr.Mangaioyarkarasi only.

49. The above evidence during cross examination further reinforces her assertion made in chief examination that she was with Dr.S.Jayam in the hospital at Adyar Cancer Institute. She was further questioned about this fact as follows:-

q. How long were you with Dr.Jayam when she was in hospital between June 2007 till she died?

A. After my duty hours I used to meet Dr.Jayam everyday when she was at Cancer Institute, Adyar in 2007 and accompanied her for her radiation therapy and was also there in December 2007 when she was readmitted in Cancer Institute.

q. Are you aware of the treatment given to Dr.Jayam during the period you referred to above?

A. Yes, I am aware.

q. Atleast after the commencement of the treatment, did you know the stage of the cancer which she suffered?

A. Yes, I am aware

Q. What was the stage?

A. There was some sarcomatus changes in her tumor of the uterus.

50. The above evidence, again during cross examination reinforces the fact that PW-2 was with Dr.S.Jayam everyday in the hospital. She was then questioned about the necessity to be with Dr.S.Jayam everyday. The following has been recorded.

q. What was the interest you were having in Dr.Jayam to be with her during the treatment?

A. I was closely associated with Dr.Jayam for more than 30 years. She was my teacher, mentor, friend, philosopher and guide.

51. She was then asked about the Will:-

q. What was the time or the period, Dr.Jayam told about her intention of making a Will?

A. Somewhere in April 2007.

q. Did she discuss about the Will after that?

A. Only on 2nd January 2008 in the evening she called me and Dr.Sridevi to sign as witnesses in a handwritten Will and later on 05.01.2008 at about 7 in the morning she called me and Dr.Kumutha and asked us to sign the typewritten Will explaining the reasons as she wanted a drafted Will to be signed because the first one was a handwritten Will.

q. On 2nd January 2008, you said that you signed a Will as a witness, who

were all there at the time of signing the Will?

A. Dr.Jayam, Myself and Dr.Sridevi.

52 . This evidence spoken on oath during cross examination reinforces the fact that PW-2 was physically present at the time when the Wills were executed by Dr.S.Jayam. They are in consonance with the case of the plaintiff. She was then asked about the contents of the Will. It was as follows:-

q. Did Dr.Jayam tell about the contents of the Will?

A. We were made to go through the Will before signing as witness.

q. Who had first signed the Will of Dr.Jayam?

A. Dr.Jayam.

53. She was further asked about the Will:-

q. Do you know who had written the Will dated 02.01.2008?

A . Dr.Jayam told that she had discussion with one Mr.Elango, lawyer whom she had known earlier to draft a Will and she also told that on her request Mrs.Usha wife of Mr.Krishnaswamy had handwritten the Will.

54. On the subsequent cross examination, she further answered as

follows:-

"I jointed as intern at the Institute of Child Health where I met Dr.Jayam who was working there in the year 1978."

This only reinforces the credibility and the long association of the witness with Dr.S.Jayam.

55 . During further cross examination, she was then asked about the stage of cancer of Dr.S.Jayam. She replied as follows:-

" Hepatomegaly with multiple metastasis. Hepatomegaly means enlargement of liver, multiple metastasis means many areas of deposits. I am not a competent authority to comment whether the cancer has spread or not. Regarding the medical condition of the patient of Dr.Jayam I am not a competent authority to comment on the condition of Dr.Jayam because I am only deposing the evidence regarding the attestation of the Will. I deny the suggestion that I did not take Dr.Jayam to the hospital on 27.12.2008 and admitted her and also that I do

not know anything about her physical condition. It is correct to state that Dr.Sridevi and her team of doctors treated Dr.Jayam. I did enquire about the condition of Dr.Jayam at the time and after admission of Dr.Jayam. Dr.Sridevi said that only after conducting some investigations she can give a clear picture of the patient Dr.Jayam. Adeno carcinoma Grade III means one type of cancer and grade III means one of the various stages of the cancer."

She further explained the condition,

"Oedema means swelling. Generally, Oedema means accumulation of fluids. I do not know the exact weight of Dr.Jayam. Oedema was approximately 10% in abdomen and since she was wearing a dress the exact nature of oedema was difficult to access. It is not always the case that yellowish discolouration of the skin appears when any complication in liver occurs. It is not necessary that whenever liver is disturbed the blood circulation is necessarily affected. I deny the suggestion that as a doctor I do not know the basic principle of the medicine that whenever liver is disturbed the blood circulation throws out the fluids otherwise called as oedema. Witness adds: Oedema occurs in a liver disorder only if there is a severe

compromise of the liver. After completion of treatment of Dr.Jayam in the first phase including raditherapy at Adyar Cancer Institute I went to Adyar Cancer Institute on 26.12.2007 only. But I have been seeking her at her residence or at her work place quite often."

56 . She further stated about the condition of Dr.S.Jayam during her days at Cancer Institute:-

"Dr.Jayam was amidst the presence of her close associates and friends and she was talking in general on the day of her death till she became dyspneic and continued to speak thereafter. Dyspnea means difficulty in breathing. She was sitting upright in her bed during dyspnea. I admitted her under Dr.Sridevi's care who was her treating gynecologist and so I did not examine the pulse of Dr.Jayam or examine her by stethoscope at the time of admission. I do not remember exactly what Dr.Jayam was taking about to her friends and associates just before her death."

57. The evidence of PW-2 shows that the witness answered truthfully about the physical and mental condition of Dr.S.Jayam. She was emphatic that Dr.S.Jayam executed the Will and that she signed the Will in her presence.

58. PW-3 was A.U.Elango, Advocate, who was associated with K.V.Sankaran and who was given instructions to draft the Will on 02.01.2008, which was marked as Ex.P-25. He stated as follows:-

"Ex.P- 25 was drafted by me. Dr.Jayam gave me the instructions to draft Ex.P- 25. On 02.01.2008 Dr.Jayam called me from Adyar Cancer Hospital to meet her to draft a Will. So I went there around 6.00 p.m on that day and took instructions from her to draft a Will. Ex.P- 25 is the said Will which I had drafted. I took instructions from Dr.Jayam and I dictated to Mrs.Usha, w/o. S.Krishnasamy."

He further stated as follows:-

"On page 2 of Ex.P- 25 the word 'absolutely' was incorporated by me. In the same page in the disposition "c" was also corrected by me."

He further stated

"The next day on 03.01.2008 Dr.Jayam sent Ex.P- 25 Will after counter signing the corrections. On 03.01.2008

when the Will was sent to me, it was signed by her and attested by two witnesses as mentioned in Ex.P- 25."

He further stated

"Ex.P- 26 is the Will typed in my office. There is no substantial difference between Exs. P- 25 and P- 26. Dr.Jayam requested me to have the Will typed since in Ex.P- 25 there are small corrections. On 04.01.2008 Ex.P- 26 was typed at my office. I took Ex.P- 26 myself and had it delivered to Dr.Jayam personally on 04.01.2008. I told Dr.Jayam to sign in the typed Will in ex.P26 in the presence of two witnesses. Subsequently on 05.08.2008 she called me and she wanted to hand over the Will Ex.P- 26 so I met her around 12.00 noon on 05.01.2008. On 05.01.2008 I met her at 12.00 noon and Ex.P- 26 was handed over to me in a duly executed form."

He further stated

"On 05.01.2008 Dr.Jayam returned Ex.P- 25 and P- 26 to me. The mental and physical condition of Dr.Jayam when I met her on 05.01.2008 at 12.00 noon, was sound."

59. During his cross examination he stated:

"I would say Ex.P- 25 and P- 26 were drafted according to the instructions of Dr.Jayam."

He also explained why he did not signed the Will:-

"Having drafted the Will I did not think it necessary to sign in the Will as a person who had drafted the same as the Will was not to be registered."

He further reiterated during cross examination as follows:-

"The Will was drafted according to the instructions of Dr.Jayam"

60 . It is seen from the above evidence that the witness had withstood cross examination. He had infact during cross examination, asserted that the Will was drafted according to the instructions of Dr.Jayam.

61 . PW-4 R.Senguttuvan was a third party to the proceedings. He filed his proof affidavit and stated that he had a very close relationship with the family of Dr.Jayam, Advocate K.V.Sankaran and their children. He specifically stated that he had participated in all the important family functions of Dr.Jayam and her family and had never seen the defendant or her husband or daughter in all his

years of association with Dr.Jayam and her family. He further stated that he was a witness to the shocking incident of the daughter of the defendant stealing the ashes of Dr.Jayam kept in an urn from the crematorium after the funeral and running to the beach for immersion. He was cross examined by the counsel for the defendant and again withstood cross examination.

62 . 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.”

63 . 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.”

64 . 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.”

65 . 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.”

66 . 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.”

67 . 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.”

68. 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. "

69 . Dr.V.Sridevi, who was another attesting witness was examined as CW-1. She was the Professor, Surgical Oncology Cancer Institute, Chennai. She was asked to produce the medical records from Cancer Institute. She produced the bed side chart and a case summary which was marked as Ex.P-30. During her cross examination, she stated as follows:-

q. By looking at the bed side chart produced by you today can you point the progressive deterioration mentioned in the case summary in Ex.P- 30?

A . She was admitted on 26.12.2007 with breathing difficulty and swelling in

the legs. Subsequently, developed diarrhoea on 28.12.2007, and her oral intake was less, she was passing blood in stools, and blood vomiting also on 31.12.2007. Subsequently on 02.01.2008 we noticed that certain periods she was more drowsy (Intermittent periods only) on 03.01.2008 her liver function test suggested jaundice and she continued to be breathless, needing oxygen intermittently. On 05.01.2008 morning she was conscious but entirely confined to bed. After 2.40 p.m on 05.01.2008 she was not at all breathing, no heart function, not arousable, resuscitation was not successful and she was declared dead on 2.50 p.m on 05.01.2008.

70. It is seen that the witness was emphatic that on 05.01.2008 Dr.Jayam was conscious in the morning. That was the time when she had executed the Will at 7 a.m. During cross examination by the counsel for the defendant, she further stated :-

q . For a lay man, can you give the symptoms of adeno carcinomas grade - III with metastasis of the liver having internal edema in the condition of Dr.Jayam pertaining on condition her on 04.01.2008 and 05.01.2008?

A . Inability to eat, breathing difficulty, swelling of both the legs, appearance of jaundice and being bed bound and some intermittent drowsiness and confusion.

71. During cross examination by the counsel for the plaintiff since the

witness was Court witness, she stated as follows:-

q . What was the state of mind and consciousness of Dr.Jayam from 02.01.2008 to the morning of 05.01.2008?

A . From 02.01.2008 evening there was intermittent period of stupor in between she was alert and well and gradually worsened on 05.01.2008. On the morning of 05.01.2008 as per the bed side chart patient was confined to bed, there is no mention of her conscious level. It can be implied that she was conscious and oriented.

72 . The evidence that Dr.S.Jayam was "conscious and oriented" is very significant. The witness was not only a medical professional at Cancer Institute but also one of the attesting witnesses.

73. Earlier, during cross examination by the counsel for the defendant, she had stated as follows:-

q . Have you attested any Will of Dr.Jayam?

A . No.

74 . To clarify this, in the cross examination by the counsel for the plaintiff, she stated as follows:-

q. Witness is shown Ex.P- 25. Whether the signature in Ex.P- 25 is yours?

A. Yes, it is my signature and address given there has been written therein in my own hand. However I do not remember now to signed as a witness to the said documents.

75 . She further stated as follows:-

q. When was oxygen administered to Dr.Jayam on the morning on 05.01.2008?

A . As per the previous days instructions to the nurse she has been advised to administer oxygen to the patient as and when required. Accordingly she was advised to give oxygen around 8 a.m on 05.01.2008.

q. What do you mean stupor?

A. Stupor means intermittent period of drowsiness and confusion. The period can be variable for ten minutes for somebody and half an hour and one hour for different patients.

q. What was the period of stupor for Dr.Jayam?

A. From 26.12.2007 to 02.01.2008 she was conscious and well oriented. From

the afternoon of 02.01.2008 I noticed her to be having intermittent episode of stupor. I cannot recall the duration of each of episodes of stupor of Dr.Jayam.

q. Except during the duration of each of the episodes of stupor of Dr.Jayam was she conscious?

A. Yes. She was conscious and oriented during the other periods.

76. She further stated

q. Whether you can say which of the periods Dr.Jayam was conscious and the periods when she had stupor?

A. On the morning of 05.01.2008 from the bed side chart it appears she was conscious. Since there is no record of stupor on 05.01. She is likely to be more conscious on the morning of 05.01.2008.

q. What was the state of mind from the time when she admitted on 26.12.2007 to 05.01.2008?

A. She was more conscious than in stupor.

77. This evidence, during cross examination is again very significant.

The learned counsel for the defendant stated that the bed side chart produced as document would give an indication about the condition of the patient at the time when the doctor visit the patient for examination. He stated that it would not give

a complete picture of the condition of the patient.

78 . The learned counsel for the defendant relied on the **MERCK MANUAL CENTENNIAL EDITION** and more particularly relied on **LIVER METASTASES** :- *Metastatic cancer is the most common hepatic malignancy. The liver provides a fertile bed for bloodborne metastases; lung, breast, colon, pancreas, and stomach are the most frequent primary sites, although virtually any source may be responsible. Spread to the liver is not uncommonly the initial clinical manifestation of cancer elsewhere. In the terminal stages, progressive jaundice and hepatic encephalopathy presage death .*

79. He further stated the **PORTAL - SYSTEMIC ENCEPHALOPATHY** and pointed out the extract from the Manual with respect to Symptoms and signs as follows:-

"Personality changes (eg, inappropriate behavior, altered mood, impaired judgment) are common early manifestations that may antedate apparent change in consciousness. Usually, impaired consciousness occurs. Initially, subtle sleep pattern changes or sluggish movement and speech may be present. Drowsiness,

confusion, stupor, and frank coma indicate increasingly advanced encephalopathy."

80. Relying on the above, he stated that the Will particularly Ex. P-26 dated 05.01.2008 is forged and fabricated Will.

81 . I differ with the contentions of the learned counsel.

82 . The Manual gives the general condition of a patient, who is afflicted with Cancer. The actual condition of the patient can be spoken to only by the Doctor who actually treated the patient. In this case, CW-1 Dr.Sridevi had given the treatment for Dr.S.Jayam. She specifically stated that in the morning on 05.01.2008 Dr.Jayam was conscious. The Will was attested by two medical professionals PW-2 and CW-1. PW-2 very specifically stated that she saw Dr.Jayam signing the Will and she also signed the Will in her presence. She was examined orally in chief. She answered clearly in her chief examination and in her cross examination. Similarly, CW-1 Dr.V.Sridevi was examined only for the purpose of the bed side chart report under Ex.P-30. She again spoken very clearly when examined orally in chief. The deep appreciation of the Court must be placed on record on the very fair conduct of Mr.Bijai Sundar, learned counsel

for the plaintiff, who did not resort to filing proof affidavits, but examined the witnesses orally in chief. The witnesses themselves, came forward to tender evidence.

83 . On the other hand, the defendant did not gray the witness box. She did not come forward to subject herself to cross examination. She did not substantiate anything which she had stated in her written statement.

84 . I hold the plaintiff has proved the Will in manner known to law. Suspicious circumstances stated by the defendant are rejected by me as Dr.S.Jayam was in conscious and executed the Will in a sound state of mind. In this connection, Ex.P-22 dated 04.01.2008 assumes significance. This was one day prior to the date of death and was written from the hospital. The letter is addressed to the trustees of Vijaya Medical Trust. Dr.S.Jayam in her own handwriting has spoken about the renewal of lease agreement of Sahishnatha Educational and Charitable Trust. The two and half page letter was in the own handwriting of Dr.S.Jayam who also signed the same. This is more than sufficient proof to show that she was in a conscious state of mind during her period at the hospital. The defence taken by the defendant are out of despair. I reject them.

85 . I hold with respect to issue No.1 in T.O.S.No. 35 of 2008 that the Will Ex.P-26 dated 05.01.2008 was executed by Dr.S.Jayam in a sound state of mind in the presence of the attesting witness and that it is a valid and genuine Will. I reject the contention that it is a forged Will. I further hold with respect to Issue No. (c) in Tr.C.S.No. 892 of 2009 that the Will is enforceable. Consequently, Issue No.1 in T.O.S.No. 35 of 2008 is answered in favour of the plaintiff and Issue No. 2 in T.O.S.No. 35 of 2008 is answered against the defendant, rejecting their contention that the Will is a forged one and Issue No. (c) in Tr.C.S.No. 892 of 2009 is answered in favour of the plaintiff in T.O.S.No. 35 of 2008, who was the second defendant in Tr.C.S.No. 892 of 2009.

Issue No. 3 in T.O.S.No. 35 of 2008:-

86 . It naturally follows that the plaintiff having proved the Will by examining the Executor and also the attesting witness is entitled for grant of probate as sought for.

Issue Nos. (a) (b) and (d) in Tr.C.S.No. 892 of 2009:-

87 . Tr.C.S.No. 892 of 2009 has been filed for a declaration that the

plaintiff therein, namely N.Ranganayagi is a legal heir of her deceased sister and entitled to succeed her properties. The relief sought is not formed properly. She can be a legal heir in her capacity as blood sister, but she is not entitled to succeed to the property since her sister Dr.S.Jayam had written and executed a Will dated 05.01.2008 which has been proved before this Court in the manner known to law. The relief sought in the suit is misleading and cannot be granted.

88. With respect to the relief to be granted in Tr.C.S.No. 892 of 2009 I hold that the suit deserves dismissal since the frame of the suit itself is bad and that two reliefs cannot be combined. These issues are answered against the plaintiff in Tr.C.S.No. 892 of 2009.

Issue No.4 in T.O.S.No. 35 of 2008:-

89. In the result, I hold that the plaintiff is entitled for probate of the Will dated 05.01.2008 executed by Dr.S.Jayam, who died on 05.01.2008. T.O.S.No. 35 of 2008 is decreed with costs. Tr.C.S.No. 892 of 2009 is dismissed with costs. Consequently, connected Application in A.No. 1240 of 2010 is dismissed.

30.11.2017

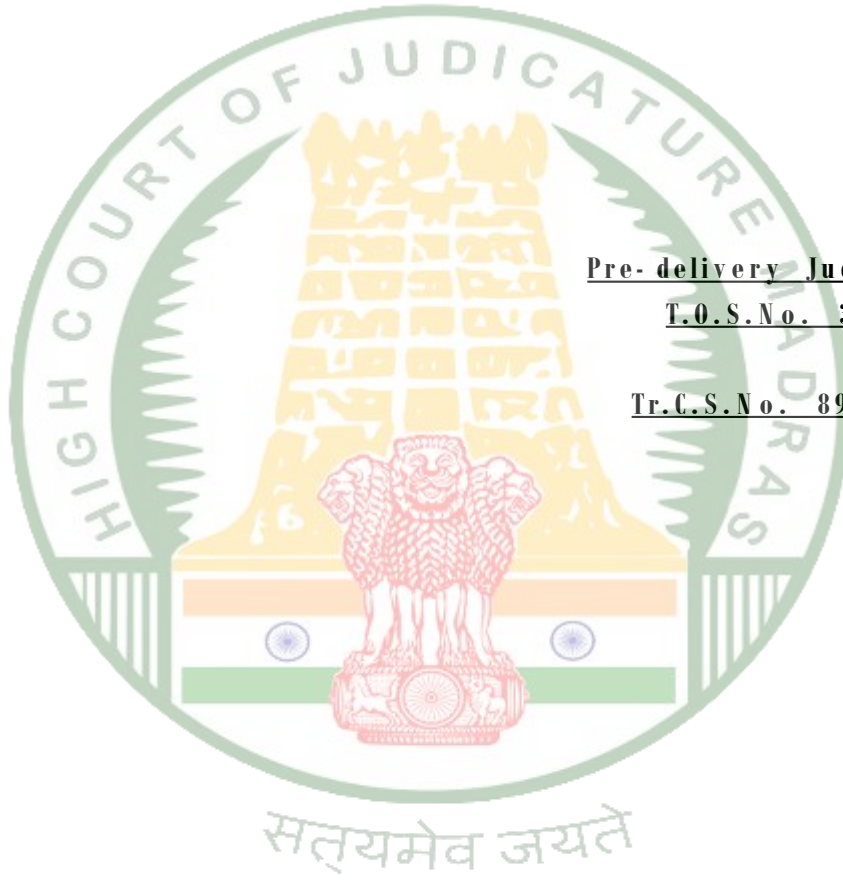
vsg

Index: Yes/No

Internet: Yes/No.

C.V.KARTHIKEYAN .J.

vsg



Pre-delivery Judgment in
T.O.S.No. 35 of 2008
And
Tr.C.S.No. 892 of 2009

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30.11.2017

Pre-delivery Judgment in

T.O.S.No. 35 of 2008

And

Tr.C.S.No. 892 of 2009

And

A.No. 1240 of 2010

To

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Most respectfully submitted
by VSG



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